



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 22, 2019

CASE NUMBER: 2018OPA-1092

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)
# 3	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Not Sustained (Training Referral)
# 4	15.170 - Conducting Identification Procedures 15.170 TSK-1 Conducting a Show-up	Not Sustained (Training Referral)

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)
# 3	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Not Sustained (Training Referral)
# 4	15.170 - Conducting Identification Procedures 15.170 TSK-1 Conducting a Show-up	Not Sustained (Training Referral)

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 improperly arrested her and, when doing so, subjected her to biased policing. OPA also alleged that the Named Employees’ reports concerning this incident were, in part, not accurate, as well as that the Named Employees conducted a show-up that was not in compliance with SPD policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Named Employees responded to a 911 call of an assault. The caller contended that she was spit on by another woman. The caller indicated that she was following the suspect and that she observed the suspect spit on and try to hit someone else. The caller reported that the suspect was at Occidental Square Park and provided the following

description: Black female, 20-30 years old, 5'6" to 5'10", thin to medium build, short hair, and wearing a light green rain jacket.

The caller was contacted at the scene by the Named Employees. She told them that the suspect had spit in her mouth. She stated that the suspect was wearing a light green jacket, jeans, and had short hair. She pointed towards the direction of Occidental Square Park and stated that the suspect went there. The Named Employees walked in that direction and heard a woman's voice yelling. Named Employee #1 (NE#1) referenced hearing the yelling and the victim, who was still with them at the time, confirmed that the suspect had been "freaking out." The officers determined that the source of the noise was a woman who was seated on the stairs in the vestibule of a building. She was a Black woman, wearing what appeared to be a light grey jacket with the hood pulled over her head. The officers made contact with the woman, who was later identified as the Complainant. NE#1 informed her that it had been reported that someone matching her description spat in the victim's face. The Complainant denied doing so. At that point, the victim walked by the Complainant, looked at her, and stated "that's her." The officers then placed the Complainant under arrest for assault.

They placed the Complainant into handcuffs and walked her back to the patrol vehicle. Named Employee #2 (NE#2) searched her incident to arrest and the officers seated her inside the patrol vehicle. During that time, the Complainant was upset and repeatedly stated that she did not spit on anyone. She further stated that she had been arrested based on her race.

The officers called a Sergeant to the scene to screen the incident and to investigate the allegation of bias. The Sergeant did so, which included speaking with the Complainant. The Complainant reiterated to the Sergeant her belief that she had been subjected to biased policing and was falsely arrested. The Complainant was then transported from the scene to the King County Jail.

Shortly thereafter, the victim again called 911 and indicated that she may have incorrectly identified the Complainant as the suspect. She said that she now observed the suspect in the park. The Sergeant went to the King County Jail and ensured that the Complainant was released from custody. He further arranged for her to be transported from the King County Jail to a location of her choosing.

At the time she was released from custody, the Complainant did not ask for an OPA complaint to be filed regarding this incident. This was the case even though she had earlier alleged that her arrest was inappropriate and based on bias. However, the Sergeant screened this matter with OPA and, after that screening, the collective decision was made that an OPA referral and further review was appropriate. As such, this investigation ensued.

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.*)

While it cannot be disputed that the Complainant was arrested when she did not actually commit a crime, this was based on a faulty identification provided by the victim, not by intentional misconduct on the part of the Named Employees. Their decision to take the Complainant into custody was not based on the Complainant's race but was, instead, due to an error on the part of the victim. For these reasons, I do not find that there is sufficient evidence to determine that the Named Employees engaged in biased policing. As such, I recommend that this allegation be Not Sustained – Unfounded as against both Named Employees.

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

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

Based on a review the Department video, the Complainant did not perfectly match the description of the suspect. Notably, she was wearing a grey not a green jacket and she did not appear to be 20-30 years old. However, as the officers contended, it was possible that the description of the suspect by the victim was imperfect. Both officers stated that this is common with eyewitness and OPA concurs that, in its experience, victims in high-stress, quick-occurring situations often do not get all of the details of a suspect description correct. I agree with the officers that, given how near the Complainant was to the scene, the closeness of her appearance to the provided description, and the fact that she was yelling at the time the officers approached her, it was reasonable for them to have believed that she was the suspect and to have made contact with her to investigate this possibility. Moreover, when the victim walked by and identified the Complainant as the perpetrator, this gave the officers probable cause to place the Complainant under arrest.

While it was later established that the Complainant was not the perpetrator and, as a result, the Complainant's liberty was curtailed when she had committed no crime, this does not yield the arrest infirm. What is determinative is whether the officers reasonably believed that they had probable cause at the time of the arrest. Here, I find that they did. For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

Named Employee #1 - Allegation #3

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report

From a review of the General Offense Report, it appears that the statements for NE#1 and NE#2 are identical and both are written from NE#2's first-person perspective. However, NE#1 signed the statement attributed to him even though it appears that he did not write it. This was not addressed during NE#1's OPA interview and, as a result, I do not know why and/or how he made this error. Ultimately, he was responsible for ensuring the accuracy of his report and he did not do so here. That being said, I believe that this was a mistake rather than intentional misconduct and, accordingly, I recommend that NE#1 receive the below Training Referral.

- **Training Referral:** NE#1 should be reminded of the importance of ensuring the accuracy of his reports. Specifically, with regard to his report in this case, NE#1 should be counseled concerning his affirmation that a report that he did not appear to write was a true and accurate representation of the law enforcement actions that he took. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegations #4

15.170 - Conducting Identification Procedures 15.170 TSK-1 Conducting a Show-up

SPD Policy 15.170-TSK-1 governs conducting a show-up. It sets forth eight steps that officers are required to perform when doing so.

Based on a review of the Department video of this incident, OPA concludes that the Named Employees conducted a show-up. However, they failed to complete the majority of the steps itemized by the policy when they did so. As such, the show-up was technically not in compliance with policy. That being said, I recommend that the Named Employees receive Training Referrals rather than Sustained findings. I reach this decision for several reasons. First, this is a fairly esoteric policy that the officers may never have applied before. Second, the officers acknowledged that the show-up that they conducted in this case was imperfect, recognized what they could have done better, and explained how they would avoid similar mistakes in the future. Third, in OPA's opinion, this constitutes a mistake and a minor performance issue, not intentional misconduct.

- **Training Referral:** NE#1 and NE#2 should receive additional training concerning the requirements of this policy and the elements of a proper show-up. They should be counseled that, wherever possible, they should attempt to comply with this policy and, where they do not, they should explain any deviations in their reports. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegations #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), I recommend 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), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #3

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report

While NE#2 properly completed a report, it contained several inaccuracies. Most notably, NE#2 wrote that the victim described the suspect as a “Black female, approximately 40-50 years of age, with short black hair, and a grey jacket. However, the victim did not state that the suspect was between 40-50 years of age to the officers or, for that matter, during any of her 911 calls. Moreover, the victim did not tell NE#2 that the suspect was wearing a grey jacket. To the contrary, she affirmed that the jacket was light green. While, as discussed above, NE#2 may have been correct that the victim made the common error of misidentifying a suspect, this does provide a justification for the partial misreporting by NE#2.

Even though I find this to be technically contrary to this policy, I do not believe that a Sustained finding is warranted. Instead, I recommend that NE#2 receive a Training Referral.

- **Training Referral:** NE#2 should be counseled concerning the above-referenced inaccuracies in her report and should be reminded that such errors, even if inadvertent, can undermine the quality of her work. This counseling and any associated retraining should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegations #4

15.170 - Conducting Identification Procedures 15.170 TSK-1 Conducting a Show-up

For the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained – Training Referral.

Recommended Finding: **Not Sustained (Training Referral)**

