



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 25, 2019

CASE NUMBER: 2019OPA-0349

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)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

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 Employees subjected him to 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 Employees. As such, the Named Employees were not interviewed as part of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

On April 30, 2019, a woman (referred to here as the victim) called 911 and alleged that her boyfriend – the Complainant in this case – choked her during a dispute. Named Employee #1 (NE#1) and Named Employee #2 (NE#2) responded to the call. The Named Employees’ response to the scene and their investigation was captured on Body Worn Video (BWV). The Named Employees interviewed the victim in her apartment. She told them that the Complainant had given her a phone approximately three years ago, and that, when the Complainant was angry with her, he would sometimes take her phone as retribution. During this incident, the victim and the Complainant argued about the phone. She attempted to prevent him from taking it by lying on top of it. A struggle ensued, during which the victim reported that the Complainant briefly put both of his hands on her neck. The victim said that, during the altercation, she threw a small speaker at the Complainant. The Complainant then took the phone from the caller and went to his apartment that was located in the same complex.



NE#2 examined the victim's neck and observed variations in skin color. However, NE#2 was unable to conclusively determine whether the color variations were caused by the alleged choking. The victim told the Named Employees that the Complainant had been verbally and physically abusive to her in the past.

The Named Employees took a statement from the victim. After doing so, they went to the Complainant's apartment to speak with him. They observed that the Complainant's speech was slurred. This led them to believe he may have been intoxicated. The Complainant denied touching the victim and said that she threw the phone and the speaker at him. The Complainant showed the Named Employees the phone, which was cracked, as well as a text message from the caller which read: "I called the police." Based on the totality of their investigation, the Named Employees believed that they had probable cause to arrest the Complainant for domestic violence assault.

The Complainant later complained to the officers that his arrest was not supported by probable cause. He stated that the arrest was based on a false report made by the victim. He further alleged that the only reason he was arrested was because he was a Black man. NE#1 explained to the Complainant that, on a domestic violence call, state law and SPD policy required officers to make an arrest. A sergeant arrived to screen the arrest, and the Named Employees notified the sergeant of the Complainant's bias allegation. The sergeant spoke to the Complainant to try to elicit more information. The Complainant declined to elaborate on his bias allegation, and the sergeant forwarded the complaint to OPA. This investigation ensued.

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 race of the subject. (*See id.*)

Based on the totality of the record, I find insufficient evidence to determine that the Named Employees engaged in biased policing. Here, given the totality of the evidence available to them, it was reasonable for the Named Employees to believe that there was probable cause to arrest the Complainant. Moreover, even if there was insufficient probable cause as the Complainant alleged, this does not establish that the arrest was based on bias. Indeed, I find that the Named Employees' arrest was based on his conduct, not his race. For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against both Named Employees.

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

Named Employee #2 - Allegation #1

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

For the reasons stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

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