



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 10, 2019

CASE NUMBER: 2019OPA-0447

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) |

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) |

Named Employee #3

| 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 the Named Employees arrested him on the basis of his race because while multiple individuals were present, only he was arrested in connection with an open container violation.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General'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.

During the chain of command review of this incident, a Department supervisor identified that the Complainant made comments amounting to an allegation of bias. The supervisor further determined that the Named Employees heard the comments but did not report them as required by policy. Given that this issue was identified by the chain of command and addressed with counseling and retraining, as well as because OPA did not identify an intentional violation of policy by the Named Employees, OPA determined that this issue was best handled via a Supervisor Action.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

While on patrol, Named Employee #1 (NE#1) and Named Employee #2 (NE#2) observed five individuals sitting in a gas station parking lot. NE#2, the primary officer, approached the five individuals and saw that one individual – the Complainant in this case – was sitting next to an open alcohol container. After making contact with the individuals, NE#2 saw that the Complainant had several capped needles in plain view in his bag. The Complainant also appeared to be holding something in his right hand. When asked what it was, the Complainant said only that it was “not drugs.”

NE#2 observed that the object in the Complainant’s hand was an uncapped needle. He directed the Complainant to drop the needle, which the Complainant did. NE#2 and NE#1 placed the Complainant in handcuffs. NE#2 explained to the Complainant and NE#1, a student officer, that he placed the Complainant in handcuffs because he was concerned about whether the Complainant would stab officers, the other individuals, or himself with the uncapped needle. NE#2 asked the Complainant to identify himself, which he declined to do.

Named Employee #3 (NE#3) arrived, and NE#2 briefed him on the situation. The Complainant attempted to stand, and NE#3 briefly placed his hands on the Complainant to prevent him from doing so. NE#3 asked the Complainant what his first name was, but the Complainant continued to decline to identify himself. The Complainant grew frustrated and said that he was being detained without cause. He stated that the reason he was detained while the other individuals were permitted to leave was “racism.” Of the five individuals initially observed by the officers, the Complainant was the only one who was Black. The other individuals were of a variety of races and the Named Employees were White. NE#1 explained to the Complainant that his detention was for possessing an open container, and not due to his race.

The Named Employees discussed whether they had probable cause to arrest the Complainant for obstruction of justice. NE#2 contacted a supervisor and explained that he was unsure if the Complainant could be arrested for obstruction for failure to identify himself. NE#2 said, however, that he was not comfortable removing the handcuffs because the Complainant was agitated and was known to be in possession of needles. NE#2 further explained that the Complainant had not yet been searched as he had not yet been arrested. The supervisor approved the arrest for obstruction. The Named Employees arrested the Complainant and conducted a search incident to arrest, which revealed several more needles. NE#3 explained to the Complainant that if the Complainant identified himself, he would be cited for the open container but would not be arrested for obstruction. The Complainant continued to decline to identify himself. NE#2 and NE#3 secured him in the back of NE#2’s vehicle, at which time the supervisor arrived and screened the arrest.

The next day, the supervisor reviewed Body Worn Video (BWV) from the incident. During that review, he identified that the Complainant had made a bias allegation that had not been reported by the officers. This matter was ultimately referred to OPA and this investigation ensued. OPA interpreted the Complainant’s allegation to be that he his arrest was improperly based on his race.

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 finds that there is insufficient evidence to conclude that the Complainant was detained on the basis of his race. As an initial matter, the open container appeared to be in the Complainant’s possession given its positioning on the ground. Moreover, unlike the other individuals, the Complainant had a number of needles in his possession, including an uncapped needle that he appeared to conceal in his right hand. As such, the Complainant’s initial detention was justified. Further, NE#2’s decision to handcuff the Complainant upon seeing the uncapped needle appeared to be motivated by a concern for safety rather than being motivated by the race of the Complainant. Finally, NE#2 and the other Named Employees screened the arrest with a supervisor, who approved an arrest for obstruction. The Named Employees were permitted to rely on their supervisor’s judgment in effectuating this arrest. Again, this law enforcement action appeared to be based on the Complainant’s conduct, not his race.

Ultimately, under the totality of the circumstances here, OPA concludes that the Named Employees’ actions were not based on bias. As such, OPA recommends that this allegation be Not Sustained – Unfounded as against all of the Named Employees.

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

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), OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - 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), OPA recommends that this allegation be Not Sustained – Unfounded.

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