



## CLOSED CASE SUMMARY

ISSUED DATE: MARCH 24, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0573

### **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 (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 Employee failed to take appropriate action during an investigation and engaged in bias towards him.

### **SUMMARY OF INVESTIGATION:**

OPA received a complaint from the Complainant. He alleged that Named Employee #1 (NE#1) did not properly handle an incident between himself and his girlfriend. The Complainant believed that NE#1 abused his discretion by not arresting the girlfriend, who the Complainant believed committed burglary, and instead simply wrote a report documenting the incident. The Complainant asserted that NE#1's actions and inactions were based on bias towards the Complainant due to the Complainant's race and gender. The Complainant, who is a person of color, explained that he felt NE#1 improperly took the side of the girlfriend, who was a White woman, over his. The Complainant told OPA that he felt that NE#1 treated him as a suspect and acted like he, not the girlfriend, had done something wrong. He further told OPA that, had NE#1 watched his surveillance video, there likely would not have been any complaint because NE#1 would have taken appropriate action.

As a result, OPA commenced this investigation. OPA reviewed Body Worn Video (BWV), which fully captured NE#1's response to this incident and what occurred. NE#1 and another officer were dispatched to a disturbance at the Complainant's home. When they arrived, the officers spoke with the Complainant. The Complainant, who was upset, told the officers that he wanted the girlfriend to be arrested for "theft and burglary." The Complainant told NE#1 that the girlfriend entered his house without permission and took her phone from within. NE#1 also spoke with the girlfriend. She stated that she had been living at the house for around the last month and a half and that she had been sleeping there each night. She told NE#1 that, on the evening in question, she was listening to music outside while the Complainant was sleeping. She said that the Complainant woke up and then accused her of "looking at him wrong," prompting an argument between them. She acknowledged that she entered the Complainant's home without permission in order to retrieve her cellphone. As she walked away, the Complainant called her to come back to him



and then took the cellphone out of her hand. He refused to give it back. The Complainant then called 911 to report that the girlfriend had committed a burglary.

Based on the totality of his investigation, NE#1 did not believe that he had probable cause to determine that a crime had been committed. Accordingly, he chose to document the incident in a report and to not make any arrests. He informed the Complainant of this and the Complainant asserted that he was angry and that he felt that NE#1's failure to make an arrest was due to bias in favor of the girlfriend due to her race and gender and against him. He told NE#1 to leave the property and NE#1 did so. NE#1 informed his supervisor of the Complainant's allegation of bias. The BWV indicated that the Complainant did not tell NE#1 at any time that he had surveillance video or offer to show NE#1 the video.

### **ANALYSIS AND CONCLUSIONS:**

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

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

As indicated above, the Complainant alleged that NE#1 engaged in biased policing towards him. Specifically, he alleged that NE#1 gave more credence to the girlfriend's account because she was a white female, and he was a male and a person of color.

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.*)

OPA's review of the evidence – most notably, the BWV, did not support the conclusion that NE#1's actions were based on bias either for the girlfriend or against the Complainant. Instead, and as discussed more fully below, his actions were reasonable and were based on his interpretation of the totality of the evidence adduced during his investigation. While the Complainant may not like this outcome, this does not mean that it was biased.

Accordingly, 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***

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.)

After evaluating the evidence and information available to NE#1 at the time, OPA finds that his decision to write a report rather than to make an arrest was appropriate. In reaching this conclusion, OPA believes it significant that, while the Complainant said that the girlfriend committed "burglary," she was a current residence of the home and



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there was no basis to conclude that she committed a crime. Moreover, the item she retrieved from the home was her property, not the Complainant's, and this did not constitute "theft" in any sense. Lastly, if anyone committed a potential crime, it was the Complainant when he took the girlfriend's phone without her consent and kept her from regaining access to it. However, OPA believes that NE#1 again properly exercised his authority when he chose not to make an arrest.

Given the above, OPA finds that NE#1's decision-making was appropriate and consistent with policy. There is no evidence supporting a finding that he abused his discretion in any way. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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