



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 1, 2020

CASE NUMBER: 2019OPA-0736

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)

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 stopped his vehicle and temporarily detained him based on bias.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the review and approval of the Office of Inspector General for Public Safety, 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 - Allegations #1

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

Officers responded to a drive-by shooting in which two people were injured. The name of the suspect was provided. The officers also received a description of the suspect. Specifically, they were notified that he was a Hispanic male approximately 30-40 years old and that he only had one leg. A DOL photograph was disseminated to the officers. They were informed that he had been wearing a Seattle Seahawks hat and a black t-shirt with an image on it. Lastly, the officers learned that the suspect was driving a black BMW sedan and that the vehicle was not registered to the suspect.

Named Employee #1 (NE#1) was notified of the above information. He observed a black BMW sedan approximately ¼ of a mile from where the crime occurred. At this time, around 11 minutes had elapsed from the time of the shooting. NE#1 described the driver was a light-skinned male and believed that he was approximately 30-40 years old. NE#1 saw that the male – who was later identified as the Complainant – was wearing a black t-shirt with a logo on it but he could not determine what the logo was from his vantage point. Lastly, given that the Complainant was seated in the car, NE#1 could not discern whether the Complainant was missing a leg.

Another officer drove up and NE#1 and the other officer discussed whether the Complainant was the suspect. NE#1 and the officer talked about the Complainant's skin tone and whether it matched the suspect's description.

NE#1 asserted that the Complainant had a similar skin tone to the suspect and stated that he believed that the Complainant looked Hispanic. The other officer asserted that, in his opinion, the Complainant appeared to be Black. The officers also went over the DOL picture that showed the suspect as having hair and noted that the Complainant, appeared to them, from their quick glance, to be bald. NE#1 learned that the vehicle was registered in the Complainant's name; however, this was consistent with the information that the suspect was driving a car belonging to someone else.

After further discussions with the other officer, NE#1 concluded that he had a sufficient basis to conduct a stop of the vehicle. He activated his emergency lights and siren and, with other officers, pulled the Complainant over. The officers conducted a high-risk traffic stop. As part of this stop, they instructed the Complainant to turn off his car and ordered him to exit at gunpoint. Very soon after the Complainant got out of the car, the officers determined that he was not the suspect. NE#1 holstered his firearm. He approached the Complainant and explained why he had been stopped. NE#1 also told the Complainant that a supervisor was coming to the scene to speak with him. The Complainant was clearly upset and told NE#1 how afraid the stop made him.

The Complainant referenced the description of the suspect and the Complainant asserted to NE#1 that he stopped the first Black man he saw in a BMW. NE#1 attempted to explain what occurred but the Complainant got back into his car and drove off of the roadway to await the supervisor. The Complainant subsequently informed NE#1 that he was going to get a haircut and drove to a barbershop. NE#1 followed him there in order to try to convince him to wait for a supervisor. The Complainant told NE#1 that he did not want to talk to him. He later exited the barbershop and asked NE#1 for a business card, which NE#1 provided. The Complainant did not end up speaking with a supervisor and NE#1 left the scene. NE#1 later informed his supervisor of the Complainant's statements regarding the stop and the supervisor referred this matter to OPA.

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 review of the evidence – most notably, the BWV, it appears to OPA that NE#1 was acting in good faith when he stopped the Complainant's car. Listening to the statements he made in real-time, it is evident that he believed that the Complainant could be the suspect. This was due to the similar car being driven by the Complainant, the proximity in time and place to where the shooting occurred, and NE#1's perception that an individual who he believed could be Hispanic and who had a black t-shirt with a logo on it was driving. When evaluating the pictures of the suspect and the Complainant, there are more differences than similarities. However, NE#1 must be evaluated on the decisions he made in a matter of minutes and without the benefit of hindsight. Notably, reasonable suspicion is not a high standard and OPA finds that, while a close call, it was met here. In any event, even though NE#1 ultimately stopped the wrong person and even had he done so without a sufficient legal basis, this would not result in a finding of bias. Indeed, there is a lack of evidence in the record suggesting that bias played any part in NE#1's decision-making and taking of law enforcement action against the Complainant.

In reaching this finding, OPA is extremely sympathetic to what the Complainant experienced. He must have been terrified by the stop and OPA does not fault him for being angry and for believing that NE#1 engaged in misconduct. However, when applying the requisite burden of proof, OPA concludes that NE#1 did not violate the Department's biased policing policy. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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