

**Issued Date:** FEBRUARY 12, 2024

**From:** Director Gino Betts, Office of Police Accountability 

**Case Number:** 2023OPA-0351

## **Allegations of Misconduct & Director's Findings**

### **Named Employee #1**

1. **Allegation #1:** 6.010 – Arrests, 6.010-POL-1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest (Effective July 26, 2019)
    - a. **Finding:** Not Sustained - Unfounded (Expedited)
  
  2. **Allegation #1:** 5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing
    - a. **Finding:** Not Sustained - Unfounded (Expedited)
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### **Named Employee #2**

1. **Allegation #1:** 6.010 – Arrests, 6.010-POL-1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest (Effective July 26, 2019)
    - a. **Finding:** Not Sustained - Lawful and Proper (Expedited)
  
  2. **Allegation #1:** 5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing
    - a. **Finding:** Not Sustained - Unfounded (Expedited)
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**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:**

Community Member #1 (CM#1) was arrested for stabbing Community Member #2 (CM#2). The Complainant alleged that Named Employee #1 (NE#1) and Named Employee #2 (NE#2) lacked

probable cause. The Complainant also alleged CM#1 was arrested because he was Black.

**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 September 15, 2023, OIG certified OPA's investigation as thorough, timely, and objective.

**Summary of the Investigation:**

On August 14, 2023, the Complainant left a voicemail for OPA, saying that officers arrested CM#1 after a stabbing incident. On August 17, 2023, OPA contacted the Complainant, who alleged that officers lacked probable cause to arrest CM#1 for stabbing CM#2. The Complainant also alleged that officers arrested CM#1 because he was Black.

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

On August 5, 2023, at 2:08 AM, CAD call remarks noted, "MALE STABBED."

The named employees and other officers responded to a park and activated their BWV, capturing the following:

NE#2 approached CM#2, who's left hand was lacerated and bleeding. A witness officer documented in a police report that CM#2 was "clearly intoxicated" based on an alcoholic odor and slurred and repetitive speech. CM#2 said he could not see and wanted to find his glasses. CM#2 identified CM#1 as the offender. NE#2 handcuffed CM#1. CM#1 said, "I didn't do anything wrong." CM#2 pointed at CM#1 and said, "He stabbed me right there." CM#2 declined a medical evaluation.

NE#1 and Witness Officer #1 (WO#1) spoke with CM#1 and Community Member #3 (CM#3). CM#1 and CM#3 were escalated and appeared to be in a dispute. NE#1 and WO#1 separated CM#1 and CM#3. CM#3 shouted, "I didn't do anything!" NE#1 handcuffed CM#3, saying he pushed an officer. NE#1 escorted CM#3 to a patrol car. CM#3 said CM#1 stabbed CM#2.

WO#1 *Mirandized* CM#1 and said he was arrested for assault. CM#1 claimed self-defense and denied stabbing CM#2. CM#1 said he and his friends encountered another group, which erupted into argument and then a fight. CM#1 said someone punched him, causing a bloody nose. A sergeant responded to the park and screened the arrests.

The named employees wrote police reports consistent with the events captured on BWV. NE#2 wrote, "Based on various lacerations to [CM#2's] hand (defensive wounds), [CM#1] being on

scene and [CM#2] verifying [CM#1] to be the correct suspect, officers determined there was probable cause for his arrest.”

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### **Analysis and Conclusions:**

#### **Named Employee #1 – Allegation #1**

##### **6.010 – Arrests, 6.010-POL-1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest (Effective July 26, 2019)**

The Complainant alleged that NE#1 lacked probable cause to arrest CM#1 for assault.

Officers must have probable cause to believe that a suspect committed a crime when effecting an arrest. SPD Policy 6.010-POL-1 (effective July 26, 2019). Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy. Probable cause exists when the facts and circumstances within an officer’s knowledge are sufficient in themselves to support a reasonable belief that an offense has been or is being committed. *See State v. Fricks*, 91 Wash.2d 391, 588 P.2d 1328 (1979); *State v. Gluck*, 83 Wash.2d 424, 426–27, 518 P.2d 703 (1974).

Here, NE#1 separated CM#1 and CM#3 and briefly held CM#1’s arm. CM#1 was not detained or arrested at that point. NE#1 then approached CM#3, handcuffed him, and escorted him to a patrol car. NE#1 did not arrest or handcuff CM#1.

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

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

#### **Named Employee #1 – Allegation #2**

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

The Complainant alleged that NE#1 arrested CM#1 because he was Black, constituting bias-based policing.

Biased policing means “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well as other discernible personal characteristics of an individual.” SPD Policy 5.140-POL. It includes different treatments based on race. *See id.* Officers are forbidden from making decisions or taking actions influenced by bias and expressing prejudice or derogatory comments concerning personal characteristics. *See* SPD Policy 5.140-POL-2.

Here, NE#1 was not directly involved in CM#1's arrest. Accordingly, for reasons at Named Employee #1 – Allegation #1, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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

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### **Named Employee #2 – Allegation #1**

#### **6.010 – Arrests, 6.010-POL-1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest (Effective July 26, 2019)**

The Complainant alleged that NE#2 lacked probable cause to arrest CM#1 for assault.

Here, NE#2's police report documented the reasons for CM#1's arrest. NE#2 wrote that CM#2's hand was lacerated, and CM#2 identified CM#1 as the offender. CM#3 also identified CM#1 as the offender. Therefore, there was at least probable cause for CM#1's arrest. While some facts may have undermined CM#2's accusation, like CM#2's intoxication and impaired vision, NE#2 only needed probable cause at that stage.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

### **Named Employee #2 – Allegation #2**

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

The Complainant alleged that NE#2 arrested CM#1 because he was Black, constituting bias-based policing.

Here, NE#2 investigated the assault against CM#2. NE#2's police report documented the reasons for arresting CM#1— none of which concerned his race. As noted in Named Employee #2 – Allegation #1, NE#2's decision to arrest CM#1 was based on the evidence he gathered during his investigation, not CM#1's race.

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