



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 20, 2019

CASE NUMBER: 2019OPA-0450

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, who was arrested on suspicion of a domestic violence assault, alleges that he was arrested on the basis of his race.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

On June 28, 2019, at approximately 2:55 a.m., Named Employee #1 (NE#1) and other officers responded to reports of a possible assault. The 911 caller, a resident in an apartment building, reported that he heard a woman next door screaming. When NE#1 and other officers arrived, the 911 caller came downstairs and let them in. NE#1 informed the 911 caller that he was recording with his Body-Worn Video (BWV). The 911 caller told the officers that he heard a woman screaming next door, and, when he opened his door, he saw her in the hallway. She went back inside the neighboring apartment and the 911 caller called the police.

The 911 caller, NE#1, and other officers went inside to the apartment's courtyard. A man—the Complainant in this case—came downstairs and told NE#1 and the other officers that he was the resident of the neighboring apartment. He immediately put his hands up and said he was not carrying weapons. NE#1 asked the Complainant if he wanted to be patted down. When the Complainant said yes, NE#1 did so. The Complainant then put his hands down. When NE#1 asked the Complainant what was happening, the Complainant said: "she's fucking crazy." A female officer asked the Complainant to "just tell us what happened." The Complainant said: "I don't know what happened." The Complainant then repeated that "she" was crazy. He said he would rather the officers talked to the woman, who he identified as his girlfriend. NE#1 told the Complainant that he was not giving officers a lot to go on. The Complainant said: "I know I'm not." NE#1 and the other officers continued to speak to the Complainant and ascertained that he was very intoxicated. The Complainant provided his identification and apartment number. The female officer went to speak with the woman, who was in the apartment.

The Complainant made several statements to the effect that he believed NE#1's questioning was aggressive. The Complainant asked NE#1 to "lower the tension." BWV did not reflect NE#1 or the Complainant becoming noticeably escalated with each other. However, for several minutes, the Complainant did not provide any explanation of what



was happening except “she’s crazy,” and NE#1 attempted to explain to the Complainant that he and other officers were concerned with the girlfriend’s safety. NE#1 told the Complainant that, if they had simply been fighting, he could tell them that, but they needed him to explain further. After providing NE#1 his identification, the Complainant agreed to speak to the other officer present. After a few minutes, NE#1 left to speak with the girlfriend.

The Complainant explained to the other officer that he had been dating his girlfriend for a year and a half and that occasionally she drank too much and became upset. He said that there had been no physical altercation except some pushing and that his girlfriend hit him. The Complainant, who identified as a person of color, also stated that he was nervous because people “get shot and die because of this.” He specified that he meant “brown people generally,” and was not trying to single out a specific officer. The Complainant also disclosed that he and his girlfriend had been out drinking, as well as explained that he felt NE#1 was being accusatory and that it made him very nervous. He stated that he felt NE#1 had been trying to instigate a situation with him.

During this time, NE#1 and the female officer spoke to the Complainant’s girlfriend. The female officer contacted her first at the apartment door. The girlfriend was crying and was heavily intoxicated. The girlfriend told the female officer that “he didn’t hurt me,” and she wanted the Complainant to come home. She denied that the Complainant had victimized her and said she was not injured.

NE#1 came upstairs and spoke to the female officer. NE#1 relayed that the Complainant said there had been pushing. NE#1 went to interview the neighbors who had called 911. NE#1 spoke to the female neighbor, who witnessed the incident through the peephole. The female neighbor said that she saw the girlfriend lying on her back in the hallway wearing a shirt and underwear and crying with the Complainant standing over her. She saw the girlfriend go back into the apartment, and, at that point, she called 911.

While NE#1 spoke to the neighbors, the female officer returned to ask the girlfriend about the pushing. The girlfriend said that she “had been aggressive” and that this may have caused the Complainant to push her. She denied slapping the Complainant. She also stated that the Complainant was “an aggressive person,” but that she had been aggressive too. She said that the Complainant pushed her out of his personal space and out of the apartment without pants on, causing her to scream. At this point, NE#1 returned from speaking with the neighbors. He asked the girlfriend about what the neighbors stated. The girlfriend said that the Complainant pushed her outside “as a joke.” NE#1 recounted the neighbor’s observations and said that what the neighbors relayed did not sound like a joke to him. The girlfriend said: “I am drunk and that is the problem here.” She denied being victimized. She said she “did not know what to tell” NE#1 but that the Complainant was innocent. NE#1 explained that he was having difficulty getting information from either of them and that he only had the information the neighbors reported, which was concerning to him. The girlfriend said: “he wanted me outside the apartment.” She also explained that she was “scared” to be outside of the apartment in her underwear. She stated that it was “not abusive, it was an argument.” NE#1 and the female officer conferred briefly away from the girlfriend, and NE#1 stated that in his opinion, “it was an [arrest]” based on the witness statements.

NE#1 went downstairs and informed the Complainant that he was being placed under arrest for domestic violence assault based on the witness statements. He explained that, in Washington, domestic violence arrests are mandatory when an assault is identified. The Complainant exclaimed: “are you kidding me, man?” NE#1 and the other officer placed him in handcuffs and walked him to the patrol vehicle. After reading the Complainant his Miranda warnings, officers transported him to the precinct.



At the precinct, a supervisor screened the arrest. After being advised of the Complainant's statements to the other officer about bias, he discussed this potential allegation with the Complainant. The Complainant stated that he wanted OPA to do a full investigation in this matter and this OPA investigation ensued. The Complainant also said that he did not understand why he was arrested in the first place. The supervisor went through the information officers obtained from witnesses and the domestic violence laws in Washington, as well as explained to the Complainant that his arrest was mandatory.

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 supporting the allegation that NE#1 arrested the Complainant because of his race. Rather, in OPA's judgment, NE#1 developed probable cause to believe that an assault occurred and was therefore required to conduct an arrest. According to statements on BWV, NE#1 based his probable cause determination on the statements made by the witnesses who called 911. These witnesses asserted that they saw the girlfriend on the ground outside the apartment crying and that she was in a state of undress. NE#1 further relied on statements made by the girlfriend in which she admitted that the Complainant pushed her. Notably, the Complainant, himself, acknowledged doing so. Further, while the girlfriend argued that the Complainant had not intended to injure her and that he had not committed any crimes, her confirmation of being pushed by the Complainant gave the officers a reasonable basis to believe that a crime had, in fact, occurred. Once probable cause was thus established, Washington State law and SPD policy required officers to conduct an arrest. Even though the Complainant and his girlfriend denied that the Complainant meant to cause harm, the officers had no discretion and were mandated to take the Complainant into custody.

Ultimately, the totality of the evidence indicates that the Complainant's arrest was based on his conduct, not his race. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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