



## ***CLOSED CASE SUMMARY***

ISSUED DATE: MARCH 2, 2020

CASE NUMBER: 2020OPA-0055

### **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 6. Employees May Use Discretion	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 acted inappropriately and abused his law enforcement discretion when he failed to arrest the Subject. The Complainant further alleged that the Named Employee's actions were based on bias.

### **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.

In addition to the other claims in this case, the Complainant further alleged that the Named Employee's report was inaccurate. OPA reviewed the report and, when comparing it to the Body Worn Video of this incident, did not find that it contained any inaccuracies. However, OPA note that, even though the Named Employee told multiple bar employees that he would be forwarding the incident to the Seattle City Attorney's Office, he did not do so and did not include charge-by-officer language in his report. While an SPD detective later confirmed with OPA that the incident would be referred to a prosecutor, OPA returned this matter to the Named Employee's chain of command to address as a Supervisor Action. Specifically, OPA requested that the chain of command counsel the Named Employee regarding the non-inclusion of this language in the report. The chain of command did so and reported that the Named Employee was receptive of this counseling.

### **SUMMARY OF INVESTIGATION:**

Named Employee #1 (NE#1) and other officers were dispatched to a disturbance outside of a bar. When they arrived, they determined that the bouncer employed by the bar had been involved in a physical altercation with the Subject. NE#1 spoke with the Subject who said that he and a friend were walking down the street when they were accosted by a homeless man. The Subject said that the homeless man balled his fists and approached his friend. The Subject contended that he believed that his friend would be assaulted and, as a result, he kicked the homeless male. He said that he then exchanged words with the bouncer and that this ultimately led to a physical fight between



them. The Subject stated that he would pay for the damage to the bar door, which was broken, and indicated that he did not want to press charges.

NE#1 spoke with second officer who had interviewed the bouncer. The second officer relayed that it appeared that it was a mutual combat situation. NE#1 later spoke with the bouncer who asserted that this was not the case. The bouncer contended that he was inside of the bar when he observed the Subject in a physical fight. When he exited the bar, the Subject asked the bouncer if he had a problem and wanted to fight. A physical altercation then ensued. The bouncer said that he pushed the Subject and that this may have caused the bar door to break. The bouncer also stated that he suffered chipped teeth as a result of the fight. The bouncer indicated that he wanted to file charges against the Subject.

NE#1 spoke with another witness who described the Subject as aggressively confronting the homeless male. NE#1 also spoke with bar staff who stated that the Subject was the primary aggressor. The officers could not locate the homeless male.

Ultimately, after conferring with other officers, NE#1 determined that he did not have sufficient evidence to establish who the primary aggressor was. As such, he decided not to make a custodial arrest. However, he informed all of the involved parties that he would be documenting this incident and his investigation in a report. He also told the bouncer and the other bar staff that he would be referring this matter to the Seattle City Attorney's Office to consider filing assault charges against the Subject, as well as recommended that the bar seek civil remedies against the Subject.

Other officers later obtained security video from the bar. That video indicated that the Subject was, in fact, the primary aggressor. It further indicated that he initiated the physical altercation with the bouncer, assaulted him, and caused the bar door to shatter when he punched it.

OPA confirmed that a follow-up detective was assigned the case. The detective indicated that she would be forwarding the case to a prosecutor with a request that the Subject be charged with assault.

The Complainant, who is the owner of the bar, later initiated this matter with OPA. He contended that NE#1 acted inappropriately and abused his law enforcement discretion when he failed to arrest the Subject. The Complainant further alleged that NE#1's actions were based on bias towards the bouncer. This OPA investigation ensued.

## **ANALYSIS AND CONCLUSIONS:**

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

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

The Complainant asserted that NE#1's law enforcement decisions were based on bias. As evidence of this, the Complainant pointed to a purported statement by NE#1 in which NE#1 allegedly told the bouncer: "Look, I know your people like to fight." The Complainant believed that this indicated bias towards the bouncer, who the Complainant described as Middle Eastern.

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.*)

NE#1's entire interaction with the bouncer was captured on Body Worn Video (BWV). At one point, the bouncer told NE#1 that, at the inception of the altercation, the Subject "wanted to fight." However, once the Subject was knocked to the ground, he was no longer aggressive towards the bouncer and started saying that he would pay for the door. The bouncer stated that, at that point, he "did not want to let [the Subject] go" and "wanted to kick the shit out of him" because the Subject had been attacking strangers on a public street. In response, NE#1 stated: "That



is a reasonable reaction to that, and I mean you know man, your, this is your world, kind of fighting, thank you for not kicking the shit out of him.”

When viewed in context, when NE#1 stated “this is your world, kind of fighting,” he was clearly referring to the nature of the bouncer’s employment, not his race. There is no evidence supporting a determination that this statement, to the contrary, signified bias on the part of NE#1. Moreover, unlike the Complainant’s description of the statement, NE#1 never referred to “your people” when talking to the bouncer.

In addition, NE#1 notified the bouncer and other bar staff that he would be referring this matter to the Seattle City Attorney’s Office to consider filing assault charges against the Subject and further recommended that the bar seek civil remedies against the Subject. This is inconsistent with an alleged bias against the bouncer.

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

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

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

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

The Complainant asserted that NE#1 acted inappropriately and abused his discretion when he did not arrest the Subject.

As indicated in SPD Policy 5.001-POL-6, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-6.)

Based on OPA’s review of the evidence and given the information available to NE#1 at the time, OPA does not believe that he abused his discretion during this incident. First, when NE#1 was investigating this matter, he did not have access to the bar’s security video. As such, he was relying solely on the accounts provided by the involved parties, which had significant discrepancies. OPA finds it likely that, had he possessed the security video, he would have placed the Subject under arrest. However, in the absence of this information, OPA cannot find that he violated policy. Indeed, in determining whether NE#1 acted consistent with the discretion afforded him as a law enforcement officer, OPA must evaluate this matter based on what NE#1 knew at the time, not based on a hindsight determination. Second, OPA finds it significant that the other officers at the scene agreed with NE#1’s decision-making. This further convinces OPA that NE#1 did not abuse his discretion.

OPA recognizes the frustration of the Complainant, the bouncer, and the other bar employees. OPA believes that the Subject did engage in criminal conduct and notes that the Subject will be held to account for his conduct as this incident was ultimately referred to a prosecutor for charges. However, this does not mean that NE#1 violated policy and, as discussed above, OPA finds that this was not the case here.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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