



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 6, 2018

CASE NUMBER: 2017OPA-0954

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Training Referral)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Inconclusive)

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 said "c'mon boy" to an African American male, which could be viewed as a racially derogatory and/or biased statement.

STATEMENT OF FACTS:

On the date in question, SPD 911 received several calls concerning an African-American male – the subject – who was reported to be assaulting civilians on the street. Named Employee #1 (NE#1) was among the officers dispatched to the call. NE#1 drove to the location in his patrol vehicle and observed the subject walking on the street. NE#1 made the decision to contact him, stopped his vehicle in front of the subject, and exited his vehicle. NE#1 used force on the subject to place him under arrest; however, this force is not at issue in this case.

Given that force was used by NE#1, it was reviewed by a Department Sergeant. During that review, the Sergeant watched NE#1’s In-Car Video (ICV). The ICV depicted NE#1 drive his vehicle towards the subject. At the time he was passing the subject and the subject was to his left and approximately in the vicinity of the driver’s side window, NE#1 audibly stated “c’mon boy.” NE#1’s driver’s side window was closed at that time and there was no indication that the subject heard the statement. However, based on that statement, on the potential racial connotations of the term “boy,” and the fact that the subject was African-American, the Sergeant referred this matter to OPA for investigation as to whether NE#1 used an offensive racial term towards the subject.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

SPD Policy 5.001-POL-9 instructs that SPD employees shall strive to be professional at all times. It further states the following: “Regardless of duty status, employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-9.)



At his OPA interview, NE#1 explained that he was an athlete and, generally, he would try to pump himself up before engaging in sporting events. He indicated that, when he pulled up to the subject, he knew that he was going to go hands on with him. NE#1 explained to OPA that, when he said “c’mon boy,” he was talking to himself and trying to get his adrenaline flowing for what he believed was an imminent physical confrontation.

At the outset, I note that there is no evidence in the record to conclusively disprove NE#1’s explanation for his use of the term “c’mon boy.” Stated differently, there is insufficient evidence to prove or disprove whether NE#1 made a racially insensitive statement in this instance.

That being said, I was concerned with the statement I heard on the ICV. The word “boy” has a number of negative meanings and has historically had racist connotations when used towards African American men. *See, e.g., Ash v. Tyson Foods, Inc.*, 546 U.S. 454, 456 (2006) (finding, in the context of the term “boy” used towards an African American man, that “[a]lthough it is true the disputed word will not always be evidence of racial animus, it does not follow that the term, standing alone, is always benign. The speaker’s meaning may depend on various factors including context, inflection, tone of voice, local custom, and historical usage.”).

I was also concerned with the fact that NE#1 expressed, at his OPA interview, that he did not understand the term “boy” when used towards an African-American male to have racial connotations. This is, or at least should be, a widely understood truth. This should particularly be understood by law enforcement officers given their positions of power and historical interactions with the African-American communities.

While NE#1’s failure to understand the historical significance and impact of this term does not establish, in and of itself, a lack of professionalism, I find that a training referral is warranted based on this fact.

- **Training Referral:** NE#1 should be counseled by his chain of command concerning the historical significance and impact of the term “boy” on African-American men. NE#1 should be instructed by his chain of command that the term has racial connotations and that both the Department and community expect that no officer, let alone any individual, will use that term towards an African-American man. This counseling should be memorialized in a PAS entry.

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

Named Employee #1 - Allegation #2

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.*)

If NE#1 did use a racially derogatory term towards the subject, then all of the law enforcement activities he took afterwards would be tainted by that statement. If, instead, he solely stated “c’mon boy” to get himself mentally prepared for a possible physical altercation and did not have any racial animus, then I would find that he did not engage in biased policing. I note that there was reasonable suspicion to stop the subject on the basis that he had



reportedly committed assaults, if not probable cause to arrest him at that time. Absent the statement made by NE#1, I would have found that NE#1's actions in this case were based on the subject's reported conduct, not on any bias.

Here, however, I cannot conclusively determine the motivation and intent of NE#1's statement. As such, I cannot ultimately recommend that this allegation be Sustained and I, instead, recommend that it be Not Sustained – Inconclusive.

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