



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 3, 2022

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0293

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)

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 engaged in biased policing by treating him differently because of his race.

SUMMARY OF INVESTIGATION

The Complainant reported to SPD that his girlfriend's mother – referred to here as Community Member #1 – had stolen some of his personal items. Named Employee #1 (NE#1) responded to the reported theft. During NE#1's investigation, the Complainant – who identifies as Black – alleged that NE#1's response to his call was different than it would have been for a similarly situated white person. Specifically, the Complainant alleged that Community Member #1 – who he identified as White – had previously caused him to be arrested for violating a Protection Order based on lies. NE#1 identified that the Complainant was making a bias allegation and requested a supervisor. NE#1's supervisor responded, conducted a preliminary investigation, and ultimately referred the Complainant's allegation to OPA. This investigation ensued.

OPA reviewed the CAD, Incident/Offense Report, and Body Worn Video (BWV) from the Complainant's theft allegation against Community Member #1. OPA also reviewed the CAD, Incident/Offense Report, and BWV from the Complainant's prior arrest for violating a Protection Order. OPA also reviewed the Protection Order and interviewed both the Complainant and Complainant's mother.

OPA determined that, on February 24, 2021, a Protection Order was issued in which the Complainant was ordered to, among other things, refrain from communicating with his girlfriend – referred to here as Community Member #2 – and to stay away from her residence. The Protection Order was personally served on the Complainant on March 1, 2021, and was in place until March 10, 2021.

On March 9, 2021, Community Member #1 reported to SPD that the Complainant was at Community Member #2's apartment, in violation of the Protection Order. SPD officers arrived at Community Member #2's apartment and found



both Community Member #2 and the Complainant therein. The Complainant was arrested for violating the terms of the Protection Order, a mandatory arrest under SPD policy. (See SPD Policy 15.400.)

Shortly after the Complainant's arrest, Community Member #2 vacated her previous apartment and moved in with Community Member #1. The Complainant was detained in jail at the time, but some of his personal effects were in the apartment. Those items were boxed up and kept by Community Member #1 and Community Member #2 in their newly shared residence. After the Complainant was released from jail, he contacted Community Member #1 to have his items returned. Although the Complainant and Community Member #1 texted about where to go with the boxes and/or have them sent, the boxes were ultimately not returned to the Complainant.

On June 14, 2021, the Complainant called SPD and reported that Community Member #1 had stolen his personal items. NE#1 responded to the call two hours later. In the interim, the Complainant had been called back twice and advised of the delay in response times. After arriving, NE#1 spoke with the Complainant. During this interaction, the Complainant explained to NE#1 that Community Member #1 used the Complainant's detention in jail as an opportunity to take his things and that Community Member #1 had obtained the Protection Order against him and on behalf of Community Member #2. He told NE#1 that the Protection Order was based on lies propagated by Community Member #1. NE#1 stated that, under these circumstances, the usual course of action would be to contact Community Member #1 to arrange a time to pick up his personal items and then contact the police to request a civil standby. The Complainant explained that he did not want to contact Community Member #1 because he did not want anything to do with her, noting that Community Member #1 is an older White woman and would have him killed. NE#1 explained that he was not going to simply go take items from Community Member #1 and bring them back to the Complainant. The Complainant alleged that NE#1 was treating him differently because he was Black. He asserted that if someone said the Complainant "stole a penny" officers would try to shoot him, but that an older white lady – Complainant #1 – had lied to put him in jail.

NE#1 informed the Complainant that he would write a theft report but noted that it would not be normal procedure for police to simply go and retrieve items for someone based solely on their allegations. NE#1 further requested a supervisor, who arrived on the scene sometime later. The Complainant repeated his allegations to the supervisor, including his claim of bias. Like NE#1, the supervisor explained the difference between civil and criminal processes to the Complainant. NE#1 completed a theft report documenting the Complainant's allegations. NE#1 also called Community Member #1 who stated that she did not have the Complainant's personal items because she had given them to another person to return to the Complainant.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged that NE#1 engaged in biased policing by treating him differently because of his race.

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.*)



As both captured on BWV and as the Complainant later stated at his OPA interview, the Complainant's belief that he was discriminated against was based on his perception of a difference between the SPD response to the alleged violation of the Protection Order and then to the theft of his personal property.

From OPA's review of the evidence, any difference between SPD's response to these two distinct calls was due to the fact that each involved an entirely different set of facts and different levels of exigency. With regard to the Complainant's arrest, he was indisputably in violation of the Protection Order at the time and, as such, the officers were required to arrest him as a matter of law. Conversely, even if the Complainant's account was completely accepted, NE#1's statement that the incident should be handled with a theft report and, potentially, officers going to the scene and standing by while the Complainant retrieved his belongings was appropriate under the circumstances. Notably, SPD Policy 15.410-POL-6 directs that, in a domestic violence situation, "officers will not determine disputed property ownership without specific court ordered instructions," but that "officers will stay present with both parties while property is being gathered and transported and will remain on the scene until the parties have separated." The policy further directs that "officers do not have to assist in moving property." (SPD Policy 15.410-POL-6.) Accordingly, the different matter in which these two unique incidents were handled does not suggest bias in OPA's perspective.

Moreover, the facts do not suggest that NE#1 failed to provide the Complainant with adequate, professional service. Quite the opposite. NE#1 listened to the Complainant's allegations, explained the relevant issues, stood by as the Complainant accused him of misconduct based on a prior situation unrelated incident, and then summoned a supervisor to screen the allegation against him. NE#1 further generated a theft report for the Complainant. NE#1's actions were consistent with policy and the expectations placed on him by the Department.

In sum, there are no facts to suggest that NE#1 treated the Complainant differently than another individual based solely on his race. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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