



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 19, 2019

CASE NUMBER: 2018OPA-0863

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)

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 due to his race.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. 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 the Named Employee. As such, the Named Employee was not interviewed as part of this case.

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) was dispatched to a fight disturbance. When he responded, he learned that the Complainant, who is African-American, was in a physical altercation with another male, who is Caucasian. NE#1’s investigation revealed that the Complainant and the male got into an argument. During that argument, the Complainant threatened to harm the male. The male reported that the Complainant cornered him against a wall and, fearing that he would be struck by the “angry” Complainant, the male hit the Complainant with a scooter that he was holding. The male stated that he did so in self-defense. He recounted that the Complainant then started striking him while the male was in the fetal position. The male, who suffered fairly significant injuries, said that he was hit approximately five to ten times by the Complainant, including in the head/facial area. Two other witnesses corroborated portions of the male’s account, including that the Complainant was the primary aggressor at the beginning of the altercation.

NE#1 also spoke to the Complainant, who stated that the male was the primary aggressor. He told NE#1 that the male hit him with a scooter and, as a result, he fought back. The Complainant told NE#1 that he “won the fight.” The Complainant had substantially fewer injuries than the male.

Based on his investigation, NE#1 determined that the Complainant was the primary aggressor and placed him under arrest. At that time, the Complainant alleged that he had been arrested, as opposed to the Caucasian male, because



of his race. A supervisor attempted to interview the Complainant concerning his allegation of bias; however, the Complainant was uncooperative. Accordingly, the supervisor referred the allegation to OPA and this investigation ensued.

As part of its investigation, OPA attempted on multiple occasions to interview the Complainant to obtain his account of what had occurred. However, the Complainant did not respond to OPA and, as such, he was not interviewed.

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 as 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 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.*)

Based on my review of the record, including the Body Worn Video, I find that the NE#1’s determination that the Complainant was the primary aggressor was reasonable under the circumstances and when evaluating the totality of the evidence available to him. Given this, I find that the Complainant’s conduct, not his race, was the reason that law enforcement action was taken against him. There is no evidence establishing that NE#1, instead, engaged in biased policing or, for that matter, acted in any impermissible manner during this incident.

As such, I recommend that this allegation be Not Sustained – Unfounded.

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