



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 10, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0218

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)

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 while investigating a traffic collision in which he was involved.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 – Allegation #1

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

The Complainant was involved in a collision with two other vehicles, one unoccupied. The driver of the other occupied vehicle called 911 and Named Employee #1 (NE#1) was dispatched to the scene. When he arrived, he first spoke with the 911 caller and her passenger who said that they were driving straight when the Complainant tried to merge into their lane, causing the collision. He then spoke with the Complainant and an individual that she identified as a witness. The Complainant and the witness contended that there were two lanes of traffic and that the Complainant merged into an open lane. NE#1 asked the witness to show him where the witness viewed the collision from. The witness did so, and NE#1 determined, as captured on Body Worn Video (BWV), that the witness's vantage point may have been blocked by a parked vehicle. He remarked to himself: "Alright, you didn't see anything."

NE#1 took both parties' information and walked over to his motorcycle. He eventually proceeded over to the other driver and returned her information. The Complainant approached and said that she needed to take a picture of the other driver's insurance card. NE#1 told her that he would provide all of the information to the involved parties when he was done. She stated that she wanted to make sure: "Because it seems like you guys are choosing sides." NE#1 ultimately advised the other driver that she could leave.

NE#1 approached the Complainant and told her that he was going to issue her a citation for unsafe driving. She stated that she had her blinker on. NE#1 told her that the blinker did not make a difference and she disagreed with him. He asked the Complainant if she was going to argue with him or listen to him. She responded: "I feel like you're picking



her side because she's Asian and you're Asian, this is fucking weird as fuck, this is racist." NE#1 asked her if she wanted a supervisor to respond to the scene and she said that she did.

The supervisor arrived shortly thereafter and spoke with the Complainant. She told him that NE#1 was racist and argued for an extended period of time about the road having two lanes. She stated, regarding the other driver: "That dumb fucking bitch who hit me said she was going straight. If she was going straight, that means she was in both lanes." The supervisor asked her why she believed that her race played a role in NE#1's handling of the incident. She replied: "Because that bitch was Asian." The Complainant went on to state that NE#1: "Was on her [the other driver's] side," and that he kept talking to the other driver in "fucking I don't know what the fuck language they fucking speak." She also said that she did not feel that NE#1 gave equal time to hear her side of the story. The supervisor made an OPA referral on the Complainant's behalf.

As part of its investigation, OPA interviewed the Complainant. She reiterated her belief that NE#1 engaged in biased policing. OPA also reviewed the BWV and the report and citation generated by NE#1. In his report, NE#1 documented that the Complainant pulled out into traffic while the other driver had the right of way.

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.*)

OPA's focus in this case is on whether NE#1's actions were based on bias, not to second guess the lawful basis for the citation. With regard to this latter issue, the Complainant's remedy lies in challenging the citation in court. OPA notes, however, that there is no evidence on the face of the citation and NE#1's investigation (as captured by the BWV) that his decision to find the Complainant at fault was in error.

With respect to the Complainant's allegation of bias, OPA finds it to be clearly unfounded. NE#1's investigation appeared to be based on his evaluation of the evidence, not the race of either the Complainant or the other driver. There is no support for the Complainant's contention that NE#1 gave the other driver special treatment simply because they both may have been of Asian descent.

OPA also notes that some of the language used by the Complainant suggests bias on her part. For example, referring to the other driver as an Asian "bitch" and her claims that NE#1 was speaking to the other driver "in fucking I don't know what the fuck language they fucking speak" were, in OPA's opinion, wholly improper, not to mention demonstrably false.

Ultimately, OPA deems this allegation to be without merit and recommends that this allegation be Not Sustained – Unfounded.

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