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From: Office of Police Accountability, Director Gino Betts, Jr.

Case Number: 2023OPA-0457



Allegations of Misconduct & Director's Findings

Named Employee #1

1. **Allegation #1:** 5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing (Effective July 15, 2018)
Finding: Not Sustained - Unfounded
2. **Allegation #2:** 5.001 – Standards and Duties, 5.001-POL-10. Employees Shall Strive to be Professional (Effective March 1, 2018)
Finding: Not Sustained - Unfounded
3. **Allegation #3:** 11.050 – Detainee Property, 11.050-POL-1. Officers Secure Detainee Property
Finding: Not Sustained - Timeliness
4. **Allegation #4:** 15.250 – Interpreters and Translators, II. Contact with Deaf Persons, A. Interpreters will be used
Finding: Not Sustained - Unfounded
5. **Allegation #5:** 16.200 – Interaction with Transgender Individuals, 16.200-POL-3. Employees Shall Address and Refer to Transgender Individuals by Their Adopted Name and Preferred Pronouns (Effective October 29, 2018)
Finding: Not Sustained - Inconclusive
6. **Allegation #6:** 16.200 – Interaction with Transgender Individuals, 16.200-POL-7. Officers Will Inform Transgender Individuals of Their Right to Express a Preference of Officer Gender for Searches (Effective October 29, 2018)
Finding: Not Sustained - Inconclusive

Named Employee #2

1. **Allegation #1:** 5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing (Effective July 15, 2018)
Finding: Not Sustained - Unfounded
2. **Allegation #2:** 5.001 – Standards and Duties, 5.001-POL-10. Employees Shall Strive to be Professional (Effective March 1, 2018)
Finding: Not Sustained - Training Referral

3. **Allegation #4:** 15.250 – Interpreters and Translators, II. Contact with Deaf Persons, A. Interpreters will be used

Finding: Not Sustained - Unfounded

4. **Allegation #5:** 16.200 – Interaction with Transgender Individuals, 16.200-POL-3. Employees Shall Address and Refer to Transgender Individuals by Their Adopted Name and Preferred Pronouns (Effective October 29, 2018)

Finding: Not Sustained - Timeliness

5. **Allegation #6:** 15.180 – Primary Investigations, 15.180-POL-5. Officers Shall Document all Primary Investigations on a Report

Finding: Not Sustained - Timeliness

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), Named Employee #2 (NE#2), and Witness Officer #1 (WO#1) responded to a disturbance at a Big 5 Sporting Goods store and arrested the Complainant. The Complainant alleged the named employees were unprofessional and biased against her being a deaf transwoman with a mental health issue. The Complainant alleged the named employees failed to provide her with an interpreter or allow her to answer questions in writing. It was alleged that the named employees referred to the Complainant using male pronouns after learning she identified as female.

It was alleged that NE#1 allowed the Complainant to be searched by WO#1—a male officer—without asking whether she preferred a female officer. It was alleged that NE#1 failed to secure the Complainant’s property after the Complainant’s coins fell to the ground.

It was alleged that NE#2 referred to the Complainant as “it.” The Complainant alleged NE#2’s incident report failed to document the Complainant’s account of the incident.

Administrative Note:

On March 25, 2024, the Office of Inspector General certified OPA’s investigation as thorough, timely, and objective.

OPA acknowledges no discipline may result from this investigation. The incident occurred on April 6, 2019. OPA received the complaint on October 10, 2023—more than four years after the incident. Under section 3.6(G) of the collective bargaining agreement between the City of Seattle and the Seattle Police Officers’ Guild, “[n]o disciplinary action will result from a complaint of misconduct where the complaint is made to the OPA more than four (4) years after the date of the incident which gave rise to the complaint.”

Summary of Investigation:

A. OPA Complaint

On October 10, 2023, the Customer Service Bureau (CSB) referred a complaint to OPA. According to that complaint, the Complainant called CSB using a sign language interpreter to report a 2019 incident. The Complainant alleged that officers were discriminatory, failed to provide her with an interpreter, handcuffed her, and transported her to a hospital where she was repeatedly referenced as male. The Complainant also alleged that officers laughed at her, likely due to her gender identity or being deaf.

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, body-worn video (BWV), and incident report. OPA also interviewed the Complainant and named employees.

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

On April 6, 2019, at 7:44 PM, CAD call remarks noted, “CH[EC]K INSIDE BIG 5 FOR INTOX[ICATED] MALE YELLING AT STAFF AND CUSTOMERS, NO [WEAPONS] SEEN.”

The named employees and Witness Officer #1 (WO#1) responded to a Big 5 Sporting Goods store and activated their BWV, capturing the following:

A store employee told the officers the Complainant was disorderly and flipped off employees. NE#2 asked the Complainant, “You’re going to leave nicely?” The Complainant wrote something on paper and handed it to NE#2. NE#1 said, “We understand it’s not stolen.” The Complainant appeared to have difficulty speaking. NE#1 said, “No. No. We’re not doing that. We’re not doing that. Let’s go.” The Complainant grabbed her merchandise and exited the store with the officers. NE#1 told the Complainant that she would go to jail if she returned because she was banned. The Complainant flipped off NE#1. NE#1 said, “Get your stuff and go.” The Complainant left her merchandise with the officers and entered the parking lot. NE#2 said, “I don’t think he could hear. We could try our best, but ... I don’t think he could hear anything.” A store employee gave NE#1 paper on which the Complainant allegedly wrote to suggest the store employees would be “fucking dead.”

The Complainant reapproached and flipped off the officers. WO#1 told the Complainant to get her merchandise and leave. The Complainant appeared to use sign language to communicate, then wrote something on paper. Community Member #1 (CM#1)—a pastor and the Complainant’s companion—approached and told the officers that the Complainant was admitted to a behavioral health hospital and was medication non-compliant. The Complainant motioned for a hug from the officers, but they refused, prompting her to flip them off. CM#1 told the officers that the Complainant should be recommitted to the hospital.

NE#2 ran the Complainant’s name through dispatch and said, “It’s a male.” Dispatch said the person was female. NE#2 replied, “This doesn’t appear to be a female.” NE#2 told NE#1 to call for an American Medical Response (AMR). Dispatch described the Complainant’s physical features and said the Complainant was hearing impaired. CM#1 provided the Complainant’s name. NE#2 replied, “Is it a male or?” CM#1 said the Complainant presented as male but identified as female. NE#2 radioed for an American sign language (ASL) interpreter and told dispatch that officers would execute an Involuntary Treatment Act (ITA) detention.

WO#1 and NE#1 handcuffed the Complainant, then sat her on a nearby bench. WO#1 searched the Complainant, which NE#1 verbally approved. WO#1 recovered cash from the Complainant but dropped her coins. WO#1 said, "We'll get it for you later. We'll pick it up. Don't worry." The Complainant appeared agitated, twice standing. NE#1 and WO#1 sat her down and told her to stop. NE#1 told the Complainant they were trying to get her help, but she was uncooperative. CM#1 told NE#1, "She can't hear what you're saying. Totally deaf." CM#1 continually wrote on paper to communicate with the Complainant during the detention.

NE#2 screened the detainment with a sergeant over the phone, saying that the Complainant threatened store employees. NE#2 said, "He's deaf, so we've been doing our best to communicate through writing." NE#2 said the requested ASL interpreter would not arrive on time. NE#2 said officers handcuffed the Complainant for being violent.

AMR employees arrived. NE#1 told them that the Complainant threatened store employees, was combative, and was off her medication. NE#1 referred to the Complainant as a male. AMR employees applied a spit sock mask on the Complainant and then placed her on a gurney. WO#1 and NE#1 put the Complainant's belongings in a plastic bag. NE#1 asked WO#1, "Got all the change down there?" WO#1 replied, "I'm going to grab it." WO#1 grabbed some of the coins off the ground and placed them in the plastic bag. WO#1 told NE#1, "I got all the big coins." WO#1 handed the plastic bag to an AMR employee. AMR employees transported the Complainant to Harborview Medical Center.

C. Incident Report

NE#2's incident report was consistent with the events captured on BWV. The incident report indicated that the Complainant wrote threats on paper, such as "[Fucking] Dead" and "Fuck you, I don't dead you." The incident report indicated that store employees reported that the Complainant threatened them. The incident report also suggested that the Complainant's detainment was necessary due to her threats.

D. OPA Interviews

On October 17, 2023, OPA interviewed the Complainant. She denied threatening the store employees. She said she wrote "Axes" on paper because she wanted to buy one. She said the officers did not ask her questions or ask for her side of the story. She said no one talked to her. She said the incident report was inaccurate and incomplete based on events that did not occur. She said the officers should have been friendlier and considered her disability while interacting with her and that the situation worsened after she was handcuffed since she could not write to communicate. She believed the officers were biased because she was deaf. She said she was denied an interpreter.

On January 16, 2024, OPA interviewed NE#2. NE#2 said store employees reported that the Complainant wrote threats and was verbally aggressive. NE#2 said store employees expressed concern about the Complainant returning. NE#2 said he considered the Complainant's disability by ensuring that she received the assistance she needed during her mental health crisis. NE#2 said the Complainant communicated to him in writing. NE#2 said he stopped communicating with the Complainant once she escalated. NE#2 said he decided to detain the Complainant for her

safety since she was aggressive. NE#2 denied treating the Complainant differently because she was deaf, insisting that officers handcuffed her for safety concerns.

OPA noted that NE#2 twice referred to the Complainant as “it.” NE#2 attributed that to a “slip of the tongue,” saying he did not mean to say it. NE#2 said he did not intend to be offensive and that he commonly used “it” in reference to men and women. NE#2 said he requested an ASL interpreter but could not recall why he failed to tell the Complainant. OPA noted that NE#2 continued using male pronouns when addressing the Complainant, even after being told that the Complainant identified as female. NE#2 said it was a mistake. NE#2 said he corrected himself later when he spoke with CM#1 about the Complainant. OPA noted that NE#2’s incident report did not include the Complainant’s side of the story. NE#2 said the call initially concerned threats but evolved into an ITA, so he investigated the case through an ITA lens. NE#2 said getting the Complainant’s story would have been difficult because she was escalated.

On January 26, 2024, OPA interviewed NE#1. NE#1 said the Complainant spoke incoherently, appearing deaf and intoxicated. NE#1 said the Complainant communicated to the officers in writing. NE#1 said the Complainant wrote threats on paper, so officers decided to detain her. NE#1 said he decided to handcuff and search the Complainant. NE#1 denied treating the Complainant differently based on her disability status, gender identity, or mental illness, saying he treated the Complainant like anyone else. NE#1 said his actions were a response to the Complainant’s hostile behavior. NE#1 believed his interaction with the Complainant was professional, saying he treated her respectfully and patiently. NE#1 denied using derogatory language. NE#1 said he was composed throughout the interaction. NE#1 acknowledged he was WO#1’s field training officer, requiring him to instruct WO#1 to gather the Complainant’s property. NE#1 accepted responsibility for WO#1’s failure to collect all coins.

NE#1 said an officer radioed for an interpreter. NE#1 said he did not request an interpreter since the Complainant communicated in writing. NE#1 said he did not tell the Complainant about an interpreter because he was not the primary officer communicating with her. NE#1 said he was more focused on scene security because of the Complainant’s aggression. NE#1 believed the Complainant understood some of his verbal communication. NE#1 said he used male pronouns when referring to the Complainant because he was unaware that the Complainant identified as female. NE#1 denied hearing CM#1 say the Complainant identified as female.

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 (Effective July 15, 2018)

The Complainant alleged that NE#1 engaged in 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 (effective July 15, 2018). It includes different treatments based on disability status, gender identity, and mental illness. See *id.* Employees are forbidden from making decisions or taking actions influenced by bias, prejudice, or discriminatory intent. See SPD Policy 5.140-POL-2 (effective July 15, 2018).

OPA found no evidence that NE#1 treated the Complainant differently based on her disability status, gender identity, or mental illness. NE#1 denied reacting to or being motivated by the Complainant's discernible personal characteristics. While NE#1 was direct and firm with the Complainant, it appeared to be in response to the Complainant's reportedly threatening and aggressive demeanor towards the store employees and noncompliance and escalated behavior with the officers.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 – Allegation #2

5.001 – Standards and Duties, 5.001-POL-10. Employees Shall Strive to be Professional (Effective March 1, 2018)

The Complainant alleged that NE#1 was unprofessional.

Employees shall “strive to be professional.” SPD Policy 5.001-POL-10 (effective March 1, 2018). Further, “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” *Id.* Additionally, employees must “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” *Id.* “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language derogatory, contemptuous, or disrespectful toward any person.” *Id.*

BWV captured NE#1 ordering the Complainant to leave the store and telling her she would be arrested for trespass if she returned. While NE#1 could have arguably shown more patience and consideration for the Complainant's disability, NE#1 never shouted or used derogatory language. Instead, NE#1 appeared eager to quickly resolve the disturbance by ordering the Complainant to leave the premises. Without more, OPA cannot prove, by a preponderance of the evidence, that NE#1 unprofessionally interacted with the Complainant.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 – Allegation #3

11.050 – Detainee Property, 11.050-POL-1. Officers Secure Detainee Property

It was alleged that NE#1 failed to secure the Complainant's property.

Officers will store a detainee's property in a secure area when practical. SPD Policy 11.050-POL-1.

BWV captured WO#1 picking up some of the Complainant's fallen coins. WO#1 told NE#1 that he “got all the big coins.” NE#1 acknowledged he was WO#1's field training officer, requiring him to instruct WO#1 to pick up all the coins. NE#1 also acknowledged not complying with SPD policy after WO#1 failed to collect all the coins. Thus, the Complainant's property was not properly secured.

OPA would have recommended this allegation be Sustained had the complaint been submitted in a timely manner. Accordingly, OPA recommends this allegation be Not Sustained – Timeliness.

Recommended Finding: **Not Sustained - Timeliness**

Named Employee #1 – Allegation #4

15.250 – Interpreters and Translators, II. Contact with Deaf Persons, A. Interpreters will be used

The Complainant alleged that NE#1 failed to call for an interpreter.

Interpreters will be used when interviewing a deaf person as a witness, victim, or suspect concerning a criminal investigation. SPD Policy 15.250(II)(A).

While NE#1 did not request an ASL interpreter, NE#2 did. Although an ASL interpreter did not arrive, the officers communicated with the Complainant somewhat effectively. BWV captured NE#2 and the Complainant communicating in writing before the Complainant’s detention. Additionally, CM#1 facilitated communication, translating for the officers and the Complainant.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 – Allegation #5

16.200 – Interaction with Transgender Individuals, 16.200-POL-3. Employees Shall Address and Refer to Transgender Individuals by Their Adopted Name and Preferred Pronouns (Effective October 29, 2018)

It was alleged that NE#1 failed to address the Complainant by her preferred pronouns.

When addressing or referring to a transgender individual, employees will use pronouns preferred by the individual. SPD Policy 16.200-POL-3 (effective October 29, 2018).

NE#1 used male pronouns when referring to the Complainant. NE#1 claimed he did not know the Complainant identified as female, denying hearing CM#1 say that. While BWV captured CM#1 telling officers that the Complainant presented as a male but identified as female, there is insufficient evidence to establish that NE#1 heard it. NE#1 was a few feet away and appeared focused on the escalated Complainant. Therefore, OPA cannot conclude, by a preponderance of the evidence, that NE#1 knew the Complainant’s pronoun preference.

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

Recommended Finding: **Not Sustained - Inconclusive**

Named Employee #1 – Allegation #6

16.200 – Interaction with Transgender Individuals, 16.200-POL-7. Officers Will Inform Transgender Individuals of Their Right to Express a Preference of Officer Gender for Searches (Effective October 29, 2018).

It was alleged that NE#1 failed to inform the Complainant that she had the right to express a gender preference for the officer who would search her.

Absent exigent circumstances, officers will inform transgender individuals before searching them of their right to express a preference for the gender of the officer who will conduct the search. SPD Policy 16.200-POL-7 (effective October 29, 2018).

NE#1 directed WO#1 to search the Complainant. However, as articulated in Named Employee #1 – Allegation #5, there is insufficient proof that NE#1 knew the Complainant was a transwoman with the right to choose the gender of the officer conducting the search. As CM#1 stated, the Complainant presented as male. CM#1 also repeatedly used male pronouns to reference the Complainant to the officers. The Complainant's attire was gender-neutral—a hoodie, dark jacket, and cargo pants. Moreover, due to the Complainant's aggressive behavior, the officer's limited communication did not cover the Complainant's gender identity. Overall, unless NE#1 heard CM#1 indicate that the Complainant identified as female or was otherwise apprised, NE#1 had no duty to admonish the Complainant about her right to select the gender of the officer who would search her.

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

Recommended Finding: **Not Sustained - Inconclusive**

Named Employee #2 – Allegation #1

5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing (Effective July 15, 2018)

The Complainant alleged that NE#2 engaged in bias-based policing.

Here, there is insufficient evidence indicating that NE#2 treated the Complainant differently based on her disability status, gender identity, or mental illness. BWV captured NE#2 attempting to engage the Complainant several times before she was detained. NE#2 and the Complainant appeared to communicate in writing, but the Complainant escalated over time. The evidence suggests that the Complainant was detained due to the danger she presented to others, like the store employees and herself, by reportedly being medication noncompliant, rather than bias-based policing.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 – Allegation #2

5.001 – Standards and Duties, 5.001-POL-10. Employees Shall Strive to be Professional (Effective March 1, 2018)

The Complainant alleged that NE#2 was unprofessional.

Throughout the encounter, BWV showed that NE#2 was calm and attentive, attempting to communicate with the Complainant in writing. However, NE#2's referring to the Complainant as "it" was more complicated. Trying to confirm the Complainant's identity with dispatch, NE#2 provided the Complainant's name and said, "It's a male." The dispatcher told NE#2 that the Complainant was female. Appearing to seek clarification, NE#2 asked CM#1, "Is it a male or?" While there is no evidence that NE#2 intended to offend or demean, his repeated inartful phrasing warrants retraining and counseling.

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

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

Named Employee #2 – Allegation #3

15.250 – Interpreters and Translators, II. Contact with Deaf Persons, A. Interpreters will be used

For the reasons at Named Employee #1—Allegation #4, OPA recommends this allegation be Not Sustained— Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 – Allegation #4

16.200 – Interaction with Transgender Individuals, 16.200-POL-3. Employees Shall Address and Refer to Transgender Individuals by Their Adopted Name and Preferred Pronouns (Effective October 29, 2018)

It was alleged that NE#2 failed to address the Complainant by her preferred pronoun.

After CM#1 told NE#2 that the Complainant identified as female, NE#2 repeatedly referred to the Complainant with male pronouns. Although CM#1—the Complainant's companion—also referenced the Complainant with male pronouns, the department's standards required more of NE#2.

OPA would have recommended this allegation be Sustained had the complaint been submitted in a timely manner. Accordingly, OPA recommends this allegation be Not Sustained – Timeliness.

Recommended Finding: **Not Sustained - Timeliness**

Named Employee #2 – Allegation #5

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

The Complainant alleged that NE#2's incident report was incomplete.

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

NE#2's incident report failed to capture the Complainant's side of the story. The Complainant claimed she did not threaten store employees but, instead, asked to purchase an axe. BWV captured no attempt by NE#2 to ask the Complainant about what happened. NE#2 claimed that

getting the Complainant's story would have been difficult because she was escalated. However, CM#1 facilitated communication between the Complainant and the officers, yet NE#2 failed to seek CM#1's assistance communicating with the Complainant about her story. Although NE#2 said the call evolved into an ITA, NE#2's incident report was coded as a "threats" offense report listing the Complainant as the suspect, indicating that the report involved a crime. Therefore, NE#2's incident report was incomplete.

But for the untimeliness of this investigation, OPA would have recommended this allegation be Sustained. Accordingly, OPA recommends this allegation be Not Sustained – Timeliness.

Recommended Finding: **Not Sustained - Timeliness**