



## **CLOSED CASE SUMMARY**

ISSUED DATE: DECEMBER 2, 2019

CASE NUMBER: 2019OPA-0380

### **Allegations of Misconduct & Director’s Findings**

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained (Training Referral)

***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 treated him unprofessionally and in an intimidating manner. The Complainant further alleged that this treatment was motivated by the Named Employee’s perception that the Complainant was homeless, thus constituting biased policing.

### **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 the Named Employee. As such, the Named Employees was not interviewed as part of this case.

During its intake investigation, OPA’s review of the video indicated that the Named Employee may have engaged in unprofessional behavior during this incident. That allegation was returned to the chain of command for handling as a Supervisor Action.

### **SUMMARY OF INVESTIGATION:**

On May 22, 2019 at approximately 6:00 p.m., Named Employee #1 (NE#1) and other officers responded to a call for service at an apartment building. It was reported that two individuals – the Complainant and a female resident – were fighting in the entry area. When NE#1 arrived, he encountered the Complainant outside the apartment building. Body Worn Video (BWV) recorded the Complainant bleeding from the nose and mouth. The Complainant began to explain the circumstances of his visit; namely, that he was visiting a friend in the building and had left to purchase soda before returning and trying to gain entry using the call box. NE#1 interrupted to ask the Complainant to describe: “what happened...without a lot of other stuff.”

The Complainant began to say that he came to his friend’s door with a case of soda and encountered the female resident. The Complainant had trouble speaking and was slurring his words, and unintentionally spat blood from his



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facial injury. NE#1 told him to stand in the alleyway and to maintain distance until he could control his spitting. NE#1 asked the Complainant if he wanted the Seattle Fire Department (SFD) to come to the scene treat his injuries. The Complainant declined. The Complainant attempted to explain the circumstances again, but he continued to have a difficult time doing so. NE#1 said that he would give the Complainant: “a minute to gather himself and come up with a coherent account of what happened.”

NE#1 went to his vehicle to retrieve sanitary wipes and was seen wiping his face. He then asked the Complainant again if he wanted SFD to treat his injuries. The Complainant declined and started to speak again. NE#1 interrupted him again to state to the Complainant: “listen to what I am saying to you.” NE#1 demanded to know if the Complainant wanted the police to take any action. The Complainant paused for a moment and said he did not. NE#1 then asked if the Complainant lived in the building. He said he did not. When the Complainant attempted to speak again, NE#1 interrupted him and stated, “listen, listen, listen, listen,” while pointing at the Complainant. NE#1 then told the Complainant that he and the woman: “had the chance to deal with this like adults, that’s not what you did and now we’re here, now it’s our turn, listen to me.” The Complainant again attempted to explain his side of the events, but NE#1 shouted: “Stop! I don’t care.” He told the Complainant not to try to get back into the building and “people will not throw cans at you.” He ordered the Complainant to get his property and leave. In response to a follow up question by the Complainant, NE#1 said that he was not permitted to return to the building later.

NE#1 walked over to observe the female resident, who was giving a statement to another SPD employee. The female resident interrupted and argued with the SPD employee. She spoke slowly and somewhat indistinctly. NE#1 returned to the other waiting officers and stated: “He’s drunk. The lady who called is drunk. They’re both loaded. And she’s thinking he’s trying to break into the building.” During the interview of the female resident, which was provided to the other SPD employee but not heard by NE#1, the female resident admitted to instigating violence with the Complainant.

As the Complainant and the female resident left the area, another male resident came out and said he would tell the officers about: “the dynamics of what is going on.” NE#1 addressed the resident and said: “That’s the dynamic, sir. That’s it. We’ll condense down thirty minutes of you telling us everyone is loaded.”

Three days later, the Complainant went to the East Precinct lobby and filed a complaint with a SPD supervisor. BWV of this interview showed the Complainant’s slurred speech, although he spoke more quickly. The Complainant said that NE#1’s treatment of him was abrupt, and that NE#1 did not allow him to tell his side of the story. He explained that he was attempting to visit a friend, that the female resident assumed he was homeless, and that she assaulted him with a full soda can causing his injuries. He said that NE#1’s treatment was intimidating enough that he did not request medical assistance. He also said he has suffered two strokes, which caused his speech and memory issues. He also thought NE#1’s treatment of him was due to NE#1 believing that he was homeless. The supervisor referred the Complainant’s concerns to OPA, and this investigation ensued. As part of its investigation, OPA interviewed the Complainant. Notably, the Complainant’s speech patterns in his recorded OPA interview matched his speech patterns in the videos.



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**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 subject’s perceived homeless status. (*See id.*)

Based on OPA’s review of the evidence, there is an insufficient basis to determine that NE#1’s actions were motivated by bias. Notably, during the interaction, NE#1 did not ask if the Complainant was homeless, and the Complainant did not say that he was. The female resident who assaulted the Complainant appeared to believe that the Complainant was homeless and seeking drugs, but NE#1’s BWV did not reflect that he heard this allegation or that he relied on it in dealing with the Complainant. Moreover, NE#1 asked the Complainant if he lived at the apartment where the incident took place. This suggests that NE#1 did not, at least as an initial matter, assume that the Complainant was homeless. No additional information in the record indicates that NE#1 developed such a perception during his interaction with the Complainant.

Ultimately, for the above reasons, OPA finds no evidence of biased policing on NE#1’s part. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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

**Named Employee #1 - Allegation #2**

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

SPD Policy 15.180-POL-1 requires that, in primary investigations, officers conduct a thorough and complete search for evidence.

Based on NE#1’s observation of the Complainant’s demeanor, NE#1 determined that the Complainant was drunk. He did so without asking any questions regarding the Complainant’s alcohol use, and even though he did not observe any open or empty alcohol containers on or about the Complainant’s person. He also determined that no additional investigation or action was required despite uncontroverted information that the Complainant was an assault victim, including statements by the female resident admitting to the assault.

While NE#1 has wide discretion as to whether or not to effectuate an arrest, he conducted little factfinding during this matter and provided the Complainant virtually no opportunity to give his account of the situation. Moreover, when the Complainant attempted to do so, NE#1 interrupted and admonished him, telling the Complainant to stop because NE#1 did not care. Similarly, when another witness tried to inform the officers of what occurred, NE#1 interrupted that witness as well.

OPA recognizes that NE#1 was concerned that he would get blood on his person from the Complainant and that this may have impacted how he approached the Complainant and this incident. OPA also understands that NE#1



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believed that both parties were intoxicated and, perhaps, he has experienced similar situations before where this was the case. Lastly, OPA knows that NE#1 works in a sector in which he often encounters people in crisis or under the influence of alcohol and/or narcotics. However, his demeanor towards and interaction with the Complainant and his general handling of this investigation were, in OPA's opinion, largely problematic and counterproductive.

The above being said, OPA does not believe that this warrants a Sustained finding. Instead, OPA recommends that NE#1 receive the below Training Referral.

- **Training Referral:** OPA requests that NE#1 receive additional training concerning the elements of SPD Policy 15.180-POL-1. NE#1's chain of command should watch the BWV of his response to this incident with him and discuss how he handled this matter. NE#1's chain of command should discuss whether his approach to the Complainant and the other witness, as well as his overall investigation were consistent with the Department's expectations of his conduct. The retraining and associated counseling should be documented, and this documentation maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**