



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 18, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0108

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 14. Retaliation is prohibited	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 Named Employee violated SPD's policies on biased policing and retaliation.

ADMINISTRATIVE NOTE:

In his complaint, the Complainant asserted that the Named Employee was unprofessional towards him during this incident. OPA also identified that the Named Employee was not wearing a facemask at times. These matters were returned to the chain of command to be handled as Supervisor Actions.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Complainant, a Black man, initiated this complaint alleging that he was racially profiled when Named Employee #1 (NE#1) initiated a social contact with him, and fifteen minutes later, subjected him to a Terry stop. At the time, he was driving in a convertible with his pregnant wife, and he said that he had nothing to do with the underlying incident. He contended that NE#1 stopped him because he was "dark and interesting" and that the stop was a "humiliation tactic." The Complainant also said that he could not come up with any reason for the stop other than his race and a retaliatory motive on NE#1's part. OPA subsequently commenced this investigation.

A review of the offense report generated by NE#1 showed that he was actively investigating a crime at the time of the incident. NE#1 responded to a report of a man brandishing a firearm at a group of people near a nail salon. Two suspects were identified. The first suspect was identified as a Hispanic or light skinned Black male, in his twenties or thirties, 6'3, heavy set, beard, with a black handgun. The second suspect was described as a Black male, in his twenties or thirties, 5'10, black puffy jacket, and possibly associated with a vehicle. NE#1 initiated contact with Complainant, who NE#1 asserted matched a suspect description, after NE#1 drove into the parking lot where the crime took place. After their initial contact, NE#1 conferred with another officer at the scene who advised him that they should detain



the Complainant based on his physical description. NE#1 then initiated the Terry stop on the Complainant. The Body Worn Video (BWV) showed that, at the time of the stop, the Complainant was driving a convertible and a woman was seated in the front seat. He had the shadow of a beard and was wearing a black sweatshirt.

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-POL.) This includes different treatment based on the race of the subject. (See *id.*)

As discussed above, both the social contact and the later Terry stop were conducted in the context of an ongoing criminal investigation into a serious crime involving a firearm. NE#1 had a general description of the suspects and stopped the Complainant because he believed that the Complainant possibly matched the description, and that the Complainant was in the near proximity of where the crime had occurred. This belief was ultimately mistaken, as the officers quickly determined that the Complainant was not one of the suspects.

OPA recognizes how angry the Complainant was during this incident and cannot imagine how frustrating it must have been for his liberty to have been infringed, even if temporarily. However, reasonable suspicion is not a high legal standard. It further allows for good faith mistakes on the part of officers while investigating crimes. From a review of the BWV, OPA sees no indication that this incident was anything other than such a mistake.

In addition, while the Complainant is correct that his arrest was, in part, based on his race, SPD policy and Washington law permit officers to take into account discernable personal characteristics of an individual “when the characteristic is part of a specific suspect description based on trustworthy and relevant information” (5.140-POL-3). In this case, the suspect description was provided by a trustworthy source (multiple witnesses who observed the suspects in the daylight and for an extended period) and the Complainant was detained only long enough for NE#1 to determine that he was not the suspect they were seeking.

Again, these conclusions are not reached to minimize what the Complainant experienced. They are simply a result of the legal and policy parameters that govern this allegation. For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegations #2

5.001 - Standards and Duties 14. Retaliation is prohibited

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, “oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy” or “who otherwise engages in lawful behavior.” (*Id.*) Retaliatory acts are defined broadly under SPD’s policy and include “discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

The Complainant alleges that NE#1’s second contact with him was based on NE#1’s animosity towards him after their first interaction. However, a review of the evidence – specifically the BWV - indicated that NE#1 was engaged in an ongoing search for the suspects, that NE#1 believed in good faith that the Complainant potentially matched the description of one of the suspects, and that NE#1 decided to contact the Complainant the second time only after another officer recommended that he do so. This convinces OPA that no retaliation was present.



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

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