



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 2, 2018

CASE NUMBER: 2018OPA-0309

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)

Named Employee #3

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 #4

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 #5

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	15.410 - Domestic Violence Investigation 1. Domestic Violence Terms are Defined by Statute (RCW 10.99.020(3))	Allegation Removed
# 3	15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause (RCW 10.31.100)	Not Sustained (Lawful and Proper)

Named Employee #6

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 engaged in biased policing. During intake, OPA added allegations against the supervisor, Named Employee #5, for the potential failure to make a mandatory domestic violence arrest.

ADMINISTRATIVE NOTE:

This case was designated as a partial Expedited Investigation. The biased policing allegations against all of the Named Employees received expedited review. With regard to these allegations, this means that OPA, with the OPA Auditor's review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing those Named Employees. The allegations against Named Employee #5 concerning the domestic violence investigation were subject to a full investigation.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #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 race of the subject. (*See id.*)

The Complainant, who is African-American, alleged that the Named Employees arrested him and not his stepfather, who is White, based on their races. The Complainant contended that, had he also been White, his stepfather would have been arrested, not him.

As discussed more fully below, I find that there was probable cause to arrest the Complainant for domestic violence (DV) assault. As the officers identified the Complainant as the primary aggressor and determined that the stepfather had not engaged in any DV offense, they reasonably exercised their discretion when they chose not to arrest the stepfather. As such, I find that there was a lawful basis to arrest the Complainant and that this did not violate any Department policy. Moreover, I find that none of the officers engaged in biased policing towards the Complainant in this case. I base this determination on the entirety of the record, including: the documentation that was generated by the officers; the statements by the Complainant, victims, witnesses, and the officers; the Department video; and the OPA interview of Named Employee #5 (NE#5).

For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against all of the Named Employees.

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



Named Employee #2 - Allegations #1

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)**

Named Employee #3 - Allegations #1

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)**

Named Employee #4 - Allegations #1

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)**

Named Employee #5 – Allegation #1

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)**

Named Employee #5 – Allegation #2

15.410 - Domestic Violence Investigation 1. Domestic Violence Terms are Defined by Statute (RCW 10.99.020(3))

SPD Policy 15.410-POL-1 provides the definitions of DV terms. Under this policy, it is evident that this case fell within the scope of a domestic violence investigation. However, the policy does not actually set forth any directives for officers. Moreover, whether NE#5 failed to properly make a domestic violence arrest is discussed in the context of Allegation #3, below. As such, this allegation is duplicative and I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**



Named Employee #5 – Allegation #3

15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause (RCW 10.31.100)

The Complainant was involved in a DV incident. His stepfather and mother were the other individuals involved in the incident. The mother reported to the responding officers that she had rented a car and the Complainant had taken it without her permission. The mother asked the Complainant to return the vehicle multiple times, but he failed to do so. The stepfather and mother later located the vehicle and the Complainant got inside and tried to drive away. The stepfather, who was armed with a firearm, told the Complainant to get out of the vehicle while pointing his firearm downwards towards the grass. The Complainant stated that the gun was not real, and the stepfather discharged it into the ground. Notably, there was no evidence in the record that the stepfather ever pointed the firearm towards the Complainant or that he ever threatened him with the firearm.

After the firearm was discharged, the Complainant got out of the rental car and got into a physical altercation with the stepfather. During that physical altercation, the Complainant caused the stepfather to suffer a dislocated shoulder and choked him. The Complainant then took possession of the gun and threatened his mother, stepfather, and other people at the scene. Multiple individuals at the scene were able to wrestle the firearm away from him and he was then held to the ground by those other individuals until the police arrived.

When officers, including NE#5, came to the scene, they spoke to the mother, the stepfather, the Complainant, and other witnesses. Based on those discussions, NE#5 believed that the Complainant was the primary aggressor. NE#5 relied heavily on the fact that the witnesses universally identified the Complainant as the primary aggressor, the extent of the injuries suffered by the stepfather and the lack of such injuries to the Complainant, and information he learned concerning past assaults perpetrated by the Complainant on the stepfather.

NE#5 believed that the stepfather had potentially engaged in reckless endangerment by shooting the firearm into the ground, but he did not believe that the stepfather was the perpetrator of a DV offense. Given this, while NE#5 believed that the Complainant's arrest was required by law, he did not believe that the stepfather had potentially committed a DV crime. As such, he did not believe that the stepfather's arrest was legally required and, instead, he asserted that he appropriately exercised his discretion when he decided not to arrest the stepfather. Instead, NE#5 referred this matter to the prosecutor for consideration of charging the stepfather with reckless engagement.

SPD Policy 15.410-POL-2 concerns domestic violence investigations generally and, specifically, requires that officers make arrests in such cases where there is probable cause. The policy references RCW 10.31.100 and notes that, where probable cause exists to make a domestic violence arrest, such an arrest is required by Washington State law.

Based on my review of the record, I find that NE#5 acted appropriately when he made the discretionary decision to arrest the Complainant rather than the stepfather. I agree with NE#5 that the Complainant appeared to be the primary aggressor in this case. I further agree that, while NE#5 possibly engaged in reckless endangerment, he did not appear to have committed any DV offense. For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #6 – Allegation #1

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)**