
Issued Date: FEBRUARY 19, 2024

From: Director Gino Betts, Office of Police Accountability



Case Number: 2023OPA-0359

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)
 - a. **Finding:** Not Sustained - Lawful and Proper
2. **Allegation #2:** 6.010 – Arrests, 6.010-POL-2. When Taking a Suspect Into Custody, Officers Must Identify Themselves, Inform the Suspect that He or She is Under Arrest, and State the Reason for the Arrest As Early as Practical (Effective July 26, 2019)
 - a. **Finding:** Not Sustained - Unfounded (Expedited)
3. **Allegation #3:** 8.200 – Using Force, 1. Use of Force: When Authorized (Effective June 19, 2020)
 - a. **Finding:** Not Sustained - Lawful and Proper (Expedited)
4. **Allegation #4:** 5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing
 - a. **Finding:** Not Sustained - Unfounded
5. **Allegation #5:** 5.001 – Standards and Duties, 5.001-POL-10. Employees Shall Strive to be Professional (effective March 1, 2018)
 - a. **Finding:** Not Sustained - Unfounded (Expedited)

Named Employee #2

1. **Allegation #1:** 8.200 – Using Force, 1. Use of Force: When Authorized (Effective June 19, 2020)
 - a. **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)
 - a. **Finding:** Not Sustained - Unfounded (Expedited)

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 dispute between the Complainant and his housemate, Community Member #1 (CM#1). NE#1 arrested the Complainant for domestic violence (DV) harassment. The Complainant alleged that NE#1 lacked probable cause to arrest him, failed to state the reason for his arrest, and engaged in bias-based policing. The Complainant also alleged that the named employees applied unauthorized force and were unprofessional when his body became exposed.

Administrative Note:

During its investigation, OPA noted that Witness Supervisor #1 (WS#1)—a sergeant on the incident date—failed to notify a supervisor or provide information to the Complainant about filing an OPA complaint in response to the Complainant’s bias-based policing allegation. OPA processed this allegation as a Supervisor Action. Supervisor Action generally involves 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).

The allegations concerning stating the reason for the arrest, use of force, and professionalism were 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 about those allegations. As such, OPA did not interview the named employees about those allegations. On October 2, 2023, OIG certified OPA’s expedited investigation as thorough and objective but untimely. Specifically, OIG determined notices of receipt of complaint were sent to the named employees beyond the required period. OPA acknowledges that these notices were sent late and respectfully explains the delay did not impact the thoroughness or objectivity of OPA’s investigation. Classification notices were timely issued, and OPA completed its investigation within 180 days as required by ordinance and the governing collective bargaining agreement.

The remaining allegations underwent a full investigation. On January 8, 2024, OIG certified OPA’s full investigation as thorough, timely, and objective.

Summary of the Investigation:

A. OPA Complaint

On August 23, 2023, the Complainant filed an online OPA complaint, writing that he and CM#1 argued over moving out but denied any physical altercation. The Complainant wrote that he was arrested for DV harassment after the police responded and believed CM#1’s “lies.” The Complainant alleged the following: (1) he was “immediately circled” by officers having their hands on their firearms after he stepped out during a bath, wearing only a towel; (2) officers prioritized

CM#1's claims over his claims; (3) he was treated inhumanely when he was inadvertently exposed wearing only a towel while officers "dragged" him out; and (4) he was unlawfully held in a holding cell for about 48 hours without being told his charges.

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

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

On August 31, 2020, at 11:06 PM, CAD call remarks noted, "IN FRONT, SEE [REPORTING PARTY] WHO STATES THAT HIS LANDLORD HAS CHANGED THE LOCKS ON HIS UNIT, WHEN CALLTAKER ATTEMPTED TO ADVISE CIVIL NATURE OF CALL, [REPORTING PARTY] BECAME ESCALATED AND WAS YELLING THAT HE IS GOING TO FORCE HIS WAY IN IN ORDER TO GET HIS ITEMS, NO WEAPONS."

On September 1, 2020, shortly after midnight, the named employees responded to a house and activated their BWV, which captured the following events. The named employees spoke with CM#1 downstairs. CM#1 said he subleased to the Complainant, who was told to move out for failing to pay rent. CM#1 said he allowed the Complainant to enter the house if he was out by midnight. CM#1 said the Complainant agreed but, after entering the house, threatened to smash CM#1's face with a bottle and make him bleed. CM#1 said he felt unsafe while the Complainant was home. CM#1 said the Complainant previously threatened him several times and had manic episodes.

The named employees went upstairs. The Complainant said he was taking a bath, then exited the bathroom wearing a towel around his waist. The Complainant said CM#1 changed the door locks, preventing him from entering the house. The Complainant said CM#1 slammed the door on his hand, then showed NE#1 his left hand. NE#1 looked at his hand and touched it, but the Complainant did not appear to react. NE#1 wrote in his police report, "I did not see any fresh bruising or red marks." The Complainant said CM#1 was escalated and got in his face. The Complainant said he took a bath to calm down, then planned to move out. The Complainant acknowledged talking to CM#1 downstairs but invoked the Fifth Amendment when NE#1 asked what they talked about. NE#1 approached the Complainant, said he was under arrest, and handcuffed him. The Complainant asked, "What am I arrested for?" NE#1 replied, "Harassment DV." The named employees asked about his clothes, but the Complainant became escalated and dropped to his knees. After the named employees escorted the Complainant out of his room, his towel fell, prompting NE#1 to wrap it around his waist. While outside, the Complainant repeatedly shouted, "Help" and "I'm being taken away" during his escort to NE#1's patrol car. NE#1 transported the Complainant to the East Precinct.

WS#1 screened the arrest at the East Precinct. The Complainant said the named employees lacked consent to enter his room, "manhandled" him, and removed the towel from him. The Complainant expressed pain in his arm and back. The Complainant alleged that CM#1 attacked him. The Complainant also alleged that the named employees were racist for arresting him based

on a white man's claims and did not explain why they arrested him. WS#1 said he was arrested for DV harassment.

The named employees each wrote a police report consistent with the events captured on BWV.

C. OPA Interviews

On September 12, 2023, OPA interviewed the Complainant. The Complainant said he and CM#1 argued downstairs. The Complainant said he armed himself with a whiskey bottle because of CM#1's aggression but denied CM#1 threatening him. The Complainant said CM#1 had a violent history and was larger than him but denied being in a physical altercation with him. The Complainant said the named employees used a public address system and sirens to order him out of his room. The Complainant said he exited his bathroom wearing only a towel and saw the named employees with their hands on their guns and surrounding him. The Complainant said he invoked the Fifth Amendment to avoid misspeaking. The Complainant said his arrest could be retaliation for protesting in 2020. The Complainant said he did not consent to police entry and believed his arrest was an illegal eviction. The Complainant said the named employees neither explained why he was arrested nor allowed him to get his pants. The Complainant denied receiving physical injuries from the incident.

On October 5, 2023, OPA interviewed NE#1. NE#1 described the incident consistent with the evidence summarized above. NE#1 denied having any prior interaction with CM#1 and the Complainant. NE#1 said his probable cause was based on the Complainant's threat, CM#1's belief that the Complainant intended to carry out that threat, and the Complainant invoking the Fifth Amendment. NE#1 said he entered the Complainant's room to investigate the threat and because the Complainant was the 9-1-1 caller. NE#1 said he told the Complainant he was arrested for DV harassment. NE#1 said he asked about the Complainant's clothes, but the Complainant became escalated and resisted. NE#1 denied the Complainant's race impacted the decision to arrest him.

On October 31, 2023, OPA interviewed NE#2. NE#2 described the incident consistent with the evidence summarized above. NE#2 said he did not hear NE#1's interview with CM#1 because he was positioned near the stairs. NE#2 said he was a backing officer for NE#1, who established probable cause to arrest the Complainant. NE#2 denied hearing any claims of bias during the Complainant's arrest. NE#2 believed the Complainant's race played no role in his arrest.

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 to arrest him for DV harassment.

Officers must have probable cause to believe that 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 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).

Here, NE#1 arrested the Complainant after interviewing CM#1 and the Complainant. CM#1 reported that the Complainant threatened to smash his face with a bottle and make him bleed. CM#1 said he felt unsafe while the Complainant was home. The Complainant acknowledged that there was a verbal dispute. However, when NE#1 asked about what they discussed downstairs, the Complainant refused to provide any further information, invoking the Fifth Amendment. At that point, there was no evidence disputing CM#1's claim that the Complainant threatened to assault him with a bottle. Probable cause only requires a reasonable belief that a crime was committed. It does not require proof beyond a reasonable doubt, which the government must prove to secure a conviction. Based on the information reported to NE#1, he had sufficient probable cause to arrest the Complainant for DV harassment.

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

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

Named Employee #1 – Allegation #2

6.010 – Arrests, 6.010-POL-2. When Taking a Suspect Into Custody, Officers Must Identify Themselves, Inform the Suspect that He or She is Under Arrest, and State the Reason for the Arrest As Early as Practical (Effective July 26, 2019)

The Complainant alleged that NE#1 failed to state the reason for his arrest.

When taking a suspect into custody, officers must identify themselves, inform the suspect that he or she is under arrest, and state the reason for the arrest as early as practical. SPD Policy 6.010-POL-2 (effective July 26, 2019).

Here, BWV captured the Complainant asking about the reason for his arrest, and NE#1 replied, "Harassment DV." BWV also captured the Complainant asking again, and NE#1 replied, "Harassment." NE#1 stated his reason for arresting the Complainant.

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

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

Named Employee #1 – Allegation #3

8.200 – Using Force, 1. Use of Force: When Authorized (Effective June 19, 2020)

The Complainant alleged that the named employees applied unauthorized force.

An officer shall use only the force objectively reasonable, necessary, and proportional to effectively bring an incident or person under control while protecting the life and safety of all persons. SPD Policy 8.200(1) (effective June 19, 2020). Stated differently, officers shall only use objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law enforcement objective. *Id.* The force used must comply with federal and state law, SPD policies, and the rules for specific weapons and tools. *Id.* Once safe to do so, and the threat has ended, the force must stop. *Id.*

The reasonableness of a particular use of force is based on the totality of circumstances known by the officer at the time of the use of force and weighs the officer's actions against the subject's rights considering the circumstances surrounding the event. SPD Policy 8.050 (effective June 19, 2020). Reasonableness must consider that officers are often forced to make split-second decisions—in circumstances that are tense, uncertain, dynamic, and rapidly evolving—about the amount of force that is necessary in a particular situation. *Id.* The reasonableness inquiry in an excessive force case is an objective one—whether the officers' actions are objectively reasonable considering the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Id.* The policy also identifies several factors that should be weighed when evaluating reasonableness. See *id.* "Necessary" means that 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.* A proportional use of force must "reflect the totality of circumstances surrounding the situation at hand, including the nature and immediacy of any threats posed to officers and others. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied. Reasonable and sound judgment will dictate the force option to be employed." *Id.*

Here, BWV captured the named employees using—at most—*de minimis* force during this incident. *De minimis* force is physical interaction meant to separate, guide, 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 (effective June 19, 2020). After NE#1 handcuffed the Complainant, the named employees attempted to escort him out of his room when he dropped to his knees, refused to stand, and became escalated. The named employees raised him and escorted him out of the house. BWV disproved the Complainant's allegation that the named employees "immediately circled" him after he exited the bathroom. Additionally, BWV captured NE#1's right hand gripping his firearm before the Complainant exited the bathroom, but NE#1 never drew it. The named employees' use of force was objectively reasonable to effect a mandatory DV arrest and to protect CM#1 from harassment. Their use of force was necessary to escort the Complainant out of the house, given his resistance to leave. Their use of force was proportional because they applied an appropriate amount of force to overcome the Complainant's resistance.

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

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

Named Employee #1 – Allegation #4

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

The Complainant alleged that NE#1 engaged in bias-based policing by prioritizing CM#1's claims over his claims.

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. *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.

Here, the Complainant believed NE#1 arrested him based on a white man's claims. However, as articulated in Named Employee #1 – Allegation #1, the Complainant's arrest was based on probable cause that NE#1 developed during his investigation into DV harassment. The record reflects no evidence of race impacting NE#1's investigation.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 – Allegation #5

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

The Complainant alleged that the named employees were unprofessional when his body was exposed during escort.

SPD employees shall "strive to be professional." SPD Policy 5.001-POL-10 (effective March 1, 2018). Regardless of duty status, employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers. *Id.*

Here, the named employees arrested the Complainant wearing only a towel around his waist. The named employees asked about his clothes multiple times, but the Complainant became escalated and resisted in response. When they escorted the Complainant out of his room, his towel fell. At that time, they were in the upstairs hallway where no one else was present. NE#1 rewrapped the towel around the Complainant's waist and escorted him to his patrol car at nighttime. There was no indication that the towel fell off again during that escort. The named employees' conduct was not unprofessional.

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

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

Named Employee #2 – Allegation #1

8.200 – Using Force, 1. Use of Force: When Authorized (Effective June 19, 2020)

For the reasons at Named Employee #1 – Allegation #3, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

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

Named Employee #2 – Allegation #2

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

For the reasons at Named Employee #1 – Allegation #5, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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