



## **CLOSED CASE SUMMARY**

ISSUED DATE:      OCTOBER 27, 2019

CASE NUMBER:     2019OPA-0327

### **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, who was involved in a motor vehicle collision with a tractor trailer, alleges that officers’ refusal to cite the other party for causing the collision was due to bias based on the Complainant’s race.

### **ADMINISTRATIVE NOTE:**

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General’s review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employees. As such, the Named Employees were not interviewed as part of this case.

As discussed below, minor inaccuracies were identified between the accident report completed by Named Employee #1 (NE#1) and the Body Worn Video (BWV) of the officers. This inconsistency was not determinative as to whether either party was at fault for the accident. As such, the inconsistencies were returned to the chain of command to be handled by a Supervisor Action and they are not addressed in this investigation.

### **ANALYSIS AND CONCLUSIONS:**

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

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

On May 3, 2019, the Complainant was involved in a collision with a tractor trailer on Mercer Street. The Named Employees were dispatched to clear the road and to take statements from both drivers. However, because they were unable to conclusively determine which driver was at fault, the Named Employees issued no citations and, instead, completed a Police Traffic Collision Report (PTCR).



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When the Named Employees arrived at the scene, BWV showed the Complainant's car straddling a solid white line, partly occupying both the inside right lane and the right turn lane. The other vehicle, a large tractor trailer with an oversized load, appears to occupy two lanes of travel due to cargo width. NE#1 directed the Complainant to move his car out of traffic on Mercer Street and to park on a parking lot near 5th Avenue, and then instructed the driver of the tractor trailer to turn onto 5th and park along the side of the road.

NE#1 interviewed the Complainant. The Complainant told NE#1 that, at the time of the collision, he had been stopped on Mercer Street behind a bus. He said that he had not been attempting to change lanes and was not straddling the lanes when the collision occurred. The Complainant explained that he was stopped behind a bus at the time of the collision. NE#1 told the Complainant that he would be making a report about the collision, and that the Complainant was free to go when was ready. Named Employee #2 (NE#2) interviewed the truck driver separately. The driver said that he had expected the Complainant's vehicle to turn right. While he admitted to not being able to see the Complainant's vehicle at the time of the accident, the driver theorized that the Complainant must have turned into his truck. The Named Employees concluded that they were unable to determine fault based on the information available to them. As such, the Named Employees did not issue any citations.

NE#1 completed the PTCR. The PTCR contained minor inaccuracies and did not fully document each driver's story. Rather, it indicated that "neither driver could prove fault for the collision based on the heavy traffic and location." The diagram in the PTCR was also not completely consistent with the video. For example, the diagram showed the Complainant's vehicle in the inside right lane, while BWV confirmed that the Complainant's vehicle was straddling the white line between the turn lane and the inside right lane. The PTCR also showed the truck occupying one lane of travel, whereas BWV suggested that it occupied two lanes.

The Complainant later alleged that the other driver was not cited because the other driver was White. The Complainant asserted that the PTCR was inaccurate and that it should have been obvious from the scene that the other driver was at fault.

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 a review of the BWV, OPA finds no indication that the Named Employees treated the Complainant differently based on his race or that they did not cite the other driver because he was White. The BWV indicated that NE#1, who was the primary officer interacting with the Complainant, remained courteous and professional throughout the interaction. NE#1 made no statements that suggested bias towards the Complainant. The Named Employees conducted a complete investigation, including examining the scene and interviewing both involved drivers. However, the Named Employees were not able to locate any independent witnesses to the incident and, as such, only had the disparate accounts provided by the parties. Based on their investigation and its limitations, the Named Employees collectively agreed they could find no basis to determine fault and informed both drivers that their disparate accounts would be documented in the PTCR.

Moreover, while the PTCR contained inaccuracies, those inaccuracies did not suggest bias against the Complainant. Rather, the PTCR depicted the Complainant's vehicle as fully within a lane of travel, whereas BWV showed that the



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Complainant's vehicle was straddling the solid white line and was angled left, as though changing lanes. While this depiction was inconsistent with the BWV, it was largely congruent with the Complainant's account that he provided to the officers. Moreover, it suggests that the Named Employees did not dismiss the Complainant or privilege the truck driver's account over his.

Ultimately, while I recognize the Complainant's frustration with the Named Employees' decision not to cite the other driver, the evidence does not support a finding that this was based on bias. As such, I recommend that this allegation be Not Sustained – Unfounded as against both Named Employees.

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

**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 – Unfounded.

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