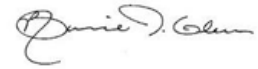

Issued Date: JULY 19, 2024

From: Deputy Director Bonnie Glenn on Behalf Of Director Gino Betts, Jr.
Office of Police Accountability



Case Number: 2024OPA-0055

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)
Finding: Not Sustained - Lawful and Proper (Expedited)
- 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 (Expedited)
- 3. Allegation #3:** 5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing (Effective August 1, 2019)
Finding: Not Sustained - Unfounded (Expedited)
- 4. Allegation #4:** 5.001 – Standards and Duties, 5.001-POL-14. Retaliation is Prohibited (Effective March 1, 2018)
Finding: Not Sustained - Unfounded (Expedited)

Named Employee #2

- 1. Allegation #1:** 6.150 – Advising Persons of Right to Counsel and Miranda, 6.150-POL-8. Officers Shall Stop Questioning Once an Arrestee has Invoked the Right to a Lawyer (Effective January 1, 2015)
Finding: Not Sustained - Unfounded (Expedited)

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

Executive Summary:

Named Employee #1 (NE#1)—a detective—arrested the Complainant for felony assault. The Complainant alleged that NE#1 lacked probable cause for the arrest, fabricated evidence, and

threatened to kill him during the arrest. The Complainant also alleged that NE#1 and a federal task force harassed him since his arrest. Finally, the Complainant alleged that Named Employee #2 (NE#2)—an unknown employee—questioned him at SPD headquarters despite informing officers that he wanted to speak with an attorney.

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 in this case.

On February 29, 2024, OIG certified OPA's investigation as thorough, timely, and objective.

Summary of Investigation:

On January 24, 2024, the Complainant left OPA a voicemail, seeking to file a complaint against NE#1. On January 29, 2024, OPA called the Complainant, who alleged that NE#1 unlawfully arrested him and fabricated evidence in the Complainant's case, which was dismissed. The Complainant said he fled from two officers who tried to arrest him. The Complainant said NE#1 threatened to kill him, saying, "Keep running, boy, so I can shoot you." The Complainant said he expressed to have a lawyer present during his arrest but claimed he was still questioned at SPD headquarters. The Complainant said NE#1 and a federal task force continued to harass him for three years after his arrest.

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, police reports, body-worn video (BWV), case investigation report, search warrant documents, use of force documents, and declination memo. OPA also interviewed the Complainant.

The Assault

On July 30, 2020, at 12:31 AM, a robbery was coded into CAD.

Witness Officer #1's (WO#1) incident report documented that officers responded to a call involving Community Member #1 (CM#1) being assaulted. WO#1 documented CM#1's account of the assault. CM#1 reported that he recorded a group of protestors but tried to disengage when they became confrontational. CM#1 reported that he felt a blunt object strike the back of his head, causing him to fall. CM#1 reported the physical features of the assailant. CM#1 reported that his wallet and phone were missing, but his phone was later recovered. WO#1 documented two witness accounts corroborating CM#1's account, and both witnesses described the physical features of the assailant.

The Arrest

On August 19, 2020, at 8:01 AM, narcotics violations were coded into CAD.

BWV captured the following:

Witness Officer #2 (WO#2) and Witness Officer #3 (WO#3) exited their patrol vehicle, and the Complainant immediately fled, prompting the witness officers to chase him. WO#3 shouted, "Stop! Police! Get on the ground!" The Complainant appeared to reach into his waist. NE#1 chased and shouted, "Seattle police! You are under arrest! [Inaudible], or you will be [stopped or shot]!" BWV was inconclusive on whether NE#1 said, "Stopped" or "shot." The Complainant went to the ground and rolled onto his stomach. A plain clothes officer approached with his firearm aimed at the Complainant. NE#1 approached and shouted, "You are under arrest! Do not resist arrest! Do you understand me?" The witness officers handcuffed the Complainant, and then escorted him to their patrol vehicle. WO#2 told the Complainant he was arrested for assault. The Complainant said, "Take me straight to county. I refuse to talk to anybody if my attorney is not present." The Complainant also said he would represent himself if the prosecutor filed charges against him. The Seattle Fire Department evaluated the Complainant, and then American Medical Response transported him to a hospital.

WO#2's and WO#3's police reports were consistent with BWV observations.

Case Investigation Report

NE#1's case investigation report included a certification for determination of probable cause, documenting:

More protestors began to approach [CM#1] and he continued to speak with them. At that time, without warning, [the Complainant] struck [CM#1] one time, causing him to fall to the ground and strike his head on the concrete. When [the Complainant] Struck [CM#1], he took a step forward with his left foot, pulled his right arm back, then extended his right arm while moving forward with the punch. When the punch connected with [CM#1], he immediately fell to the ground. [CM#1] lost consciousness, and he received a severe laceration to the back of his head, requiring four staples. He was also diagnosed with a concussion.

NE#1's documented evidence included a camera at a nearby residence capturing the assault, a photograph of the Complainant's face from a video taken by the protestors, pictures from the Complainant's Facebook page, and evidence obtained from a search warrant executed on the Complainant's home and phone. NE#1 noted, "One of the photos found on the [Complainant's] Facebook page contained a photo where [the Complainant] appeared to be wearing the same hat and same shirt that [the Complainant] was wearing during the assault." NE#1 concluded, based on these facts and circumstances, there was probable cause that the Complainant committed second-degree assault.

Prosecution Declination

A deputy prosecuting attorney (DPA#1) with the King County Prosecuting Attorney's Office wrote a memo declining to prosecute the Complainant based on identity concerns, noting that there were no eyewitnesses to the assault, and CM#1 did not see who assaulted him because CM#1 was hit from behind. DPA#1 noted "good detective work" in locating different videos, but "one of the challenges of using and admitting the videos in trial are finding witnesses who could authenticate them." DPA#1 wrote:

[Dismissal] is not being proposed because the detective acted improperly in any way or is believed to have committed any malfeasance. There was also no judicial finding that the detective acted improperly in any way in this case.... The warrants were properly obtained and the case was properly filed because a judge determined that there was probable cause. However, now that the State knows that it cannot authenticate the key videos in this case, ... the case cannot be proven beyond a reasonable doubt at trial. Therefore, [dismissal] is appropriate.

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 for his arrest.

Officers must have probable cause that a suspect committed a crime when effectuating 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).

NE#1’s probable cause that the Complainant assaulted CM#1 was predicated on video evidence, CM#1’s statements, witness statements, and photographs from the Complainant’s Facebook page depicting clothing that matched the clothing worn by the purported assailant. Several King County superior court judges also found probable cause upon reviewing NE#1’s search warrant affidavits, authorizing NE#1 to search the Complainant’s home and phone. OPA found sufficient probable cause for the Complainant’s arrest based upon this record.

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

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

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 fabricated evidence.

SPD 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,” whether on or off duty. *Id.*

DPA#1 reviewed NE#1's collected evidence and concluded "good detective work," noting an absence of impropriety or malfeasance. DPA#1 also noted that no judge found NE#1 "acted improperly in any way in this case." The dismissal of the Complainant's case was based on the difficulty of locating witnesses who could authenticate the videos during trial. OPA found no evidence that NE#1 fabricated any evidence.

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

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

Named Employee #1 – Allegation #3

5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing (Effective August 1, 2019)

The Complainant alleged that NE#1 said, "Keep running, boy, so I can shoot you," constituting race-based mistreatment.

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 August 1, 2019). It includes different treatment based on race. See *id.* Officers are forbidden from making decisions or taking actions influenced by bias, prejudice, or discriminatory intent. See SPD Policy 5.140-POL-2 (effective August 1, 2019).

BWV captured NE#1 shouting, "You are under arrest! Do not resist arrest! Do you understand me?" BWV did not capture NE#1 or any officer telling the Complainant, "Keep running, boy, so I can shoot you." Although NE#1 warned the Complainant that he would either be "stopped" or "shot," the Complainant appeared to pose a threat when he reached into his waist while he fled from the officers. OPA found no evidence that any officer used racially charged language during the chase.

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

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

Named Employee #1 – Allegation #4

5.001 – Standards and Duties, 5.001-POL-14. Retaliation is Prohibited (Effective March 1, 2018)

The Complainant alleged that NE#1 and his federal task force continued to harass him for three years after his arrest.

SPD employees are prohibited from retaliating. SPD Policy 5.001-POL-14 (effective March 1, 2018). SPD employees are specifically prohibited from retaliating against a person who engages in activities, including, but not limited to, opposing any practice reasonably believed to be unlawful or in violation of SPD policy, or who otherwise engages in lawful behavior. *Id.* Retaliatory acts are defined broadly under SPD's policy and include discouragement, intimidation, coercion, or adverse action against any person. *Id.*

OPA found no evidence supporting this allegation. OPA located reports involving the Complainant in which he was listed as a victim, not a subject. OPA also located a May 1, 2021, arrest, but NE#1 was not involved with that arrest.

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

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

Named Employee #2 – Allegation #1

6.150 – Advising Persons of Right to Counsel and Miranda, 6.150-POL-8. Officers Shall Stop Questioning Once an Arrestee has Invoked the Right to a Lawyer (Effective January 1, 2015)

The Complainant alleged that NE#2 questioned him at SPD headquarters despite informing officers that he wanted to speak with an attorney.

Once an arrestee invokes the right to counsel, officers shall stop questioning unless the arrestee reinitiates contact. SPD Policy 6.150-POL-8 (effective January 1, 2015).

BWV disproved the Complainant’s allegation. After the Complainant invoked his right to an attorney, no officer asked him any investigative questions. Additionally, BWV and GPS data showed that the Complainant was transported to a hospital and then the King County Jail, not SPD headquarters.

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

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