



CLOSED CASE SUMMARY

ISSUED DATE: JULY 30, 2019

CASE NUMBER: 2019OPA-0107

Allegations of Misconduct & Director’s Findings

Named Employee #1

| Allegation(s): | | Director’s Findings |
|----------------|--|---------------------------|
| # 1 | 5.001 - Standards and Duties 14. Retaliation is prohibited | 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 Named Employee #1 took him into custody in order to retaliate against him due to a prior interaction.

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 Named Employee. As such, the Named Employee was not interviewed as part of this case.

During its intake investigation, OPA determined that the Named Employee did not complete a *Terry* Template. This matter was handled by the chain of command as a Supervisor Action.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 14. Retaliation is prohibited

Named Employee #1 (NE#1) observed the Complainant sleeping in his vehicle that was parked and running in Capitol Hill, approximately an hour after the local bars had closed. After NE#1 approached the vehicle and engaged in a conversation with the Complainant, the Complainant denied that he was asleep or under the influence. NE#1 noted in his report that the Complainant’s eyes were bloodshot and watery, and that he had difficulty following NE#1’s instructions. NE#1 also reported that the Complainant failed one of the Standardized Field Sobriety Tests he agreed to take and that he refused to perform other requested tests. The documentation relating to this incident indicated that the Complainant agreed to a breathalyzer test, which came back negative. However, NE#1 believed that, based on the totality of the circumstances, the Complainant was in physical control of a vehicle while under the influence of an unknown drug and determined that there was probable cause to arrest the Complainant. After arrival at the East Precinct, the Complainant was evaluated by an officer who was certified as Drug Recognition Expert (DRE). The



DRE officer determined that the Complainant was not impaired by drugs. The Complainant was then released from custody and was provided a courtesy transport to the tow lot.

Prior to leaving the East Precinct, the Complainant spoke to NE#1's Sergeant and alleged that he was arrested by NE#1 in retaliation for an incident that took place a couple of weeks earlier. The Complainant recounted that, on that date, he was driving in the Capital Hill area and saw NE#1's patrol vehicle parked awkwardly and blocking traffic without its overhead lights on. The Complainant claimed that he expressed his dissatisfaction with how NE#1 had his vehicle positioned, and NE#1 responded by yelling and cursing at him needlessly. The Complainant stated that he stopped his vehicle and spoke to a supervisor concerning this encounter both in person and over the phone. The unidentified supervisor purportedly told the Complainant that he discussed the Complainant's allegation with NE#1 and that NE#1 said that he had no recollection of having any previous contact with the Complainant.

The Sergeant who was informed of these allegations by the Complainant referred this matter to OPA.

OPA reviewed NE#1's Body Worn Video (BWV) and found that it was consistent with the circumstances and behavior that NE#1 described in his reports. From OPA's review of BWV, it did not appear that either the Complainant or NE#1 recognized the other from a previous encounter.

OPA attempted to interview the Complainant, but he informed OPA that he was unavailable at the time because he was on his way to the White House for a meeting. The Complainant asked OPA to call back after a specific date; however, multiple later calls from OPA went unanswered. Thus, the Complainant was not interviewed as part of this investigation.

OPA searched its database for evidence of any complaints made against NE#1 that matched the prior incident referenced by the Complainant. This inquiry returned no responsive records.

SPD Policy 5.001 (14) precludes its employees from engaging in retaliation. SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, "oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy_" or "who otherwise engages in lawful behavior." (*Id.*) Retaliatory acts are defined broadly under SPD's policy and include "discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

Based on OPA's review of the BWV of the Complainant's contact with OPA, there is insufficient evidence supporting the assertion that NE#1 recognized the Complainant and took law enforcement action against him based on their prior interaction. Moreover, there is no evidence supporting a determination that this prior interaction even occurred. Ultimately, the Complainant's failure to present any evidence or testimony in this case undermines his allegations. For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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