



CLOSED CASE SUMMARY

ISSUED DATE: MAY 19, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0674

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities...	Not Sustained (Lawful and Proper)

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 that the Named Employee brandished his Taser in an escalatory fashion. The Complainant also alleged that the Named Employee used a hand signal affiliated with white supremacists.

ADMINISTRATIVE NOTE:

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 any involved officers.

SUMMARY OF INVESTIGATION:

Posts circulated on social media indicating that a downtown Seattle hotel was offering free rooms to people in need because of unhealthy air quality. It turned out that these posts were fake. Individuals, including demonstrators, came to the hotel. They were asked to leave by hotel staff but refused to do so. The hotel called 911, and officers, including Named Employee #1 (NE#1), responded to the scene.

Officers informed the crowd that they were trespassing and asked them to leave hotel property. Members of the crowd, including an African American male referred to here as the “Subject,” were escalated and engaged in antagonistic conversations with officers. NE#1’s BWV showed his interactions with the Subject. At one point, the Subject said to NE#1: “Hey yo, why do you keep walking up behind me bro?” He repeated this. He also offered NE#1 some “weed.” The Subject continued to yell at and insult officers. NE#1 walked over to a Lieutenant and briefed him on what was occurring. He returned to assist with the crowd when he observed a disturbance relating to officers trying to clear demonstrators from the street. NE#1 told the Subject, who was yelling at him from approximately a foot away, not to spit on him. The Subject denied doing so. He told NE#1 “fuck you” and repeated: “I’ll spit on you



with my dick.” A Lieutenant also interacted with the Subject, and their conversation appeared to grow argumentative. At one point, the Lieutenant directed the Subject not to assault officers. NE#1 walked in between the Subject and the Lieutenant. He held out his hand and told the Subject not to come towards him. The Subject told NE#1 not to touch him.

The Subject then stated: “We can get busy, bro. I’ll take my backpack off and we can get busy.” He took his backpack off and handed it to another individual. NE#1 took his Taser out. The Subject said: “I don’t care about that Taser.” He handed his phone to another individual. NE#1 sparked the Taser and told the Subject that, if he attacked officers, he would be tased. The Subject told NE#1 to tase him. The Subject called the officers “bitches” and told them to “fuck” themselves. He further told male and female officers to “suck” his “dick.”

NE#1 remained in that location with other officers while demonstrators continued to yell at and insult them. At one point, a demonstrator said to NE#1: “Watch how you pull that taser, you gonna be in the OPA next.” The demonstrator further referenced the name of an officer who was wrongfully accused of misconduct earlier in the summer and who subsequently went viral on social media. NE#1 responded by using the “okay” hand sign. Another demonstrator immediately alleged that NE#1 was making a white supremacist hand signal.

Someone later initiated an OPA complaint. This Complainant alleged that NE#1 engaged in unnecessary escalation when he brandished his Taser. The Complainant also asserted that NE#1 engaged in biased policing based on his hand signal. This investigation ensued. As part of the investigation, OPA reviewed incident reports and watched BWV and third-party video. OPA communicated with the Complainant over email and determined that he was not a direct witness to this incident and that he filed this complaint after watching the video.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

SPD policy prohibits biased policing, which it defines 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.) This includes different treatment based on the race of the subject. (*See id.*)

OPA recognizes that the “okay” hand signal was coopted by the alt-right and white supremacists around 2016. However, this does not mean that every usage of the hand signal conclusively establishes bias or expresses an affiliation with these groups. Ultimately, context is important.

Here, a demonstrator told NE#1 that he was going to go to OPA and referenced an officer who went viral because he was wrongfully alleged to have pepper sprayed a child. NE#1 immediately responded by using the okay sign. As such, NE#1’s use of the “okay” sign was clearly in direct response to the demonstrator’s statement. Had, for example, NE#1 used the “okay” sign in response to people chanting “Black Lives Matter,” OPA may have reached a different decision. Again, context matters. Ultimately, there is no evidentiary support for the assertion that NE#1 intended to suggest his affiliation with white supremacists or that he engaged in biased policing during this incident.



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

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

Named Employee #1 - Allegation #2

8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities...

“De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.” (SPD Policy 8.100-POL-1.) The policy further instructs that: “When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.” (*Id.*) Officers are also required, “when time and circumstances permit,” to “consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors” such as “mental impairment...drug interaction...[and/or] behavioral crisis.” (*Id.*) These mental and behavioral factors should be balanced by the officer against the facts of the incident “when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.” (*Id.*)

Based on a review of the video, OPA disagrees with the Complainant that NE#1’s brandishing of his Taser was escalatory and violated policy. First, OPA notes that, prior to NE#1 drawing his Taser, the Subject was already escalated and was yelling at and insulting officers. There is no support for the conclusion that he then grew more agitated due to NE#1’s actions. Second, at the time the Taser was drawn, the Subject was standing close to the Lieutenant and arguing with him. In addition, prior to NE#1 brandishing the Taser and when the Subject was told to stay back, he began to take his backpack off while saying to NE#1 that they could get “busy.” NE#1 interpreted this as the Subject posturing as if to fight. OPA finds that this interpretation was reasonable under the circumstances. Third, NE#1 only sparked the Taser when the Subject continued to posture as if he was going to fight, removed his backpack, and handed his phone to another individual. This was appropriate to dissuade the Subject from choosing to engage in an assault.

Notably, during this entire time, NE#1 spoke to the Subject calmly, without raising his voice, and with no threats or profanity. He explained that, if the Subject attacked him, the Subject would be tased. OPA believes that this was entirely permissible, was consistent with the concepts set forth in the de-escalation policy, and ultimately reduced the likelihood that force would need to be used.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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