



CLOSED CASE SUMMARY

ISSUED DATE: MAY 14, 2019

CASE NUMBER: 2018OPA-1151

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 | 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) |

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 Named Employee arrested the Complainant for Driving Under the Influence (DUI). During his arrest, the Complainant alleged that the Named Employee engaged in biased policing because of the Complainant’s status as a “foreigner.” The Complainant further alleged that the Named Employee fabricated the Field Sobriety Tests and arrested him without probable cause.

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 Employee was not interviewed as part of this case.

SUMMARY OF INVESTIGATION:

According to the General Offense (GO) report, on December 10, 2018, Named Employee #1 (NE#1) observed the Complainant driving over stripped lane markers, weaving back and forth, and traveling at 10 miles per hour above the posted speed limit. Based on what he observed, NE#1 initiated a traffic stop. NE#1 reported that the Complainant exhibited signs of an individual who was likely impaired. As such, NE#1 requested and the Complainant agreed to perform standard field sobriety tests (SFST). As a result of how the Complainant performed those tests and based on NE#1’s extensive training in identifying individuals who are impaired, NE#1 arrested the Complainant for DUI. NE#1 also obtained a search warrant to draw blood from the Complainant, which took place later at the hospital. The Complainant denied that he was under the influence and alleged to NE#1, and later to the Sergeant who screened the arrest, that NE#1 took police action against him because of his status as a “foreigner.” The Complainant further alleged that NE#1 lacked probable cause to arrest him because NE#1 purportedly made up the SFSTs. The Sergeant referred this matter to OPA and this investigation ensued.



The Complainant also filed an in-person complaint with OPA about this incident and was interviewed as part of this investigation. During his interview, the Complainant reiterated his false arrest and biased policing allegations. He told OPA that bad things have happened to him since the first day he arrived in the United States.

OPA reviewed the In-Car Video (ICV) and Body Worn Video (BWV) associated with this incident. The ICV captures the driving actions of the Complainant that NE#1 identified as evidence of potential DUI. OPA found that the BWV also supported NE#1's reporting of the actions on the part of the Complainant that led to his arrest for DUI. The video further foreclosed any possibility that NE#1 knew the race of the Complainant at the moment that the traffic stop was effectuated.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

SPD Policy 5.140 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.” This includes different treatment based on the race of the subject. (*See id.*) If NE#1, as the Complainant alleged, stopped and arrested the Complainant solely based on his race, this would violate SPD policy.

Based on OPA's review of the evidence – most notably, the video of this incident, there is no indication that NE#1 engaged in biased policing. The Complainant was arrested based on his conduct, not because of his race or membership in a protected class. Indeed, I find that there was sufficient probable cause supporting the Complainant's arrest for DUI. For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against NE#1.

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

Named Employee #1 - Allegation #2

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.

As discussed above, NE#1 clearly established probable cause to arrest the Complainant for DUI. The SFSTs employed by NE#1 were consistent with his training and applied appropriately. The existence of probable cause is also established by the video of this incident. For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#1.

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