



## ***CLOSED CASE SUMMARY***

ISSUED DATE: JANUARY 19, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0464

### **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	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 #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)

***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 Employees lacked probable cause to arrest her, and that they further exhibited bias toward her during the course of her arrest.

### **ADMINISTRATIVE NOTE:**

During the investigation of this case, OPA found that Named Employee #1 should have taken further steps to investigate and report on this incident. This matter was returned his chain of command for handling as a Supervisor Action and is not addressed herein.

### **ANALYSIS AND CONCLUSIONS:**

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

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

On June 27, 2020, at approximately 4:08 PM, a call was placed with 911 to report that a shoplifter was in front of the Northgate Mall Nordstrom Rack, where she was fighting with security officers. The 911 caller described the shoplifter as a black female in her twenties, approximately 5'6" with thin build, and wearing gray sweatpants and a



red hoodie with the hood up. In response to this call, the Named Employees were dispatched to the mall. During transit, the officers were apprised of the suspect description. Upon arrival at the mall, the Named Employees encountered the Complainant, who accurately matched the suspect description and who was carrying several Nordstrom bags/items. The Named Employees stopped the Complainant, who immediately indicated that she was not the person who the officers were looking for.

At that point, the Named Employees advised the Complainant that she matched the suspect description of a Nordstrom shoplifter. They further asked her to stay calm and to explain her story. The Complainant proceeded to provide a frantic summation of her narrative, indicating that the store security thought that she was shoplifting, but that the items in her possession were really hers. During the course of her narrative, the Complainant stated that Nordstrom security had placed her in a headlock and that she is pregnant.

The Complainant's account abruptly changed course, with the Complainant indicating that she was actually conducting a study for her school that was purposed to determine whether Nordstrom would identify a minority suspect instead of a non-minority suspect. In support of this assertion, the Complainant stated that she and a non-minority individual went into Nordstrom dressed in the same exact clothing. The non-minority individual began to shoplift; however, Nordstrom staff mistakenly identified the Complainant as the shoplifter. When officers asked for further clarification, the Complainant changed her story again, stating that she did not know the other person, but that they happened to be wearing the same exact attire. Without pause, the Complainant again contradicted herself, stating that she did know the other person as they were in the same social studies class.

NE#1 then asked the Complainant to provide her name and date of birth; however, the Complainant gave information that was eventually determined to be fictitious. Nordstrom security identified the Complainant as the shoplifting suspect and explained that the Complainant had resisted their attempts to stop her. According to Nordstrom staff, the Complainant had also caused Nordstrom staff to suffer minor injuries during the struggle. Upon receiving this information, the Named Employees placed the Complainant under arrest.

During transport to the precinct, the Complainant alleged that the Named Employees would not listen to her account because she is biracial. She further alleged that the Named Employees subjected her to an unlawful detention and arrest. These allegations were screened by a sergeant once the Named Employees arrived at the precinct.

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-POL.) This includes different treatment based on the race of the subject. (*See id.*)

Based on OPA's evaluation of the evidence in this case – most notably, the BWV, OPA finds no basis to conclude that the Named Employees engaged in biased policing. When the Named Employees arrived at the incident location, they encountered the Complainant, who was seen with numerous Nordstrom items and who closely matched the subject description. The Named Employees conducted a field interview of the Complainant, who provided a convoluted narrative of her presence at Nordstrom, which contained numerous statements that were either unbelievable or internally contradictory. Nordstrom staff contested the Complainant's account and conclusively identified her as the shoplifting suspect. At this point in time, the Complainant was placed under arrest. OPA's review of this incident



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yields the conclusion that Named Employees' decision to arrest was premised on clear probable cause that the Complainant had engaged in shoplifting and was not the result of racial profiling.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded as against both Named Employees.

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



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

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

NEs arrested the Complainant for robbery in the second degree. RCW 9.56.190 further defines the act of robbery as:

A person commits robbery when he or she unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

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 stated above, there was abundant probable cause to believe that the Complainant committed robbery in the second degree. The evidence indicated that she took property from the Nordstrom without paying for it and, when confronted, she assaulted Nordstrom security. This satisfied the elements of the crime and justified her arrest.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

**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 #1), 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 #2), OPA recommends that this allegation be Not Sustained – Lawful and Proper.



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