



## CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 15, 2024

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0358

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

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing.	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:**

The Complainant alleged Named Employee #1 (NE#1) was unprofessional and engaged in bias-based policing due to her race.

### **ADMINISTRATIVE NOTE:**

The Complainant alleged NE#1 was both unprofessional and engaged in bias-based policing. During OPA's intake, OPA observed NE#1 laughing at two points of the interaction. OPA also observed NE#1 engage with the Complainant's supervisor in an unnecessarily argumentative and overbearing manner. OPA returned the professionalism allegations to the chain of command to be handled via a Supervisor Action.

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General's review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the involved employees. As such, OPA did not interview the involved employees in this case. On September 27, 2023, the Office of Inspector General (OIG) certified OPA's Expedited Investigation as thorough, timely, and objective.

### **SUMMARY OF INVESTIGATION:**

Following the interaction between the Complainant and NE#1, an SPD Supervisor (Witness Supervisor #1 or WS#1) filed an internal Blue Team complaint on behalf of the Complainant. WS#1 wrote that officers responded to a reported assault at a hospital. There, the officers met with the Complainant—the reported assault victim—and began an investigation. The Complainant alleged NE#1 was unprofessional when he laughed at her and she believed these actions were motivated by her race. WS#1 documented speaking to the Complainant. In their conversation, the Complainant alleged NE#1 told a Black officer what to say to her—a Black female—in a way she alleged was using the Black officer as a "translator." WS#1 explained the Black officer (Student #1) was a student officer, and it was common



for senior officers to instruct students as to how a situation should be handled. The Complainant also alleged that, if her role were reversed with her assailant, she would have been arrested.

OPA opened an intake investigation. During its intake, OPA reviewed the Blue Team complaint, computer-aided dispatch (CAD) call report, incident report, and body-worn video. OPA also interviewed the Complainant.

### **1. CAD and Incident Report**

The Complainant called 9-1-1 to report that she was assaulted at a hospital by a patient's family member (Community Member #1 or CM#1). NE#1 responded with two other officers, Student #1 and his field training officer (Witness Officer #1 or WO#1).

Student #1 wrote the incident report. Student #1 documented his conversation with the Complainant, who stated she wanted to press charges against CM#1. The Complainant said she was a social worker who was working with CM#1's brother. The Complainant reported CM#1 was unhappy with the situation causing CM#1 to become upset. The Complainant reported that, when she went to enter a room, CM#1 pushed her then followed her while yelling. Student #1 documented NE#1 speaking with reported witnesses, but these individuals explained they did not witness a push, only yelling. Student #1 confirmed that hospital supervisors wanted CM#1 trespass from the hospital for one day. Student #1 documented speaking to CM#1, who denied pushing the Complainant and suggested the Complainant was upset because CM#1 was working around her to resolve her issue with her brother. Student #1 documented escorting CM#1 off the property. Student #1 wrote that he chose not to pursue a "Charge-by-Officer" (CBO)<sup>1</sup> for CM#1 as the two parties disputed whether a push occurred and there were no witnesses to corroborate either account. Student #1 concluded he did not have probable cause.

### **2. BWV**

OPA also reviewed BWV from the incident. BWV recorded NE#1's approximately one-hour involvement in this incident. BWV recorded NE#1, WO#1, and Student #1 entering the hospital. The officers approached the Complainant and spoke with her. The Complainant explained her allegations against CM#1. At WO#1's request, NE#1 spoke with two hospital employees, neither of whom reported seeing the shove. NE#1 and WO#1 then discussed the incident and how to resolve it, though much of this conversation was inaudible on BWV. NE#1 said, "I was gonna let him bring his ideas to me, but that was gonna...that's what I was thinking to, though. Is that OK?" NE#1 then asked Student #1 "What are you thinking?" Student #1 responded, "What I'm thinking just, get her trespassed, uh, charged by officer...and then, um, move from there." NE#1 told Student #1 that was the "best idea," though WO#1 discussed the challenges of trespassing someone from a hospital. NE#1 instructed Student #1 to explain the CBO program to the Complainant, which Student #1 did.

The Complainant expressed frustration about the decision to pursue a CBO versus a custodial arrest. WO#1 explained that the CBO would be used, "in lieu of like arresting somebody." The Complainant responded, "We haven't gotten to that point yet? For her actually to have consequences?" NE#1 explained the plan, stating, "Given the nature of the assault, we feel the best move forward is to escort her out and refer the charges to the prosecutor for misdemeanor

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<sup>1</sup> The CBO program is a way for patrol officers to, "refer completed misdemeanor investigations (a preliminary investigation which has been finished with the available on-scene resources and requires no detective follow-up) to the Seattle Law Department." SPD Policy 15.020. After developing probable cause, an officer may use the CBO program in lieu of a custodial arrest to have charges reviewed for prosecution. See SPD Policy 15.020-POL-1.



assault.” The Complainant expressed that she felt the situation would have been different if the roles had been reversed. WO#1 asked the Complainant to clarify, and the Complainant responded, “If I would’ve sat there, if someone put their hands on me and I beat her down because I feel attacked, what would be the, would, what would the, how would that scenario work out?” WO#1 replied noting that the Complainant did not beat CM#1 down. The Complainant expressed feeling upset, stating she was “irate” and “getting really pissed off.”

NE#1 and Student #1 then asked the Complainant to step from the middle of the hallway, indicating an area to the side of the hallway. The Complainant asked another hospital employee to call her supervisor, Community Member #2 (CM#2). NE#1 approached the Complainant and stated something to the effect of, “I’m going to ask you to please have a layer of professionalism here and move on with this officer and speak to him over here.” The Complainant responded, “No, no, no, I want to talk to my manager now.”

As the BWV continued, the Complainant started walking down the hallway to her office, requesting the officers follow her. NE#1 approached WO#1 and stated, “told you,” and scoffed or laughed. The Complainant, who was about fifteen feet ahead of NE#1 and WO#1, responded, “You can stay back, whoever was chuckling like that. That’s just not fucking funny son.” WO#1 told NE#1 something to the effect of, “Do not say anything else.” WO#1 then shuffled quickly as she appeared to hurry to catch up to Student #1, who was walking with the Complainant and two security officers. NE#1 appeared to laugh. The Complainant stated, “and keep that white homeboy (inaudible) there back...he needs to fix his attitude. Take some culture training. Just crazy.” As the Complainant was saying this, NE#1 asked a security officer, “Is this like a normal thing for her?” The security officer’s response was not clear on BWV. The Complainant, Student #1, WO#1 then discussed the incident in the Complainant’s office with CM#2 joining. The discussion concerned the difference between the CBO program, trespassing CM#1, and a physical arrest. The group also discussed the Complainant’s feelings about being asked to clarify her statement that the situation would be different if the roles had been reversed. During this time, NE#1 discussed the situation with a group of hospital staff in a hallway. During this time, NE#1 expressed his understanding that this situation was upsetting to the Complainant, but stated his belief that the Complainant was upset because CM#1 was not placed in handcuffs. NE#1 also explained the officers’ intent to request the hospital trespass CM#1 and request charges through the CBO program. The hospital staff explained their belief that the Complainant was upset because the Complainant felt the officers were not taking her allegations seriously.

CM#2, WO#1, and Student #1 joined the conversation in the hallway. The group discussed NE#1 laughing. A security guard stated NE#1 and WO#1 were laughing at the Complainant. NE#1 stated he was laughing at the manner in which WO#1 was walking to catch up to Student #1 and the Complainant. WO#1 stated she told NE#1 to stop. NE#1 offered to apologize<sup>2</sup> and the discussion continued. The hospital staff decided CM#1 would be trespassed from the hospital.

Officers later spoke to CM#1, who denied shoving the Complainant. NE#1 and CM#2 then discussed whether the Complainant referred to NE#1 by a homosexual slur<sup>3</sup> and rediscussed the incident at length.

### **3. OPA Interview – Complainant**

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<sup>2</sup> CM#1 later expressed to NE#1 that the manner in which he said this sounded insincere.

<sup>3</sup> While the Complainant was in her office and NE#1 was standing just outside, BWV captured the Complainant saying, “Nah, because we got homeboy out there, Captain Jack, giggling explaining to us what that means.” OPA’s investigation showed “Captain Jack” could refer to several different things, one of which refers to a gay man. In her OPA interview, the Complainant stated she was comparing NE#1 to the fictional character Captain Jack Sparrow.



OPA interviewed the Complainant. The Complainant explained she works at the hospital as a social worker, and one of her roles is assisting patients locate skilled nursing facilities. The Complainant stated she was helping CM#1 locate a facility for CM#1's brother, but CM#1 and the Complainant disagreed about the options, and CM#1 "kind of shoved" the Complainant. The Complainant described ending the conversation and walking away but said CM#1 followed her out to the nurses station while berating her. The Complainant said she called 9-1-1.

The Complainant stated Student #1, WO#1, and NE#1 responded. The Complainant said she was telling the officers what happened, but the officers also asked other nurses what happened. The Complainant stated she observed CM#1 walking around while she was speaking with the police. The Complainant described questioning the officers, "like I called you guys, why am I being like, why are you guys, interrogating me?" The Complainant then said NE#1 told Student #1, "tell her that we're going to charge something."

The Complainant said the, "white officer would not talk to me," and, instead, the Complainant described NE#1 telling Student #1 to speak with her. The Complaint described feeling frustrated and choked up because the officers were talking to her and did not talk to CM#1.

The Complainant described getting frustrated and angry at that point, but then becoming "really pissed off" when she observed NE#1 "giggling," as she felt this made it seem like the officers were making light of the situation and "playing games" with her. The Complainant stated her feeling that if her role was reversed with CM#1, that the situation would have been different. The Complainant said that, when she expressed this, "the officer was like, what do you mean?" The Complainant described frustration, "I was like, what do you think I mean, like this white woman pushed me (inaudible)...like you guys should be...three officers don't need to talk to me...would you guys be investigating asking all these nurses about my character. When I called you guys, and that's when I got upset...and you keep giggling and so I went to my office with my office mate Karen cause I was like, I'm code blue crying because it was embarrassing." The Complainant then expressed that the three officers followed her around and stated her disbelief at NE#1's explanation that he was laughing at WO#1.

#### **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 due to her race.

SPD policy prohibits biased policing, defined 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 race of the subject. *See id.* Officers are forbidden from both, (i) making decisions or taking actions influenced by bias, and (ii) expressing any prejudice or derogatory comments concerning personal characteristics. *See* SPD Policy 5.140-POL-2.



The Complainant articulated several overlapping issues that she cited as evidence of NE#1's bias. In her interview with OPA, the Complainant also acknowledged that she felt NE#1 was very unprofessional and that may have contributed to her allegation that NE#1 was biased. As discussed above in the administrative note, OPA processed NE#1's unprofessional conduct as a supervisor action.

First, the Complainant alleged the outcome of the situation was biased because CM#1 was not taken as a custodial arrest and was, instead, going to be given a charge by officer. OPA observed no evidence that this decision was motivated by bias on the part of NE#1. The decision to route this situation through the CBO program rather than a custodial arrest was made by Student #1, not NE#1. Although NE#1 validated this decision, the decision was reasonable and appropriate under the circumstances. OPA recognizes the fear and frustration CM#1 may have caused the Complainant, but the assault as described by the Complainant was, at most, a misdemeanor assault that did not result in injury. Moreover, the circumstances of the assault were during a disagreement regarding the medical care of CM#1's brother. All the parties to the alleged assault were present and identifiable, and all potential witnesses were interviewed. The Complainant and CM#1 were going to be separated by trespassing CM#1 from the hospital for the day. Moreover, after officers spoke to CM#1—who denied touching the Complainant—and determined there were no witnesses to corroborate the assault allegation, neither a custodial arrest nor CBO would have been appropriate. See SPD Policy 15.020.

Second, the Complainant alleged NE#1 was biased because he ignored her and "trying to Black translate" by telling Student #1 what to say. As an initial matter, NE#1 did speak with the Complainant on multiple occasions and tried to explain the CBO program to her. Also, BWV made clear that the things NE#1 was instructing Student #1 to do or say were guiding in nature and in line with Student #1's learning role in the situation. A specific instance raised by the Complainant in her OPA interview was NE#1 telling Student #1 to explain the CBO program to the Complainant. This occurred at a time in the conversation when the Complainant appeared unclear about the course of action.

Third, the Complainant alleged the officers did not talk to CM#1 and, instead, focused on her and treated her like the suspect. Relatedly, the Complainant alleged NE#1 was asking the nurses about her "character." It is true that the officers did not speak to CM#1 until the very end of the interaction. However, it was appropriate for the officers to approach the Complainant and seek her version of events first as she was the 9-1-1 caller. The questions the officers asked concerned the Complainant's allegations against CM#1 and sought to clarify the circumstances of the push. After the officers determined that a trespass and CBO would be a reasonable course of action, they sought to determine whether hospital staff wanted to exercise their legal authority to trespass CM#1 and, if so, for how long. During this time, the communication between the officers and the Complainant deteriorated, with the Complainant walking down the hallway to her office saying, "So, we can come to my office and talk to my manager, now." Ultimately, the officers had to significantly delay speaking with CM#1 because they became preoccupied with following the Complainant to her office to speak with CM#2, at the Complainant's request. Finally, BWV showed NE#1 did not ask any nurses about the Complainant's "character." Instead, he sought their version of events to determine if they witnessed the alleged assault and could corroborate the allegation.

Fourth, the Complainant alleged NE#1 did not explain the process. BWV showed NE#1, WO#1, and Student #1 made significant efforts to explain both the trespassing and CBO process to the Complainant.

Fifth, the Complainant alleged NE#1 showed bias by either giggling at her or, if his laughter was not directed at her, making light of the situation by laughing inappropriately. To the extent NE#1's laughter raised a professionalism issue, OPA processed this as a supervisor action to be addressed with supervisor. However, BWV did not show anything that



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would directly attribute NE#1's laughter to a bias-based motive. The first time NE#1 appeared to laugh or scoff, it was to WO#1 directly after the Complainant walked off and stated she wanted to talk to her manager. The second time NE#1 appeared to laugh, it was immediately after WO#1 appeared to shuffle quickly to catch up to Student #1 and the Complainant. Neither of these situations appeared motivated by the Complainant's race.

Sixth, the Complainant suggested the officers were being obtuse or "playing games" with her by asking for clarification after the Complainant said, "If I would have done that shit to her, we would be having a different conversation." BWV showed it was WO#1 that sought this clarification. SPD Policy requires officers, "call a supervisor in response to allegations of bias-based policing." SPD Policy 5.140-POL-5. The Complainant's comment potentially—but not explicitly—raised a bias-based policing allegation. WO#1 asked the Complainant to clarify, asking an open-ended question, "I'm not sure I understand, what do you mean it would be different?" This sort of clarification was in line with the officers' obligations under SPD's bias-free policing policy.

Overall, OPA recognizes that the interaction between the officers—particularly NE#1—the Complainant, and hospital staff deteriorated. The underlying alleged assault was understandably and visibly upsetting to the Complainant. The officers, including NE#1, could have more clearly communicated their thought processes, reasoning, and intent behind their words and actions. Combined with these circumstances, NE#1's laughter exacerbated an already delicate situation. However, based on the evidence provided in review by more than preponderance of the evidence, OPA found no evidence that NE#1's words or actions was motivated by bias.<sup>4</sup>

Accordingly, OPA finds that this allegation did not occur as alleged and recommends a finding of Not Sustained – Unfounded (Expedited).

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

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<sup>4</sup> See SPOG CBA Article 3.1.