



## ***CLOSED CASE SUMMARY***

ISSUED DATE: MAY 6, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0710

### **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)

***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 engaged in biased policing towards him.

### **SUMMARY OF INVESTIGATION:**

The Complainant, who was hospitalized at Swedish Hospital, called 911 to report that he was assaulted by White security guards. Officers were eventually dispatched to the hospital. Named Employee #1 (NE#1) and Named Employee #2 (NE#2) made contact with the Complainant and spoke to hospital staff. The officers learned from a hospital physician that the Complainant was suffering from a serious and potentially life-threatening infection and was not permitted to leave the hospital. The officers were also informed that the hospital physician did not believe it was safe for the Complainant to be walking around the hospital. The Named Employees interviewed the Complainant. He asserted that he was walking around the hospital when three White security officers confronted him. He said that the security officers told him to return to his room and, when he refused, they told him that they would physically escort him there if needed. He contended that this constituted verbal assault. The Named Employees interviewed the security guards and they denied threatening the Complainant.

The Named Employees concluded that no crime had been committed. The Complainant was upset by this decision and alleged that the Named Employees failed to make an arrest because the security guards were White, and he was a person of color. The Named Employees notified their supervisor of the allegation and he responded to the scene.



The supervisor spoke with the Complainant who reiterated his allegation of bias. The supervisor made an OPA referral and this investigation ensued.

As part of its investigation, OPA reviewed Body Worn Video and other documentation of the incident and the Complainant's subsequent 911 calls. OPA also interviewed the Complainant. The Complainant provided the same information to OPA concerning this incident as he did to the Named Employees and the supervisor. He alleged that the Named Employees should have arrested the security officers and did not do so because of bias towards him, as a person of color, and in favor of the security guards, who were White. He also stated that he called 911 multiple times after the Named Employees declined to make an arrest and no one responded to him.

### **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.*)

From OPA's review of the evidence, even if the facts relayed by the Complainant were all accepted as true, there would not have been sufficient probable cause to arrest the security guards. Under the Complainant's account, he was walking around the hospital, was told to return to his room, refused to do so, and was instructed by the security guards that if he failed to comply they would be forced to physically compel him to do so. Based on the information provided by the hospital physician – that the Complainant was suffering from a potentially fatal infection, that it was not safe for him to be walking around, and that he was required to remain in his room – the security guards would arguably have been justified in physically compelling the Complainant to return to and remain in his room.

Moreover, there is no basis to conclude that the Named Employees' decision to not arrest the security guards was based on bias, rather than on the belief that they could not establish probable cause. While the Complainant may have believed that this was the case, there must be more, other than those assertions, for OPA to meet its burden of proof. Such additional evidence is not present here.

Lastly, with regard to the Complainant's assertion that no one responded to him when he called 911 after the incident, OPA verified that an officer did try to reach him but that the Complainant did not answer his phone.

Accordingly, as there is no evidence supporting a finding that the Named Employees or any other SPD employee engaged in biased policing, OPA recommends that this allegation be Not Sustained – Unfounded.

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)**