



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 31, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0098

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	15.180 – Primary Investigation 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained (Lawful and Proper)
# 2	15.180 – Primary Investigation 5. Officers Shall Document all Primary Investigations	Not Sustained (Training Referral)
# 3	15.260 – Primary Investigation 4. Officers Take Enforcement Action in Reportable Non-Felony Collisions	Not Sustained (Lawful and Proper)
# 4	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)
# 5	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 failed to fully and adequately investigate and take enforcement action in a collision that she was involved in, that the Named Employee treated her unprofessionally, and that the Named Employee engaged in biased policing towards her.

SUMMARY OF INVESTIGATION:

The Complainant was involved in a traffic collision with a bicyclist. She called 911 and spoke to a call taker. Audio of the 911 call indicated that the Complainant and the bicyclist were arguing with each other. The call taker asked the Complainant whether they had exchanged information and the Complainant said that the bicyclist had not given her any information and was telling her that he did not have insurance. The call taker recommended that the Complainant remain in her vehicle while officers responded. However, the Complainant and the bicyclist continued to argue with each other. At one point, the Complainant told the call taker that the bicyclist was leaving the scene and going into the Columbia Center. She said that the bicyclist was a delivery driver and was parking his bicycle. The call taker asked the Complainant if it was possible that the bicyclist was trying to get away from her. The call taker noted that the interaction between the Complainant and the bicyclist was growing confrontational and asked her to try to calm the situation down. The call taker told the Complainant that she did not want her to be yelling and swearing at the bicyclist and remarked: "you're probably coming across as a little too aggressive with him." The Complainant said that she was back in her car.



Around a minute later, the Complainant told the call taker that the bicyclist was riding away. The Complainant said: "I'm following him. I'm backing up, I'm doing something illegal because I'm going down 5th Avenue." The call taker asked the Complainant if she was operating her vehicle in an illegal manner and the Complainant responded that she was not but that the bicyclist was trying to "force" her "hand." She clarified that she believed that the bicyclist was trying to get her to chase him and told the call taker that she observed the bicyclist ride through a red light. She alleged to the call taker that the bicyclist was using profanity towards her and that he called her the "N-word." They both stopped in the vicinity of the Yesler Bridge and the call taker told the Complainant to remain there. The Complainant confirmed that the bicyclist called her the "N-word." She stated that the bicyclist was taking photographs of her vehicle and that he walked up to her car "throwing his hands up in the air." She said that she did not know what he was getting out of his pockets. The call taker confirmed the Complainant's location. The call ended when the Complainant said that she believed the police were arriving.

As the call taker spoke with the Complainant, she documented the substance of their call using short form notes. These notes were reviewed by the responding officers, who included Named Employee #1 (NE#1). The notes characterized the Complainant as "very angry" and indicated that she was "swearing" at the bicyclist and the call taker. The notes further indicated that the Complainant "seems to be escalating the situation." The notes described that the bicyclist had gone into the Columbia Center "possibly to get away from the verbal confrontation." The notes indicated that both the bicyclist and the Complainant were proceeding down 5th Avenue with the Complainant potentially engaged in "illegal" activities. The notes lastly identified the location of the Complainant and the bicyclist under the Yesler Bridge.

The officers' response to the call was recorded on Body Worn Video (BWV). The BWV showed that NE#1 first spoke to the bicyclist and asked the Complainant to remain in the car. The bicyclist acknowledged that he was at fault during the collision. He told NE#1 that the Complainant was "extremely agitated" and rude to the 911 call taker. He said that he did not intend to leave the collision but that the Complainant "was very agitated and there was no moving forward with any kind of resolution." The bicyclist confirmed that he told the Complainant that he did not have insurance. NE#1 asked the bicyclist whether he called the Complainant the "N-word" and he denied doing so.

NE#1 inspected the rear of the Complainant's vehicle where the alleged damage was incurred. He stated aloud that he did not see any damage. NE#1 later photographed the vehicle.

NE#1 approached the driver's side window and spoke with the Complainant. At that time, the Complainant was relaying what occurred to another officer. NE#1 told her: "I looked at your car, there's no damage." The Complainant responded: "And you do autobody, that's your specialty?" NE#1 stated: "Do you want to take a look at the car and tell me what damage there is? Because I'm telling you right now there's no damage." The Complainant interjected: "I'm telling you do you do autobody? Because the car is dirty." They continued to discuss whether there was damage to the vehicle. NE#1 retorted: "And? My point? I have two eyes" and "I have my own two eyes. There's no damage."

NE#1 then pivoted and asked the Complainant about the bicyclist calling her the "N-word," stating: "Let's focus on that. That seems a bit more important." The Complainant again alleged that this occurred. NE#1 said that he would ask dispatch to play back the audio of the 911 call to see if the slur could be heard.

NE#1 returned to his vehicle and screened the incident with a Sergeant. He asked whether he had to complete a Police Traffic Collision Report (PTCR) or whether he could write an incident report and note the bias elements. He further stated that he did not know what he would photograph because there was no apparent damage to the vehicle and he



told the Sergeant that he did not know what he would cite the bicyclist for. NE#1 did not mention that the bicyclist left the scene of the collision.

NE#1 spoke to the bicyclist and informed him that he was going to be cited for failure to maintain speed. He then spoke with the Complainant and asked her for her insurance information. She asked NE#1 why she had to provide this information when the bicyclist did not have insurance. NE#1 told her that bicyclists were not required to have driver's insurance.

The Complainant raised the bicyclist leaving the scene of the accident. NE#1 responded: "Based on the information and your aggressive behavior he..." The Complainant cut him off and said: "Oh, I'm the aggressor when he's the one who ran into the back of my car?" NE#1 replied: "have you not been listening to any of the word that have been coming out of my mouth, ma'am? I've been telling you that I've determined him to be at fault for the incident..." The Complainant interrupted and questioned: "Why am I the aggressor?" NE#1 told the Complainant: "You're not the aggressor, you are being aggressive towards him." He further stated that the bicyclist left the scene because of how aggressive she was being. NE#1 then asked the Complainant: "Do you want me to file this report or not?" The Complainant raised concerns with NE#1's interpretation of the facts and he offered to call a supervisor to the scene. He ultimately provided her with a supervisor's contact information. Shortly thereafter, the incident concluded and the officers and involved parties left the scene.

The Complainant later filed an OPA complaint concerning this incident. She alleged that NE#1 failed to properly investigate this incident, took the bicyclist's side, and treated her as if she was the responsible party. She further contended that this was based on NE#1's bias in favor of the bicyclist, who was White, and against her given her status as a Black woman. She lastly alleged that NE#1 was unprofessional during his interactions with her. This investigation ensued.

OPA's investigation included reviewing the 911 call audio and the CAD Call Log, the documentation generated by the involved officers, and the BWV. OPA also interviewed the Complainant and NE#1.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

15.180 – Primary Investigation 1. Officers Shall Conduct a Thorough and Complete Search for Evidence

SPD Policy 15.180-POL-1 requires that officers conduct a thorough and complete search for evidence. This allegation was alleged here for two main reasons: first, for NE#1's potential failure to appropriately assess the damage to the Complainant's vehicle; and second, for NE#1's potential failure to fully investigate the bicyclist's leaving the scene after the collision.

With regard to the damage to the Complainant's vehicle, NE#1 examined the rear of the vehicle and took photographs. In his assessment, the damage was minor and virtually imperceptible. The photographs taken by NE#1 showed no clear evidence of damage. However, the Complainant later provided OPA with an estimate from an autobody repair company for over \$2,000 worth of damage. Photographs taken after the fact showed what appeared to be minor scrapes. OPA interviewed a representative of the autobody repair company who said that the damage was minor but that the estimate was high because of the potential need for parts. She said that the work would probably only take an hour but that they would not know what parts/repairs were needed until they could take the bumper off.



From a review of the totality of the evidence, OPA does not find NE#1's initial belief that the damage was minor to be unreasonable. Moreover, while admittedly a lay perspective, OPA finds the estimate provided by the autobody repair company to be extraordinarily high for what appears to be scratches. Accordingly, OPA does not believe that NE#1's investigation into the damage was incomplete or that his initial assessment that the damage was minor was unreasonable.

With regard to the bicyclist leaving the scene, OPA finds that NE#1 fully investigated this matter. While OPA believes that NE#1 could have more fully documented the bicyclist's conduct and why, in NE#1's opinion, it did not rise to the level of a criminal offense in his report, that concern is addressed in the context of Allegation #2, below.

For the above reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

15.180 – Primary Investigation 5. Officers Shall Document all Primary Investigations

SPD Policy 15.180-POL-5 requires officers to document all primary investigations in report. These reports must be complete, thorough, and accurate.

Here, OPA finds that NE#1's report was incomplete with regard to the bicyclist leaving the scene. The sole discussion of this issue in the report was the following: "[The bicyclist] told me that he was not attempting to leave the scene of an accident but that due to [the Complainant's] aggressive nature towards him, that was documented in call notes, and being extremely agitated, he decided to 'keep moving.'"

As discussed below, OPA does not necessarily disagree with NE#1's decision to not cite the bicyclist for leaving the scene. However, OPA believes that he should have more fully explained this decision in the report. NE#1 should have explained whether the bicyclist's conduct met the elements of SMC 11.56.420. Specifically, NE#1's report would have been strengthened by an analysis of whether or not the bicyclist leaving the scene and also refusing to provide identifying information to the Complainant violated the law, as well as why NE#1 felt that not citing the bicyclist was appropriate given the lack of any explicit affirmative defenses set forth in the ordinance. It also would have been beneficial to more fully address the bicyclist's purported fear of the Complainant and whether it rose to a level that warranted him leaving the scene.

While OPA finds NE#1's report to be incomplete, OPA does not find that it was so deficient as to violate policy. Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should discuss his report and the deficiencies outlined above. NE#1 should be reminded that his reports must be thorough, complete, and accurate, and counseled to more closely comply with this policy moving forward. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #3



15.260 – Primary Investigation 4. Officers Take Enforcement Action in Reportable Non-Felony Collisions

SPD Policy 15.260-POL-4 requires officers to take enforcement action in reportable non-felony collisions. Where probable cause exists for an offense, they must issue a citation.

At his OPA interview, NE#1 stated that he complied with this policy as he did, in fact, cite the bicyclist. He did not believe, however, that he was required to also cite the bicyclist for leaving the scene. He did not feel that the evidence supported such a citation.

In assessing NE#1's compliance with this policy, OPA notes that, as he stated, he did issue a citation. OPA further does not read the policy as expressly requiring NE#1 to have issued a citation for every conceivable offense, but only that he determine fault, which he did.

OPA further does not find unreasonable NE#1's decision to not cite the bicyclist for leaving the scene. Based on the evidence available to him, NE#1 plausibly could have determined that the bicyclist left the scene for safety reasons, particularly given that the bicyclist remained at the scene for a period of time before initially departing and then again waited for police to arrive at the Yesler Bridge. As such, OPA does not find that NE#1's choice concerning this citation violated policy.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #4

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.*)

After a review of the BWV, OPA concludes that NE#1 could have handled his interaction with the Complainant better in a number of respects. First, NE#1's initial comment to the Complainant, before introducing himself or checking whether she was okay, was concerning his perception that there was no damage to her vehicle. Even if this conclusion was totally legitimate, it was not a productive way to commence the discussion. As a result, their entire conversation went down an unfortunate path. While this may have occurred regardless, NE#1 could have been more skillful and at least tried to avoid it.

Second, once NE#1 saw that the Complainant was agitated and that she was not reacting well to his comments about the damage, he should have stopped arguing with her. Whether or not she agreed on the level of damage was irrelevant and NE#1 should have moved on with his investigation. However, he did the opposite and continually engaged with her, including discussing how he had "two eyes." This was just unnecessary and counterproductive.



Moreover, NE#1 believed at the time that the Complainant was already “aggressive” and agitated, which makes his decision to engage with her in this manner even more confusing.

Third, NE#1 made a number of comments that served no purpose that OPA could find. For example, his comments about having “two eyes” and his asking the Complainant whether she wanted him to file the report. These statements could easily have been avoided and, like his arguing with the Complainant, were unnecessary.

Ultimately, OPA believes that NE#1 could have handled this incident significantly more adeptly. That being said, OPA feels that this was more a result of a lack of experience and communication skills rather than misconduct. Accordingly, OPA recommends that NE#1 receive the below Training Referral.

- **Training Referral:** NE#1’s chain of command should debrief this incident with him, including watching his BWV. NE#1 should be counseled on his professionalism during his interaction with the Complainant and retrained on how to handle such incidents better in the future. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #5

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.*)

While there were shortcomings in how NE#1 interacted with the Complainant and the manner in which he documented this incident, OPA finds no evidence of bias on his part. The video did not establish that NE#1 unduly favored the bicyclist or took his side because of his race. If anything, it appeared that NE#1 placed significant weight on the CAD Call notes and that this, not the Complainant’s status as a Black woman, informed how he handled this incident. In the absence of any compelling evidence to the contrary, OPA concludes that bias has not been proved in this case.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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