



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 29, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0410

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	15.150 - Narcotics II. Seizure of Assets A. Drug Money	Not Sustained (Lawful and Proper)

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 engaged in biased policing and violated policy when he impermissibly seized the Complainant's money and impounded his car.

SUMMARY OF INVESTIGATION:

The Complainant's car was stopped by an SPD Sergeant. Prior to the stop, the Sergeant observed the car driving erratically and committing a number of traffic infractions. The Sergeant believed that the driver was potentially DUI. He accordingly asked for assistance from Named Employee #1 (NE#1), who was experienced with DUI and narcotics investigations. The Sergeant activated his patrol vehicle's emergency lights and siren to effectuate the stop. The Complainant's car initially continued driving before stopping suddenly and pulling over. At that time, the Sergeant observed the passenger and the driver switch places.

The officers spoke with both the driver and the Complainant, who was then sitting in the passenger seat. The driver provided a false name and birthday and, after an extended discussion and her continuing to provide knowingly inaccurate information, she was arrested for false reporting. The officers determined the Complainant's identity. They also verified that he had an open \$50,000 warrant for a narcotics violation, as well as that his license was suspended. The Complainant was arrested for the warrant and was taken into custody.

At that time, the Complainant was searched incident to arrest by NE#1. During that search, NE#1 located a large amount of money in the Complainant's pocket. Given the denominations and condition of the money, NE#1's training and experience investigating narcotics crimes, and the Complainant's open narcotics warrant, NE#1 believed that the money was the fruits of narcotics transactions. NE#1 asked if the officers could search the car and the Complainant declined to provide consent. Accordingly, NE#1 made the decision to impound the car so that a search warrant could be obtained. The Complainant was subsequently transported from the scene by officers.



The Complainant later alleged that NE#1 engaged in biased policing when he seized the Complainant's money and impounded his car. The Complainant's argument was, had he not been Black, NE#1 would not have taken these actions. The Complainant also asserted that, even independent of bias, the seizure of the money and the impounding of the vehicle were improper. This investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant asserted that NE#1's decision to seize his money and impound his car constituted bias.

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.*)

From OPA's review of the BWV and the related documentation, there is no evidence supporting this contention. First, the video indicated that the initial stop of the Complainant's car was legally justified. Second, it is undisputed that the Complainant had an open drug-related warrant. Third, NE#1 was trained in investigating narcotics offenses. Fourth, based on his training and experience, NE#1 reasonably determined that the currency held by the Complainant was potentially the fruits of narcotics activity and that there could be additional evidence of such criminality in his vehicle. This last conclusion, which OPA finds to be determinative, is discussed more fully below.

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

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

Named Employee #2 - Allegation #1

15.150 - Narcotics II. Seizure of Assets A. Drug Money

SPD Policy 15.150(II)(A) governs when money believed to be used in narcotics transactions may be seized. Specifically, the policy permits seizure where: "(a) Probable cause exists to show the money can be traced to drug trafficking; or (b) The money was intended for the purchase of drugs." The policy instructs that, as a general matter, currency under \$500 should not be seized.

Here, NE#1 located approximately \$1,935 on the Complainant. NE#1 explained that, the denominations and condition of the currency, coupled with the Complainant's conduct during this incident and his open warrant for a drug crime, collectively provided probable cause to believe that the money was associated with narcotics transactions.

After evaluating the same evidence, OPA finds that this decision was legally supported. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**