



## ***CLOSED CASE SUMMARY***

ISSUED DATE: FEBRUARY 12, 2020

CASE NUMBER: 2019OPA-0602

### **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 the Named Employee engaged in biased policing during a demonstration.

### **ADMINISTRATIVE NOTE:**

This case was designated as an Expedited Investigation. This means that OPA, with the review and approval of the Office of Inspector General for Public Safety, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employee. As such, the Named Employee was not interviewed as part of this case.

### **ANALYSIS AND CONCLUSIONS:**

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

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

The Complainant reported to OPA that, during a demonstration that occurred on July 11, 2019, he spoke to Named Employee #1 (NE#1). The Complainant said that he did so because he was "trying to help [NE#1] prevent a problem at Westlake" in the form of possible confrontation between "Operation Cold Front" and anti-fascist activists. The Complainant asserted that NE#1 "showed extreme bias in interactions with right wing people" who the Complainant stated that he knew were "trying to antagonize people in Seattle to create conflict." The Complainant cited multiple portions of NE#1's Body Worn Video (BWV), as well as his incident report, as evidence of this bias. Specifically, the Complainant pointed to: NE#1 stating that individuals blocked the path of the subject when they were actually physically restraining her; NE#1 repeating false allegations made by the individuals against the Complainant; NE#1 neglecting to note in his report that other people also advised him of a potential conflict between the demonstrators; NE#1 characterizing the Complainant as an "antagonist" while treating the individuals as the victims; and NE#1 indicating that the Complainant supported the anti-fascists and stating that the Complainant provided a "one-sided" account.

OPA reviewed the video and other materials provided by the Complainant with his complaint, as well the BWV recorded by NE#1. In the beginning of the BWV, NE#1 was shown taking custody of the subject, who was being physically held by other individuals. It was established that the subject threw a milkshake at the individuals, striking

one of them. NE#1 indicated that he heard the milkshake being thrown. NE#1 determined that the subject did so because the individuals were associated with the Proud Boys.

The BWV did not capture the initial interaction between NE#1 and the Complainant; however, NE#1 relayed the substance of that conversation to other officers. Specifically, NE#1 stated that the Complainant approached his vehicle and told him that right wing demonstrators were planning to protest at Westlake Park. NE#1 stated he did not know of any planned protests or of the group that the Complainant was referring to. NE#1 indicated that the Complainant expressed that the demonstrators were violent, that they were antagonized people, and that he was afraid of them. He further noted that, after the Complainant provided this information, the Complainant walked away.

NE#1 spoke with the individuals concerning the crime. They asserted their belief that they were targeted by the subject because of their political beliefs and requested that charges be filed. NE#1 discussed the incident with a supervisor. NE#1 disclosed the information provided by the Complainant concerning potential protests at Westlake. Neither was aware of any planned protests for that day. However, the supervisor dispatched several bicycle officers to Westlake. The supervisor approved the arrest of the subject. Officers then identified the subject and charged-by-officer. The subject was released from custody after being directed that there would be a subsequent court date regarding this incident.

At points during NE#1's investigation of the throwing of the milkshake and discussions with the individuals and other officers, the Complainant remained in the near vicinity videotaping. NE#1 directed him to move back and told him not to interfere in the investigation. One of the individuals noted that he had either sought or obtained an order of protection against the Complainant. A number of the individuals indicated that the Complainant regularly followed them around and videotaped them, even though the Complainant continually stated that he was afraid of the individuals and other like protestors. NE#1 spoke with the individuals for a period of time until they left the scene. NE#1 returned to his patrol vehicle and ended his involvement in this matter. He did not further interact with the Complainant.

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.*) Based on the totality of the evidence, OPA finds an insufficient basis to conclude that NE#1 engaged in biased policing.

First, with regard to NE#1's reference to the individuals blocking the subject's path, OPA cannot definitively say that this was inaccurate. Stated differently, it may have been the case that NE#1 saw the individuals blocking the subject's path prior to physically holding her or that NE#1 interpreted the physical holding as blocking the subject's path. Either way, even if it was not a complete description or was inaccurate, this does not establish bias on NE#1's part.

Second, NE#1 reiterated on BWV and then documented the various statements made to him by the individuals. To the extent those statements were inaccurate, that is based on the bias of and inaccuracies articulated by the individuals, not bias on the part of NE#1.

Third, that NE#1 did not note in his report that other individuals set forth concerns about potential clashes between demonstrators constituted an omission, not bias.

Fourth, OPA does not interpret NE#1's report as painting the Complainant as an antagonist. NE#1 does note the individuals' allegations against the Complainant and state that the Complainant tried to interject himself into the conversation; however, the Complainant is not identified by name and is not listed as a victim. Moreover, while the individuals are referred to in the report as victims, they were, in fact, the victims of an assault.

Fifth, the "one-sided" conversation that NE#1 was referring to was the Complainant's statements to him that Operation Cold Front were violent and were trying to provoke conflict. NE#1 explained on the video that, while the

Complainant stated that these protestors were the primary aggressors, the individuals described the situation differently.

Sixth, when NE#1 told the Complainant to move back from the investigation scene, he noted that, while the Complainant stated that he was in fear of the individuals, he was still remaining in their near vicinity and was videotaping them. These statements and the direction provided to the Complainant did not constitute bias, particularly given that NE#1 informed the Complainant that he could continue recording.

Seventh and last, even if the Complainant believed that NE#1's conversation with the individuals regarding what occurred, the ongoing demonstrations, and their interactions with anti-fascists and the Complainant was unprofessional – which OPA does not find, this did not constitute bias in violation of SPD policy.

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

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