



## CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 23, 2024

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0383

### **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
# 2	6.010 – Arrests, 6.010-POL-1. Officers Must Have Probable Cause That a Suspect Committed a Crime to Effect an Arrest (Effective July 26, 2019)	Not Sustained - Training Referral
# 3	6.010 – Arrests, 6.010-POL-4. Officers are Required to Report Arrests (Effective July 26, 2019)	Not Sustained - Training Referral

#### **Named Employee #2**

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
# 2	6.010 – Arrests, 6.010-POL-1. Officers Must Have Probable Cause That a Suspect Committed a Crime to Effect an Arrest (Effective July 26, 2019)	Not Sustained - Training Referral
# 3	6.010 – Arrests, 6.010-POL-4. Officers are Required to Report Arrests (Effective July 26, 2019)	Not Sustained - Unfounded

***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 Employee #1 (NE#1) and Named Employee #2 (NE#2) responded to a domestic violence (DV) call. The Complainant provided the named employees with a description and photos of Community Member #1 (CM#1)—the Complainant's husband and purported assailant. The named employees mistakenly arrested the Complainant's friend, Community Member #2 (CM#2), and then released him. The Complainant alleged that the named employees engaged in bias-based policing and lacked probable cause to arrest CM#2. It was also alleged that the named employees failed to report CM#2's arrest.



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**ADMINISTRATIVE NOTE:**

During its investigation, OPA noted that Witness Supervisor #1 (WS#1), an acting sergeant, failed to screen CM#2's arrest. OPA processed this allegation for Supervisor Action.<sup>1</sup> Additionally, OPA noted that the named employees failed to notify the parties that they were being recorded and failed to tell CM#2 the reason for his arrest. OPA processed these allegations for Supervisor Actions.

On February 2, 2024, the Office of Inspector General certified OPA's investigation as thorough, timely, and objective.

**SUMMARY OF INVESTIGATION:**

**A. OPA Complaint**

On September 4, 2023, the Complainant filed an online OPA complaint. The Complainant wrote that he called the police due to a DV incident involving CM#1. The Complainant wrote that he described CM#1 to the officers and provided a picture. The Complainant wrote that officers encountered CM#2 and handcuffed him. The Complainant wrote that officers released CM#2 after realizing he was the wrong person. The Complainant wrote that CM#2's features did not match CM#1's features and that CM#2 was 23 while CM#1 was 48. The Complainant wrote that officers were unapologetic about detaining CM#2 based on his skin color and gender.

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, body-worn video (BWV), incident and field contact reports, and photographs. OPA also interviewed CM#2 and the named employees. OPA could not reach the Complainant for an interview.

**B. Computer-Aided Dispatch (CAD) Call Report and Body-Worn Video (BWV)**

On September 1, 2023, at 2:22 PM, CAD call remarks noted, "RIGHT NOW, HUSBAND THROWING DISHES AND SMASHED [REPORTING PARTY'S] CELLPHONE5, SUSP[ECT] HAS BELT IN HAND, NO [ASSAULT], NO WEAPONS." CAD noted the suspect's description as a Hispanic male, age 48, five feet eight inches tall, 140 pounds, and wearing a dark sweater and dark shorts.

The named employees responded to an apartment and activated their BWV, capturing the following:

They approached the Complainant, who said CM#1 was "crazy." He said CM#1 threw dishes at him and smashed his phone. He said CM#1 wore dark shorts and a long-sleeved dark shirt. He described CM#1 as clean-shaven with medium-length smooth black hair, five feet eight inches tall, and 140 pounds. He said CM#1 left the apartment but liked to hide in the stairwell. NE#1 radioed that she had probable cause for DV assault. The named employees entered the apartment, cleared it, and exited it. The Complainant showed the named employees CM#1's photo and CM#1's identification on his phone. He said he could track CM#1's phone. NE#1 stood next to the apartment's front door.

CM#2 approached the apartment from the end of the hallway. NE#1 said to NE#2, "Um, I think he's here." NE#1 asked CM#2, "Are you [CM#1]?" CM#2 replied, "Huh?" NE#1 again asked, "[CM#1]?" Whether CM#2 responded was unclear.

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<sup>1</sup> Supervisor Actions generally involve a minor policy violation or performance issue that is best addressed through training, communication, or coaching by the employee's supervisor. See OPA Internal Operations and Training Manual section 5.4(B)(ii).

in the BWV audio due to dogs barking. NE#1 asked CM#2 to drop his water bottle and keep his hands out of his pockets. CM#2 complied and raised his hands. The named employees approached CM#2. NE#2 said, "Right now, you're not free to go." NE#1 removed his backpack. They brought his arms behind his back. NE#1 handcuffed CM#2. NE#2 told CM#2 he was under arrest. NE#2 escorted CM#2 toward the exit when CM#2 said, "Wait, who? I'm not . . . [CM#1]?"

NE#2 *Mirandized* CM#2 outside. CM#2 denied living at the apartment and identified himself. NE#2 told CM#2, "We'll get this all squared away," then instructed CM#2 to sit on a patrol car's bumper. NE#2 knocked on the Complainant's window. The Complainant stepped outside and shouted, "No, no, no, no, no, no, no, no, no, no, no, no, no, no, no, no, no Not him! Jesus Christ!" An officer uncuffed CM#2. NE#1 asked whether CM#2 wanted to speak with a sergeant, then explained he was detained because he matched CM#1's description. CM#2 said he saw CM#1 walk away earlier. NE#1 apologized, and CM#2 said, "No problem." NE#1 said he was free to leave. An officer allowed CM#2 to speak with a sergeant about being handcuffed. NE#1 took CM#2's information. CM#2 left without speaking with a sergeant.

The Complainant told NE#1 that CM#2 was his best friend and came to check on him. NE#2 claimed CM#2 answered to CM#1's name. The Complainant expressed shock about CM#2's arrest. NE#2 said CM#2 was detained. NE#2 approached NE#1 and asked, "Did [CM#2] explain why he answered to [CM#1's] name?" NE#1 replied, "Oh, no. I think he was just overwhelmed." The named employees left.

### C. Incident and Field Contact Reports

NE#1 wrote an incident report consistent with the events captured on BWV. NE#1 wrote, "I spotted a subject matching the description and picture I had been [shown] walking toward the unit down the hallway." NE#1 also wrote a field contact report describing her *Terry* stop. NE#1 wrote, "The subject matched the picture I was shown and the victim description. He was also walking up to the unit where the domestic disturbance occurred." Both reports indicated that CM#2 was arrested and released.

#### D. OPA Interviews

On September 26, 2023, OPA interviewed CM#2. CM#2 said he was walking down the hallway when NE#1 asked whether he lived there and whether he was CM#1. CM#2 said he answered no to both questions. CM#2 said he did not match CM#1's description except for race. CM#2 said the named employees failed to ask questions to ascertain his identity and failed to listen before handcuffing him. CM#2 believed the named employees should have explained the situation and confirmed with the Complainant that they detained the right person before arresting him.

On December 19, 2023, OPA interviewed NE#1. NE#1 said she was the primary officer, and NE#2 was secondary. NE#1 said CM#2 matched CM#1's description based on attire, height, build, hair, and face. NE#1 said race was one of several factors she considered before contacting CM#2. NE#1 acknowledged failing to consider the age difference between CM#1 and CM#2 but noted that older people could look young and people could change their appearances. NE#1 said she had probable cause to arrest CM#2 because "any reasonable officer would believe, based off the description and the evidence given by the victim, that our suspect was the person who I saw approaching from the end of the hall." NE#1 said she decided to handcuff CM#2, and NE#2 decided to arrest and *Mirandize* him. NE#1 acknowledged she should have overridden NE#2's arrest decision. NE#1 said she was inexperienced and relied on NE#2, a more experienced officer.



On December 21, 2023, OPA interviewed NE#2. NE#2 said he was inside the Complainant's apartment when he heard NE#1 engage CM#2. NE#2 said he heard NE#1 call out CM#1's name and thought he heard CM#2 acknowledging that name. NE#2 said he saw CM#2 and was confident he matched CM#1's description. NE#2 noted that although CM#2 wore a tank top, he could have removed the long-sleeved shirt the Complainant described the offender as wearing. NE#2 said he had probable cause to arrest CM#2 based on his belief that CM#2 responded to CM#1's name, matched CM#1's description, and proximity to the Complainant's apartment. NE#2 said he decided to arrest CM#2. NE#2 said after CM#2 was handcuffed, NE#2 wanted to divert CM#2's attention from his arrest by asking unrelated questions to prevent CM#2 from planning an assault or escape, which is why NE#2 did not immediately explain the reason for CM#2's arrest. NE#2 said his priority was to ensure officer safety—mainly NE#1's since she was a newer officer—and escort CM#2 from the Complainant's apartment before issuing *Miranda warnings* and explaining the reason for the arrest. NE#2 denied hearing CM#2 deny being CM#1 during the escort. NE#2 said CM#2 was handcuffed for over two minutes.

### **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 the named employees arrested CM#2 based on his race, 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 or gender. *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. Officers may not use discernible personal characteristics in determining reasonable suspicion or probable cause except as part of a suspect description. *Id.*

Here, the evidence indicates that the named employees relied on several features, including race, before arresting CM#2. The named employees noted that CM#2 wore dark clothing, was of similar height and build, had black hair, and was clean-shaven. BWV corroborated these similarities. Under the policy, the named employees were permitted to use race in determining probable cause “as part of a suspect description.” *See* SPD Policy 5.140-POL-2. Race was one factor—but not the only factor—in identifying the suspect. There is no evidence that the named employees were influenced by bias or treated CM#2 differently because he was Hispanic outside of identifying whether CM#2 matched the suspect description. They were motivated by the evidence they gathered during their DV investigation, which indicated that the alleged perpetrator was Hispanic.

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

Recommended Finding: **Not Sustained - Unfounded**

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

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



The Complainant alleged that the named employees lacked probable cause to arrest CM#2.

Officers must have probable cause to believe 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 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, the named employees had reasonable suspicion to detain—and arguably had probable cause to arrest—CM#1. The information reported to the named employees suggested that they had probable cause to arrest CM#1 for at least DV assault and interfering with DV reporting. However, they mistakenly arrested CM#2, thinking he was CM#1, based on similar physical features and proximity to the Complainant's apartment. The circumstances suggest that the misidentification was genuine. The named employees had reason to believe CM#1 could be nearby based on the Complainant reporting that CM#1 could be hiding in the stairwell. Then, CM#2 was found walking toward the Complainant's apartment. Additionally, OPA reviewed photographs of CM#1 and CM#2, including the driver's license photograph of CM#1 that the Complainant showed the named employees. Although CM#1 was significantly older than CM#2, the driver's license photograph of CM#1 the Complainant provided to officers appeared old. CM#2 shared similar physical features to the older photograph of CM#1. Under these circumstances, NE#1's conclusion that he had probable cause to arrest CM#2 was reasonable, even if debatable.

However, OPA agrees with NE#1 that—under the circumstances here—detaining CM#2, not arresting him, would have been more appropriate. The named employees arrested CM#2 without ascertaining his identity, even though this would have been easy. A brief investigation during the detention would have entirely dispelled the need to arrest CM#2. Even so, the distinction between an arrest versus a stop under these facts is mainly academic—except for NE#2 telling CM#2 that he was “under arrest,” nothing the officers did during the approximately three-minute arrest would have exceeded the scope of the stop.

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's and NE#2's chain of command should discuss OPA's findings with NE#1 and NE#2, review *Terry* stops under SPD Policy 6.220-POL-2 with NE#1 and NE#2, and provide retraining or counseling deemed appropriate. The retraining and counseling should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

### **Named Employee #1 – Allegation #3**

#### ***6.010 – Arrests, 6.010-POL-4. Officers are Required to Report Arrests (Effective July 26, 2019)***

It was alleged that NE#1 failed to report CM#2's arrest.

An officer will notify a sergeant and write an arrest report for each person arrested. SPD Policy 6.010-POL-4 (effective July 26, 2019). If an officer arrests a subject but discovers probable cause for the arrest no longer exists, the officer may not extend the subject's detention to await a supervisor's arrival or screening. *Id.* The officer shall immediately release the subject. *Id.* Incidents where a subject was arrested and then released shall be documented in a report. *Id.*



Here, NE#1 documented CM#2's arrest in her incident and field contact reports but not in an arrest report. NE#1 also acknowledged that she failed to notify a sergeant about CM#2's arrest. While NE#1 provided CM#2 with the opportunity to speak with a sergeant, NE#1—as the primary officer—should have notified a sergeant and documented CM#2's arrest in an arrest report. OPA recognizes that NE#1 is a newer officer who completed field training about two months before this incident. NE#1 also appeared to follow NE#2's lead in arresting CM#2. The record reflects a potential violation of policy that does not amount to serious misconduct, given that NE#1 documented CM#2's arrest in two other reports but not an arrest report as also required.

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1, review reporting arrests under SPD Policy 6.010-POL-4 with NE#1, and provide retraining or counseling deemed appropriate. The retraining and counseling should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

**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.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #2 – Allegation #2**

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

For the reasons at Named Employee #1 – Allegation #2, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's and NE#2's chain of command should discuss OPA's findings with NE#1 and NE#2, review *Terry* stops under SPD Policy 6.220-POL-2 with NE#1 and NE#2, and provide retraining or counseling deemed appropriate. The retraining and counseling should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

**Named Employee #2 – Allegation #3**

***6.010 – Arrests, 6.010-POL-4. Officers are Required to Report Arrests (Effective July 26, 2019)***

It was alleged that NE#2 failed to report CM#2's arrest.

NE#1 was the primary officer during this call, and NE#2 was the secondary. The primary officer was responsible for notifying a sergeant and documenting CM#2's arrest in an arrest report. While NE#1 relied upon NE#2's experience during their investigation, NE#1 remained responsible for reporting CM#2's arrest.



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

Recommended Finding: **Not Sustained - Unfounded**