



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 6, 2019

CASE NUMBER: 2018OPA-0773

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 10. Employees Shall Strive to be Professional	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)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	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 were unprofessional towards him and subjected him to biased policing.

SUMMARY OF INVESTIGATION:

The Named Employees responded to a two-car collision. A car, which was driven by the Complainant, crashed into another legally parked vehicle. The officers spoke with the Complainant to determine what had occurred. At that time, the Complainant told them that he had hit a “bump.” Named Employee #1 (NE#1) asked him how he sustained damage on the side of his car and scuffing to the tire. Named Employee #2 (NE#2) then stated “that didn’t happen,” apparently referring to the Complainant’s assertion that he had only hit a bump. The officers asked the Complainant where the female who had been observed in his vehicle went. The Complainant told them that she left. The officers again questioned the Complainant’s assertion that he hit a bump. NE#2 then stated to the Complainant: “Are you going to lie to us? We’re not stupid...you did not hit a bump...why did the passenger leave?” The Complainant responded that he did not know the passenger’s name.

The Named Employees continued to discuss what occurred with the Complainant and questioned his account. NE#1 then began asking the Complainant to clarify why he was in the area. NE#1 tested the Complainant’s explanation until the Complainant stated that it was not illegal for him to be there. A witness approached the officers, who were, at that time, in the vicinity of their patrol vehicle and away from the Complainant. The witness recounted that a woman got out of the car and then left the scene. NE#2 told the witness the following: “...yeah, we assume...that



there was some vice stuff was going on. We guarantee that's how this collision happened and we're going to definitely write that in here..."

NE#2 again approached the Complainant and informed him that he was going to be cited for inattention to driving and told him what the amount of the ticket was. NE#2 raised the fact that the Complainant's conduct was suspicious and said that his statement that he did not know that he hit another car was both concerning and "absurd." NE#1 and NE#2 arranged for the Complainant's vehicle to be towed and then drove from the scene. While in the patrol vehicle, the BWV captured NE#2 stating in reference to the Complainant: "That guy's a fucking idiot." NE#1 began to respond, but, when he realized that he was still recording video, turned off his BWV.

The Complainant later initiated this OPA complaint, alleging that the Named Employees were unprofessional towards him and that they subjected him to biased policing. With regard to the professionalism, the Complainant contended that the Named Employees repeatedly cut him off and did not let him tell his side of the story, as well as that they were belligerent and rude. With regard to the bias allegation, he contended that the officers engaged in "blatant racism."

NE#1 stated that he believed that he acted professionally during this incident. When asked why he questioned the Complainant as to why he was in that area, NE#1 said that he was trying to fully investigate the incident and did not believe that this was inappropriate. He further stated that he did not believe the references in the reports to possible vice activity on the part of the Complainant was unprofessional. NE#1 told OPA that he felt that he gave the Complainant ample time to provide his account of what occurred and that he cut the Complainant off at times when it was clear that he was lying.

NE#2 also denied that she was unprofessional towards the Complainant. NE#2 agreed that she cut the Complainant off at times; however, she asserted that this was based on his provision of an implausible account, not because of a lack of professionalism. NE#2 did not believe that telling the witness about their belief that the Complainant's conduct was vice-related was impermissible. While she acknowledged that she called him a "fucking idiot" after the interaction and while in her patrol vehicle, she denied that this was reflective of how she felt about him and how she interacted with him during the call. She recognized that her statement was recorded and subject to public disclosure and stated that, could she do it again, she would have avoided saying what she said about the Complainant.

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.*)

The Complainant alleged that the Named Employees engaged in "blatant racism" towards him. The Named Employees denied doing so and stated that the law enforcement activity that they took was based the Complainant's actions not his race.



Based on OPA's review of the video, there is no evidence supporting the Complainant's contention that he was treated differently because of his race. Instead, the Complainant was questioned due to the suspicious nature of his account and the fact that the officers found it unbelievable that he did not know that he had sideswiped a vehicle. He was further properly cited for his inattention that resulted in the accident.

For the above reasons, I recommend that this allegation be Not Sustained – Unfounded as against both Named Employees.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

The Complainant alleged that he was treated unprofessionally by the Named Employees. He specifically contended that the Named Employee repeatedly cut him off and did not let him tell his side of the story, as well as that they were belligerent and rude.

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-10.) The policy further states the following: "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person." (*Id.*) Lastly, the policy instructs Department employees to "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." (*Id.*)

From my review of the video evidence, I do not believe that NE#1 acted unprofessionally towards the Complainant. The video reflected that he used a calm tone and spoke to the Complainant politely, even when questioning the Complainant's account of what occurred. At one point, NE#1 repeatedly questioned the Complainant regarding why he was in the area. The Complainant took umbrage to this line of questioning and stated that he was not breaking any law by being there. I agree with the Complainant that he was permitted to be in that location; however, I have no problem with NE#1 exploring this issue. This is particularly the case given the implausible nature of the Complainant's account and the fact that the officers knew that a woman was in the car at the time of the incident and that this woman left the scene before the officers arrived. This suggested possible vice activity on the Complainant's part and I do not think it was unreasonable for NE#1 to have explored this. Lastly, I do not believe that it was unprofessional when NE#1, at times, interrupted the Complainant to ask clarifying questions or to revisit his account. Given the circumstances of this case, I find that such questioning was appropriate.

For the above reasons, I find that NE#1 did not act unprofessionally during this incident. As such, I recommend that this allegation be Not Sustained – Unfounded as against him.

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), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #2

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

Unlike with NE#1, I have considerably more concern with NE#2's approach to this situation and towards the Complainant.

Based on OPA's review of the video, NE#2 approached this situation aggressively. She was dismissive of the Complainant's account from the outset. Within the first moments of their conversation, NE#2 told the Complainant that his version of the account "didn't happen," asked whether he thought the officers were "stupid," and expressed her belief that the Complainant was lying. She later told the Complainant that his account was "absurd."

Moreover, when speaking with a witness who observed the female passenger leaving the scene, NE#2 expressed her belief that the Complainant had been engaged in vice activity. I do not believe that it was appropriate to disclose this information to another civilian and it served no legitimate law enforcement purpose to do so.

Lastly, while in the patrol vehicle leaving the scene, NE#2 referred to the Complainant as a "fucking idiot." While this statement was made outside of the presence of the Complainant, it was captured on video and is, thus, publicly available in perpetuity. NE#2 should know better. Further, even if NE#2 denies this, it gives insight into why she approached the Complainant as she did and reveals how little patience she had with him and his account.

Ultimately, NE#2 was not required to believe the Complainant. Indeed, his story was unbelievable. He clearly hit the vehicle and likely did so because he was distracted, potentially by the female passenger in his car. However, NE#2 could have dealt with this situation and with the Complainant in a less aggressive and dismissive fashion. In addition, she should have avoided using profanity towards the Complainant, even if it was not to his face.

The above being said, I do not believe that NE#2's conduct necessitates a Sustained finding, instead I recommend that she receive the below Training Referral.

- **Training Referral:** NE#2 should receive additional training concerning the requirements of SPD Policy 5.001-POL-10 and concerning the Department's expectations of her professionalism. Her chain of command should discuss this incident with her and together view the video of her interaction with the Complainant. NE#2's chain of command should coach her on how to better handle such situations in the future. Lastly, NE#2 should be informed that future similar conduct will likely result in OPA recommending a Sustained finding. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.



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