



## CLOSED CASE SUMMARY

ISSUED DATE: JULY 30, 2018

CASE NUMBER: 2018OPA-0166

### 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)

**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)

***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 engaged in a traffic stop of his vehicle and then arrested him for DUI.

### ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the OPA Auditor’s review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employees. As such, the Named Employees were not interviewed as part of this case.

### ANALYSIS AND CONCLUSIONS:

**Named Employee #1 - Allegation #1**

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

The Named Employees performed a traffic stop of the Complainant’s vehicle based on the fact that it appeared to have no rear license plate. The Complainant explained that he had just purchased the vehicle from a dealer and there was a temporary tag on a small window on the trunk lid. The vehicle had a dark tint and the windows had a film of dust/dirt on them, making it extremely difficult to see the temporary tag. When the Named Employees approached the vehicle and began interacting with the Complainant, they noticed the smell of alcohol emanating from inside. The Complainant first stated that it was his female passenger that had been drinking (she agreed) but the Named Employees also believed that the Complainant was intoxicated. They asked him to take Field Sobriety Tests (FSTs) and he agreed. After the conclusion of the FSTs, the Named Employees informed the Complainant that



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he had failed. He told them that he was not intoxicated but he refused to perform a breath test. He was then placed under arrest and transported to the precinct.

After he was taken into custody, the Complainant asserted that the initial stop and his later arrest were based on bias. Particularly, he asserted that these events occurred because he was a person of color. His passenger made the same allegation. A sergeant was notified of the allegation and spoke with both the Complainant and his passenger. The sergeant referred this matter to OPA and the instant investigation ensued.

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 entirety of the Complainant’s stop, detention, arrest, and the time he spent in custody was recorded on Department video. Based on my review of the video, there was clearly a basis for the stop. The temporary tag was very difficult to see – notably, I could not discern it on the video even after repeated watching. The Named Employees were entitled to pull the Complainant over to investigate this matter further. When they did, they smelled alcohol on both the Complainant and his passenger, which gave them reasonable suspicion to believe that the Complainant was DUI. Once they performed the FSTs and deemed that the Complainant had failed, this gave them probable cause to effectuate the arrest.

From my review of the record, including the video, I see no evidence establishing, as the Complainant asserts, that the officers’ conduct was based on bias. To the contrary, I find that they acted based on the facts and circumstances of this case, including their perception of the Complainant’s level of intoxication, coupled with their law enforcement training and experience. For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against both Named Employees.

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)**