

Issued Date: FEBRUARY 21, 2024

From: Director Gino Betts, Office of Police Accountability



Case Number: 2023OPA-0369

Allegations of Misconduct & Director's Findings

Named Employee #1

1. **Allegation #1:** 5.001 – Standards and Duties, 5.001-POL-10. Employees Will Strive to be Professional
 - a. **Finding:** Not Sustained - Unfounded (Expedited)

Named Employee #2

1. **Allegation #1:** 5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing
 - a. **Finding:** Not Sustained - Unfounded (Expedited)
2. **Allegation #2:** 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 (Expedited)
3. **Allegation #3:** 5.001 – Standards and Duties, 5.001-POL-10. Employees Will Strive to be Professional
 - a. **Finding:** Not Sustained - Unfounded (Expedited)

Named Employee #3

1. **Allegation #1:** 5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing
 - a. **Finding:** Not Sustained - Unfounded (Expedited)
2. **Allegation #2:** 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 (Expedited)

- 3. Allegation #3:** 5.001 – Standards and Duties, 5.001-POL-10. Employees Will Strive to be Professional
- a. **Finding:** Not Sustained - Unfounded (Expedited)
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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 #2 (NE#2) and Named Employee #3 (NE#3) arrested the Complainant for assault. The Complainant alleged that NE#2 and NE#3 arrested him based on his race. The Complainant also alleged that NE#2 and NE#3 lacked probable cause to arrest him. Finally, the Complainant alleged that Named Employee #1 (NE#1), NE#2, and NE#3 were rude and refused to hear his side of the story.

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 involved in this case.

On September 29, 2023, OIG certified OPA's investigation as thorough, timely, and objective.

Summary of the Investigation:

On August 28, 2023, NE#1—an acting police sergeant—submitted a Blue Team complaint to OPA on the Complainant's behalf, writing that the Complainant was arrested for second degree assault and transported to the South Precinct. NE#1 wrote that he screened the arrest and interviewed the Complainant, who alleged bias and requested an OPA investigation.

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

On August 15, 2023, at 8:03 PM, CAD call remarks noted, "2 MIN[UTES] AGO MALE ST[R]ANGLED [REPORTING PARTY]."

NE#2, NE#3, and Witness Officer #1 (WO#1) responded to a tiny home village and activated their BWV, which captured the following events. Officers contacted the reporting party (RP) and Community Member #1 (CM#1). CM#1 said the Complainant approached and told her not to talk about him. CM#1 denied speaking about him. CM#1 said the Complainant grabbed her neck using both hands for about ten seconds, restricting her airway for about a second. CM#1 said she did not lose consciousness. WO#1 photographed the Complainant's neck. WO#1's police report noted, "There was a large red area visible on [CM#1's] neck." Photographs depicted redness

around her neck. CM#1 identified a witness to the incident. The witness told officers that she saw the Complainant's hands around CM#1's neck.

NE#2, NE#3, and WO#1 contacted the Complainant. The Complainant said he heard CM#1 insulting him, so he confronted her about the insults. The Complainant said CM#1 scratched his arm, then showed officers his arm. WO#1's police report noted that WO#1 later determined the scratch on the Complainant's arm was a "defensive wound caused by [CM#1] during the incident. [CM#1] stated that while being strangled she was attempt[ing] to grab [the Complainant]." The Complainant equivocated about whether he physically contacted CM#1. He denied touching CM#1 but then acknowledged touching her, though he said he was frightened to touch her. The Complainant said, "That's the first time I touched someone." The Complainant denied knowing how CM#1 received red marks around her neck. WO#1 arrested the Complainant.



CM#1 Redness Around Neck

NE#1 screened the Complainant's arrest at the South Precinct. The Complainant alleged he was arrested because he was Black and CM#1 and the witness were white. The Complainant said officers failed to consider his story despite showing them the scratch on his arm.



Complainant's Scratch Mark On Arm

NE#2, NE#3, and WO#1 wrote police reports consistent with the events captured on BWV. WO#1 wrote, “Based on the visible injury to [CM#1’s] neck and the independent witness’ account of the incident, probable cause for Assault 2 was determined. [The Complainant] was placed under arrest for Assault 2.”

On September 12, 2023, OPA interviewed the Complainant. The Complainant said officers spoke to CM#1 first and did not believe his story. The Complainant said officers were rude, aggressive, and already decided to arrest him without interviewing him. The Complainant alleged his arrest was racially motivated. The Complainant also alleged NE#1 laughed at him, refused to hear his story, and told him that nothing would happen if he filed an OPA complaint.

Analysis and Conclusions:

Named Employee #1 – Allegation #1

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

The Complainant alleged that NE#1 was unprofessional by laughing at him, refusing to hear his story, and telling him that nothing would happen if he filed an OPA complaint.

SPD employees must “strive to be professional.” SPD Policy 5.001-POL-10. 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.* 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 that is derogatory, contemptuous, or disrespectful toward any person. *Id.*

Here, NE#1 activated his BWV and screened the Complainant’s arrest at the South Precinct. BWV did not substantiate the Complainant’s allegations. Instead, BWV captured NE#1 listening to the Complainant’s story, looking at the Complainant’s scratch, telling him that officers would photograph and document his scratch, and assuring him that OPA’s contact information would be provided to him. NE#1 neither laughed at the Complainant nor refused to hear his story. NE#1 also did not express any opinion about filing an OPA complaint. NE#1’s interaction with the Complainant was professional.

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

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

Named Employee #2 – Allegation #1

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

The Complainant alleged that NE#2 and NE#3 arrested him based on his race, constituting 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. 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, NE#2 and NE#3 arrested the Complainant based on evidence of assault, not on race. CM#1 reported that the Complainant strangled her neck. Photographs depicted redness around CM#1’s neck. Additionally, an independent witness reported seeing the Complainant’s hands around CM#1’s neck. Finally, the Complainant’s claim about whether he touched CM#1 was inconsistent and failed to dispel NE#2’s and NE#3’s probable cause that he assaulted CM#1. The record reflects no evidence of race impacting NE#2’s and NE#3’s investigation.

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

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

Named Employee #2 – Allegation #2

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#2 and NE#3 lacked probable cause to arrest him.

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, the Complainant believed NE#2 and NE#3 arrested him because he was a Black man. He also believed they sided with two white women—CM#1 and the witness. However, as articulated in Named Employee #2 – Allegation #1, the Complainant’s arrest was based on probable cause that NE#2 and NE#3 developed during their investigation into assault. Their probable cause was predicated on two consistent accounts and a visible injury that was inconsistent with the Complainant’s account. 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 evidence gathered, NE#2 and NE#3 had sufficient probable cause to arrest the Complainant for assault.

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

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

Named Employee #2 – Allegation #3

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

The Complainant alleged that NE#2 and NE#3 were rude, aggressive, and already decided to arrest him without interviewing him.

Here, BWV disproved the Complainant's allegation. WO#1 led the interview while NE#2 and NE#3 observed. Officers did not say anything that could be construed as rude or aggressive. They remained calm and asked the Complainant to explain his side of the story. WO#1 asked follow-up questions to clarify inconsistencies in his story. After interviewing the Complainant, officers arrested him based on probable cause that he assaulted CM#1. Collectively, their interaction with the Complainant was professional.

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

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

Named Employee #3 – Allegation #1

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

For the reasons at Named Employee #2 – Allegation #1, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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

Named Employee #3 – Allegation #2

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)

For the reasons at Named Employee #2 – Allegation #2, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

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

Named Employee #3 – Allegation #3

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

For the reasons at Named Employee #2 – Allegation #3, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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