



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 30, 2024

FROM: DEPUTY DIRECTOR BONNIE GLENN ON BEHALF OF DIRECTOR GINO BETTS JR.,
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0438

Allegations of Misconduct & Director's Findings

Named Employee #1

| Allegation(s): | | Director's Findings |
|----------------|---|---------------------------------------|
| # 1 | 5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing | Not Sustained - Unfounded (Expedited) |

Named Employee #2

| Allegation(s): | | Director's Findings |
|----------------|---|---------------------------------------|
| # 1 | 5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing | Not Sustained - Unfounded (Expedited) |

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 Named Employee #1 (NE#1) and Named Employee #2 (NE#2) singled him out for investigation due to his race.

ADMINISTRATIVE NOTE:

This case was approved for Expedited Investigation. That means OPA, with the Office of Inspector General's (OIG) agreement, believed it could issue recommended findings based solely on its intake investigation without interviewing the named employees. As such, OPA did not interview the named employees involved in this case.

On November 7, 2023, the Office of Inspector General (OIG) certified OPA's investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

An SPD Sergeant screened the Complainant's bias allegations. The Complainant alleged the named employees—particularly NE#1—singled him out of a crowd of four people because the Complainant is Black. The Complainant alleged the named employees had a different demeanor with him and that NE#1's "face said it all," even though no derogatory language was used. The Complainant stated the officers had no reason to speak with him, but NE#1 stated something to the effect of, "you match the description of someone who should be stealing stuff," and, "you never had a job you are obviously a thief."

The SPD Sergeant filed the OPA complaint on behalf of the Complainant. OPA opened an intake investigation. During its intake, OPA reviewed the complaint, incident reports, photos, body-worn video (BWV), and in-car video (ICV). OPA attempted to contact the Complainant at the email address the Complainant provided, which was the only contact method available for him. The Complainant did not respond to OPA's email and, so, was not interviewed.



ICV and BWV recorded the named employees' stop, investigation, and arrest of the Complainant. NE#1 wrote an incident report consistent with the ICV and BWV. ICV and BWV depicted the following.

The named employees drove past a group of community members—including the Complainant—who were sitting on the sidewalk in front of a driveway. The named employees stopped and backed up. NE#1 radioed that he and NE#2 were “with four subjects, narcotics violation.”

The named employees approached the group of community members, who were gathered along a sidewalk next to a house. The Complainant was sitting in the driveway near the sidewalk with an electric bicycle and various tools around him.



Complainant indicated by red arrow. NE#2 indicated by blue arrow.

NE#2 spoke to one of the community members about a narcotics offense. NE#1 spoke with the Complainant about the bicycle and commented on the high quality of the bicycle. The Complainant stated the bicycle was his and that he was replacing a dead battery. NE#1 also observed the bicycle had words, markings and names written in with a sharpie which he felt was suspicious as, “... since most people don’t do that to their electric bicycles.” NE#1 asked the Complainant whether the bicycle was stolen. The Complainant questioned why NE#1 was “harassing” him for “minding my own business,” waiting for his girlfriend to come down, and fixing his bicycle. NE#1 told the Complainant his behavior was “suspicious.” NE#1 elaborated that, in his experience, it was reasonable to believe a bicycle might be stolen if it was with a group of people who were doing drugs while working with tools on their bicycles.



The Complainant and the bicycle.

The Complainant refused to give NE#1 his name. NE#1 asked the Complainant for his girlfriend's name. The Complainant responded, "I don't know," but then said it was "Jessica." As NE#1 and the Complainant continued talking, the Complainant stated, "cause I'm a big fucking problem." NE#1 responded, "you know what, you're not giving me your name, you might be." The Complainant then gave his name and date of birth and said, "run it." NE#1 asked whether the Complainant worked and the last time he had a job. The Complainant responded he was last employed in 2013.

NE#2 informed NE#1 that the Complainant had a warrant for trespassing. NE#2 asked the Complainant about the bicycle. The Complainant told NE#2 that he bought the bike from "a friend" for \$600 a week prior. The Complainant said he knew the bicycle was not stolen because his friend told him it was not stolen. NE#2 asked the Complainant for the bicycle's Vehicle Identification Number (VIN). NE#2 checked the VIN on his computer and learned the VIN was "similar" to the VIN for a stolen bicycle. NE#1 confirmed the VIN by looking at the bicycle, then told NE#2 that one digit could either be a "1" or an "l." The named employees looked at pictures of the reportedly stolen bicycle, confirming it was the same one the Complainant possessed. The bicycle was reported stolen the prior month about a block away from the location where the named employees contacted the Complainant.



NE#2 reviewing pictures of the reportedly stolen bicycle.

The named employees arrested the Complainant. About twenty-four minutes passed between the time NE#1 first spoke to the Complainant and the Complainant's arrest.

After he was arrested, the Complainant accused the officers of "profiling him" and asked if the officers were going to accuse him of possessing a weapon because he is Black. NE#1 asked the Complainant, "did you say that you're Black?" The Complainant responded, "Yeah, I am." NE#1 replied, "Okay, I'm not going to argue with you." The Complainant said, "I guess you don't know what Puerto Rican is then. I'm part Black." NE#1 responded, "Okay." The Complainant replied, "Yeah, you learned something today."

After NE#1 requested a supervisor to screen the bias allegation, the SPD Sergeant arrived and spoke with the Complainant about his allegations.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged the named employee singled him out for investigation because of his race.

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.* Officers are forbidden from both, (i) making decisions or taking actions influenced by bias, and (ii) expressing any prejudice or derogatory comments concerning personal characteristics. *See* SPD Policy 5.140 POL-2.

Based on review of the evidence provided, OPA found no evidence of bias. OPA reviewed all the documents and BWV related to the complaint. The evidence showed NE#1's decision to contact the Complainant was based on objective factors. NE#1 was acting as back up while NE#2 investigated a community member for a narcotics violation. As articulated by NE#1, he started speaking with the Complainant because of the apparently high quality of the



battery-assisted bicycle coupled with the nearby narcotics violation and fact the Complainant was working on the bicycle with tools.¹ The named employees then developed probable cause to arrest the Complainant for both possessing stolen property and his outstanding warrant.

The evidence did not show that the named employees had a different demeanor with the Complainant than other community members. First, NE#1 only interacted with the Complainant, not other community members. NE#2 contacted another community member, but OPA did not observe any meaningful differences in how NE#2 engaged with that community member versus the Complainant. Also, NE#2's interaction with the other community member ended with a different result because the facts of that interaction were different.²

Finally, NE#1's comments to the Complainant about his employment status did not imply the Complainant was stopped because of his race or for being unhoused. Instead, these factors were relevant to NE#1's level of suspicion because the Complainant said he paid \$600 for the bicycle the week prior despite having been unemployed since 2013.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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

Named Employee #2 - Allegation #1

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

For the same reason set forth above at Named Employee #1, Allegation #1, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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

¹ In his incident report, NE#1 also wrote, "I explained to [the Complainant] that since he was part of a group with drug paraphernalia out in public, that he was sitting on a driveway in which he did not live at and taking a bicycle apart with multiple tools laying around him which are not specific to bicycles. I informed him that it was suspicious and [the Complainant began speaking to me in a rude and argumentative way." NE#1 also wrote that the Complainant told him the bicycle cost \$600, which NE#1 found suspicious as the Complainant also said he was homeless and had been unemployed since 2013.

² NE#2 contacted the other community member for smoking out of a glass "bubble pipe" in plain view. The community member provided his information and did not have any warrants. NE#2 attempted to refer the community member to a program, but stopped after learning the community member was already enrolled in the program.