



## CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 23, 2020

CASE NUMBER: 2019OPA-0557

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 6. Employees May Use Discretion	Sustained
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

#### **Imposed Discipline**

Written Reprimand

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	1.020 - Chain of Command 7. Command Employees Take Responsibility for Every Aspect of Their Command	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:**

It was alleged that Named Employee #1 engaged in biased policing. It was further alleged that he made several decisions during this incident that constituted an abuse of his discretion. Lastly, it was alleged that Named Employee #2 failed to properly supervise the officers under his command.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegations #1**

##### ***5.001 - Standards and Duties 6. Employees May Use Discretion***

Officers, including Named Employee #1 (NE#1), responded to a call concerning a disturbance near I-5 in Seattle. It was reported that there was a vehicle parked on the side of the road with four people in or around it. Two of the individuals, both female, were said to be on the ground. It was also reported that there was yelling. NE#1 approached the vehicle and observed a female sitting in the front seat (female #1) and two females (female #2 and female #3) sitting in the rear. There was a male standing by the passenger door. NE#1 asked them what was going on and he was told that they were looking for the lens from the male's glasses. Female #1 appeared to be intoxicated and was slurring her words. She denied that she had been driving and said that they had just come from the "club." While speaking with female #1, NE#1 observed an unsecured firearm by her feet. NE#1 drew his firearm and placed it at the low ready. He ordered everyone in the car to get out and referenced the gun. The male told NE#1 that the gun was his. NE#1 instructed all of the individuals to get against the wall.

Female #2, who also appeared to be intoxicated, began yelling at the other individuals to "shut up." She further used profanity towards NE#1. The male told female #2 to be quiet. He tried to move her around to face the wall. The male eventually pushed her towards the wall, which caused the female to fall down. NE#1 spoke with the male who said



that he had been driving earlier. He told the officers that he had a concealed carry permit for the handgun and that it had fallen out of his pocket. The male showed his permit to NE#1. The male gave NE#1 permission to retrieve the handgun from the car and NE#1 did so and secured the handgun.

The officers determined that there may have been a physical altercation in the car. However, when they spoke with the male about that, he denied that it occurred. The officers determined that the male's permit was valid and that he had no open warrants. They verified that female #2 was a convicted felon and was prohibited from being around firearms. They further determined that none of the individuals had valid licenses. NE#1 discussed this with his Sergeant, Named Employee #2 (NE#2). NE#2 recommended that the individuals take a taxi/ride-share home if their licenses were not valid. NE#1 mentioned that female #3 was potentially sober. NE#2 reiterated that if no one had valid license, they could not drive the car home. NE#1 spoke with female #3 and verified that she was sober. He ultimately allowed her to drive the other individuals home even though she did not have a valid license. He further allowed the male to retain the handgun and the male placed it into the trunk. The individuals then drove away from the scene.

An anonymous Complainant, who OPA assumes is one of the occupants of the car, later filed an OPA complaint alleging that NE#1 engaged in biased policing during this incident. This investigation ensued. As part of its intake review, OPA was concerned with NE#1's use of discretion during this incident. Specifically, OPA had questions regarding three of NE#1's decisions: (1) not making a DV arrest; (2) not seizing the handgun; and (3) allowing female #3, who did not have a valid license, to drive the car from the scene.

With regard to the failure to effectuate the arrest of female #2, OPA does not believe that this constituted an abuse of discretion. Based on OPA's review of the Body Worn Video (BWV), it was unclear what actually occurred as far as the DV assault. All of the individuals, with the exception of female #3, were intoxicated and unreliable witnesses. Moreover, the male, who was the purported victim of the assault, denied that it occurred. As such, it was not unreasonable to have declined to make an arrest and to, instead, have decided to document the incident in a report.

With regard to the handgun, OPA believes that NE#1 should have seized it temporarily for three main reasons. First, the handgun was unsecured in the car and was not on the person of the male at the time it was observed. This, in OPA's opinion, constituted a violation of law. Second, female #2, a convicted felon, was in close proximity to the firearm and it could not definitively be determined that it was not hers. Third, temporarily seizing the handgun would have allowed the male to sober up prior to possessing it. This also would have ensured that the handgun was not unsecured with multiple intoxicated individuals in the car who had potentially been involved in an ongoing domestic dispute. In explaining why he did not seize the handgun, NE#1 said that, because the male had a valid permit, he felt it would have been illegal to seize the handgun. During its investigation, OPA asked other officers who responded to this incident, including NE#2, whether they would have seized the firearm. The response was split. As such, even though OPA feels that permitting the male to retain the handgun was not the optimal decision, OPA recognizes that reasonable officers could disagree as to this question. As such, OPA finds that NE#1 did not improperly abuse his discretion in this regard.

The above being said, OPA does find that NE#1 abused his discretion when he allowed female #3 to drive the car from the scene. While NE#1 recognized that an individual with a suspended license was not legally permitted to drive, he asserted that his decision making was lawful and reasonable. OPA disagrees. Notably, unlike with the seizure of the firearm, the other interviewed officers, including NE#2, universally stated that female #3 should not have been allowed to drive and that the car should have been towed. Moreover, as captured by BWV, NE#2



instructed NE#1 at the scene that the individuals should not be permitted to drive if they were not sober and did not have valid licenses. When NE#1 made this decision, even if well intentioned, he facilitated female #3 violating the law. Indeed, it would have been very problematic if female #3 was later stopped in another jurisdiction – she claimed to be driving to Kent – and had informed another law enforcement agency that SPD had condoned and, indeed, permitted her illegal activity. It would have been similarly problematic had she gotten into an accident. Ultimately, it was simply inappropriate and not within NE#1's authority to allow female #3 to break the law. As such, OPA finds that NE#1's decision to permit a driver with a suspended license to drive the car from the scene abused his discretion and, accordingly, recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

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

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

The anonymous Complainant alleged that NE#1 engaged in biased policing. 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.*)

This BWV for this incident conclusively indicates that NE#1 did not engage in biased policing. Indeed, the video establishes that such a claim is frivolous. At the time NE#1 responded to the scene, three of the four individuals were intoxicated, they were yelling, they had been fighting, there was an unsecured handgun in the car when one of the occupants was a convicted felon, and they had been driving a vehicle even though all of them had invalid driver's licenses. While they had engaged in all of these actions, some of them criminal, none were arrested, even though it would have been warranted. The individuals should count themselves fortunate rather than filing a meritless complaint.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

**Named Employee #2 - Allegations #1**

***1.020 - Chain of Command 7. Command Employees Take Responsibility for Every Aspect of Their Command***

SPD Policy 1.020-POL-7 instructs that command employees are expected to take responsibility for every aspect of their command. This allegation was classified against NE#2 as he was the on-scene supervisor during this incident and, thus, was ultimately responsible for the actions of the involved officers.

As discussed above, while OPA questions the decisions to not arrest female #2 and to not seize the gun, OPA does not find them unreasonable. Accordingly, NE#2's supervision in this respect was not defective. With regard to the problematic decision made by NE#1 to allow female #3 to drive the car from the scene, NE#2 advised him not to allow this and to, instead, have the individuals take a taxi/ride-share home. For this reason, NE#2 cannot bear responsibility for NE#1's misstep in this regard.



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For the above reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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