



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 29, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0216

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	5.001 - Standards and Duties 12. Employees Must Promptly Report Exonerating Information	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 acted based on bias and failed to disclose exculpatory information.

SUMMARY OF INVESTIGATION:

OPA received a complaint from a criminal defense attorney concerning the arrest of a woman – referred to here as the Subject. The Complainant asserted that Named Employee #1 (NE#1) arrested the Subject for assaulting a male by throwing oil on him. The Complainant said that the Subject informed NE#1 and a Sergeant that the male had sexually assaulted her and that both officers included this information in their reports. However, she told OPA that the sexual assault was not mentioned in NE#1's declaration of probable cause included in the superform, which the Complainant said was relied upon by the court at the Subject's first appearance and was used to determine probable cause, to assess release arguments, and to set bail. The Complainant alleged that the absence of this information prejudiced her client and was exculpatory. She further asserted that NE#1 failed to identify other evidence supporting the Subject's allegation of sexual assault, including not noticing a bruise on the Subject's arm and a mark on the inside of the Subject's mouth. The Complainant contended that NE#1's alleged shortcomings were due to his bias against the Subject, who the Complainant identified as a Black woman suffering from mental illness. The Complainant told OPA that she was able to present the Subject's defense before the court. Bail was reduced but the court declined to release the Subject. The charges were ultimately dismissed against the Subject on December 29, 2020.

As part of its investigation, OPA reviewed the Body Worn Video (BWV) of this incident, as well as the documentation generated by NE#1 and other officers. The BWV showed the officers' investigation into this matter, including their discussions with both the Subject and the male – who presented as Latino. The Subject was recorded telling the officers that the male "showed his penis" to her and demanded sex. At one point, the Subject said that the male hit her; however, she later said that this did not occur and, instead, that the male "tried" to do so. The BWV indicated that both involved parties were intoxicated at the time and struggled to convey clear accounts of what occurred. From



a review of the BWV, no injuries could be readily observed on the Subject's person. She was further wearing long sleeves and her arms were not visible. The male had injuries to his face and oil was all over his clothes. Oil was also seen on the floor.

An officer – referred to here as Witness Officer #1 (WO#1) – and the responding Sergeant both documented the Subject's claim of sexual assault perpetrated by the male. NE#1 did not include this information in the report that he generated. NE#1 completed the superform that same day. In his probable cause statement included in the superform, NE#1 again did not note the Subject's statement concerning sexual assault and set forth the basis to believe that the Subject threw oil on the male, causing him to suffer injuries. OPA further identified that, on December 28, 2020, a Detective wrote a more detailed Certification for Determination of Probable Cause in which he outlined the Subject's claim of sexual assault.

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-POL.) This includes different treatment based on the race of the subject. (*See id.*)

The Complainant contended that the Subject was arrested because of her status as a Black female suffering from mental illness. She further believed that NE#1 did not include the information concerning the alleged sexual assault in the superform because of the Subject's race. When asked why she felt that this was the case, the Complainant pointed to the fact that the Subject was arrested, not the male.

From a review of the BWV, OPA finds no evidence supporting the Complainant's allegation of biased policing on NE#1's part. Notably, both of the involved parties were people of color, and the Complainant provided no evidence indicating that NE#1 chose to take the side of a Latino male over that of a Black female because of some improper motive. To the contrary, it appeared that NE#1, and the other officers at the scene, made the decision that the Subject was the primary aggressor based on what they learned and observed, not due to the race of either individual.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 12. Employees Must Promptly Report Exonerating Information

SPD Policy 5.001-POL-12 requires that Department employees promptly report exonerating information. The policy further states that: "Employees must report any information they discover that may exonerate a person who is under investigation or has been charged with or convicted of a crime."



The Complainant allegation here is twofold. First, she claims that, by not including information about the sexual assault in the superform, NE#1 failed to disclose exculpatory information. Second, she asserts that NE#1 failed to note the injuries to the Complainant, which also constituted the non-disclosure of exculpatory information.

With regard to the first claim, while it would have been optimal and more complete for NE#1 to include the sexual assault information in the superform, that he did not do so does not constitute a violation of this policy. Most notably, two other officers disclosed this information, it was present in other case documents, including in a detained probable cause certification generated by a Detective. As such, the purportedly exculpatory information was, in fact, disclosed by SPD, even if documented by NE#1 himself. Moreover, as the Complainant asserted, she was aware of the Subject's defenses and had the opportunity to present them to the court. She further could have presented the SPD documents setting forth the defenses. Given this, even were OPA to find that NE#1 was required to include this information in the superform, OPA does not identify any actual prejudice to the Complainant or the Subject. This is particularly the case given that the charges were dismissed against the Subject shortly thereafter.

In addition, from a review of the video, there was no evidence indicating that NE#1 or any other officer was aware of injuries to the Subject. She did not complain of injuries, she had no visible injuries, and her arms were covered by long sleeves. Given this, NE#1 did not violate this policy when he, like the other officers, failed to identify injuries.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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