



## ***CLOSED CASE SUMMARY***

ISSUED DATE: DECEMBER 31, 2020

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0239

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

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

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.140 Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 4	5.100 - Operations Bureau Individual Responsibilities 2. Monitor and take appropriate action regarding criminal activity in assigned area	Sustained
# 5	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Allegation Removed

#### **Imposed Discipline**

Written Reprimand

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

Allegation(s):		Director's Findings
# 1	5.140 Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)

#### **Named Employee #3**

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Training Referral)
# 2	5.140 Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

#### **Named Employee #4**

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Training Referral)
# 2	5.140 Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)



Named Employee #5

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Training Referral)
# 2	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:**

It was alleged that the Named Employees subjected the Complainant to biased policing and that Named Employee #1, Named Employee #3, Named Employee #4, and Named Employee #5 all failed to report potential claims of biased policing. It was further alleged that Named Employee #1 and Named Employee #2 arrested the Complainant without probable cause. Lastly, it was alleged that Named Employee #1 failed to take law enforcement action when required and, in doing so, violated Department policies.

**SUMMARY OF INVESTIGATION:**

The Complainant initiated this complaint with OPA in which he alleged that SPD officers repeatedly arrested him for violation of a no contact order. While OPA's initial investigation indicated that the Complainant was never arrested for violating a no-contact order, OPA discerned complaints concerning three interactions he had with SPD employees. He alleged that in the first interaction, which occurred on April 14, 2020, Named Employee #1 (NE#1) and Named Employee #2 (NE#2) arrested him without probable cause and engaged in biased policing towards him. He asserted that during the second interaction, which took place on April 22, 2020, Named Employee #3 (NE#3) and Named Employee #4 (NE#4) engaged in biased policing towards him. Lastly, he claimed that in the third interaction, which also occurred on April 22, Named Employee #5 (NE#5), a 911 dispatcher, refused to dispatch officers to respond to the Complainant's calls because of the Complainant's race. OPA further identified that all of the Named Employees except for NE#2 may have failed to report allegations of bias made by the Complainant, as well as that NE#1 may have violated Department policies when she failed to take action concerning an ongoing assault that she was informed of by a community member.

OPA verified that, on April 14, NE#1 and NE#2 were dispatched to a threats call. It was reported that the Complainant had made threats against two employees of his residence. NE#1 and NE#2 spoke with both victims and confirmed that threats had been made by the Complainant and that those threats rose to the level of a violation of law. Their investigation was captured on Body Worn Video (BWV). The BWV also showed that, during NE#1's interaction with the Complainant, he stated concerning one of the residence employees: "A White woman can say anything, right." NE#1 did not construe this to be an allegation of biased policing and did not report the statement to a supervisor. The BWV also indicated that, while she was conducting her investigation, a community member approached NE#1 and said: "There's some woman beating another woman's ass." NE#1 replied: "We are currently in the middle of something involving one of your tenants...call 911 so they can dispatch someone who is not busy." The community member shrugged and walked away. NE#1 took no law enforcement action concerning this assault and did not, herself, call the crime in to see if other officers could be dispatched to the scene.



OPA further determined that, on April 22, NE#3 and NE#4 responded to a call concerning a male who was kicking on the Complainant's door. When they spoke with the Complainant, he remarked: "See y'all get a call and y'all come running for all the white people but when I call...because somebody kicking on my door. It takes y'all this long and then you listen...you down there talking to him...you didn't come see me." NE#3 responded that this was not the case here. The Complainant continued by stating: "I bet...like I said, if it was a white person up there, you would've walked right by him and went up there." Neither NE#3 nor NE#4 reported the Complainant's statement to a supervisor.

Lastly, OPA identified that, also on April 22, the Complainant called 911 multiple times. On one of those occasions, the Complainant spoke with NE#5. During that call, he stated, referencing the response to his home: "If I was a white woman...you would have been here." When NE#5 asked him what he said, the Complainant responded: "Come on man...wow." There was no indication from OPA's investigation that NE#5 reported the Complainant's statement to a supervisor.

#### **ANALYSIS AND CONCLUSIONS:**

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

##### ***5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing***

SPD Policy 5.140-POL-5 requires employees to call a supervisor in response to allegations of biased policing. This includes providing sufficient information to the supervisor to allow a determination as to what occurred and what the nature of the bias allegation is. (SPD Policy 5.140-POL-5.)

At her OPA interview, NE#1 stated that she did not perceive the Subject's comment to constitute an allegation of biased policing. She confirmed that, given this, she did not report the statement to a supervisor.

Based on a review of the BWV and after evaluating the plain language of the Complainant's statement, OPA agrees that it did not rise to the level of an allegation of biased policing. The Complainant referenced "white women" generally and noted that they could "say anything." This intimated the Complainant's belief that a White woman was falsely accusing him of criminal activity, not that NE#1 or other officers were engaging in biased policing.

Given this, that NE#1 did not report the comment does not constitute a policy violation, and OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

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

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

The Complainant alleged that his arrest by NE#1 and NE#2 was based on bias.

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.*)



As indicated above, NE#1 and NE#2 responded to a report that the Complainant had been threatening employees at his residence. Their investigation included speaking with the reporting parties, as well as with the Complainant. Based on these interviews, the officers believed that there was sufficient probable cause warranting the arrest of the Complainant. From OPA's review of the BWV, this was the correct decision. OPA deemed the accounts of the victims to be credible and more than enough to support taking the Complainant into custody.

Given this finding, OPA similarly concludes that the Complainant's conduct, not his race, was the reason for his arrest. There was no evidence in the video indicating that NE#1 and NE#2 took any action due to bias against the Complainant. For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#2.

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

**Named Employee #1 - Allegation #3**

***6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest***

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy. Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient in themselves to support a reasonable belief that an offense has been or is being committed.

As indicated in the context of Allegation #2, OPA finds that there was abundant probable cause supporting the arrest of the Complainant. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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

**Named Employee #1 - Allegation #4**

***5.100 - Operations Bureau Individual Responsibilities 2. Monitor and take appropriate action regarding criminal activity in assigned area***

SPD Policy 5.100(I)(A)(2) instructs that officers will monitor and take appropriate action regarding criminal activity in their assigned area. This policy also requires that officers remain professional at all times. (SPD Policy 5.100(I)(A)(10).) OPA alleged that NE#1 acted contrary to these policy provisions when she failed to take any action concerning a report of an ongoing assault by a community member.

At her OPA interview, NE#1 said that she did not believe that her conduct violated SPD policy. She noted that there were often false reports at that residence and she affirmed that, at the time of the complaint, she was busy trying to determine whether there was probable cause to arrest the Complainant for felony threats. NE#1 recognized that she should have called the assault in over the radio rather than simply telling the community member to contact 911. She said that, when she brought the Complainant out of the residence, she did not see any evidence of a disturbance or notice anyone who was injured.



Whether or not there were past false reports at that location is not, in OPA's opinion, an excuse for NE#1's failure to take action here. She was aware of a complaint of an ongoing active assault. Indeed, based on the nature of the report by the community member, it was possible that the victim in the assault was injured. Given this, NE#1 should have taken action to address this more exigent crime. At the very least, she should have called the assault in over the radio or asked NE#2 to go outside to see if there was actually an ongoing assault. Her telling the community member to call 911 because she was busy represented a failure to perform her duties as a patrol officer and was dismissive, unprofessional, and inappropriate.

For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #5**

***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.*)

As discussed above, OPA finds that NE#1's handling of the assault report was unprofessional. However, because this conduct is fully subsumed in Allegation #4, OPA finds it duplicative and unnecessary to also sustain this allegation. Accordingly, OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

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

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

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Unfounded.

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

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

***6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest***

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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



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**Named Employee #3 - Allegation #1**

***5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing***

The BWV indicated that, during the April 22 incident, the Complainant made a complaint of biased policing. Specifically, he stated that the officers responded differently to his call for service because he was not White. Neither NE#3 nor NE#4 reported this statement to a supervisor.

At this time of this investigation, NE#4 had resigned from SPD and did not participate in an interview. NE#3 was interviewed, and he confirmed that he heard the Complainant's statement. He told OPA that, based on his past experience with the Complainant, it was common for the Complainant to blame other people for his conduct. He interpreted this as the meaning behind the Complainant's comment. He recognized that, in hindsight, the Complainant's statement could be plausibly construed as an allegation of biased policing.

OPA believes that the statement rose to the level of an allegation of biased policing. Here, the Complainant explicitly indicated his belief that he was getting substandard treatment because of his race. In comparison, the Complainant's statement to NE#1 only referenced the potential bias of one of the victims, not bias held by an officer. Given this, NE#3 and NE#4 should have reported the comment to a supervisor.

However, based on the specific circumstances of this case – including the lack of merit of the Complainant's allegation – and given that neither NE#3 nor NE#4 have previously violated this policy, OPA recommends retraining rather than discipline.

- **Training Referral:** NE#3 and NE#4 should be counseled by their chain of command concerning the need to report potential allegations of bias to a supervisor. This is the case even when, as here, the statement is borderline and clearly without merit. This counseling and any associated retraining should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #3 - Allegation #2**

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

NE#3 and NE#4 were tasked with investigating the report that someone was banging on the Complainant's door. The officers' response to this incident was completely captured on BWV. There was no indication from the video that NE#3 or NE#4 took any actions motivated by bias or that they treated the Complainant differently because of his race. The video showed that, to the contrary, they conducted a thorough and fair investigation.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded as against both NE#3 and NE#4.

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

**Named Employee #4 - Allegation #1**

***5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing***



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OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #3 – Allegation #1).

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #4 - Allegation #1**

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

For the same reasons as stated above (see Named Employee #3 – Allegation #2), OPA recommends that this allegation be Not Sustained – Unfounded.

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

**Named Employee #5 - Allegation #1**

***5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing***

As indicated above, during his conversation with NE#5, the Complainant expressed his frustration with the law enforcement response to his residence and said: “If I was a white woman...you would have been here.” NE#5 did not report that comment to a supervisor.

At his OPA interview, NE#5 asserted that he did not catch the full import of the comment during the phone call and, because of this, he did not report it. He denied that he engaged in any bias towards the Complainant and said that he tried to assist the Complainant, even staying on the phone with the Complainant to address his concerns.

After reviewing the 911 call audio and when viewing the incident in its totality, OPA concurs that there was no evidence of any bias on NE#5’s part and that he did his best to assist the Complainant. However, OPA concludes that NE#5 was obligated to report the comment made by the Complainant, which did constitute an allegation of biased policing. While OPA does not doubt NE#5’s assertion that he did not recognize the nature of the comment at the time, it was his job to do so and to take appropriate action as set forth in policy.

However, for the same reasons as explained in the context of NE#3 and NE#4, OPA feels that this matter is better addressed via retraining rather than discipline. As such, OPA issues the below Training Referral.

- **Training Referral:** NE#5 should be counseled by his chain of command concerning the need to report potential allegations of bias to a supervisor. This is the case even when, as here, the statement is borderline and clearly without merit. This counseling and any associated retraining should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #5 - Allegation #2**

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



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As discussed above, after listening to the 911 audio and when evaluating the totality of the circumstances, OPA finds no evidence supporting a conclusion that NE#5 engaged in biased policing. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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