



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 16, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0089

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 (Unfounded) |

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 | 5.001 – Standards and Duties 10. Employees Shall Strive to be Professional | 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 Employees pulled over her vehicle based on racial profiling and treated her unprofessionally during the traffic stop.

SUMMARY OF INVESTIGATION:

The Named Employees observed the Complainant's vehicle driving at a high rate of speed through downtown Seattle. They then watched the Complainant drive through a stop sign without stopping and swerve around another vehicle to do so. This conduct was captured on In-Car Video (ICV). The Named Employees subsequently effectuated a traffic stop of the Complainant's vehicle.

The Named Employees' interaction with the Complainant was recorded on Body Worn Video (BWV). The video showed that the Complainant was verbally aggressive at the inception of the stop, questioning why she had been pulled over. Early on during the stop, the Complainant appeared to spill coffee in her vehicle. The vehicle then began moving forward. Both Named Employees told the Complainant to stop, and Named Employee #2 (NE#2) hit the side of the Complainant's vehicle with her hand. They Complainant stopped driving forward.

After this, the stop continued to grow negative. The Complainant alleged to Named Employee #1 (NE#1), who was



standing by the driver's side window, that she was racially profiled. She also criticized NE#2 for striking her car, referring to her as a "bitch." The Complainant was not cooperative with either of the Named Employees, rolling up her window until an Acting Sergeant arrived.

When the Acting Sergeant spoke to her, the Complainant reiterated her belief that she was racially profiled and asserted that both of the Named Employees acted inappropriately during the stop. The Complainant asked the Acting Sergeant to make an OPA complaint on her behalf and he did so. This investigation ensued.

As part of its investigation, OPA reviewed the ICV and BWV. OPA also reviewed documentation generated by the officers, including a citation issued to the Complainant for reckless driving. Lastly, OPA interviewed the Complainant.

The Complainant stated that she felt she was racially profiled because she was treated like a "criminal" during the stop. She felt that both of the Named Employees spoke "down" to her. She was also upset that NE#2 struck her vehicle while the Complainant was trying to put it into park. She felt that the officers were going to break her window or pull a gun on her. Lastly, she did not like that the officers kept shining their flashlights into her car and in her face.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 – Allegation #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.*)

A review of both ICV and BWV conclusively disproves the Complainant's allegation that she was racially profiled. Specifically, the ICV showed her commit a traffic violation prior to her being pulled over. Given this, the officers had a legal basis to stop her. Moreover, from a review of the video, OPA could not tell what race the Complainant was at the time of the traffic violation. This almost certainly applied for the Named Employees as well given that it was evening and the Complainant's vehicle was moving at a high rate of speed.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#2.

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.) As discussed above, the Complainant alleged that the Named Employees acted unprofessionally when they spoke down to her, repeatedly shined their flashlights at her, and treated her like a criminal. She further asserted that NE#2 unprofessionally when she struck the Complainant's vehicle with her hand.



Based on a review of the BWV, OPA disagrees that the Named Employees violated SPD's professionalism policy during this incident.

First, the video does not support the conclusion that the Named Employees spoke down to the Complainant or treated her like a criminal. Both of the Named Employees were respectful during the traffic stop. To the contrary, the Complainant was extremely agitated and repeatedly criticized and insulted the officers, including referring to NE#2 as a bitch. Moreover, the officers were, in fact, investigating potential criminal behavior on the Complainant's part and were legally permitted to do so. OPA saw no evidence indicating that they treated her inappropriately during that investigation.

Second, it was dark outside during the traffic stop, the Complainant had just pulled her vehicle away from the officers, and she was acting aggressively towards them prior to closing her window. Given this, it was reasonable for the officers to shine their flashlights into the vehicle in order to ensure that the Complainant did not present a threat of harm to them. While the Complainant may have had no intent to cause them harm, the officers did not and could not have known that.

Third, NE#2 did not act unprofessionally when she struck the side of the Complainant's vehicle. At the time, the Complainant had begun rolling away from a traffic stop. This was abnormal and, frankly, dangerous behavior. OPA does not find NE#2's reaction under the circumstances to have been unreasonable.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#2.

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

Named Employee #2 – Allegation #1

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

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 – Allegation #2

5.001 – Standards and Duties 10. Employees Shall Strive to be Professional

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Unfounded.

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