



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 18, 2017

CASE NUMBER: 2017OPA-0708

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Sustained

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Sustained

Named Employee #3

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	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 was detained for shoplifting and asked if 'white' people were being asked for their receipts and commented that he was 'another black man was going down.' It was alleged that the Named Employees did not report the comments of alleged bias to a supervisor.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing

The Named Employees were involved in the arrest of the subject for shoplifting. During the arrest, the officers asked the subject from which check stand he had purchased various items. The subject, who is African-American, responded by asking the officers whether they were also asking white people where they bought their items from and why they were asking him where he did so. He also asked if he was going to be subjected to excessive force due to his race. During his interaction with the officers, the subject appeared to be intoxicated and used expletives and himself used racial slurs.

The officers were interviewed by OPA. Named Employee #1 (NE#1) indicated that he heard the Complainant’s statements but that he did not believe that they were a complaint of bias. NE#1 was familiar with the Complainant



and believed this to be typical behavior and statements on his part. NE#1 stated that if he had believed the complaints to raise an allegation of bias, he would have reported that to a supervisor.

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.*) SPD employees are required to “call a supervisor in response to allegations of bias-based policing.” (SPD Policy 5.140-POL-5.) The supervisor must be called to the scene. (*Id.*) This section of the policy provides guidance as to when an allegation of biased policing occurs, explaining that: “an allegation of bias-based policing occurs whenever, from the perspective of a reasonable officer, a subject complains that he or she has received different treatment from an officer because of any discernable personal characteristic...” (*Id.*)

Here, I find that a reasonable officer would have found that the Complainant’s comments were an allegation of bias. The Complainant explicitly expressed his belief that he was being treated differently because of his race. As such, the allegation should have been reported and a supervisor called to the scene. The failure to do so was contrary to policy.

As such, I recommend that this allegation be sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing

Named Employee #2 (NE#2) also indicated that he heard the Complainant’s statements. He did not believe that they rose to the level of a complaint of bias. Upon reviewing the ICV and hearing some of the statements made by the Complainant, NE#2 admitted that perhaps those comments could be interpreted as bias but he did not do so at the time. NE#2 also stated that if he had heard what he believed to be a complaint of bias, he would have reported it to a supervisor.

For the same reasons as stated above, I find that NE#2 should have reported the Complainant’s allegation of bias to a supervisor. His failure to do so was in violation of policy.

As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #3 - Allegation #1

5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing

Named Employee #3, like NE#1 and NE#2, heard the Complainant’s statements and did not feel that they alleged biased policing. NE#3, like NE#1, had prior experience with the Complainant and stated that the Complainant’s demeanor on that day was similar to that during those other contacts. NE#3 told OPA, however, that he reported



the Complainant's comments to a sergeant when he arrived at the precinct, and that the sergeant asked the Complainant "do you have anything to say" but the Complainant did not reply.

From my review of the ICV, I cannot determine when this conversation occurred and what exactly was discussed. Regardless, the policy requires that, upon hearing a complaint of bias, a supervisor must be called to the scene. Here, none of the named employees, including NE#3 did so. Accordingly, I find that NE#3 also acted contrary to policy. However, as he reports that he made efforts to address this issue with a sergeant after the fact and because I cannot conclusively determine otherwise, I find that a training referral is a more appropriate result.

- **Training Referral:** NE#3 should receive additional training concerning the requirements of SPD's policy on reporting allegations of bias. Specifically, he should be reminded what rises to the level of an allegation of bias and that the Department's expectation is that he will report that allegation to a supervisor and call the supervisor to the scene. This training and associated counseling should be memorialized in a PAS entry.

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