



CLOSED CASE SUMMARY

ISSUED DATE: JULY 18, 2018

CASE NUMBER: 2018OPA-0076

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 5. Employees May Use Discretion	Not Sustained (Lawful and Proper)

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 towards him and that the Named Employee abused his discretion when he failed to cite the other driver in an alleged hit and run accident.

STATEMENT OF FACTS:

Named Employee #1 (NE#1) and a witness officer responded to a complaint of “road rage” between two motorists. When NE#1 arrived at the scene he observed the Complainant, who was driving a van, and other individuals, who were driving a box truck. NE#1 learned that there had been contact between the Complainant’s vehicle and the box truck, causing a minor scuff to the Complainant’s mirror and a scratch to the box truck. NE#1 recounted that, while the Complainant was aware of the contact between the vehicles, the occupants of the box truck were not. This was corroborated by the witness officer, who said that the occupants told him that they did not know that they had been in an accident (as they did not feel a collision) or that they had caused damage to the Complainant’s vehicle.

The witness officer recounted that the occupants of the box truck stated that they drove away from the scene because they were “freaked out” given that the Complainant started yelling at them for what they believed to be no reason. At that time, the Complainant pursued the box truck and pulled his vehicle in front of the box truck, applying his brakes. This required the box truck to quickly stop and could have caused an accident. This portion of the incident was captured on third party video.

NE#1 and the witness officer spoke with the occupants of the box truck and informed them that they had caused damage to the Complainant’s vehicle. Once they knew that, the occupants were willing to provide their information. NE#1 also spoke with the Complainant and got his account of the incident.

Based on the totality of his investigation, NE#1 did not believe that the occupants of the box truck had been involved in a hit and run. Given his past experience dealing with similar cases, he credited their account that they were unaware that they had been in an accident. NE#1 found, however, that the Complainant had engaged in reckless driving when he pulled his vehicle in front of the box truck and stopped short. He reached this determination both because the



Complainant initially admitted that he drove in such a fashion and because he viewed the third-party video of the incident that clearly showed the conduct.

NE#1 issued a citation to the Complainant for reckless driving. He also issued a citation to the occupants of the box truck for failing to have insurance. When he received the citation, the Complainant alleged that NE#1 had not arrested the occupants for a hit and run because the Complainant was Black, was an immigrant, and had an accent. A sergeant came to the scene to investigate this allegation of bias. The Complainant reiterated his claims to the sergeant and this matter was referred to OPA.

As part of its investigation, OPA reviewed the documentation generated as part of this case, as well as the Department and third party video. OPA also interviewed NE#1 and the witness officer. OPA further interviewed the Complainant. The Complainant repeated that he believed the occupants of the box truck had been involved in a hit and run and asked OPA to facilitate their arrests. At one point, he informed the assigned OPA investigator that he would file a lawsuit if OPA's investigation did not result in arrests. Ultimately, the Complainant's statement did not provide any evidentiary value.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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.*)

Based on my review of the record, I find no evidence that NE#1 engaged in biased policing in this instance. I find that, instead, he made the decision to not arrest the occupants of the box truck for a hit and run based on his investigation of the incident and his determination that they did not engage in such conduct. Moreover, with regard to the citation issued to the Complainant for reckless driving, I conclude that it was warranted under the circumstances and was not based on bias or any other impermissible reason. Accordingly, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 5. Employees May Use Discretion

SPD Policy 5.001-POL-5 states that: “Employees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the Department and duties of their office and assignment.”

As discussed above, I find that NE#1's decision to not arrest the occupants of the box truck for a hit and run was reasonable under the circumstances and represented an appropriate exercise of NE#1's discretion. I find the same for NE#1's decision to cite the Complainant for reckless driving.



For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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