



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 14, 2020

CASE NUMBER: 2018OPA-0229

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 officers arrested the Subject because of the Subject's race.

ADMINISTRATIVE NOTE:

No SPD officer was ever identified as the involved employee in this case. As such, the 180-day timeline set forth in the collective bargaining agreements between the police unions and the City is inapplicable. For administrative purposes, OPA set the date of this DCM as the 180-day deadline.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Complainant made a Facebook post in which he described potential misconduct by unknown SPD employees. The post included a video that depicted the arrest of a Black male at a bar, as well as a description of what the Complainant perceived.

In the post, the Complainant relayed that, while walking down the street, he witnessed three White security guards employed by a nightclub carrying a Black male – referred to here as the Subject – out of a nightclub. While stating that he was unaware of what had transpired before, the Complainant alleged that one of the guards struck the Subject five times with a closed fist and that this action appeared to be unprovoked. He stated that the Subject then began to bite the security guard “in self-defense.” The Complainant alleged that the three security guards then pinned the Subject on the ground and continually punched him in the head until the Complainant intervened. The Complainant stated that the security guards applied a “choke-hold” to the Subject and his attempts to intervene were met with threats from the security guards. He stated that he stood by until SPD officers arrived. He alleged that the SPD officers, who he described as being all White, ignored his account of the incident and “hardly” questioned the security guards before arresting the Subject for assault. The Complainant asserted that this amounted to racism on the part of the involved officers and reflected what he believed were attitudes widely held in SPD.



The video included with the Facebook post showed two SPD officers lifting the Subject to his feet while a White male in a shirt labeled “security” sat on the ground. It depicted the SPD officers restraining and handcuffing the Subject and then directing him out of the field of view of the recording.

As part of its investigation, OPA reviewed the General Offense (GO) Report completed by one of the officers who responded to the scene of the incident. According to the GO Report, officers interviewed the nightclub staff who indicated that they were informed by the nightclub bartender that the Subject was aggressive and intoxicated. Security attempted to remove him without force, but the Subject ran deeper into the club. Security apprehended him and started to push him out, at which point the Subject bit one of the security guards. A security officer showed the SPD officers the bite, which had punctured his skin and drew blood. Security stated that they then ejected the Subject from the club. One of the security guards stated to SPD that they struck the Subject and eventually took him to the ground because he attempted to hit and then bite them again.

Body Worn Video (BWV) captured the incident from the time SPD officers arrived to when they cleared the scene. Included in this recording was the arrest of the Subject. When the first SPD officer arrived, he saw the Subject sitting on the ground being held from behind by a security guard, who was also seated. BWV showed that the guard was holding the Subject by his arms, which were held behind his back, and not in a “choke hold.” Three officers took the Subject into custody. One of the officers spoke to the Subject, who stated that a person had stepped on his left jaw. The officer examined the Subject’s jaw and did not see any visible injury. The Subject declined medical assistance from the Seattle Fire Department (SFD) and denied that he had hit or bitten anyone.

Another one of the officers interviewed a witness, who OPA believes is the Complainant in this case. The Complainant provided a statement consistent with his later Facebook post. The officer took the Complainant’s name and information and walked away. Some minutes later, that officer relayed the Complainant’s statement to the primary officer, who determined that based on the statements by the nightclub staff there was probable cause to arrest the Subject. Shortly afterward, a female officer’s BWV showed that she spoke to the Complainant, who reiterated his statement. Of note, the Complainant said to her that he had no knowledge of what occurred inside the nightclub. The female officer also spoke with an individual identified as the Subject’s friend. The friend stated that he did not see the alleged fight inside the nightclub because he became separated from security and the Subject. The friend further indicated that he did not believe it was necessary for security to remove the Subject.

OPA attempted to contact the Complainant by phone and mail. The Complainant’s phone rang through to an unconfigured voicemail. The Complainant did not reply to the attempt to contact him by mail and did not, consequently, participate in this investigation. As a result, OPA based its investigation on the allegations in the initial Facebook post and the video evidence.

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.*)

OPA’s investigation found insufficient evidence to substantiate an allegation of bias against any SPD officer who responded to this incident. The involvement of SPD employees was fully captured on BWV and included information that the Complainant and the Subject’s friend were unaware of. For example, both acknowledged that they did not



see the Subject's conduct in the bar and, as such, they could not contest Security's assertion that he was disruptive and would not leave the bar.

Moreover, OPA finds no reason to support a finding that the officers wrongly arrested the Subject or should have arrested the security guards. Rather, OPA finds that the officers had probable cause to believe the Suspect committed the crimes of both assault and trespassing. The security guard sustained visible injuries consistent with being bitten on the chest while the Subject was not visibly injured and, when offered, declined medical assistance from SFD. The officers also had reason to believe that the bite injury occurred prior to the alleged punches to the Subject's head based on statements by the nightclub staff and the lack of evidence to the contrary.

Additionally, OPA finds no basis for the allegation that the officers were more favorably disposed to the security guard because they, like the security guard, were White. Indeed, OPA notes that one of the officers who took the Complainant's statement on BWV was not White. That officer took statements from both the Complainant and the friend and relayed them to the primary officer at the scene. While the White officer who took the Complainant's information could have spent more time with the Complainant, there is no evidence to suggest that he discounted the Complainant's statement or that the officers as a group ignored evidence that tended to exonerate the Subject and implicated the security guard in the assault. Rather, BWV showed that the officers considered all aspects of the case and determined, based on the totality of the statements and the visible injuries suffered by the security guard, that the Subject was the primary aggressor.

Ultimately, OPA was unable to identify any officer who took law enforcement action based on the Subject's race, rather than on the totality of the evidence regarding the incident. For this reason, OPA recommends that this allegation be Not Sustained – Unfounded.

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