



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 19, 2018

CASE NUMBER: 2017OPA-0987

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 9. Employees Shall Strive to be Professional at all Times	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 was biased and unprofessional when she stopped him for a traffic violation.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

The Complainant, who is Black, alleged that he had an interaction with Named Employee #1 (NE#1) during which he believed that he was given a citation based on his race.

OPA reviewed the In-Car Video (ICV) relating to this matter. It revealed that NE#1 was working a traffic post and was directing traffic with one of the witness officers. The Complainant’s vehicle approached the crosswalk that NE#1 was controlling. NE#1 and the witness officer signaled with their hands for the Complainant to keep moving, and stopped the pedestrians to allow the Complainant to get through the crosswalk. The Complainant came to a stop, and NE#1 and the other officer directing traffic again waved for him to continue. On the ICV, it appeared as if the Complainant’s tinted window was up at the time he passed by the officers. The actual traffic stop occurred out of view of the ICV and there is not conclusive evidence as to what occurred. However, the audio of NE#1’s interaction with the Complainant, as well as the Complainant’s later discussion with the supervisor, was captured.

As part of its investigation, OPA interviewed the Complainant. He declined to have his statement recorded. The Complainant stated that he did not understand what NE#1 was telling him to do. The Complainant indicated that he received contradictory directions from NE#1 and the other officer directing traffic. The Complainant reported that he asked NE#1 repeatedly what he had done but NE#1 did not respond to him and asked him for his license and registration. He stated that he then asked her to call a supervisor, which NE#1 did. While the Complainant stated that the supervisor was polite, he asserted that NE#1 was unprofessional during her interaction with him. The Complainant showed the responding supervisor segments of a video that he had recorded, but he refused to



provide that video to the supervisor and, ultimately, also did not provide it to OPA either. The Complainant stated that NE#1 was biased because she pulled him over for no reason.

OPA also interviewed NE#1. She stated that she stopped the Complainant because he failed to obey traffic directions. She stated that he placed his vehicle in a position that was dangerous to pedestrians when he stopped and then began driving. NE#1 told OPA that the Complainant was argumentative with her and was not complying with her requests during the traffic stop. NE#1 then called her supervisor, who came to the scene. She eventually provided the Complainant with a citation and he then stated, while NE#1's supervisor was present, that he believed that he was being racially profiled. NE#1 told OPA that this was the first time during their interaction (which up to that point had lasted approximately 25 minutes) that the Complainant made any allegation of biased policing. NE#1's supervisor then engaged in a discussion with the Complainant concerning his allegation of bias, and NE#1 left the immediate vicinity and had no further interactions with him. NE#1 contended that she was polite and professional during her interaction with the Complainant and that she did not racially profile him or engage in biased policing towards him.

During its investigation, OPA further interviewed the responding supervisor and witness officers. The supervisor stated that she heard NE#1 call for a supervisor and she came to the scene. The Complainant told the supervisor that he was only stopped because he was black. The supervisor discussed how the Complainant's allegation of bias would be handled and, at that time, he told her that if he was not issued the citation he would rescind his complaint. The supervisor told the Complainant that the citation could not be canceled. The supervisor recalled watching a portion of the video recorded by the Complainant and stated that it looked like NE#1 was waving the Complainant through an intersection and he stopped his vehicle. The witness officer who was flagging with NE#1 corroborated NE#1's account of the Complainant's driving. He, like NE#1, articulated that they were concerned about the Complainant's vehicle being too close to pedestrians in the crosswalk and the vehicle presenting a safety risk. The other witness officer did not observe the traffic stop and did not hear NE#1's interaction with the Complainant.

SPD Policy 5.140 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 as other discernible personal characteristics of an individual." This includes different treatment based on the race of the subject. (*See id.*) The policy provides guidance as to when an allegation of biased policing occurs, explaining that: "an allegation of bias-based policing occurs whenever, from the perspective of a reasonable officer, a subject complains that he or she has received different treatment from an officer because of any discernible personal characteristic..." (*Id.*)

While there may be a dispute of fact concerning whether NE#1's traffic directions were clear and concerning whether the Complainant should have received a ticket, I see no evidence in the record indicating that NE#1's actions were based on bias. Instead, they appeared to be premised on her perception of the Complainant's conduct and then her belief that the Complainant failed to cooperate with her requests. Regardless of whether the citation issued to the Complainant was ultimately warranted, I find no support whatsoever for the allegation that NE#1 engaged in biased policing. As such, I recommend that this allegation be Not Sustained – Unfounded.

Lastly, while not necessarily germane to my findings, I find it troubling that the Complainant attempted to use his filing of an OPA complaint against the Complainant as a bargaining chip to try to get out of the citation. In my opinion, this very much undermined his account of the incident and his credibility, as well convinced me that the



bias complaint was meritless. I commend both NE#1 and her supervisor for rejecting this unethical request by the Complainant out of hand.

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

Named Employee #1 - Allegation #2

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

SPD Policy 5.001-POL-9 states that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” This includes making statements that undermine “the effectiveness of the Department...” (SPD Policy 5.001-POL-9.)

As indicated above, the Complainant alleged that NE#1 was rude and unprofessional during their interaction. He stated that NE#1 was really loud and that when he asked her what he had done, NE#1 simply pointed and told him to move in a certain direction. The Complainant told OPA that he again asked what he had done wrong and NE#1 told him that she had already asked for his license and registration. He cited her purported refusal to respond to him as evidence of her unprofessionalism.

NE#1 asserted to OPA that she was professional during her interaction with the Complainant. She further stated that she did not engage in any behavior that undermined the public’s trust in herself and the Department or that unnecessarily escalated the events. Lastly, NE#1 told OPA that she did not use any insults or derogatory language towards the Complainant and that she was not disrespectful during the stop.

From my review of the ICV, NE#1’s voice may have been louder than normal, but she was trying (at times) to speak over traffic. The ICV supports that, after the stop, NE#1 gave the Complainant multiple commands that he did not initially comply with. As such, some of her tone was likely caused by his lack of compliance and her belief that she needed to be more assertive to ensure that he cooperated. Ultimately, by her account, she was required to summon a supervisor for this reason. The ICV further supports that, throughout her interaction with the Complainant, NE#1 was firm but repeatedly referred to him as “sir.”

Based on my review of the record and, specifically, the ICV, I do not find sufficient evidence to establish that NE#1 engaged in unprofessional behavior. The Complainant was argumentative at the beginning of the stop and NE#1 was required to give him the same commands repeatedly. While the Complainant may have believed in good faith that the stop was unwarranted, I find that NE#1 believed with equal good faith that the stop was legally supported. I find that her tone was firm and that she, at times, used a higher than normal volume of voice, but I do not find that either establishes a violation of policy. Accordingly, I recommend that this allegation be Not Sustained – Unfounded.

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