



CLOSED CASE SUMMARY

ISSUED DATE: MAY 18, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0427

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper
# 2	5.140 – Bias-Free Policing 2. Employees Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded
#3	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained - Lawful and Proper

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded
# 3	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained - Lawful and Proper

Named Employee #3

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded
# 3	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained - Unfounded

Named Employee #4

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Will Strive to be Professional	Not Sustained - Unfounded

Named Employee #5

Allegation(s):		Director's Findings
# 1	15.170 POL-1 Preparing and Administering Photomontages and Show-ups 3. Administrators Will Make an Effort to Avoid Suggesting There is a Specific Suspect	Not Sustained - Training Referral
# 2	15.170 TSK-1 Conducting a Show-up	Not Sustained - Training Referral



Named Employee #6

Allegation(s):		Director's Findings
# 1	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Allegation Removed

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 Named Employees violated policy when they improperly identified and arrested him as a suspect in a shooting. The Complainant further alleged that Named Employees targeted him due to his race. The Complainant also alleged that he was subjected to excessive force. He alleged that Named Employees pointed firearms at him and then slammed him to the ground.

OPA added an allegation against an Unnamed Employee for failing to properly conduct the investigation into the shooting that resulted in Complainant's arrest. OPA also alleged that Named Employee #5 (NE#5) may have violated policy regarding the administration of show-up identifications. Lastly, it was alleged that Named Employee #4 (NE#4) may have violated the Department's professionalism policy when interacting with the Complainant regarding his arrest.

ADMINISTRATIVE NOTE:

During the intake investigation, OPA reviewed BWV for Named Employee #7 (NE#7). NE#7 looked through a tent, found a bottle of prescription pills, and removed the bottle of pills from the tent. NE#7 ran the name of the individual on the bottle. When the name came back and it was understood that the individual named on the medication was not involved, NE#7 tossed the pill bottle, of possibly important medication, to the ground. While it is unclear how this search took place, throwing the pills on the street, rather returning them to the tent from where they were removed, could have jeopardized not only the individual to whom they were prescribed, but also anyone who might have found and mishandled the pills. If this occurred as alleged, Named Employee NE#7 may have violated 5.001 - Standards and Duties 5.001-POL-6 Employees May Use Discretion. OPA believed that this allegation should be processed through the chain of command and returned it to be handled via a Supervisor Action.

This is an amended DCM. OPA originally recommended that Named Employee #5, Allegation #1 be Sustained. However, following a discipline meeting with NE#5's chain of command, OPA now recommends that this allegation be Not Sustained – Training Referral. The reasons for this decision are set forth more fully below in the Analysis and Conclusions section at Named Employee #5, Allegation #1.

SUMMARY OF INVESTIGATION

On September 13th, 2021, Seattle Police Department (SPD) received a 911 call of a "person shot" at Western Ave and Marion St. Numerous police personnel attended the scene. The Complainant's allegations arose after he was detained as a suspect in the shooting by Named Employees. OPA notes that this was a complex scene involving three separate



locations with several units having responded. The first scene was the location of Subject #1 and Subject #2, in the alley. The second scene was Harbor View Medical Centre (HMC), where the suspected shooter went for treatment as he too had been injured. The third scene was where the Complainant was detained at Alaska Way and S. Washington St, a couple of blocks from where the alleged shooting occurred.

For ease of reading the following individuals are identified with a brief overview of their respective involvement in the case as not all were interviewed with respect to the OPA investigation:

Witness Officer #1 (WO#1) Detailed as the primary officer. First at scene, engaged with Subject #1 (Injured) and Subject #2 in the Alley. WO#1 spoke with Community Member #2 (CM#2). WO#1 viewed surveillance footage depicting shooting. He described the suspect in the surveillance video as a black male, short black hair, wearing a dark sweater with a light-colored logo, tan pants, and no shoes.

Witness Officer #2 (WO#2) viewed local surveillance footage, described the suspect as a black male, wearing a blue sweatshirt with a white emblem on the front/back, white or tan pants, socks and, or no shoes.

Witness Officer #3 (WO#3) spoke with Community Member #2 (CM#2). He transported CM#2 to identify the Complainant as possible shooter. Positive ID was done.

Witness Officer #4 (WO#4), SWAT leader, detained the Complainant a few blocks from the scene of the shooting.

Witness Officer #5 (WO#5) reviewed surveillance footage with WO#1, WO# 2 and WO#3 that resulted in discrepancies being identified and the Complainant being released from detention as a suspect.

Community Member #1 (CM#1) observed two males running south on Post Alley. CM#1 stated that one of the males had blood on his head and neck, and the second male, behind, was saying "Dre, I'm sorry." CM#1 said he witnessed as both individuals ran into the alleyway and a female assisted the injured male. CM#1 did show-up identification procedures at the three scenes with NE#5, (1) the Alley (Subject #1 and Subject #2 positive identification given), (2) the Complainant location (Negative identification), and (3) HMC (Positive Identification).

Community Member #2 (CM#2) Viewed surveillance footage depicting the shooting. CM#2 described the suspect in the surveillance video as a Black male, short black hair, wearing a dark sweater with a light-colored logo, tan pants, and no shoes. CM#2 was transported to a show-up at the Alley by WO#3 of Subject #1 and Subject #2 (positive identification of possible victims). CM#2 was also brought to the Complainant location for a show-up by WO#3. CM#2 made a false Positive identification.

Community Member #3 (CM#3) showed WO#1 surveillance footage from a nearby building. From this footage WO#1 described the shooter as a black male, short black hair, wearing a dark sweater with a light-colored logo, tan pants, and no shoes.

Community Witness Member #4 (CM#4)

Named Employee (NE#1) detained the Complainant.

Named Employee (NE#2) detained the Complainant.



Named Employee (NE#3) detained the Complainant.

Named Employee (NE#4) unprofessional comments with the Complainant.

Named Employee #5 (NE#5) transported CM#1 to Alley (Positive ID). Transported CM#1 to Complainant (Negative ID). Transported CM#1 to HMC (Positive ID). Also spoke with CM#3. CM#3 described a male with a gun, wearing a black shirt or jacket and tan pants, running behind another male who wore a gray shirt.

i. The Complainant

OPA interviewed the Complainant. The Complainant alleged that he was approached by five or six SWAT Officers brandishing automatic weapons. When asked to explain how these officers brandished their weapons, the Complainant stated that the officers were running, and believed “some had the guns facing me and some had them facing the ground. They were out of control and reaped[sic] terror on me and on other homeless people.” He further alleged that “to me it seems like they were military trained for war on foreign soil; kill everybody type mentality.” The Complainant stated that the SWAT leader, WO#1 approached him and told him “there was a shooting five minutes ago and he [SWAT Officer] decided to check the shelter for anybody who might have run to the Compass Center to hide.” WO#1 told him that he “fitted the description of the said suspect and was it okay if I wait for two witnesses to identify me as the shooter.” The Complainant said the WO#1 told him the suspect had a black jacket and tan pants. The Complainant stated that WO#1 was respectful, “however, he called his team in to get me with guns, instead of waiting for some fake witnesses to come identify me.”

The Complainant stated that he cooperated until “five or six SWAT members came around the corner brandishing automatic weapons.” He further stated, “I was then slammed to the ground and placed in handcuffs.” The Complainant stated that he was informed that he was under arrest because a witness from the shooting identified him as a suspect. However, OPA’s review of BWV did not show Named Employees pointing their weapons as described.

The Complainant alleged that when he was arrested and was on the ground, NE#2 had a knee in his back. He said he was slammed to the ground and told he was under arrest after being identified as a shooter by the first witness. The Complainant alleged that he was the target of these police actions because he is African American. The Complainant said he was detained for approximately one hour until another witness indicated that he was not the suspect.

ii. CAD Reports

Following the initial report, numerous police officers attended the given location which indicated that “the suspect was shooting at the encampment underneath the footbridge at Western Ave and Marion St.” Two individuals, Subject #1 and Subject #2, were detained by officers at Post Alley and Columbia Street. Subject #1 was injured by a gunshot wound on his left shin and a second gunshot wound on his right hand. Both Subject #1 and #2 were detained because they were in the area where the suspect was last seen and were seen exchanging a dark item that was placed in a backpack. Subject #2 allowed the search of the backpack, and nothing was recovered. A canvas of the area was conducted. Video surveillance from a local business depicted a male suspect firing a gun at another male. WO#2 identified CM#1, who had observed the shooting. CM#1 stated that the suspect continued to shoot as Subject #1 attempted to flee.

iii. Descriptions of Suspect and Involved Persons



The two subjects detained in the alley were described:

- Subject #1 was described as wearing a black hoodie, black gloves, black pants, and appeared to be holding an unknown black object in his hand.
- Subject #2 was described as wearing a white hoodie, black pants and had a backpack.

The following descriptions of the suspect were also provided:

- At 0656 hours, CAD records indicated the suspect was last seen heading southbound and provided this description: black male, 5-10, short hair, black coat, tan pants.
- At 0675 hours the suspect's description, as above, was again provided.
- At 0658 hours, CAD records indicated the call was broadcasted city wide at 0654 hours. WO#1 provided the description: "Black male, 35, 5-10, thin build, short hair, black coat, tan pants, gun in his left hand."
- At 0704 hours, CAD records indicated WO# 4 provides a suspect description "Black male, tan pants, no hat, possible tan shirt as well."
- At 0725 hours, CAD records indicated that WO#4 broadcasted the following suspect description: Black male, short hair, tan pants, short shirt or jacket. At this juncture, WO#4 indicated that there were three potential victims and one shooter.
- At 0726 hours, CAD records indicated that WO#3 reported a possible suspect, namely the Complainant, at Washington and Alaska.
- WO#1 assisted with scene security and canvassed for any surveillance footage. After viewing footage which depicted the shooting, WO#1 described the suspect as: black male, wearing a blue sweatshirt with a white emblem on the front/back, white or tan pants, socks and, or no shoes.
- NE#5 spoke with another witness, CM#1. CM#1 described a male with a gun running behind another male who wore a gray shirt. The male with the gun wore a black shirt or jacket and tan pants.
- WO#5 reviewed surveillance footage with WO#1, WO#2, and WO#3 that resulted in discrepancies being identified and the Complainant being released from detention as a suspect.

iv. Involved Persons

Two Community Members, CM#1 and CM#2, were identified as having possible information that related to involved individuals in the shooting. Both spoke with officers, independently, near the scene of the reported shooting.



NE#5 reported that as he arrived on scene, he was contacted by people at the scene, one of which was CM#1. CM#1 informed NE#5 that he observed two males running south on Post Alley. CM#1 stated that one of the males had blood on his head and neck, and a second male behind said "Dre, I'm sorry." CM#1 said he witnessed both individuals run into the alleyway and a female then assisted the injured male. CM#1 stated that female and the injured male left the area in a gray 4-door sedan.

v. Show-Ups

As described above, this was a complex and dynamic incident which involved three separate yet interrelated scenes. Two Community Member witnesses were involved in "Show-Ups" to identify those involved in the shooting.

Show-up at Scene 1: The Alley

NE#5 stated in his report that while assisting with the call, he overheard a unit advise they had a person with a gunshot wound in the alley, namely Subject #1. NE#5 then transported CM#1 to the alley location where Subject #1 and Subject #2 were detained. On seeing Subject #1 and Subject #2, CM#1 stated that he was "certain this was one of the guys he saw going into the alley and yelling 'Dre I'm sorry.'"

Show-up at Scene 2: HMC

CM#1 informed NE#5 that he that he would be able to identify the male who walked away from the alley bleeding. NE#5 was made aware, via radio, that a wounded person had presented at Harbor View Medical Centre (HMC) with a gunshot wound. NE#5 then transported CM#1 to HMC and, as they walked toward the wounded person's room, CM#1 immediately recognized the female companion as she walked down the hallway with a male individual. NE#5 and CM#1 waited and, moments later, CM#1 was escorted to the wounded person's room where CM#1 positively identified the wounded person as the person he had observed bleeding in the alley.



Show-up at Scene 3: The Complainant

Witness officers spoke with independent eyewitnesses near the scene of the shooting. WO#3 observed the Complainant and stopped him at Alaskan Way S and S. Washington St, which was three blocks from the scene of the shooting.

CM#3, an employee of a nearby apartment block, allowed an officer to view surveillance video which captured the shooting. A Federal Protection Officer (FPS#1) was one of the first officers at the scene and stated that the “suspects and/or victim went Southbound on Post Alley.” FPS#1 directed SPD personnel to CM#2 who provided a statement. While officers were attending the two individuals in the Alley, SWAT officers detained the Complainant. WO#3 brought CM#2 to where the Complaint was detained, and she positively identified him as the shooting suspect.

A short time later, NE#5 overheard a SWAT officer (WO#3) say that they had a possible subject detained, namely the Complainant. NE#5 then transported CM#1 to this location for a show-up. While waiting for this to occur, WO#1, WO#2, WO#4, and WO#5 reviewed surveillance video to verify whether the Complainant was a suspect.

When NE#5 brought CM#1 to the Complainant’s location, CM#1 stated that he was certain the Complainant was not involved in the shooting.

WO#5 reviewed surveillance footage with WO#1, WO# 2, and WO#3. This review identified discrepancies that resulted in the Complainant being excluded as a suspect and released.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

SPD Policy 8.200-POL-1 states that Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” (SPD Policy 8.050.) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

The Complainant alleged that when he was detained “one team member grabbed my right arm first and was trying to swing it behind my back and another jumped in and grabbed the left arm and swung it behind my back, while the whole time they were pushing me down towards the ground with both their body weight.” He said that once on the ground, an officer put his knee on the Complainant’s back while the other folded his legs. The Complainant further stated that “the one with the knee in my back, while putting the handcuffs too tight, was doing something strange to my trigger finger because afterwards and even now it hurts in the joint. I thought he was trying to check for gun powder or he was putting gun powder residue on it.” The Complainant stated that his “shoulder only ached a few days but that is where I intentionally fell to the ground, at the same time lifting my head, while supporting all their weight to prevent massive damages to face and chest.” The Complainant stated that he practices falling. He also stated that he did not seek medical attention and did not have photographs of his injuries.



BWV showed that the Complainant was escorted to the ground using *de minimis* force. NE#1 controlled the Complainant's left arm. NE#2 controlled the Complainant's right arm. NE#5 controlled the Complainant's legs. NE#2 lowered himself and the Complainant in a controlled manner to prevent injury. NE#1 told OPA that as NE#2 took control of the Complainant's arm, the Complainant began to tense and buried his hands in an attempt to evade NE#2. NE#1 took control of the Complainant's arm as he spun around to get away from NE#2. NE#1's description of events was consistent with BWV.

NE#1 screened the incident with his own supervisor and was informed that a Use of Force statement was not required. In this case, NE#1 believed that he used only *de minimis* force, which SPD Policy defines as "[p]hysical interaction meant to separate, guide, and/or control without the use of control techniques that are intended to or are reasonably likely to cause any pain or injury." (SPD Policy 8.050). The policy goes on to include examples of *de minimis* force, such as "[u]sing hands or equipment to stop, push back, separate, or escort a person without causing any pain, or in a manner that would reasonably cause any pain." (Id.)

The force which was used was considered to be reasonable, necessary, and proportional. The Named Employees were unaware if the Complainant—at that time, a suspect in a shooting—was armed at the point he was detained. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #1 - Allegation #2

5.140 – Bias-Free Policing 2. Employees 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-POL.) This includes different treatment based on the race of the subject. (See id.)

When interviewed, NE#1 said that WO#4 decided to detain the Complainant. NE#1 stated that his decision to arrest the Complainant was not influenced by bias, prejudice, or discrimination but from the evidence—namely the descriptions of the suspect and the Complainant's proximity to the crime. It is apparent to OPA that the Complainant was detained based primarily on his clothing description, which matched that of the suspect given, his physical description, and his proximity to the crime location. It was an unfortunate coincidence that the Complainant matched this description and that an initial false positive identification occurred.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 - Allegation #3

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. 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.

NE#1 verbalized to the Complainant that he was under arrest. NE#1 believed that he did not violate SPD policy 6.010 because the positive identification during the first show-up and the severity of the crime (shooting) authorized officers to detain the Complainant for the crime of assault. OPA finds that the facts and circumstances surrounding the shooting were sufficient to support a reasonable belief by NE#1 that an offense had been or was committed, and CM#2's positive-identification of the Complainant—even if it was later learned to be erroneous—were sufficient to support a reasonable belief that the Complainant committed the offense.

OPA found no evidence indicating that there was a lack of probable cause to make this arrest. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #2 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

The fact pattern for the arrest and detention of the Complainant is described above at Named Employee #1, Allegation #1.

BWV showed that the Complainant was escorted to the ground using *de minimis* force. NE#2 lowered himself and the Complainant in a controlled manner to prevent injury. NE#2 said the Complainant was not slammed to ground as alleged. NE#2 said that he and NE#1 used *de minimis* force to place the Complainant in handcuffs. Once on the ground, NE#2 placed his knee on the Complainant's back, at which time the Complainant complained of pain. NE#2 stated that removed his knee once he was in a position of control. NE#2 described the knee positioning as being parallel to the Complainant's spine, over his shoulder, and away from the Complainant's neck and head.

Throughout the arrest of the Complainant, OPA noted that clear, calm instructions were verbalized to him by Named Employees. When he commented "Ah, my back," NE#2 immediately stated, "I'm off your back," and removed his knee. BWV corroborated this and showed that NE#2 appeared to have his body weight on his other knee, which was resting on the ground. The amount of force used as observed by OPA was *de minimis*.

Relatedly, OPA notes the informative engagement that NE#2 had with the Complainant. The Complainant stated, "you should've told me you we're gonna grab me." NE#2 responded, "look sometimes I don't tell people cause they act crazy okay. What you're being wanted for is a violent crime, a violent crime involving a weapon." The Complainant replied, "but it has nothing to do with f**** me!" NE#2 then informed the Complainant that he was identified by a witness and he did not know if the Complainant had the weapon on his person.

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

Recommended Finding: **Not Sustained - Lawful and Proper**



Named Employee #2 - Allegation #2

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

NE#2 stated that he did not violate this policy because he did not initiate the stop and, additionally, his decision to arrest the Complainant was based on facts and evidence available at the time of the incident. OPA finds the evidence supports NE#2's explanation.

As already discussed in Named Employee #1 – Allegation #1, the Complainant was detained based primarily on his clothing description, his physical description, and his proximity to the crime location. It was an unfortunate coincidence that the Complainant matched this description and that an initial false positive identification occurred.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 - Allegation #3

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

Although NE#2 was involved in the physical detention of the Complainant, NE#1 verbalized to the Complainant that he was under arrest. Moreover, for the reasons stated above (see Named Employee #1 – Allegation #3), there was probable cause to arrest the Complainant at the time he was taken into custody.

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

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #3 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

The fact pattern for the arrest and detention of the Complainant is described above at Named Employee #1, Allegation #1.

BWV showed NE#1 and NE#2 approached the Complainant to place him under arrest. The Complainant tensed up and told the officers not to touch him. The Complainant then began to struggle with the officers. The Complainant was instructed to stop resisting and taken to the ground in a controlled hold using *de minimis* force. NE#1 appeared to be controlling the Complainant's left arm. NE#2 appeared to control the Complainant's right arm. NE#3 controlled the Complainant's legs.

When interviewed, NE#3 recalled that the Complainant was taken to the ground face down, but NE#3 could not remember the mechanics of the takedown. NE#3 assisted by folding/crossing the Complainant's legs to prevent him from kicking. From BWV, the Complainant did not complain about this technique. NE#3 said he used *de minimis* force to control his legs. NE#3 said that crossing a subject's legs is a trained tactic taught by the SPD Training Section. NE#3 screened the incident with his supervisor and stated that he did not use reportable force.

OPA finds that the force used by NE#3 was necessary, reasonable, and proportional to the circumstances and was in line with policy. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.



Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #3 - Allegation #2

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

As discussed in Named Employee #1, Allegation #1, the evidence shows that the Complainant was detained based on his clothing and physical description—which matched that given of the suspect—and proximity to the crime. There is no available evidence to suggest that the Complainant was detained solely due to his race. His physical description and clothing was an unfortunate match to the description given of the involved shooter. When interviewed, NE#3 stated that said he wasn't responsible for the initial stop, and he did not have contact with the Complainant to express a bias. No evidence suggests that NE#3 engaged in bias-based policing.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #3 - Allegation #3

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

While NE#3 was involved in the arrest and restraint of the Complainant, he did not initiate the arrest. Moreover, for the reasons stated above (see Named Employee #1 – Allegation #3), there was probable cause to arrest the Complainant at the time he was taken into custody.

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

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #4 - Allegation #1

5.001 - Standards and Duties 10. Employees Will Strive to be Professional

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (SPD Policy 5.001-POL-10.) The policy further states the following: “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 that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

BWV captured the statements made by NE#4 and, as such, these facts are not in dispute. While waiting for the second witness to show-up, NE#4 informed the Complainant that officers were waiting for a second witness to arrive. The Complainant commented, “Ah, everybody hates me out here anyways.” NE#4 Responded, “that’s probably what it is. Somebody who just doesn’t like you.” BWV also showed NE#4 telling the Complainant that there was a black police officer at the scene who would be coming to talk to him. He also told the Complainant that “a lot of people say you did something, so...those people will let you know what you did, and if they are right you know what you did so let’s not have any more conversations.” BWV showed that the Complainant did not speak after this.



NE#4 stated that he made these statements in an attempt to deescalate the Complainant who had become upset at this point. NE#4 did not recall if he subsequently had an African American officer attend the call. No African American officer attended to the Complainant after this. NE#4 stated that he told the Complainant that people had said he had done something wrong in reference to the witnesses.

After reviewing the BWV, OPA finds the tone and delivery of NE#4's comments and behavior aligned with an attempt to engage the Complainant in conversation to attempt to deescalate the situation. His comments appeared to have the desired effect and were not derogatory, contemptuous, or disrespectful towards the Complainant. As such the behavior did not violate policy.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #5 – Allegation #1

15.170 POL-1 Preparing and Administering Photomontages and Show-ups 3. Administrators Will Make an Effort to Avoid Suggesting There is a Specific Suspect

SPD Policy 15.170-POL-1(3) states that officers administering a show-up will make an effort to avoid saying anything to a victim or witness that would suggest that there is a specific suspect or person of interest for the crime at any time prior to an identification procedure. Moreover, during show-ups, policy requires that officers take reasonable steps to avoid creating the appearance that the suspect is in custody. This includes transporting the witness to the suspect's location instead of transporting the suspect. *Id.*

Named Employee #5 (NE#5) transported CM#1 to the Alley to conduct a show-up on Subject #1 and Subject #2. This resulted in a positive identification. NE#5 then transported CM#1 to the location of the Complainant. CM#1 was not able to identify the Complainant as an individual he recognized. NE#5 then transported CM#1 to HMC which resulted in a positive identification.

On the first Show Up, NE#5 brought CM#1 to the Alley. En route NE#5 got on air and on the radio and asked if a suspect was being detained because CM#1 would be able to identify the subject. Further to this, NE#5 asked CM#1 if one of the individuals (Subject #1 and Subject #2) looked like the suspect. When interviewed by OPA, NE#5 readily accepted that the use of the term "suspect" could be misunderstood by the Witness.

During this show-up NE#5 told CM#1 that the subject was no longer wearing black clothing, and CM#1 was able to identify this subject, as one of the individuals involved in the shooting. During his interview with OPA, NE#5 again acknowledged that such comments could be suggestive to a witness.

NE#5 brought CM#1 for the second show-up to the Complainant. En route to the show-up, NE#5 identified the Complainant as the suspect. NE#5 acknowledged that this conversation and what it suggested was not in line with policy recommendations on show-ups. NE#5 also told CM#1 to listen to the Complainant's voice to see if his voice matched the tone of the person who said "Dre, I'm sorry." NE#5 further acknowledged that having a witness identify a voice is not part of a field show-up.



NE#5 has been a police officer with SPD for over 17 years and estimated in his OPA interview that he has participated in “several hundred” show-ups. OPA values NE#5’s candor regarding his missteps during these show-ups and believes he had positive intentions. But his efforts fell short and violated policy. The ability to conduct a proper show-up is a necessary skill for all sworn officers. The importance of non-suggestive show-ups to identifying perpetrators of crime, protecting the integrity of prosecutions, and avoiding false arrests cannot be overstated.

For the reasons stated above, OPA originally recommended that this allegation be Sustained. A discipline meeting was held with NE#5’s chain of command at which a robust discussion was held concerning NE#5’s behavior. NE#5’s chain of command noted that the most recent eDirective on this issue was in 2019 and was more focused on the procedure for photomontages than show ups. NE#5’s chain of command also noted that there was no disciplinary history for NE#5 to suggest that he was familiar with the specifics of this procedure and that NE#5 candidly acknowledged his shortcomings in his OPA interview. OPA agrees with NE#5’s chain of command that NE#5 possibly violated policy in this instance, but that his behavior did not amount to willful misconduct. Accordingly, a training referral is the most appropriate recommendation in this case. Although the show up procedure outlined by SPD Policy 15.170-POL-1(3) and 15.170 TSK-1 may appear technical, OPA reiterates that the ability to conduct a proper show-up is a necessary skill for all sworn officers. The importance of non-suggestive show-ups to identifying perpetrators of crime, protecting the integrity of prosecutions, and avoiding false arrests cannot be overstated

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

- **Training Referral:** NE#5’s chain of command should discuss OPA’s findings with NE#5. The Training Referral should incorporate counseling and training on relevant sections of SPD Policy 15.170-POL-1(3) and 15.170 TSK-1. In addition to this, Supervisory staff should provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

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

Named Employee #5 – Allegation #2
15.170 TSK-1 Conducting a Show-up

SPD policy 15.170 TSK-1 states that When conducting a show-up, the administrator performs the duties which include: 1. Documents a description of the suspect prior to the show-up 2. Attempts to obtain the suspect’s cooperation in the show-up procedure by requesting the suspect’s voluntary participation in the show-up. 3. Prepares to document the photomontage procedure by video recording, audio recording, or written report per POL-1 #15. 4. Transports the witness to the location of the suspect. 5. Provides instructions to the witness. 6. Documents the circumstances of the show-up. 7. Documents the suspects cooperation or lack of cooperation. 8. Documents both identification and non-identification results in writing.

Because NE#5 transported CM#1 to three different locations for show-up procedures, he was responsible for providing instructions to the witness, documenting the circumstances of the show-up, and documenting the identification/non-identification results in writing along with specific facts.

NE#5 completed a statement with respect to his involvement in the aforementioned show-ups. Policy required that instructions were provided to the witness. However, OPA finds that NE#5’s instructions and statement were



sufficiently deficient with respect to the detail required as outlined in point 5. The witness, CM#1, was not properly instructed by NE#5. NE#5 should have described in accordance with policy what was required by the witness in respect to the show-ups. NE#5's statement did not include any of this information as required by policy.

In its original DCM, OPA noted that: Had NE#5 complied with the specific procedure outlined in SPD Policy 15.170 TSK-1, he likely would have avoided the errors that resulted in OPA recommending a sustained finding for Named Employee #5, Allegation #1. OPA believes that these two policies are sufficiently intertwined that two sustained findings are not necessary to address the misconduct at issue.

For the reasons now set forward above at Named Employee #5, Allegation #1, OPA believes that training referrals are the appropriate resolutions to these allegations. Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#5's chain of command should discuss OPA's findings with NE#5. The Training Referral should incorporate counseling and training on relevant sections of SPD Policy 15.170-POL-1(3) and 15.170 TSK-1. In addition to this, Supervisory staff should provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

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

Named Employee #6 – Allegation #1

15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence

OPA added an allegation against an Unnamed Employee for failing to properly conduct the investigation into the shooting that resulted in Complainant's arrest. However, following OPA's investigation, OPA finds that the involved officers did conduct a thorough, complete, and reasonably expeditious search for evidence in this matter. As stated above, it was unfortunate that the Complainant's clothing and physical appearance matched that of a suspect in this shooting. That, plus his physical proximity to the shooting, were the cause of his detention. That a witness then provided a positive—but incorrect—identification of the Complainant also resulted in further misfortune for the Complainant. But, ultimately, the involved officers conducted sufficient due diligence to ensure that the Complainant was released without charges from the scene in about an hour.

Accordingly, OPA is removing this allegation.

Recommended Finding: **Allegation Removed**