



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 30, 2020

CASE NUMBER: 2019OPA-0745

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 arrested him because of his race.

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 Employee. As such, the Named Employee was not interviewed as part of this case.

In addition, during its intake investigation, OPA determined that NE#1 may have failed to report an allegation of bias to a supervisor, as well as that he may have acted contrary to the Department's professionalism policy when he used excessive profanity while speaking with the Complainant. These matters were deemed better handled by the chain of command and, accordingly, were sent back to be addressed as a Supervisor Action.

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) observed an individual riding a bicycle on a city street without a helmet and while wearing a "scream" mask. NE#1 told the individual – who was later identified as the Complainant – that he should be wearing a helmet. The Complainant subsequently sped away on his bicycle through traffic and without obeying traffic signals and controls. NE#1 told the Complainant to stop but the Complainant did not do so. The Complainant eluded NE#1 for a period of time but NE#1 was able to relocate him. NE#1 ultimately took the Complainant off of his bicycle in a controlled manner and held him on the ground. The Complainant's mask was taken off of him and NE#1 recognized him. The Complainant was handcuffed and was taken into custody. At that time, the Complainant asserted that NE#1 was targeting him and that he had been subjected to biased policing.

NE#1 did not report the Subject's allegation of bias to a supervisor at that time. The allegation was later discovered during the review of NE#1's force by the North Precinct Administrative Lieutenant. The Lieutenant ordered that the



bias allegation be documented in a Bias Review. The Lieutenant also made an OPA referral. This investigation ensued.

As part of its investigation into the bias allegation, OPA tried to interview the Complainant through his criminal defense attorney. However, the criminal defense attorney did not respond to OPA. The Complainant later contacted OPA but declined to provide a recorded interview. He did, however, provide a written statement at a later date. In that statement, he again alleged that NE#1 was targeting and harassing him. He also asserted that NE#1 engaged in other misconduct and those claims were ultimately evaluated in a separate case.

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.*)

In order to evaluate the Complainant’s allegation of targeting and harassment, OPA reviewed the prior interactions between them. OPA determined that NE#1 had arrested the Complainant four times in the past year, all for open warrants. OPA reviewed the reports connected to those arrests and saw no indicia of bias or harassment. Notably, the Complainant has been arrested on nine other occasions and none of these involved NE#1, which weighs against a finding that NE#1 was targeting him.

OPA also reviewed the BWV for this incident. The BWV confirmed that NE#1 had a lawful basis to detain the Complainant. It further verified that the Complainant did not listen to commands to stop and rode away. Lastly, it did not appear from the BWV that NE#1 unfairly targeted the Complainant or that NE#1 knew who the Complainant was at the inception of the stop. Indeed, it appeared that NE#1 truly did not know it was the Complainant until the mask was removed. As such, there was no indication from the video that NE#1 engaged in biased policing.

Given the totality of the evidence, OPA finds an insufficient basis to conclude that NE#1’s conduct was due to bias. To the contrary, OPA finds that the Complainant’s conduct, not his race or membership in any protected class, was the reason for the law enforcement action taken against him. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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