



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 27, 2018

CASE NUMBER: 2017OPA-1029

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	11.050-Detainee Property 2. Officers Record Detainee Property and its Disposition on the Detainee Property Form (form 26.4)	Not Sustained (Lawful and Proper)
# 3	11.050-Detainee Property 3. Officers Photograph Detainee Property	Not Sustained (Training Referral)

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)
# 2	11.050-Detainee Property 2. Officers Record Detainee Property and its Disposition on the Detainee Property Form (form 26.4)	Not Sustained (Lawful and Proper)
# 3	11.050-Detainee Property 3. Officers Photograph Detainee Property	Not Sustained (Training Referral)

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 she was arrested because of her race and that some of her money was missing after it was taken from her by officers during a search. It was further alleged that the Named Employees failed to properly document the property of the Complainant.

ADMINISTRATIVE NOTE:

Among the allegations made by the Complainant was that, after she was arrested and searched, some of her money was missing. The implication from her allegation was that the money was taken by one or both of the Named Employees. From my review of the record, there is no evidence supporting such a conclusion. However, based on the Complainant’s allegation, OPA should have classified and investigated a possible violation of SPD Policy 5.001-POL-2 against both Named Employees. None of the allegations below capture this purported conduct. While I would not have sustained this allegation as unfounded, it is still important for transparency and accountability purposes that OPA fully evaluates an allegation of potential misconduct made by a complainant, no matter how absurd or frivolous.



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.*) The policy provides guidance as to when an allegation of biased policing occurs, explaining that: “an allegation of bias-based policing occurs whenever, from the perspective of a reasonable officer, a subject complains that he or she has received different treatment from an officer because of any discernable personal characteristic...” (*id.*)

The Complainant, who is African-American, alleged that the Named Employees arrested her based on her race. The Named Employees stopped the Complainant’s vehicle because her rear plate did not match her front plate. When she was stopped, she tried to exit the vehicle and the officers identified that she was intoxicated. This entire interaction was captured on video.

Based on my review of the record, I find that there was abundant probable cause for the Complainant’s arrest. Her conduct, not her race, was the reason that law enforcement action was taken against her. There is no evidence establishing that the officers, instead, engaged in biased policing.

As such, I recommend that this allegation be Not Sustained – Unfounded as for both Named Employees.

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

Named Employee #1 - Allegation #2

11.050-Detainee Property 2. Officers Record Detainee Property and its Disposition on the Detainee Property Form (form 26.4)

SPD Policy 11.050-POL-2 requires that officers record detainee property and its disposition on a Detainee Property Form. The policy gives officers the ability to use discretion when listing the property on the form.

Here, NE#1 completed a Detainee Property Form, which was witnessed by NE#2. In that form, the officers itemized that the Complainant had in her possession: a purse; \$230; various change; a cell phone, a key, and a miscellaneous item. It is unclear from the record what this “miscellaneous item” was.

Both NE#1 and NE#2 signed the form. The Complainant did not sign the form, but NE#1 explained that there was no place on the form for her to sign. I further note that I do not read the policy to require the subject of the search to sign the form. Both NE#1 and NE#2 indicated that they reviewed the form with the Complainant when they completed the inventory. This is supported by the In-Car Video (ICV) of the incident.



I find that it was within the officers' discretion to list "purse" on the form, instead of inventorying every single item contained within. This is specifically allowed by the policy. Moreover, based on my review of the record, including the ICV, I find absolutely no evidence to suggest that the officers improperly took some of the Complainant's money.

If I have one criticism of the form that the officers completed, it was their listing of one piece of property as a "miscellaneous item." I believe that, for purposes of transparency, accountability, and later questions that could be asked of their conduct, they should have attempted to provide at least a broad description of what this item was. However, this does not yield the officers' conduct as out of policy.

For the above reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as for both Named Employees.

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

Named Employee #1 - Allegation #3

11.050-Detainee Property 3. Officers Photograph Detainee Property

SPD Policy 11.050-POL-3 provides that officers will photograph detainee property. This is in addition to the requirement that officers complete a Detainee Property Form, as detailed by SPD Policy 11.050-POL-2.

Here, the officers admittedly did not photograph the property. NE#1 explained that they instead recorded the property on their ICV and then took a "snapshot" of the property with their ICV while the property was on the hood of their patrol vehicle. This snapshot, which OPA obtained during its investigation and which is attached to OPA's case file, is grainy and does not clearly show the nature of the property. While I commend the officers for thinking creatively, an unclear snapshot taken from distance from their vehicle's ICV is not the photograph that is contemplated by the policy. The purpose of such a photograph is to clearly show exactly what property has been inventoried. Here, the snapshot taken fails to accomplish that goal.

While I note that, since this incident, the policy has been amended to allow officers to document inventoried property using their Body Worn Video (BWV) instead of having to complete a Detainee Property Form and photograph the evidence, this revision does not permit the use of ICV for this purpose. Based on the lack of quality of the snapshot taken by the officers in this case as compared to the clarity of video that can be recorded on BWV, I understand why the Department made such a decision.

However, given that I believe that the officers acted in good faith in this matter and only committed a technical violation of policy, I recommend a training referral as opposed to a sustained finding.

- **Training Referral:** NE#1 should be re-trained concerning the requirement that he photograph detainee property and complete a Detainee Property Form or, in the alternative, document the inventorying and the nature of the property using his BWV. If he chooses the former method, he should be reminded that he is required to take actual photographs that clearly show what property has been inventoried. NE#1 should be instructed that the failure to do so can undermine trust in himself and in the Department. This training and associated counseling should be memorialized in a PAS entry.



Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegation #1

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

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #2

11.050-Detainee Property 2. Officers Record Detainee Property and its Disposition on the Detainee Property Form (form 26.4)

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #3

11.050-Detainee Property 3. Officers Photograph Detainee Property

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2 should be re-trained concerning the requirement that he photograph detainee property and complete a Detainee Property Form or, in the alternative, document the inventorying and the nature of the property using his BWV. If he chooses the former method, he should be reminded that he is required to take actual photographs that clearly show what property has been inventoried. NE#2 should be instructed that the failure to do so can undermine trust in himself and in the Department. This training and associated counseling should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**