



## **CLOSED CASE SUMMARY**

ISSUED DATE: NOVEMBER 22, 2019

CASE NUMBER: 2019OPA-0381

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

**Named Employee #1**

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

**Named Employee #2**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	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)
# 2	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 he was arrested in the absence of probable cause and that his arrest was based on bias on the part of the Named Employees.

**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 - Allegations #1**

#### ***6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest***

On May 26, 2019, Named Employee #1 (NE#1) and Named Employee #2 (NE#2) responded to a disturbance. It was reported that an individual – the Complainant in this case – was standing on the street and allegedly yelling profanities at the bar patrons and bar staff. NE#1 and NE#2 encountered the Complainant immediately after arriving on scene. The officers' interaction with the Complainant was fully captured on Body Worn Video (BWV). The Complainant told the officers that he had been walking down the street when a bar patron told him to "go back to [the Complainant's] country." The Complainant stated that, as a result, he got into a verbal altercation with the bar patrons. NE#2 asked the Complainant if he had been drinking, and the Complainant said that he had. The Complainant asked NE#2 if he was free to go, and NE#2 said yes. The Complainant took a few steps away but returned to ask if he had broken any laws. The officers said he had not.

NE#1 spoke with bar patrons and bar employees who informed him that the Complainant had been using aggressive language towards them, as well as slurs involving race and sexual orientation. NE#1 then returned to where the Complainant and NE#2 were standing. The Complainant continued to remain at the scene, even after he was told several times that he could leave and after being encouraged to do so. Moreover, he continued to engage with bar patrons, including yelling at them, which served to escalate the situation.

At that time, NE#1 and NE#2 discussed whether they had probable cause to arrest the Complainant. NE#1 felt that they could arrest him for harassment. NE#2 had some questions as to whether they had enough of a basis to do so. NE#1 then went to screen the possible arrest with a supervisor. The supervisor agreed that they had probable cause to make the arrest.

NE#1 again returned to the scene and he and NE#2 took the Complainant into custody. At that time, the Complainant alleged that his arrest was based on his race. The Complainant was transported to the West Precinct and his arrest was screened by a supervisor. The supervisor ultimately referred the Complainant's bias allegation to OPA, and this investigation ensued.

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. 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.

The Named Employees' investigation revealed that, prior to their arrival on scene, the Complainant made a number of statements to bar patrons and bar staff that were harassing and aggressive. The Complainant continued to act in that matter after the officers' arrival. The Complainant, who was intoxicated, was given multiple opportunities to leave the scene but each time he declined to do so. Instead, his behavior escalated to the point that the officers felt that they needed to take action to prevent a possible altercation. Based on the officers' reasonable belief that the Complainant's statements constituted harassment, they acted reasonably and consistent with policy when they placed him under arrest. Moreover, even if probable cause was questionable, the officers screened the arrest with their supervisor who agreed that it could be effectuated. The Named Employees were entitled to rely on the guidance of their supervisor.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

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

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

As discussed above, I find that there was probable cause to arrest the Complainant for harassment. Consistent with this determination, I also conclude that the Complainant’s actions and statements, not his race or any prejudice on the part of the Named Employees, were why he was arrested. I find no evidence supporting the Complainant’s allegation that the Named Employees engaged in biased policing.

As such, OPA recommends that this allegation be Not Sustained – Unfounded as against both Named Employees.

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

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

***6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest***

For the same reasons as stated above (*see* Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

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

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

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

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