



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 20, 2020

CASE NUMBER: 2019OPA-0746

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)

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)
# 2	1.020 – Chain of Command 7. Command Employees Take Responsibility for Every Aspect of Their Command	Not Sustained (Training Referral)

EXECUTIVE SUMMARY:

The Complainant alleged that SPD officers failed to properly investigate a traffic collision and found him at fault because of his race. He further alleged that Named Employee #1 was rude and unprofessional towards him.

SUMMARY OF INVESTIGATION:

The Complainant alleged that SPD officers failed to properly investigate a traffic collision and road rage incident that he was involved in. He said that the officers did not interview him fairly and took the side of the other motorist. He felt that the officers did so because the other motorist is Caucasian, and he is Latino. This investigation ensued.

OPA determined that Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were dispatched to the traffic collision. The CAD Call indicated that there were two vehicles involved in the collision and the motorists were arguing. The call further indicated that one of the motorists had threatened the other with a baseball bat.

NE#1 was the first to arrive. She contacted the other motorist and asked him what happened. The other motorist said that the Complainant was tailgating him all the way up a hill and, then they got to a straightaway, the Complainant sped around and slammed on his brakes. The other motorist said that this caused the collision and stated his belief that the Complainant was going to kill him. NE#1 asked the other motorist about a baseball bat and he said that he had part of an old broomstick. He explained that he brought it out because he thought the Complainant was going to kill him based on the Complainant's driving.

NE#1 then went to speak with the Complainant. He told NE#1 that he was driving on cruise control at 30 miles per hour when he was hit from behind by the other motorist. NE#1 began questioning the Complainant's account, including asking why the damage was to the passenger side of the Complainant's vehicle if the other motorist hit him from behind. When the Complainant attempted to respond to her inquiries, NE#1 said to him, "where's your confusion here," and explained why she felt the Complainant's account to be inaccurate. The Complainant stated that the other motorist increased his speed while behind the Complainant which caused the collision. NE#1 noted that speed would



not account for where the damage was on the car and said: "So here's what I think happened okay, and I want to see if you agree with me here 'cuz ultimately it matters what I think right?"

NE#1 then posed the scenario that the Complainant was passing the other motorist and when he merged back into the lane he was struck. The Complainant stated that he was not actively trying to get in front of the other motorist, but he ultimately passed him because the other motorist was not driving the speed limit. NE#1 asked if the other motorist struck the Complainant during the passing. The Complainant replied that he was already in front of the other motorist when the collision occurred and that it seemed that the other motorists grew upset. NE#1 replied: "I know, I know. I already know the story and I'm going to guess that I got it down pretty good. I was just confused why you weren't being honest with me at first on what you were doing on the road, right?" The Complainant clarified that his earlier statement to NE#1 was in response to whether he was struck from behind. NE#1 said "sure, okay," and then walked away. NE#1 did not ask the Complainant any questions about the other motorist's brandishing of the broom stick.

NE#1 walked back over to the other motorist and told him that she believed the Complainant was at fault and that she would relay that to the other responding officers. NE#1 then re-engaged with the Complainant and told him that he was likely going to be cited. The Complainant tried to clarify why he was being cited and stated that there were no signs prohibiting passing in that location. NE#1 stated: "I didn't say you couldn't pass, did I?" She then told the Complainant: "No, what I'm saying is, if you pass somebody and you don't make sure that you have enough space to get in lane in front of them without it resulting in a collision, that's going to be your fault that you got in an accident." The Complainant mentioned that he recorded dash-cam video; however, NE#1 did not follow up on that statement or ask him to provide her with the evidence.

NE#2 then responded to the scene. At the time, NE#2 was a Field Training Officer and was accompanied by a student officer. NE#2 and the student officer took over the call from NE#1. They spoke to both the Complainant and the other motorist. NE#2 did not ask the Complainant for the dash-cam footage. The Complainant told NE#2 that the other motorist struck his vehicle with a bat. However, neither NE#2 nor the student officer conducted a comprehensive investigation into the potential road rage incident.

The Complainant later contacted OPA and alleged that the Named Employees failed to thoroughly investigate this incident and took the side of the other motorist because the Complainant was Hispanic, and the other motorist was White. The Complainant pointed to his "broken English" and asserted that caused the Named Employees to credit the other motorist over him. The Complainant also alleged that NE#1 was unprofessional towards him. This investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

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.*)



The Complainant believed that NE#1's approach to this incident was based on her perception of his race. As the Complainant noted, he was Hispanic while the other motorist was White. From OPA's review of the BWV, OPA can see why he believed that this could be the case.

Indeed, based on a review of the BWV, OPA has concerns about how NE#1 approached this incident and how she interacted with the Complainant. While it very well might have been the case that the evidence supporting a finding that the Complainant was at fault, the way she treated him versus the other motorist was striking. When she spoke to the other motorist, she obtained his account without significantly probing anything he said. However, when she engaged with the Complainant, she immediately began questioning him, acted officiously, and told him that he was being dishonest.

As a general matter, it seems that it would have been more productive to actually get an uninterrupted account from the Complainant concerning what occurred and then to ask follow-up questions. However, NE#1 clearly had made up her mind concerning how the collision occurred before she said one word to the Complainant. Again, NE#1 might have been correct, but, at the very least, it gave the impression that she was disinterested in what he had to say and that she believed him to be a liar at the outset. This conclusion was supported by the fact that she asked the Complainant no questions concerning the alleged road rage and did not follow up on his offer to provide evidence in the form of the dash-cam video.

NE#1 was also dismissive of the fact that the other motorist had threatened the Complainant with a stick. Indeed, she spent virtually no time investigating a potential road rage incident and threatened assault.

Had NE#1 been the primary officer on the call, OPA would have found that she violated policy by conducting an inadequate investigation. OPA also concludes, as set forth below, that her professionalism during this incident was lacking. However, the evidence is ultimately insufficient to establish that her acts were based on bias, rather than on one incidence of substandard communication and investigation.

OPA notes that, in support of his allegation of bias, the Complainant pointed to his "broken English." However, from OPA's review of the BWV, he was able to clearly and fluently communicate with the officers and explain his side of the story, even though he was cut off by NE#1. Moreover, he had no issues communicating with the assigned OPA investigator. Aside from this, there is no other evidence proffered to prove bias and OPA notes that the standard of proof to establish this allegation is high.

For these reasons, and even though OPA shares the Complainant's concern with how this incident was handled, OPA recommends 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.*)

As discussed above, OPA believes that NE#1 was dismissive and aggressive towards the Complainant during this incident. This was made even more apparent based on the juxtaposition between how she treated the Complainant and the other motorist. Notably, she was deferential to the other motorist even though it was alleged that he threatened the Complainant with a bat and struck the Complainant’s car. To the contrary, she immediately questioned the Complainant’s account and accused him of being dishonest.

NE#1 did not believe that she violated policy and, instead, characterized herself as conducting a matter of fact investigation. While this may have been the case, OPA finds that she walked the line of unprofessionalism during this incident. OPA notes that this is the first case in which NE#1 has been a named employee. Moreover, there is no indication that she has been counseled in the past for lacking professionalism. Lastly, OPA recognizes that NE#1 is a newer officer. In some respects, this is concerning given her approach to this case and her demeanor during the incident. On the other hand, it could be the case that NE#1 will modulate her approach in future cases as she continues to develop experience. OPA hopes that this latter scenario is what occurs. To the extent that is not the case, future allegations of professionalism will be investigated and may result in Sustained findings and potential discipline. Here, however, OPA recommends that this allegation be Not Sustained and issues NE#1 the below Training Referral.

- **Training Referral:** OPA requests that the chain of command review this incident with NE#1, including watching the BWV. The chain of command should discuss NE#1’s approach to this incident and her demeanor towards the Complainant. The chain of command should provide guidance as to alternative approaches that could have been used that may have been more consistent with the Department’s expectations of professionalism. 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)**

Named Employee #2 - Allegations #1

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

NE#2 denied that he was biased during this incident and, like NE#1, he stated that he had no difficulty communicating with the Complainant and that the Complainant’s language proficiency had no bearing on the investigation.

For the same reasons as set forth above in the context of NE#1, OPA concludes that, even though the investigation conducted was flawed, NE#2 did not engage in biased policing. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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



Named Employee #2 - Allegation #2

1.020 – Chain of Command 7. Command Employees Take Responsibility for Every Aspect of Their Command

NE#2 responded to the scene with his student officer. In order to help the student officer learn, NE#2 volunteered to take over the collision from NE#1. NE#2 and the student officer received an overview of the incident from NE#1. They then commenced their investigation.

Ultimately, NE#2 and the student officer, like NE#1, failed to thoroughly investigate what occurred. Most notably, NE#2 and the student officer did not conduct any substantive inquiry into the road rage aspect of the incident, including failing to question the other motorist regarding striking the Complainant's car or making an effort to obtain dash cam video from the Complainant. Moreover, NE#2 and the student officer, like NE#1, credited the account provided by the other motorist and gave no credence to any of the information provided to them by the Complainant.

In addition, the report the student officer completed did not contain any detail concerning the Complainant's account of what occurred. The report further did not make any mention of the allegation of road rage or of the existence of dash cam video evidence. While NE#2 did not complete this report, as the FTO, he was ultimately responsible for its content.

SPD Policy 1.020-POL-7 requires that command employees, such as an FTO, take responsibility for every aspect of their command. Here, NE#2 failed to ensure that the student officer conducted a thorough investigation into this incident and also did not ensure that the student officer's report was complete. This being said, OPA finds that NE#2 was disadvantaged as he came into this incident late and relied heavily on the accounting of events provided by NE#1. This appeared to influence how he approached the incident and the course of the investigation. Given this, OPA believes that retraining rather than a Sustained finding is the appropriate result and issues the below Training Referral.

- **Training Referral:** OPA requests that the chain of command review this incident with NE#2 and, specifically, discuss the thoroughness of the investigation and of the report completed by the student officer. The chain of command should provide any retraining it deems sufficient. The retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

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