



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 19, 2018

CASE NUMBER: 2018OPA-0402

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	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Lawful and Proper)

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)
# 2	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Lawful and Proper)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	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:

It was alleged that Named Employee #1 and Named Employee #2 may have engaged in biased policing and may have failed to report an allegation of bias to a supervisor. It was further alleged that Named Employee #3 may have failed to properly refer potential serious misconduct to OPA.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were in a Starbucks getting food and coffee when they were approached by a store employee. The employee told them that the Complainant, who was sitting at a counter, had been previously trespassed from the store and had been aggressive to store employees in the past. The employee asked NE#1 and NE#2 to remove the Complainant from the store. NE#1 and NE#2 approached the Complainant and



engaged him in conversation. They asked him to leave the store, but he refused. From my review of the video, the Complainant appeared to be in crisis. In later video taken at the precinct, he made a statement suggesting that he had a meth addiction.

The officers tried to reason with the Complainant to leave the store for nearly seven minutes. Approximately five minutes into those efforts, the Complainant stood up. However, two minutes later, he started walking towards the back of the store. While the video became obscured at that point by NE#1's positioning, the Complainant grabbed NE#1's coffee. NE#1 asked the Complainant what he was doing and told him to stop. NE#1 explained that, at this time, the Complainant had picked up his coffee and he was concerned that the Complainant would throw it on the officers or others in the store. This concern was corroborated by NE#2, as well as by one of the store employees who was interviewed by OPA. The officers then used force to take the Complainant down to the ground in a controlled fashion.

After the force was used, the Complainant was placed under arrest. At that time, he started the following to NE#1 and NE#2: "I hate you, I hate you, you fucking racist." At the time these statements were made, the Complainant had been engaged in constant conversation, which NE#2 described as rambling.

NE#1 recalled hearing the statements but did not believe that they constituted an allegation of biased policing against him and NE#2. NE#2 stated that he did not recall hearing the statements. Neither officer reported the statements 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.*)

Based on OPA's review of the evidence, there is no indication that either NE#1 or NE#2 engaged in biased policing. The Complainant was arrested based on his conduct, which was confirmed by Department video, not because of his race or membership in any protected class. For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against NE#1 and NE#2.

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

Named Employee #1 - Allegation #2

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

SPD Policy 5.140-POL-5 requires employees to call a supervisor in response to allegations of biased policing. This includes providing sufficient information to the supervisor to allow a determination as to what occurred and what the nature of the bias allegation is. (SPD Policy 5.140-POL-5.)

This allegation was classified against NE#1 and NE#2 based on their collective failure to notify a supervisor of the Complainant's comments and, specifically, the Complainant's statement that the officers were "racist." As discussed above, NE#2 claimed not to have heard the statement. NE#1 acknowledged that he heard the statement but denied that it was a valid allegation of bias.



Based on the circumstances of this case and given the context of the Complainant's statement, I agree with NE#1. From my review of the Department video, it appears that the Complainant's statement was borne more out of anger with the officers than out of a true belief that they had been "racist" towards him. Notably, both the Complainant and the officers were White. As such, it is unclear how either officer had acted with racism towards the Complainant in this instance.

Ultimately, while best practice would have been to notify a supervisor of what the Complainant said, especially since the officers were required to screen both the arrest and the force anyway, I do not feel that it was unreasonable when the officers did not do so. Again, I do not believe that the Complainant was making a valid allegation of biased policing against the officers that was required to be reported and investigation.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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

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 #2 - Allegation #2

5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of 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 (Lawful and Proper)**

Named Employee #3 - Allegations #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

SPD Policy 5.002-POL-5 requires supervisors who become aware of a potential policy violation to investigate or refer the allegations depending on their severity. Minor allegations of misconduct may be investigated by a supervisor, while allegations of serious misconduct – such as biased policing – must be referred to OPA. (See SPD Policy 5.002-POL-5.)

It was alleged that Named Employee #3 (NE#3) violated this policy when he initiated a bias review and a Frontline Investigation into NE#1's and NE#2's failure to summon a supervisor to the scene based on the Complainant's statement, but did not make an OPA referral for biased policing.



NE#3 explained that he believed the bias review to be appropriate under the circumstances. He further asserted that he interpreted the officers' failure to summon a supervisor to the scene to be minor misconduct appropriate for a Frontline investigation. Lastly, he did not interpret the Complainant as actually making an allegation of biased policing. Instead, he believed that the Complainant was simply engaging in "name calling." As discussed above, I agree. I concur with NE#3 that a bias review and Frontline Investigations were appropriate and that no OPA referral was required by policy.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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