



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 12, 2018

CASE NUMBER: 2018OPA-0240

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions 9. Under State Law, Traffic Violations May Not Be Used as a Pretext to Investigate Unrelated Crimes	Not Sustained (Unfounded)
# 3	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, through his mother, alleged that his vehicle was improperly stopped and cited by the Named Employee, that the law enforcement activity directed towards him was based on his race, and that the Named Employee was unprofessional during the stop.

STATEMENT OF FACTS:

Named Employee #1 (NE#1) effectuated a traffic stop of the Complainant’s vehicle. NE#1 reported that he effectuated the stop after running the Complainant’s license plate through his patrol vehicle’s MDT system and determined that the car had been sold in 2017 but the title had not been re-registered in the new owner’s name. The entire stop and the interaction between NE#1 and the Complainant was recorded on Department video.

NE#1 approached the driver’s side of the car and contacted the Complainant. He identified himself and indicated the basis for the stop. He requested the Complainant’s license, registration, and proof of insurance. At that time, the Complainant made statements to NE#1 that I could not clearly discern from my review of the Department video. NE#1 responded twice to the Complainant that he could not hear him over the traffic. NE#1 told the Complainant to give his registration and proof of insurance when located to NE#1’s partner, who was standing on the other side of the car. NE#1 returned to his patrol vehicle and began writing out a warning ticket. NE#1’s partner then returned to the patrol vehicle. NE#1 told his partner that he was going to warn the Complainant and “send him on his way.”

NE#1 finished writing the warning and walked it over to the Complainant’s car. At that time. He stated to the Complainant: “Here’s your driver’s license, here’s your written warning, you’re not getting a ticket.” NE#1 then asked the Complainant: “Did you stick your camera out the, or your phone out the window for a reason?” The Complainant responded: “Yes, I was film – I was videotaping you.” NE#1 stated: “Just so you know, I could have arrested you for



this but instead you got a warning.” He further told the Complainant: “So thanks for being rude and uncooperative. You’re free to go.” NE#1 then walked away from the Complainant and went back to his patrol vehicle. While inside of his patrol vehicle, NE#1 told his partner that the Complainant was trying to film the police “as if he was doing something of valu[e] by doing that.” He further told his partner that he gave the Complainant a warning and the Complainant “wants to give attitude.”

At some point after the stop, the Complainant informed his parents of what had occurred and stated to them that he had been stopped for potentially driving a stolen car, that the officers did not apologize, and that NE#1 told him that he could have arrested the Complainant for videotaping. The Complainant stated to his parents that when he contradicted NE#1’s assertion regarding making an arrest for videotaping, NE#1 dismissed him and told him that he was being rude and uncooperative. He further told his parents that when he tried to address what NE#1 said, NE#1 walked away and ignored him. The Complainant’s mother initiated this complaint with OPA. She stated her belief that NE#1 engaged in “racial profiling.” She criticized NE#1’s failure to apologize to the Complainant when the officers realized that the car was not stolen. She also identified NE#1’s professionalism as a concern, complaining that the officers “tried to project their bad behavior” on to the Complainant and were dismissive towards him.

Complainant’s OPA Interview

As part of its investigation, OPA interviewed the Complainant. The Complainant told OPA that he was driving to a funeral when he was pulled over by the police. He stated that he did not understand why he was stopped and contended that he had not done anything wrong. The Complainant stated that he was “obviously frustrated” by the stop. NE#1 told him that his car had been sold in 2017. The Complainant explained that he had purchased the car and gave NE#1 his license. He stated that there were officers on both sides of his vehicles and that he felt “criminalized.” He stated that he was “having discomfort” from two officers being at the scene. He also stated that he told OPA that “nothing had been communicated” to him as to why he had been pulled over.

The Complainant stated that he filmed the incident “in anticipation of something going wrong.” He told OPA that NE#1 threatened to arrest him for videotaping. He told OPA that he tried to ask NE#1 what he had done that was illegal and what law said that he could not videotape but that NE#1 walked away from him.

The Complainant stated that he went to the funeral and then texted his mother after. He told OPA that he was upset by the incident and the fact that he did not recall being told anything about failing to transfer title. He further stated that the officers did not tell him how he could transfer title.

The Complainant opined that the officers had stopped him because they ran his plates. He stated to OPA that he believed this to not be a good use of Department resources. He was frustrated that the officers appeared not to credit or account for his emotional state. The Complainant stated that NE#1’s interaction with him evinced a “lack of humanity.”

Lastly, the Complainant contended that the stop may have been effectuated because he was an African-American male driving a car with tinted windows.



NE#1's OPA Interview

NE#1 stated that he was working with a partner in a two-officer car. As part of their law enforcement activities on that day, they ran license plates of vehicles. NE#1 explained that he did this frequently, generally looking for stolen vehicles. NE#1 stated that he also ran plates to look for open warrants, failures to transfer title, and any other violations. NE#1 stated that he ran the Complainant's license plate and determined that the Complainant had failed to transfer title more than 45 days after the listed sale date. He stated that, prior to the stop, he could not tell the gender or race of the driver. He further stated that, due to the tint on the windows, he could not even tell how many people were in the car. He told OPA that he then pulled the Complainant's car over. NE#1 explained that he initially waited at the back window of the vehicle before approaching because he could not see inside.

NE#1 stated that he eventually spoke with the Complainant. He told the Complainant why he was being stopped, stating that the Complainant's vehicle was sold in 2017 without having been formally transferred to the new owner. He asked the Complainant for his license, registration, and proof of insurance. He stated that he could not hear the Complainant over the traffic and that he told him so twice. Given how long it took for the Complainant to find his registration and proof of insurance, NE#1 returned to his car to enter the Complainant's identity in his MDT system. After this search and given that the Complainant had no warrants or other serious offenses on his record, NE#1 made the decision to issue him a warning.

When NE#1 returned to the car, he determined that the Complainant had been pointing his phone outside of the window. He asked the Complainant what he was doing and the Complainant responded that he had been filming the stop. NE#1 told OPA that he stated that he could have arrested the Complainant; however, he explained that he was referring to an arrest for the infraction, not for videotaping him. NE#1 acknowledged that he was sarcastic when he said to the Complainant, "so thanks for being rude and uncooperative." However, he denied that this was unprofessional. He told OPA that he said this because the Complainant was speaking so quietly that he could not hear him, because the Complainant took a long amount of time to find his registration and proof of insurance, and because the Complainant was videotaping NE#1 when NE#1 was giving him a warning and not doing anything wrong.

He argued that his conduct did not violate the Department's professionalism policy. He stated that while he was sarcastic, he was not angry and did not raise his voice.

NE#1 denied that he engaged in pretext stop. He explained that he stopped the Complainant for the failure to transfer title and for no other reason.

Lastly, NE#1 denied engaging in biased policing. He stated that he did not know the Complainant's race until after the stop had been made and NE#1 was standing beside the driver's side door.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

SPD Policy 5.001-POL-9 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer,



or other officers.” (SPD Policy 5.001-POL-9.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*)

As discussed above, the Complainant alleged that NE#1 was unprofessional in several respects: when NE#1 initially stated that he could not hear him and walked away from the car; when NE#1 did not explain the basis for the stop; when NE#1 failed to apologize to him when it was determined that his car was not stolen; when NE#1 told him that he could have been arrested for videotaping NE#1 during the stop; when NE#1 called him rude and uncooperative; when NE#1 flipped the ticket at him; and when NE#1 walked away and dismissed him when he was trying to discuss the ticket and the stop. Each of these are discussed in turn below.

With regard to NE#1 telling the Complainant twice that he could not hear him, the car was pulled over on a busy street and it sounded loud based on a review of the video. Given this, I cannot find this statement by NE#1 to have been unreasonable. Moreover, as NE#1 explained, he had no legal obligation to remain at the car while the Complainant searched for his registration and proof of insurance. As such, while his statements that he could not hear the Complainant and his return to the car may have been abrupt and curt, they were not unprofessional as contemplated by Department policy.

In evaluating the Complainant’s assertion that he was not given the basis for the stop, from my review of the video, it is clear that he was given the reason within the first few seconds. Specifically, NE#1 stated the following; “The reason I stopped you is because your vehicle was sold back in 2017 without being re-registered in the new owner’s name.”

There is no evidence that NE#1 stopped the Complainant based on a belief that his car was stolen. Indeed, it is unclear from my review of the record why the Complainant believes that this was the case. This was not the reason provided by NE#1 to the Complainant and NE#1 contended that this was not why he effectuated the stop. Notably, NE#1 had an appropriate basis to effectuate the stop – the Complainant had purchased the car and had failed to transfer the title, which was in violation of law. NE#1 appropriately exercised his discretion when he did not issue a ticket. As such, NE#1 had no obligation to apologize to the Complainant.

With regard to NE#1’s statement that he could have arrested the Complainant, I find, based on my review of the video, that NE#1 was referring to the infraction not the videotaping. The Complainant is correct that it would have been illegal for NE#1 to have arrested him based solely on the videotaping. While I ultimately deem NE#1’s statement unnecessary, it was technically accurate and does not constitute unprofessional behavior.

After reviewing the video several times, I see no evidence that NE#1 “flipped” the citation at the Complainant as the Complainant described. Instead, the video depicted NE#1 handing the citation to the Complainant and the Complainant taking it from him.

In OPA’s opinion, none of the above constitute unprofessional behavior; however, NE#1 calling the Complainant “rude and uncooperative” and walking away from the car while the Complainant was attempting to address him were a much closer call. I find NE#1’s explanation for why the Complainant was rude and uncooperative to be less than convincing. First, while NE#1 asserted that the Complainant spoke softly, I do not think that the Complainant was intentionally speaking softly to obstruct NE#1. Indeed, that simply makes no sense. Second, the length of time



that it took the Complainant to find his registration and proof of insurance was likely attributable to nervousness or disorganization, not a deliberate lack of cooperation. Third, the Complainant had the absolute constitutional right (and right under City law) to videotape NE#1 during the traffic stop. Exercising that right was neither rude nor uncooperative. I believe the core reason for why NE#1 referred to the Complainant as rude and uncooperative was because NE#1 was frustrated that he was being recorded – and, in NE#1’s opinion, mistrusted – when NE#1 believed that he was following the law and giving the Complainant a break by issuing the warning. While this is understandable, it is simply not appropriate. Similarly, there was a better way to handle the conclusion of the stop than to walk away without responding to the Complainant. This seemed, as the Complainant suggested, to be a dismissive act on the part of NE#1.

NE#1 argued that he did not violate SPD policy because he did not use profanity, did not raise his voice, and called the Complainant “sir” throughout the interaction. He acknowledged being sarcastic, but stated that this was not contrary to the express language of the policy. I reject the assertion that sarcasm does not, under certain circumstances, constitute a lack of professionalism as contemplated by Department policy. Indeed, sarcasm is defined as “the use of irony to mock or convey contempt.” As discussed below, SPD Policy 5.001-POL-10 precludes language that is contemptuous and disrespectful. This includes, by definition, sarcasm.

That being said, and while NE#1’s comments were inadvisable, I do not believe that, under the circumstances of this case, those comments constituted unprofessionalism. However, I counsel NE#1 to be more mindful of how he approaches those he interacts with and to be cognizant of what he says. His conduct here left the Complainant feeling disrespected and dismissed. While this was almost certainly not NE#1’s intention, this was due at least in part, with how he handled the conclusion of the stop. For these reasons, I recommend that NE#1 receive a Training Referral.

- **Training Referral:** NE#1 should receive additional training concerning SPD’s professionalism policy. NE#1’s sergeant should watch the video of this stop with him and have a discussion concerning how NE#1’s demeanor and sarcasm could be viewed as demeaning and rude. NE#1 should be counseled to avoid such behavior in the future. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #2

6.220 - Voluntary Contacts, Terry Stops & Detentions 9. Under State Law, Traffic Violations May Not Be Used as a Pretext to Investigate Unrelated Crimes

SPD Policy 6.220-POL-9 precludes the use of a traffic violation to investigate unrelated crimes. The policy defines “pretext” as where an officer stops “a suspect for an infraction to investigate criminal activity for which the officer has neither reasonable suspicion nor probable cause.” (SPD Policy 6.220-POL-9.) The policy explains that pretext stops are prohibited by law. (*Id.*) It further explains that: “Officers must actually, consciously, and independently determine that a traffic stop is reasonably necessary in order to address a suspected traffic infraction.” (*Id.*)

Based on my review of the record, there is no evidence establishing that the stop of the Complainant was a pretext to investigate an unrelated crime. NE#1 denied that this was the case and explained that he stopped the



Complainant solely for the traffic violation. It is unclear what crime the Complainant believed that NE#1 was using the stop as a pretext for. Regardless, I find that the stop was justified and that NE#1 “actually, consciously, and independently” determined that it was appropriate and necessary to stop the Complainant in order to address the fact that he had not properly transferred title, in violation of law.

Moreover, NE#1’s activity log from the date in question indicated that he ran a number of other vehicles’ license plates during his shift and effectuated several other stops.

As such, NE#1 did not act inconsistent with this policy. Accordingly, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #3

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.*)

Both the Complainant and his mother asserted that the stop was effectuated based on bias and due to racial profiling. NE#1 denied that this was the case and asserted that he did not know the race of the driver until the Complainant rolled down the window.

From my review of the In-Car Video, given the tint of the rear window and the distance between the Complainant’s car and NE#1’s patrol vehicle, I could not discern the Complainant’s race and gender, or, for that matter, how many people were in the car. This lends support to NE#1 contention that he could not do so either. Moreover, while I can understand that the stop was frustrating to the Complainant, it was supported by a lawful basis.

For these reasons, I find insufficient evidence to determine that the stop of the Complainant’s car was motivated by bias. As such, I recommend that this allegation be Not Sustained – Unfounded.

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