



## ***CLOSED CASE SUMMARY***

ISSUED DATE: MAY 4, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0424

### **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

#### **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

***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 engaged in bias-based policing due to his race when they arrested him for Driving Under the Influence (DUI).

### **SUMMARY OF INVESTIGATION:**

After he was arrested, the Complainant alleged that Named Employee #1 (NE#1) and Named Employee #2 (NE#2) arrested him due to his race. The Named Employees requested a supervisor, Witness Supervisor #1 (WS#1), who responded to the scene. WS#1 spoke with the Complainant, who stated that he was diabetic but current with his insulin and that the Named Employees only arrested him because of his race. WS#1 forwarded the Complainant's allegations to OPA via Blue Team. OPA initiated this investigation.

During its investigation, OPA reviewed the Blue Team complaint, Computer Aided Dispatch (CAD) records, Incident/Offense Report (Incident Report), and Body Worn Video (BWV). OPA also interviewed the Complainant and both Named Employees.

CAD records show that NE#1 and NE#2 were dispatched to a report of a driver running over trees along a planting strip. The caller described the vehicle as a white pickup truck and provided license plate number.

NE#1 and NE#2 both responded. The Named Employees' response and interactions with the Complainant were captured on BWV and, as such, are not in credible dispute.



NE#2 arrived first and observed a white pickup truck backed up part way onto the sidewalk. NE#2 then approached the truck, knocked on the driver side window, and contacted the Complainant who was inside the truck in the driver's seat. During a conversation with NE#2, the Complainant stated that he was 82 years old. NE#2 asked the Complainant if he understood why he was being contacted, and the Complainant responded "because I'm parking where I'm parking." After the Complainant agreed to perform the Standard Field Sobriety Tests (SFST), the Complainant reported that he was diabetic, but denied that he had any medical condition that NE#2 could perceive as impairment.

As NE#1 conducted the Horizontal Gaze Nystagmus Test, the Complainant repeatedly either refused or was unable to follow NE#2's instruction to track an object with his eyes only. Also, after NE#2 asked the Complainant to turn in a different direction, the Complainant lost his balance and had to steady himself on a nearby wall. After NE#2 asked the Complainant to perform the Walk-and-Turn Test, the Complainant took the starting position, but then appeared to repeatedly lose his balance. The Complainant stated, "these shoes don't let me do that." When NE#2 asked how so, the Complainant replied, "I don't know." After removing his shoes, the Complainant stated he was not capable of performing the test. After NE#2 attempted to instruct the Complainant on the One Leg Balance Test, the Complainant stated that he did not believe he could complete the test. The Complainant also noted that he had been sleeping for two days and was under the care of a doctor. NE#2 also performed the Finger-to-Nose Test, asked the Complainant to estimate 30 seconds with his eyes closed, and recite a portion of the alphabet. When NE#2 asked the Complainant how he felt, the Complainant stated that he felt his blood sugar was low. NE#2 then placed the Complainant under arrest with NE#1's assistance. Sometime later, the Complainant stated that he was diabetic and needed to eat something. However, when NE#2 offered to buy the Complainant something from a vending machine, the Complainant declined the offer.

OPA also interviewed the Complainant by phone about two months after the Complainant's arrest. The Complainant declined to provide a recorded interview but stated that he did not believe that the way the Named Employees treated him was misconduct. The Complainant stated that, given the historical and societal context of being raised in America, the officers treated him differently. The Complainant stated that it was a societal issue, and he did not believe that the officers did anything wrong. The Complainant stated that he felt like the officers treated him as if he had robbed a bank, nor did he think he should have been asked to perform SFSTs due to his age.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegation #1**

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

The Complainant alleged that NE#1 engaged 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-POL.) This includes different treatment based on the race of the subject. (See id.)

As an initial matter, NE#1 had almost no notable interaction with the Complainant during this incident, nor did NE#1 make any enforcement decisions with respect to the Complainant. Instead, NE#1 appeared only to act as NE#2's backing officer during this incident. NE#1 denied that he did anything during this situation that reflected bias, prejudice, or discriminatory intent.



During the incident, NE#1 observed two vehicle drive the wrong direction down a nearby one-way street. NE#1 waved at one vehicle to stop, gave them a verbal warning, and directed them through the intersection. In his OPA interview, NE#1 stated that vehicles driving the wrong way down one-way streets is a common occurrence, and that he typically just provides verbal warnings to address this. Moreover, NE#1 stated that he was unable to take any further enforcement action as he was already busy providing scene security for NE#2's investigation. To the extent that there was any disparity between the enforcement action concerning these vehicles and the Complainant, this is explained by objective differences in the offenses. Here, NE#1 and NE#2 responded to a 911 call concerning the Complainant's actions, the Complainant appeared to be intoxicated, and NE#1 was occupied with providing backup to NE#2. Under these circumstances, it was not biased for NE#1 to briefly provide a verbal warning to the other drivers without further enforcement action.

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

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #2 - Allegation #1**

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

The Complainant alleged that NE#2 engaged in bias-based policing.

OPA's review of the evidence in this case did not uncover any direct evidence that NE#2 treated the Complainant differently based on the Complainant's race. NE#2 did not know the Complainant's race until after he responded to the call. NE#2 was dispatched to this incident based on the report of a 911 caller. Moreover, NE#2 had probable cause to arrest the Complainant for DUI. NE#2 observed facts that substantiated the report of the 911 caller—specifically, the Complainant's white pickup truck was parked partially up on the sidewalk. The Complainant himself acknowledged that he was being contacted because of the way he was parked. NE#2 then conducted a series of SFSTs during which the Complainant demonstrated multiple signs of impairment. That the Complainant offered possible alternative explanations for his apparent impairment—namely, his age and diabetic condition—did not undermine that probable cause that NE#2 developed. These explanations aside, it was still reasonable to believe that the Complainant had committed the offense of DUI.

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

Recommended Finding: **Not Sustained - Unfounded**