



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 25, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0233

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded (Expedited)

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, an Asian female, alleged Named Employee #1 (NE#1) was biased because he allegedly refused to arrest co-worker Community Member #1 (CM#1) for assault because she was White. The Complainant was allegedly told by an unknown Community Member #4 (CM#4) that NE#1 told another officer that he would not arrest CM#1 because she was white.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General's review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the involved employees. As such, OPA did not interview the involved employees in this case.

On July 6, 2023, the Office of Inspector General (OIG) certified OPA's investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

a. Incident Report

The Complainant called 911 reporting she was assaulted by a female co-worker CM#1 who pushed her and knocked her food out of her hand. NE#1 responded to the call and was the primary officer. Witness #1 (WO#1) and Witness #2 (WO#2) responded to the call as secondary officers.

Upon arrival of the officers, NE#1 spoke to the Complainant in the parking lot of the store. The Complainant explained she is an employee of the Safeway store and selected some food items from the deli for lunch. She then went to the Starbucks in the store to obtain some water. The Complainant indicated she stood off to the side of the ordering counter and asked the barista, CM#1 for some water. CM#1 advised the Complainant to stand in line with the other



customers. The Complainant indicated this is something employees do regularly. The Complainant stated she told CM#1, "she was not her boss". An argument ensued between the Complainant and CM#1 and the Complainant said "shut the fuck up" to CM#1. The Complaint then stated CM#1 got into her face and then grabbed her left forearm, scraping her fingers along with the forearm until CM#1 grabbed the Complainant's food items she was holding and threw them to the ground.

The Complainant showed NE#1 some redness and what appeared to be a light scrape on her left forearm. She also reported redness on her forearm. NE#1 took photographs of this. The Complainant then asked NE#1 if he was going to arrest CM#1? NE#1 told the Complainant he was not going to handcuff her or arrest her, but stated he'll be writing a report documenting the assault and will route it to the city prosecutor.

The Complainant was not happy that CM#1 was not going to be arrested given the evidence of the assault. NE#1 explained he wanted to speak to the other half involved with this case, CM#1. The Complainant further stated she would cooperate with prosecution and wanted CM#1 arrested for assault. In addition, she explained she is a member of the United States Air Force (USAF) and had advised the military police of the incident.

WO#1 and WO#2 then arrived at the scene and NE#1, WO#1 and WO#2 discussed the case. NE#1 told them, "She wants her arrest. I'm not going to do that." Furthermore, that he wanted to follow-up with an interview of CM#1.

NE#1 entered the store and interviewed CM#1 who voluntarily agreed to be interviewed and recorded. CM#1 explained the Complainant approached her from the side counter and asked for a water. CM#1 advised the Complainant she needed to wait in line with the other customers, and an argument ensued. The Complainant told her to "shut the fuck up". CM#1 explained, due to the way she was being talked to, she grabbed the paper bag the Complainant was holding and threw it on the ground. CM#1 denied grabbing onto the Complainant's forearm.

Community Member #2 (CM#2), another barista, was interviewed separately and stated the Complainant had approached CM#1 at the side and asked for a water and CM#1 gave her the water, but said she needed to wait in line with the customers in the future. CM#2 explained an argument ensued and the Complainant was "antagonistic" towards CM#1 and stated this behavior is common for the Complainant. CM#2 never witnessed a physical interaction between the two.

NE#1 wrote in his report that, "Due to the redness and scrape on [the Complainant's] forearm, as well as the admission by all parties of a heated argument, probable cause for assault was established. [CM#1] was not arrest for this incident, pending review by the city prosecutor." NE#1 completed an incident report that was signed off on by a supervisor. NE#1 routed the document package to the Homicide/Assault Unit. NE#1 gave the Complainant his card with the case number and left.

b. Complainant Interview

On June 8, 2023, the Complainant was interviewed by an OPA sworn investigator by phone. The Complainant confirmed she emailed a complaint to OPA on May 30, 2023, regarding an incident that occurred on January 5, 2023, at approximately 1:15 p.m. The Complaint acknowledged she was employed by Safeway at that time of the disturbance and CM#1 was working at Starbucks, located inside the store. The Complainant alleged she was assaulted by CM#1 and called the police. The Complainant alleged NE#1 "was racist" when he made the decision not to make an arrest. The Complainant stated she is Asian and CM#1 is white.



The Complainant explained she had purchased some items to eat and wanted some water to drink and approached CM#1 who was working at Starbucks. The Complainant asked CM#1 for water and CM#1 started to get frustrated with her and said, "... no, get in the line, you're going to get in the line and then I'm going to give you water... I'm not talking with you, I am not arguing with you and I'm not here to waste my time with a crazy girl like you, so you do your job and I'll have to do my job". The other lady said "ok, I will give you water". The Complaint then indicated that CM#1 came to her and grabbed her arm and scratched it and took the food in her hand and threw it on the ground. The Complainant then said to CM#1, "What the hell are you doing, what is your deal, are you mental or something" and then CM#1 pushed the Complainant away. The Complainant indicated, Community Member #3 (CM#3), the Assistant Store Director, told her to "not even touch her because I don't want you to get in trouble because she is going to get fired and she is going to go to jail for that and just call the police."

The Complaint explained she then called 911 and the police arrived in approximately thirty to forty minutes later. The Complainant talked to NE#1 and told him what happened and showed him her injuries and NE#1 took photos of them. The Complainant then asked NE#1, "what are you going to do about this?" NE#1 explained he was not going to place handcuffs on her or arrest her. The Complainant told NE#1, "are you crazy? You can literally see damage on my arm and you are not going to put handcuffs on her or arrest her".

The Complainant then made comments to NE#1 to include, "why are you in the police department if you're not going to do your job, if you're not going to take care of people, if you're not going to make sure they are safe and not being abused...". The Complainant then told NE#1 she was a Captain in the Airforce and works part-time at Safeway and she could show him her military ID. NE#1 indicated that was not necessary. NE#1 then explained he was going to talk to the other officer outside and CM#1.

The Complainant was not sure what happened after that, but she was told that the police were not going to place handcuffs on CM#1 because there was insufficient evidence. NE#1 gave the Complainant his card and left. The Complainant then said, after NE#1 had left an unknown store customer, Community Member #4 (CM#4) or "Susan", came up to her and said she had overheard NE#1 talking to another officer with a beard saying, "... I'm not going to arrest her because she's white".¹ The Complainant received CM#4's contact information, but unfortunately lost it. The Complainant was not sure if there was a video of her and CM#4 talking at Starbucks but thought maybe there could be video of this. The Complainant further stated, "she cannot be sure if the unknown customer [CM#4] was lying to her or being honest because she had not seen or heard anything. The name of her may have been "Susan", but she cannot remember and she no longer has her phone number, as she had a lot on her plate at that time.

The Complainant stated she talked to her mother about what happened and her mother encouraged her to file a complaint and said, "Do it. You got to do it, if you're going to keep quiet, you're never going to get ahead ... Nobody will ever get to know what exactly happened until you speak up." The Complainant believed NE#1 had evidence for the assault and did not arrest her because CM#1 was White and the Complainant was Asian, based on the statement made to her by CM#4.

¹ "...I heard that officer say to the other officer with a beard, saying, 'Oh, she's white. This lady's not white. I am not going to arrest her. I'm not going to take her to jail. I don't care who they are. I am not going to arrest her...'".



The Complaint further explained there was a witness to the assault by CM#1, an employee who worked in the bakery department, Community Member #5 (CM#5). The Complainant didn't know her name, but indicated she believed she completed a written statement at work. CM#5 came to the attention of the Complainant after the police had left.

The Complainant stated, she was not upset that NE#1 didn't make an arrest, she understood why he didn't. She was upset about NE#1 allegedly being a "racist". The Complainant said, "she would not have filed a complaint had the customer [CM#4] not told her about what she heard [NE#1] tell the other officer."

c. Body-Worn Video (BWV)

BWV did not capture the alleged assault or any biased type of language made by NE#1. The only mention of a person's race was when NE#1 asked the Complainant to describe the suspect CM#1. The Complainant described CM#1 as "Black". BWV did show that NE#1 indicated he was not going to arrest CM#1 and was going to forward the case to the City of Seattle for review for assault 4. NE#1 also encouraged the Complainant to seek an anti-harassment order. Furthermore, the BWV showed NE#1 gave the Complainant his card and case number.

d. Photos

NE#1 provided photos of the injuries of the Complainant to include the following pictures:



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged that NE#1

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.* Officers are forbidden from both, (i) making decisions or taking actions influenced by bias, and (ii) expressing any prejudice or derogatory comments concerning personal characteristics. See SPD Policy 5.140 POL-2.



Biased based policing is a serious allegation when an officer or officers are motivated by any characteristic of a protected class under the law in making decisions or taking actions influenced by bias. In the present case, the only evidence of NE#1 engaging in bias-based policing is the allegation from the Complainant that a store customer, CM#4, or “Susan”, alleged overhearing NE#1 say, “I’m not going to arrest [CM#1] because she’s white”. The Complainant learned of this statement after NE#1 left the scene and no longer had any contact information for this store customer, CM#4.

Here, based on the evidence provided, NE#1 accurately described what was captured on BWV and made a decision not to arrest CM#1 for an assault 4 and instead forwarded his police report to the Homicide/Assault Unit. Here, NE#1 interviewed the only known witness at that time, CM#2 who did not see any physical interaction and was told by the store manager there was no clear store recording of an assault. In addition, NE#1 interviewed the Complainant and CM#1. Furthermore, the Complainant stated, “she cannot be sure if the unknown store customer [CM#4] was lying to her or being honest because she had not seen or heard anything.” Therefore, based on the evidence provided, by a preponderance of the evidence, the allegation of bias-based policing against NE#1 is unfounded.

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