



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 13, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0337

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)

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)

Named Employee #3

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 Subject alleged that he was stopped and detained based on bias.

SUMMARY OF INVESTIGATION:

OPA reviewed a Bias Review completed by an SPD supervisor. The Bias Review was generated due to allegations of biased policing made during an incident that occurred on January 30, 2021. On that date, officers responded to calls about individuals causing damage to and disturbances within an apartment building. Two suspects were identified. The first was described as a Black male in his late teens to early twenties wearing a white shirt and black pants. The second was described as a Hispanic male wearing a grey hooded sweatshirt and dark shoes. The criminal conduct was reported to have occurred on the fourth floor of the building. Officers arrived and began conducting a building search. When they were on the fourth floor, they viewed an individual. This individual – referred to here as the Subject – was Black and appeared to be within the age range identified by the 911 caller. He was also wearing black pants and a white shirt. When he saw officers, he fled into the stairwell. Officers caught up to the Subject and detained him. They placed him in handcuffs and remained within him in the stairwell. During this time, the Subject was extremely upset and denied that he was the suspect. He alleged that he had only been stopped because he was Black. The officers also spoke to the Subject's sister who denied that he was the perpetrator and disclosed that he was a juvenile. The Subject



suffered from seizures while in SPD custody but was ultimately deemed to be physically well by medics who came to the scene. The SPD supervisor who reviewed this matter noted that the Subject's sister did not state that she wanted to make an OPA complaint. The supervisor further found no evidence of bias on the involved officers' parts. After reviewing the Bias Review, OPA commenced this investigation to further assess what occurred and explore the claim of bias.

After conducting its intake investigation, OPA identified that Named Employee #1 (NE#1), Named Employee #2 (NE#2), and Named Employee #3 (NE#3) were the primary officers and the subjects of the bias complaint. OPA also identified that NE#1 failed to read juvenile-specific Miranda warnings to the Subject and that he continued to question the Subject after the warnings were read. OPA further identified that NE#3's documentation of this incident was incomplete and that he failed to promptly remove the Subject's handcuffs after determining that he was almost certainly not involved. These matters were returned to the chain of command to be handled as Supervisor Actions, while the bias allegation was investigated.

With regard to the assessment of the bias, OPA reviewed the Body Worn Video (BWV) for multiple officers, including the Named Employees, and the documentation generated by the officers. OPA also contacted the Subject's sister in an attempt to locate the Subject and to get permission to speak with him. The Subject's sister said that the Subject had moved and was not available to be interviewed. The Subject's sister declined to be interviewed.

OPA's review of the BWV confirmed that the Subject was, in fact, wearing a white shirt and black pants. It also confirmed that he was a Black male who appeared to fit the age range of the suspect.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 – Allegation #1

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

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.*)

After assessing the totality of the evidence, including the BWV, OPA finds that there was reasonable suspicion to detain the Subject and to hold him while they determined whether he was involved in criminal activity. This was based on the fact that he matched the description of one of the suspects, because he was on the fourth floor where the disturbances were occurring, and because he ran when he observed officers. OPA concludes that these facts and circumstances, not the Complainant's race, was the reason for the law enforcement action taken towards him.

The above being said, OPA can understand why he may have run away. As he later articulated, he was afraid of the police and what could occur. OPA also sees why the Subject was upset and believed that the stop was based on his race. First, he did not have the full information available to the officers. Second, he knew that he was innocent even if the officers did not. Third, he may have had other negative interactions with the police or heard of such interactions happening. OPA empathizes with the Subject and believes that this situation was extremely unfortunate. However, as indicated above, no policies were violated.



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

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

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 #3 – 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)**