



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 16, 2019

CASE NUMBER: 2018OPA-0618

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 (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:

It was alleged that the Named Employee subjected the Complainant to biased policing and that he was unprofessional.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Complainant alleged that Named Employee #1 (NE#1) subjected him to biased policing when he repeatedly harassed him. The Complainant specifically referenced July 3, 2018, as the date that he was being harassed by NE#1. He told OPA that NE#1 followed him to multiple areas, always parking nearby. At one point the Complainant called 911 to report this harassment. NE#1 was dispatched to that call. During that interaction, he requested that NE#1 call for a superior officer; however, instead of doing so, NE#1 told the Complainant that he was a superior officer. The Complainant stated that he then drove away.

Shortly thereafter, the Complainant observed NE#1 parked in a loading dock at a grocery store. The Complainant approached NE#1 with a pen and paper in order to, based on the Complainant’s account, get NE#1’s identifying information. NE#1 exited his patrol vehicle and approached the Complainant. The Complainant alleged that NE#1 pointed his firearm at him. However, the video showed that, at that time, NE#1 drew his firearm from his holster and held it at the low ready. The video established that NE#1 never pointed his firearm at the Complainant. The Complainant backed from him and walked away. NE#1 returned to his patrol vehicle and drove out of the loading dock. He pulled out of the grocery store parking lot and parked on the street, where he again interacted with the Complainant. A Sergeant responded to the scene and spoke with the Complainant. The Complainant alleged that NE#1 had engaged in misconduct, including harassing him. The Sergeant provided the Complainant with NE#1’s name and badge number. The Sergeant also initiated this OPA complaint on the Complainant’s behalf.

NE#1 told OPA that he had previously contacted the Complainant outside of a known drug location. NE#1 interacted with the Complainant when he was sleeping in a car outside of the property early in the morning and offered him services. NE#1 stated that, on July 3, he recognized the Complainant’s car. He saw that the Complainant stopped and



idled in a number of locations. NE#1 continued to follow him. NE#1 believed that the Complainant was acting suspiciously and thought he could be potentially car prowling. NE#1 explained that he felt the Complainant could be car prowling because he was driving as if he was looking for a parking space, but then drove past open places to park. NE#1 also told OPA that the area in which the grocery store was located was one of the most active prowling locations based on South Precinct statistics (those statistics were provided to OPA).

NE#1 stated that he observed the Complainant park at a gas pump, but said that the Complainant did not get out of his vehicle and did not pump gas. NE#1 observed him for a moment and then left. NE#1 then heard the call come over the radio regarding the Complainant's request for contact. When NE#1 approached the Complainant, the Complainant told him that he called for a "superior" officer, not NE#1. NE#1 responded that he was a superior officer. NE#1 asked if the Complainant wanted another officer to come to the scene and the Complainant said that he did. NE#1 told him that another officer was coming. NE#1 then questioned the Complainant about whether he was actually getting gas and mentioned his suspicion that the Complainant was "trolling." The Complainant again stated that he was seeking a superior officer, NE#1 asked him whether he wanted a Sergeant to come to the scene. When the Complainant did not respond, NE#1 asked him a second time. The Complainant again did not respond and NE#1 called in the Complainant's request for a Sergeant and left the scene.

NE#1 recounted that he knew from RMS that the Complainant was a MMA fighter and that the Complainant was less than half NE#1's age. He was also aware from the radio traffic that the Complainant self-reported that he had a knife and machete in his vehicle. NE#1 stated that he was parked in the loading dock when the Complainant approached him. NE#1 told OPA that he was concerned that he could be ambushed and he drew his weapon when he stepped out of the car for that reason. The video captured NE#1 tell the Complainant to step back. NE#1 stated that he was concerned that the Complainant could be armed. The Complainant indicated that he wanted NE#1's identifying information. NE#1 stated that he would get the Complainant that information but that he wanted the Complainant to move back. At that time, NE#1 mentioned the knife to the Complainant. The Complainant told NE#1 that the knife was in his car. NE#1 mentioned that the knife was in the Complainant's lunge area and then offered to frisk him. The Complainant told him to do so but it appeared that NE#1 stated in response: "I don't need to frisk you." Later during that interaction, NE#1 told the Complainant that he was not his "bro." He then gave the Complainant his business card and stated: "you have a good day. Don't be out here car prowling." NE#1 ended the conversation, left the scene, and did not interact with the Complainant again.

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.*)

Whether NE#1's suspicions of the Complainant's behavior were legitimate and regardless of whether he was professional in his dealings with the Complainant, there is insufficient evidence to establish that NE#1's actions were improperly motivated by the race of the Complainant. Instead, I find that NE#1 based his actions on his perceptions of the Complainant's conduct, whether warranted or not. As such, I recommend that this allegation be Not Sustained – Unfounded.

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



Named Employee #1 - Allegation #2

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

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.*)

OPA is concerned by NE#1’s statements and conduct during this incident. For example, NE#1 knew or should have known that the Complainant’s initial 911 call concerned NE#1 and that he was seeking an officer to whom he could report NE#1’s conduct. However, NE#1 still, for some unclear reason, self-dispatched to the call. Given their prior interactions and given that NE#1 was aware of the Complainant’s MMA experience and self-reported weapon possession, he chose to respond to an incident that had the potential to escalate. Moreover, as discussed above, the Complainant was clearly seeking to speak to another officer, not NE#1.

Moreover, when NE#1 responded to the call and interacted with the Complainant, the Complainant told him that he did not want to speak with NE#1 and wanted a superior officer. Again, NE#1 knew or should have known that the Complainant was asking for a supervisor, not an officer with skills that were superior to NE#1’s. NE#1’s statement to the Complainant that he was a superior officer was unhelpful and served no legitimate law enforcement purpose. It may be that NE#1’s skills are superior to most other SPD officers, but, knowing this, NE#1 should not have felt the need to prove that to the Complainant. Instead, NE#1 should have just called a supervisor and walked away. I do not understand why NE#1 did not do this and, instead, felt it necessary to engage in this manner with the Complainant. When he did not do so, he set up another interaction between him and the Complainant, which again had the potential to escalate into violence. Indeed, NE#1 felt that this was enough of a possibility that he withdrew his firearm.

Lastly, NE#1 engaged in another adversarial conversation with the Complainant when he was providing the Complainant with his identification. This included telling the Complainant that he was not his “bro.” Again, this simply seemed unnecessary under the circumstances.

In OPA’s opinion, no single thing that NE#1 said rose to the level of a violation of this policy, even if the totality of his statements and demeanor were close to the line. Notably, he did not use profanity towards the Complainant, and his express words were not derogatory or contemptuous. That being said, OPA is concerned with NE#1’s approach to this situation and, most notably, his failure to call for a supervisor when he knew that this was what the Complainant was requesting. As such, OPA recommends that NE#1 receive the below Training Referral.

- **Training Referral:** NE#1 should receive retraining concerning the elements of SPD Policy 5.001-POL-10 and the requirement that he conduct himself professionally when engaging in law enforcement activity. This is the second Training Referral that NE#1 has been issued for professionalism. Moreover, he has also received on Sustained professionalism finding. As such, OPA recommends that he receive more substantial training on professionalism and concerning the Department’s expectations of his conduct. OPA suggests that this



training be conducted either by the Training Unit or at the Washington State Criminal Justice Training Commission, but leaves this decision to NE#1's chain of command. In addition, NE#1's chain of command should watch the video of this incident with him and discuss its perspective concerning NE#1's professionalism and should counsel NE#1 concerning how he may have alternatively approached this situation. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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