



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 22, 2019

CASE NUMBER: 2018OPA-0741

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Not Sustained (Unfounded)
# 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 the Named Employee provided false testimony during a criminal trial that stemmed from a June 24, 2017 assault charge against the Complainant. Additionally, the Complainant alleged that during a July 31, 2018 incident, the Named Employee engaged in bias policing when he minimized the level of violence known to be taking place in the area between individuals of different sexual orientations.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication

On June 24, 2017, Named Employee #1 (NE#1) and other officers responded to multiple 911 calls indicating that a male was hitting two females with a stick that was attached to a protest sign. According to information contained in police reports, witness statements, and heard on ICV, the female victims and witnesses reported that the male subject, who they followed until police arrived and immediately identified as the suspect, made comments to them about the way they were dressed before he picked up a protest sign that they had been carrying and swung it at them, striking one of them in the face. It was also alleged that the male pushed the other female in her chest. The male told NE#1 and the other officers that the females were lying and claimed, instead, that they struck him with the sign before he grabbed it and struck back in self-defense. However, third-party witnesses corroborated the female victims’ accounts. NE#1, who was the primary investigating officer at the scene, then arrested the male for assault.

The male, who is the Complainant in this case, alleged that NE#1 lied during the testimony that gave against the Complainant in the court case pertaining to this arrest. In his complaint, the Complainant did not provide specifics pertaining to what NE#1 testified to that the Complainant believed was untruthful. During its investigation, OPA made multiple attempts to interview the Complainant but was ultimately unsuccessful due to the Complainant’s lack of cooperation.



As part of its investigation, OPA obtained the audio of NE#1's trial testimony and compared it to what NE#1 included on his police reports and to what could be heard on the relevant video associated with the 2017 incident. OPA concluded that NE#1's trial testimony was consistent with what he reported and what was recorded on Department video.

In NE#1's interview with OPA, he confirmed the accuracy of his reports and the basis for his arrest of the Complainant. NE#1 recalled testifying in the criminal case associated with this incident. NE#1 stated that he was asked one question on cross-examination, which was whether NE#1 believed that everyone involved in the incident was intoxicated, which he answered in the affirmative. NE#1 denied that he provided false testimony against the Complainant.

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications. If the Complainant's allegation that NE#1 provided untruthful testimony in court, it would constitute a violation of this policy.

Based on OPA's review of the evidence, there is no support for the claim that NE#1 fabricated his trial testimony. Moreover, this testimony was fully tested at trial by the Complainant's attorney who had the opportunity to object to it in part or in full. Ultimately, the Complainant was convicted and there is no indication that this conviction was appealed or ever called into question in any respect. As such, I recommend that this allegation against NE#1 be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

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

On July 31, 2018, NE#1 and his partner were dispatched to a call of a fight. Information provided to the officers was that there was a male standing on a car with blood on his face – who was later identified as the Complainant. A separate male and female were reportedly standing near the car and were reportedly suspected of being involved in the fight. After NE#1, his partner, and other officers arrived, they obtained information from witnesses and all three of the involved parties.

The other two involved parties told officers that they were walking to their car while holding hands when the Complainant yelled, "heterosexual scum," and told them that their presence was ruining the neighborhood. They then claimed that the Complainant told them that he was going to stab them, while making stabbing motions in the air, but they did not observe him holding any weapons. The male then questioned the Complainant about what his problem was, which led to a fight between he and them.

The Complainant told officers that the fight started after the involved male mumbled something under his breath, and the Complainant responded by asking, "Excuse me?" According to the Complainant, the involved male then started "talking crazy" and asked if the Complainant wanted to fight. The Complainant told the officers that he replied by stating, "I don't do this hetero[sexual] shit. Get the fuck away from me." The male responded to those



statements by attacking the Complainant. The Complainant told officers that the male called him a “cocksucker” and a “faggot” while they were fighting.

During follow-up questioning, the Complainant told the officers that he did not feel that he had been targeted because of his sexual orientation. However, the male and female told officers that they felt that the Complainant targeted them because he was anti-heterosexual.

The involved parties were offered medical assistance by the officers, but they all declined. Ultimately, the officers decided against arresting any of the parties because they lacked independent witnesses who could corroborate either version. Officers gave the involved parties business cards and the associated police report number.

The Complainant later alleged that NE#1 engaged in biased policing when he minimized the level of violence known to be taking place in the area between individuals of different sexual orientations. The Complainant also made an allegation against NE#1 pertaining to an incident in 2017, which is discussed above (see Named Employee #1, Allegation #1). As with that allegation, OPA made multiple attempts to interview the Complainant regarding this incident but was ultimately unsuccessful.

OPA reviewed the available BWV associated with the July 31, 2018 incident and found no evidence indicating that NE#1 or any other officers treated the Complainant in a manner that could be viewed as biased. The BWV showed NE#1 conducting himself in a patient and professional manner during his interactions with the Complainant, other involved parties, and witnesses.

During his OPA interview, NE#1 denied making any decisions or taking any actions against the Complainant based on the Complainant’s sexual orientation. NE#1 stated that he found the Complainant’s allegation extremely offensive. NE#1 explained that, as a gay man, he has been very inclusive of his and other communities and asserted that his employed record clearly reflects that effort.

SPD Policy 5.140 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.) Such “discernible personal characteristics” include sexual orientation. (See *id.*) If the Complainant’s allegation in this case was true, it would constitute a violation of policy.

The BWV conclusively disproves that NE#1 or any other officer engaged in biased policing towards the Complainant. Additionally, I found that the actions on the part of NE#1 and the other officers were comprehensive, professional, and respectful to all involved parties and that the Complainant’s allegation was meritless. As such, I recommend that this allegation be Not Sustained – Unfounded.

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