



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 25, 2019

CASE NUMBER: 2019OPA-0027

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 2. Employees Must Adhere to Laws, City Policy and Department Policy (Pre-Text Stop)	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)

Named Employee #3

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 #4

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 #5

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Training Referral)
# 2	8.400 - Use of Force Reporting and Investigation 8.400-TSK-4 Use of Force – Responsibilities of the Sergeant During a Type I Investigation	Not Sustained (Training Referral)
# 3	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 biased policing during a traffic stop. The Complainant further alleged that the traffic stop at issue was based on pretext. Lastly, it was alleged that the on-scene supervisor, Named Employee #5, did not report an allegation of potential serious misconduct to OPA and did not properly investigate the force used during the incident.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

Named Employee #1 (NE#1) effectuated a traffic stop of a vehicle. NE#1 reported that he observed “white blinking lights in the cargo area of the vehicle.” NE#1 ran the vehicle’s license plate and determined that the Complainant was the registered owner. This check further revealed that the Complainant’s driver’s license was suspended.

After the vehicle was stopped, NE#1 approached and contacted the male driver. NE#1 reported that, after doing so, he smelled marijuana. NE#1 called for a DUI officer because he believed that the male driver was potentially impaired. The male driver provided his personal information and, during a subsequent records check, NE#1 determined that the male driver had an open felony warrant. NE#1 asked the male driver to exit the vehicle but he initially refused to do so.

During this time, the Complainant, who was seated in the passenger seat, accused NE#1 of being a “racist.” The Complainant specifically stated the following to the male driver regarding NE#1’s basis for the stop: “He's fucking with you man, driving while black.” NE#1 called other officers and a supervisor to the scene. These individuals included the other Named Employees in this case. After those backing officers arrived and approximately 30 minutes after being first asked to exit the vehicle, the male driver ultimately did so and was taken into custody.

The supervisor, Named Employee #5 (NE#5), discussed the basis for the stop with both the Complainant and the male driver. The Complainant reiterated her allegations of bias to NE#5. The male driver did not make an allegation of biased policing. The Complainant requested that her bias complaint be forwarded to OPA and NE#5 ensured that this was done. As a result, OPA initiated this investigation.

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.*)

Based on OPA’s investigation – which included a review of Department video, a reading of the documentation and reporting generated, and the interviews of the Complainant and NE#5 – there is no evidence supporting the Complainant’s allegation of bias. There was a lawful basis to effectuate the stop and insufficient evidence to



establish that the male driver's race had any impact on NE#1's decision-making. Moreover, there is nothing in the record supporting a finding that the other Named Employees engaged in biased policing in any respect. As such, I recommend that this allegation be Not Sustained – Unfounded as against all of the Named Employees.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy (Pre-Text Stop)

SPD Policy 6.220-POL-9 precludes the use of a traffic violation to investigate unrelated crimes. The policy defines "pretext" as where an officer stops "a suspect for an infraction to investigate criminal activity for which the officer has neither reasonable suspicion nor probable cause." (SPD Policy 6.220-POL-9.) The policy explains that pretext stops are prohibited by law. (*Id.*) It further explains that: "Officers must actually, consciously, and independently determine that a traffic stop is reasonably necessary in order to address a suspected traffic infraction." (*Id.*)

Based on OPA's review of the video, there were blinking lights at the rear of the Complainant's vehicle at the time of the stop. As such, the stop was lawfully effectuated. Moreover, records reviewed by OPA confirmed that the Complainant's driver's license was, in fact, suspended at the time. In OPA's opinion, the video did not reveal any questioning by NE#1 during the stop that supported a determination that his law enforcement action during this incident was based on pretext. While NE#1 eventually called for a DUI officer, this was done once he smelled marijuana after the stop was already effectuated. This does not amount to pretext in any respect. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegations #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)**

Named Employee #3 - Allegations #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)**



Named Employee #4 - Allegations #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)**

Named Employee #5 – Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

SPD Policy 5.002-POL-5 requires supervisors who become aware of a potential policy violation to investigate or refer the allegations depending on their severity. Minor allegations of misconduct may be investigated by a supervisor, while allegations of serious misconduct – such as purported biased policing – must be referred to OPA. (SPD Policy 5.002-POL-5.)

The Complainant made a bias allegation to NE#5 and he ultimately reported that allegation to OPA. In the OPA referral that he generated, NE#5 wrote that the bias allegation was against NE#1. However, Department video reflected that the Complainant asserted that she believed that all of the Named Employees engaged in biased policing during this incident.

At his OPA interview, NE#5 explained that he did not make OPA referrals against the other Named Employees because they were not involved in the traffic stop. He stated that, after this incident was concluded, he realized that he should have included all of the Named Employees in the OPA referral. He attributed this to “inexperience” and denied that he was trying to cover up any misconduct.

OPA believes that this was a mistake and, while NE#5 should have included all of the Named Employees in the OPA referral, the failure to do so is better addressed by retraining. OPA notes that NE#5 has done an exemplary job since being promoted to Sergeant and I believe that the conduct at issue here is part of the experience and process of learning a new position. As such, OPA recommends that NE#5 receive the below Training Referral.

- **Training Referral:** NE#5 should be reminded by his chain of command of the requirement that he refer allegations of potential serious misconduct to OPA. No retraining is recommended by OPA unless his chain of command deems it necessary. This counseling and any retraining provided should be documented and this documentation should be maintained in an appropriate database.

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



Named Employee #5 – Allegation #2

8.400 - Use of Force Reporting and Investigation 8.400-TSK-4 Use of Force – Responsibilities of the Sergeant During a Type I Investigation

OPA's investigation indicated that NE#5 did not complete several of the steps required of a Type I investigation. NE#5 explained at his OPA interview that this was not intentional and was based on his learning how to conduct such investigations.

OPA commends NE#5 for recognizing the shortcoming of his force investigation and, as with Allegation #1 above, believes that this matter is best addressed by retraining. Accordingly, OPA recommends that NE#5 receive the below Training Referral.

- **Training Referral:** NE#5 should receive additional training from his chain of command concerning the requirements of a Type I investigation. This retraining should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #5 – Allegation #3

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)**