



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 11, 2020

CASE NUMBER: 2019OPA-0867

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)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
Imposed Discipline		
Oral Reprimand		

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 the Named Employee made a statement that may have been unprofessional and that may have violated the Department's bias-free policing policy.

SUMMARY OF INVESTIGATION:

A supervisor was notified that, after the Complainant was arrested, he alleged that the law enforcement action taken against him was based on his race. The supervisor determined that the Complainant was detained by a store's loss prevention officer (LPO) for theft. The responding officers located the stolen property on the Complainant's person and took him into custody. Given this, the supervisor determined that the arrest was predicated on probable cause and was not, instead, improperly based on the Complainant's race.

However, during a review of Body Worn Video (BWV), the supervisor identified that, prior to making contact with the Complainant, Named Employee #1 (NE#1) – one of the responding officers – was provided with the Complainant's passport by the LPO. At that time, the LPO told NE#1 that the Subject had been arguing with them earlier. NE#1 looked at the passport and determined that it was issued by Ghana. NE#1 then said, referring to the Complainant: "He's from Ghana, that's probably why he's arguing. Many times foreign people like to argue." The supervisor believed that NE#1's statement could have potentially constituted a violation of the Department's bias-free policing policy. As such, the supervisor made an OPA referral and this investigation ensued.

OPA reviewed the BWV to listen to the statement and to determine the context in which it was made. OPA tried to interview the Complainant but was unable to locate him and could not do so. OPA did interview two witnesses to the incident. Both witnesses confirmed that they observed the Complainant steal merchandise from the store. Both witnesses also denied that there was any indication that the Complainant's arrest was due to his race. Lastly, both witnesses stated that they did not hear NE#1 made any statements that suggested bias on his part.



OPA also interviewed NE#1. He told OPA that he was trying to explain that, given the Complainant being from a foreign country, he may have a different view of law enforcement and that he might try to argue out of getting arrested. NE#1 noted that he had travelled extensively and had also worked as a police officer in other jurisdictions. He said that, in his experience, other cultures interacted with law enforcement different and, in some cases, had more of a “transactional” relationship with the police. NE#1 recalled that, when he was employed as an officer in South Carolina, people from South America had tried to pay him off after being arrested. He told OPA that he was trying to explain this to the other officer on the call but got cut off and was not able to finish his thought. NE#1 acknowledged that the statement, standing alone and without further explanation, “came out wrong.”

NE#1 denied that his statement constituted biased policing. He also denied engaging in unprofessionalism; however, he recognized that someone hearing the statement could construe it as such.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based 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.*) The policy further states that: “Employees shall not express—verbally, in writing, or by other gesture—any prejudice or derogatory comments concerning discernible personal characteristics.” (*Id.*)

In evaluating this allegation, OPA concludes that NE#1 made a statement that, without context, appeared to generalize that, because the Complainant was Ghanaian, he was more prone to argue. On its face, this comment could be construed as a prejudicial comment directed towards someone because that person was from a foreign country. However, NE#1’s explanation at his OPA interview convinces OPA that his comment, while ill-advised, was incomplete and was more nuanced than what appeared on BWV. OPA credits NE#1’s claim that he was trying to relay his experience of interacting with people from different backgrounds and who had different relationships and interactions with the police. Given this, and because the evidence clearly indicates that the Complainant’s arrest was established by abundant probable cause and was not due to his race or nationality, OPA declines to find a violation of SPD’s bias-free policing policy.

The above being said, and as discussed more fully below, OPA cautions NE#1 to be more careful with his words in the future and to ensure not to generalize those from other nations, regardless of what his past experience may be. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent



the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*)

While OPA finds the evidence insufficient to establish bias, OPA does conclude that NE#1’s statement was unprofessional. Regardless of what NE#1’s intent was, generalizing Ghanaians and/or other foreign nationals as being argumentative is inconsistent with the Department’s expectations of his conduct. Moreover, even if not NE#1’s intent, such a statement could cause community members to question whether he could fairly police Ghanaians or other foreign nationals. Accordingly, his words could serve to undermine public trust and confidence in him and in SPD.

As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**