

Issued Date: JANUARY 13, 2024

From: Director Gino Betts, Office of Police Accountability



Case Number: 2023OPA-0319

Allegations of Misconduct & Director's Findings

Named Employee #1

1. **Allegation #1:** 5.140-POL— 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing
 - a. **Finding:** Not Sustained - Unfounded (Expedited)
 2. **Allegation #2:** POL-5. Officers Shall Document all Primary Investigations on a Report
 - a. **Finding:** Not Sustained - Unfounded (Expedited)
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Named Employee #2

1. **Allegation #1:** 5.140-POL— 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing
 - a. **Finding:** Not Sustained - Unfounded (Expedited)
 2. **Allegation #2:** POL-5. Officers Shall Document all Primary Investigations on a Report
 - a. **Finding:** Not Sustained - Unfounded (Expedited)
-

Named Employee #3

1. **Allegation #1:** 5.140-POL— 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing
 - a. **Finding:** Not Sustained - Unfounded (Expedited)
 2. **Allegation #2:** POL-5. Officers Shall Document all Primary Investigations on a Report
 - a. **Finding:** Not Sustained - Unfounded (Expedited)
-

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

Executive Summary:

Named Employees #1, #2, and #3 (NE#1, NE#2, and NE#3) responded to a hate crime call resulting in Community Member #1's (CM#1) arrest. The Complainant alleged that the named employees were racially biased against her and CM#1. The Complainant also alleged that the named employees failed to document her or CM#1's version of the incident in their reports.

Administrative Note:

This case was approved for Expedited Investigation. That means OPA, with the Office of Inspector General's (OIG) agreement, believed it could issue recommended findings based solely on its intake investigation without interviewing the named employees. As such, OPA did not interview the named employees involved in this case.

On August 30, 2023, OIG certified OPA's investigation as thorough, timely, and objective.

Summary of the Investigation:

On July 21, 2023, the Complainant called an OPA investigator, who documented the following complaint. The Complainant said she and her husband, CM#1, were in a dispute with gay men, resulting in CM#1's arrest for threatening to kill them. The Complainant also said responding officers did not document her or CM#1's complaint.

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, body-worn video (BWV), witness videos, and police reports. OPA also interviewed the Complainant.

On July 8, 2023, at 3:16 PM, CAD call remarks noted, "MALE WITH GUN... [CALL TAKER] HEARS LOTS OF SCREAMING."

The named employees responded to the location with their BWV activated. Collectively, BWV captured the following incident. NE#1 and NE#3 parked on a street near a bar. NE#1 spoke with the Complainant and CM#1. Simultaneously, NE#3 spoke with Community Member #2 (CM#2), CM#2's husband (Community Member #3 or CM#3), and witnesses. NE#1 told the Complainant and CM#1 that they were being detained based on a gun threat. NE#1 interviewed the Complainant. The Complainant said she and CM#1 were in a car and turned right at an intersection when CM#2 crossed the street, ran up to her car screaming obscenities, harassed her, and threatened her. The Complainant said she did not start the argument but responded after CM#2 and CM#3—who quickly approached—yelled racial slurs. The Complainant said NE#1 should not believe CM#2 and CM#3 because they were liars and racists. The Complainant stated, "she did not recall there being a firearm mentioned in the incident, but she was so amped up that she could only recall what she said and what was said to her." NE#1 interviewed CM#1. CM#1 said CM#2 started the argument, flipped him off, and was racist for claiming he had a gun. CM#1 denied threatening CM#2 and CM#3 with a gun but later admitted he may have said, "That's how people get shot." NE#1 said officers were reviewing videos of the incident.

NE#3 interviewed CM#2, CM#3, and a bar employee. CM#2 said he was crossing a street when CM#1 said, "Walk faster" and said a homophobic slur. CM#2 said he flipped CM#1 off, then CM#1 got out of the car, yelled homophobic slurs, and threatened to shoot him. CM#2 said CM#1 reached behind his waistband to suggest he had a gun. CM#2 denied running towards the Complainant's car. CM#3 and the bar employee corroborated CM#2's claims. NE#3 interviewed two other witnesses who corroborated CM#2's claims and recorded a portion of the verbal altercation on their phones. NE#3 watched those recordings. Both witnesses said they heard CM#1 threaten CM#2 with a gun and saw CM#1 reach behind his back.

NE#1 told the Complainant that officers were going to arrest CM#1. The Complainant alleged CM#2 and CM#3 threatened her, but NE#1 replied that she did not allege that initially. The Complainant said she wanted to file charges against CM#2 and CM#3. NE#2 and NE#3 took CM#1 aside. NE#3 said she had probable cause to arrest CM#1 for malicious harassment. NE#2 and NE#3 handcuffed CM#1.

Witness videos captured the Complainant and CM#1 in a verbal altercation with CM#2 and CM#3. At one point, CM#2 said, "I was in the crosswalk, you fat bitch!" CM#1 immediately approached CM#2 and CM#3; they backed away from CM#1. The Complainant yelled homophobic slurs at CM#2 and CM#3 and called them racists.

Each named employee wrote a report consistent with the events captured on BWV. Additionally, each named employee documented either the Complainant's or CM#1's version of the incident, described in greater detail below.

OPA interviewed the Complainant on August 9, 2023. The Complainant said CM#2 and CM#3 forced her to slam the brakes at a crosswalk, leading to a verbal altercation where CM#2 and CM#3 said racial slurs and threatened her. The Complainant admitted saying a homophobic slur. The Complainant denied that CM#1 threatened to use a gun. The Complainant said the named employees were patronizing, believed CM#2's and CM#3's lies because they were biased toward LGBTQ victims, did not see her version of the incident, and failed to document her statements in their reports.

Analysis and Conclusions:

Named Employee #1 – Allegation #1

5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing

The Complainant alleged that NE#1 engaged in bias-based policing by siding with CM#2 and CM#3.

SPD policy prohibits biased policing, which it defines as "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as

well other discernible personal characteristics of an individual.” SPD Policy 5.140-POL. This includes different treatment based on the subject’s race. See *id.* Officers are forbidden from both (a) making decisions or taking actions influenced by bias, and (b) expressing any prejudice or derogatory comments concerning personal characteristics. See SPD Policy 5.140-POL-2.

Here, the named employees arrested CM#1, not CM#2 or CM#3, for a hate crime. The named employees interviewed all parties to the dispute. NE#3 also interviewed multiple community members who witnessed the incident and reviewed two recorded videos that captured a portion of the incident. Multiple witnesses reported hearing CM#1 threaten CM#2 and CM#3 with a gun and seeing CM#1 reach behind his waistband. Based on independent corroboration, the named employees had probable cause to arrest CM#1 for a hate crime. See RCW 9A.36.080. Although the Complainant and CM#1 alleged that CM#2 and CM#3 threatened them, no one corroborated their claims. The circumstances strongly indicate that the named employees effected an arrest based on evidence of a crime, not based on race or favoritism towards the LGBTQ community.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #1 – Allegation #2

15.180 – Primary Investigations, 15.180-POL-5. Officers Shall Document all Primary Investigations on a Report

The Complainant alleged that NE#1 failed to document her or CM#1’s version of the incident.

Officers must document all primary investigations in a report. SPD Policy 15.180-POL-5. All reports must be complete, thorough, and accurate. *Id.*

Here, NE#1 documented the Complainant’s version of the incident in a report, writing, “I explained the reason for contacting [the Complainant] and she explained to me that she responded to aggressive behavior from other community members.” NE#1 also wrote, “[The Complainant] stated community members yelled obscenities’ like “Fat Black Bitch” and she wanted to file charges on the person crossing the street since they “threatened her”. [The Complainant] stated she did not start the incident but instead responded to their insults and behavior from the other parties involved.” NE#1’s documentation was complete, thorough, and accurate.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #2 – Allegation #1

5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing

For the reasons at Named Employee #1 – Allegation #1, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #2 – Allegation #2

15.180 – Primary Investigations, 15.180-POL-5. Officers Shall Document all Primary Investigations on a Report

The Complainant alleged that NE#2 failed to document her or CM#1’s version of the incident.

NE#2 documented CM#1’s version of the incident in a report, writing, “During the recorded statement [CM#1] told me that the other involved parties called [the Complainant] a “fat black bitch” and a [racial slur]. [CM#1] stated that the subjects yelled at [him and the Complainant] that they would kill them.” NE#2’s documentation was complete, thorough, and accurate.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #3 – Allegation #1

5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing

For the reasons at Named Employee #1 – Allegation #1, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #3 – Allegation #2

15.180 – Primary Investigations, 15.180-POL-5. Officers Shall Document all Primary Investigations on a Report

The Complainant alleged that NE#3 failed to document her or CM#1’s version of the incident.

NE#3 documented CM#1’s version of the incident in a report, writing, “I spoke to [CM#1] and he stated, that [CM#2] had flipped him off, which caused him to get upset. [CM#1] stated, he stepped out the vehicle to verbally “defend” himself and [the Complainant] because [CM#2] was calling him “the n-word” and being racists towards them ([CM#1] and [the Complainant]).” NE#3 also wrote, “[CM#1] denied making homophobic statements towards [CM#2]. However, [CM#1] stated that

[CM#2] was making anti-black statements towards them.” NE#3’s documentation was complete, thorough, and accurate.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**