



## CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 20, 2018

CASE NUMBER: 2018OPA-0664

### 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	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	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:

The Complainant alleged that the Named Employee failed to properly investigate an incident, which led to his wrongful arrest. The Complainant’s arrest stemmed from a fist fight that took place at a Seattle hotel. The Complainant further alleged that the Named Employee’s decision to arrest him was the result of biased policing.

### 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 Employees. As such, the Named Employees were not interviewed as part of this case.

### ANALYSIS AND CONCLUSIONS:

**Named Employee #1 - Allegation #1**

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

Named Employee #1 (NE#1) and other officers responded to a call of a physical altercation at a Seattle hotel. The initial call, which was made by the Complainant, reported that the Complainant was punched in the face by an unknown male. As part of that same call, the Complainant stated that his assailant’s exact whereabouts were unknown, but that the assailant was located somewhere inside the hotel. Prior to the arrival of the officers, another caller informed police that a different physical altercation was in progress. When the officers arrived, hotel employees, including a security guard and a hotel supervisor, informed them that the fight had just ended. When describing what had happened, the hotel supervisor stated that she was assaulted by the Complainant when she attempted to break up the fight, which was between the Complainant and another male. The hotel supervisor alleged that the Complainant turned and put his hand to her throat, making contact such that it momentarily constricted her breathing. Ultimately, the Complainant was arrested for assaulting the hotel supervisor.



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The Complainant alleged that NE#1 failed to properly investigate this incident, which led to his wrongful arrest, and that NE#1's actions were discriminatory because the Complainant is Hispanic and the witnesses interviewed by NE#1 are Caucasian. As evidence in support of his allegations, the Complainant told OPA, in the brief statement he agreed to provide, that he was recently found not guilty by a jury on that assault charge.

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.) This includes different treatment based on the race of the subject. (*See id.*) If the Complainant's allegation in this case was true, it would constitute a violation of policy.

The Complainant's initial contact with NE#1, his arrest, and his subsequent communications with other officers were captured on Body Worn Video (BWV) and was fully reviewed by OPA. The BWV establishes that the conduct alleged by the Complainant did not occur. In fact, it is clear from the video that NE#1 and the other officers who responded to this incident conducted themselves in a professional and in an unbiased manner.

As such, I recommend that this allegation against NE#1 be Not Sustained – Unfounded.

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

#### **Named Employee #1 - Allegation #2**

##### ***6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest***

The Complainant further alleged that NE#1 did not have probable cause to effectuate his arrest. In support of this allegation, the Complainant offered the fact that a jury recently found him not guilty of the assault charge.

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy.

At the outset, OPA notes that the fact that the Complainant was found not guilty of the assault charge by a jury in his criminal trial does not mean that the Complainant's arrest was not supported by probable cause. The legal standard for proving guilt beyond a reasonable doubt is substantially higher than that for probable cause.

The Complainant's initial contact with NE#1, his arrest, and subsequent communications with other Officers were captured on BWV. OPA reviewed this BWV, as well as other evidence, including: the photographs of the injuries suffered by the victim; and the reports generated concerning this matter. Based on OPA's review of this evidence, it appears clear that the Complainant's arrest was supported by probable cause and, as such, that NE#1 acted consistent with policy when she took the Complainant into custody.

In reaching this decision, OPA recognizes that the Complainant believed that he was initially assaulted by the other male and was, thus, frustrated that he was ultimately arrested. However, whether or not this other male was arrested, does not change the fact that the Complainant was identified as assaulting the hotel supervisor. This assault provided the basis for the Complainant's lawful arrest.



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

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