



## ***CLOSED CASE SUMMARY***

ISSUED DATE: JANUARY 27, 2020

CASE NUMBER: 2019OPA-0574

### **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 6. Employees May Use Discretion	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:**

The Complainant alleged that the Named Employee seized his license plate without a legal basis to do so. The Complainant further alleged that the Named Employee targeted him for enforcement because of his race.

### **SUMMARY OF INVESTIGATION:**

Named Employee #1 (NE#1) was in a parking lot when he observed a car with improper tabs. He ran the license plate of the car and determined that it did not match the vehicle he observed. Specifically, the license plate returned to a Volkswagen and the car was a BMW. NE#1 parked his patrol vehicle, exited, and approached the car. At that time, he observed the Complainant, who was standing by the car. NE#1 looked for a license plate at the front of the car. The Complainant, who was on the phone, asked if he could "help" NE#1. In response, NE#1 told the Complainant that he would like to speak with him when the Complainant had a second. The Complainant replied: "I don't have a second." NE#1 said: "Okay. I'll just wait here." The Complainant got off of the phone and engaged with NE#1. NE#1 asked the Complainant why his car's license plate did not come back to the vehicle. The Complainant told NE#1 that he had just purchased the car. NE#1 stated: "Okay. I'm just confused. It's not like you're in trouble right now. I'm just trying to figure out why it's like that." NE#1 asked the Complainant whether he thought it was strange that the license plate did not match the vehicle. The Complainant told NE#1: "You've got to give me some room, because I'm a Black man in America interacting with a cop. I'm nervous." NE#1 clarified with the Complainant why he was nervous. The Complainant responded: "I'm a Black man in America interacting with a cop. That's why I'm anxious."

NE#1 asked the Complainant if he would give him a second to figure out what was going on. The Complainant shook his head no and said: "I'll just walk home." The Complainant also asked if he was "free to go." NE#1 said that he was. NE#1 then returned to his patrol vehicle. The Complainant approached NE#1 and asked him to search the car. NE#1 said that he was not going to do that. He told the Complainant that he was going to run the car's VIN and, if it checked out, NE#1 was going to leave. The Complainant stated: "I wish I could trust you, but I can't. Because of statistics, I can't." NE#1 said that he was sorry that Complainant felt that way and the Complainant replied that NE#1 should be sorry that it was that way and referenced negative contacts between Black people and the police.

After conducting further investigation, NE#1 removed the Complainant's license plate and took it into custody. The Complainant again approached NE#1 and NE#1 tried to ask the Complainant a question. The Complainant told NE#1:

"I'm not going to answer any of your questions." NE#1 replied that this was the Complainant's right and explained his confusion regarding the discrepancy he identified between the license plate and the Complainant's car. After a brief discussion, the Complainant said that he knew that he was going to have a negative interaction with NE#1, that he could not go to work now, and that NE#1 had placed a burden on him. NE#1 told the Complainant that it was illegal to drive with the wrong license plate. The Complainant replied:

Good for you. Do it. I'm sure you can walk around this whole damn fucking parking lot and find people doing illegal stuff, but it wouldn't necessarily have to be a Black man though. You could find someone else doing something illegal. You find our illegal all the time. So, make sure you hurt my ability to make money...

The Complainant then walked away and ended his interaction with NE#1. NE#1 subsequently left a voice message for the individual who he believed to be the owner of the license plate asking for a call back so that the plate could be returned.

The Complainant later initiated this complaint with OPA. The Complainant did not believe that NE#1 had a lawful basis to run his license plate. He also felt that NE#1 singled him out because of his race. The Complainant asserted that NE#1 should have approached him with the lens of helping him rather than assuming that he had committed a crime. This OPA investigation ensued.

During its review of the report generated by NE#1 and the Body Worn Video (BWV) of the incident, OPA verified that NE#1 initially ran the Complainant's license plate because the car did not have proper tabs. OPA further determined that, when NE#1 ran the license plate, he included an "F" as the third letter of the license plate when the third letter was actually an "E." This caused the license plate to return to a different vehicle and owner. The BWV reflected that the car's license plate holder partially obscured the "E," which could have reasonably caused NE#1 to perceive the letter to be an "F."

OPA interviewed NE#1. NE#1 said that he ran the license plates for the Complainant's car prior to observing the Complainant in the near vicinity. As such, he contended that he did not know the Complainant's race at the time he decided to take law enforcement action. He indicated that approximately 30 seconds elapsed from the time he first observed the tabs to the time he got out of his vehicle to further inspect the license plate. He told OPA that the parking lot where the Complainant's car was parked was a place in which stolen vehicles were often abandoned. He said that the car was not parked property that the Complainant owned and, as such, the Complainant's vehicle was open to public inspection. NE#1 described his interaction with the Complainant as being negative from the outset. He opined that the Complainant "did not like" him and stated that the Complainant refused to answer his questions and "stormed off." NE#1 denied that he seized the plates from the Complainant's vehicle or targeted the Complainant because of his race.

OPA also questioned NE#1 about his error in running the license plate. NE#1 appeared to be genuinely surprised and confused by this question. In response to OPA's line of inquiry, he stated: "I'm very shocked. And I'm surprised that I didn't see that as I was taking the plate off. That's nuts..."

## **ANALYSIS AND CONCLUSIONS:**

### **Named Employee #1 - Allegations #1**

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

As indicated above, the Complainant alleged that he was targeted for enforcement by NE#1 because of his race.

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.*)

At his OPA interview, NE#1 denied that he improperly targeted the Complainant due to his race or that the actions he ultimately took were based on bias. NE#1 explained that, at the time he first saw the Complainant's car, the Complainant was not in the near vicinity and he did not know the race of the owner. This appears to be supported by the BWV and In-Car Video for this incident. OPA's investigation did not uncover any evidence suggesting, contrary to NE#1's assertions, that he engaged in biased policing. As such, and when applying the requisite burden of proof, OPA cannot determine that NE#1 acted contrary to this policy.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

#### **Named Employee #1 - Allegation #2**

##### ***5.001 - Standards and Duties 6. Employees May Use Discretion***

While NE#1 had a legal basis to investigate the status of the Complainant's license plate given the lack of proper tabs, the evidence is clear that NE#1 was incorrect when he seized the plate. As set forth above, NE#1 entered one wrong letter that caused the license plate to return to another owner and car.

As indicated in SPD Policy 5.001-POL-6, "[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment." This policy further states that "[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed." (SPD Policy 5.001-POL-6.)

OPA ultimately finds that, even though NE#1 seized the Complainant's license plate in error, this did not constitute an abuse of discretion warranting a finding of a policy violation. Notably, the BWV reflected that, at the time he ran the license plate, it was partially obscured by the license plate holder. The license plate holder appeared to cut off the bottom of the "E" and made it look as if it was an "F." While, as NE#1 indicated at his OPA interview, he should have caught this when he removed the license plate, the failure to do so was a mistake and not intentional misconduct. In addition, after seizing the plate, NE#1 called who he thought to be the correct owner, indicating that he believed that he was doing the right thing. Lastly, from OPA's perspective, NE#1 was genuinely surprised and contrite about this mistake, which provides further evidence of a lack of intent on his part to engage in misconduct.

In reaching this finding, OPA recognizes how frustrating this must have been for the Complainant and the inconvenience this caused him. However, in OPA's perspective, the appropriate remedy is proceeding through the City claims process, not discipline.

For the above reasons, OPA recommends that this allegation be Not Sustained and issues the below Training Referral.

- **Training Referral:** NE#1's chain of command should counsel him concerning this incident and discuss this matter from the perspective of the Complainant. Even though it is clear that NE#1 made a mistake, he should be counseled to verify that he has the correct license plate prior to seizing it, including double checking the plate number. This counseling and any associated retraining should be documented, and this documentation should be maintained in an appropriate database.

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