



CLOSED CASE SUMMARY

ISSUED DATE: JULY 15, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0033

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 alleged that Named Employees subjected her to bias policing during their investigation of a traffic collision.

SUMMARY OF INVESTIGATION:

The Complainant filed a complaint with OPA concerning a collision that she was involved in. She raised concerns with the law enforcement response to and the investigation of that collision. She stated that she was rear-ended by the other motorist and that this caused her to suffer injuries and significant damage to her vehicle. She said that the other motorist did not have a valid driver's license or insurance. She complained that the officers did not cite the other motorist for all of the traffic violations that occurred. The Complainant also asserted that the officers should have determined whether the other motorist was impaired, which the Complainant believed. The Complainant asserted that the failure of the Named Employees to take these steps indicated their bias towards her as a Black female. The Complainant also believed that the Named Employees questioning of her indicated bias on their part. As a result of the Complainant's allegations, OPA commenced this allegation.

As part of its investigation, OPA spoke with the Complainant and ultimately obtained a statement from her. OPA further reviewed the documentation generated by the responding officers and watched the Body Worn Video (BWV) that fully captured what occurred.

The BWV showed that Named Employee #2 (NE#2) was the primary officer on the call. After responding to the scene, he observed both vehicles and the conditions of the involved parties. He spoke with the other motorist while a second



officer – referred to here as Witness Officer #1 (WO#1) – talked to the Complainant. The other motorist was crying. She told NE#1 that her wallet had been stolen but that she had a photograph of her license on her phone. She said that, after the accident, the Complainant began yelling at her and called her a “wetback” and a “bitch.” Based on the possibility that a bias crime had occurred, NE#2 summoned his supervisor – Named Employee #1 (NE#1) – to the scene. NE#2 viewed the other motorist’s license on her phone and also noted that her insurance card was expired. She told NE#2 that the Complainant was chasing her around the car, trying to open her car doors, and telling her that she was going to sue. Medical attention was called for the other motorist. NE#2 observed that there appeared to be minor damage to the vehicle.

NE#2 then spoke with the Complainant. The Complainant was sitting in her car and was being medically treated. The Complainant alleged that the other motorist “careened” into her and that she believed that the other motorist might leave the scene. She said that the other motorist called her a “bitch” and a “cunt” and was “talking shit to her.” She claimed that the other motorist: “fucking dented my car and hurt my back.” NE#2 looked at the Complainant’s car and stated to another officer: “Cannot tell what’s new.” NE#2 spoke to the Complainant about the damage, and she told him that she was not an “appraiser” or an “examiner.” She said that her extremities hurt, and she could not walk to the back of the car. NE#2 agreed that she should not do so. The Complainant told NE#2 that the other motorist would not provide her license or insurance information. NE#2 disclosed what the other motorist told him, and the Complainant opined that she was lying.

The Complainant told NE#2, referring to the other motorist: “She careened into me without a license. That is not okay with me. And then her attitude triggered me cuz if I hit her, I’d been nice and I’d be trying [to appease] her and understanding that I was at fault and understanding that I caused damage to my body.” NE#2 asked the Complainant whether the other motorist showed her the documents on the phone. The Complainant said that the other motorists did show her the phone, but that she could not see the documents clearly. The Complainant apologized for yelling but noted that she was “fucking pissed.” NE#2 told her that the other motorist could be fined for not having her license on her. The Complainant again said that the other motorist was lying. The Complainant also contended that the other motorist was high and that her eyes were “bloodshot red.” NE#2 told her that it may be related to the fact that the other motorist was crying.

NE#1 arrived on scene and NE#2 briefed him. NE#2 also discussed with WO#1 that the other motorist appeared to have a valid license. NE#2 again looked at the damage on the other motorist’s vehicle. He spoke with the other motorist again and she acknowledged that she was looking down at the time for the accident and then rolled into the Complainant. He then spoke with the Complainant who noted that the other motorist had a sticker on her car that read “fly high.” The Complainant questioned why the other motorist had not been cited yet and NE#1 told her that the investigation was ongoing. The Complainant said: “I want my justice today, that’s all I’m saying.”

NE#1 spoke to the Complainant about the other motorist’s allegation of biased statements. The Complainant denied that she used racial language and that she only called the other motorist a “cunt” and a “bitch.” NE#1 asked her if she tried to open the other motorist’s car door and the Complainant acknowledged that she did so. NE#1 began to ask another question and the Complainant retorted: “Was I the motherfucking aggressor? Was I the n-----r, yeah, I was. I was Black the whole time. Because see that’s the thing here, if I had did what she just did to me...if somebody was white in that car, and somebody of color had rear-ended them, you would not be asking me, ‘were you the aggressor?’ How the fuck am I the aggressor when I got rear-ended?” NE#1 told her that this was not his question. He then asked her if she was making a biased policing allegation against the officers, and she said that she was. She stated: “Yes. Yes



...you guys react to people of color differently and because in this instance my skin is darker than hers...so that's why you're asking me was I the aggressor."

NE#2 conferred with NE#1 and WO#1. Both NE#1 and WO#1 believed that it was a bias incident due to the statements reportedly made by the Complainant, but they did not feel that there was probable cause to arrest the Complainant for harassment. They agreed that the bias aspect of the case needed to be documented. NE#2 made the decision to cite the other motorist and relayed this information to both parties. The other motorist again attested that she had valid insurance but that the card on her phone was expired. NE#2 reminded her to get a new card. The Complainant noted: "If I went around with an expired insurance card, that's a game I used to play with the cops...she's going to skate..." NE#2 replied: "I understand...I'm going to write her for hitting your car...I'm just not going to do it [write the insurance ticket]." NE#1 explained to the Complainant that it was within the officers' discretion to cite or not cite the other motorist for her lack of a non-expired insurance card. He told the Complainant that that they were taking the other motorist "at her word" and found her "believable."

The Complainant apologized to NE#1. She told him: "Well, you guys didn't call me the n word, you didn't do anything. I said I've been stopped before, I've been in collisions before where I was the one who rear-ended someone and you know I got tickets, I got every single ticket that you could get...and I was just saying she should get that too...that's all I'm saying. That's what I meant when I said that." The officers and the involved parties then left the scene.

OPA verified that the other motorist was ultimately issued a citation for inattentive driving.

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.*)

As discussed above, OPA reviewed the entirety of the video and, thus, observed all of the Named Employees' interactions with the Complainant. It is clear from the video that the Complainant was frustrated by the other motorist's actions and her belief that the other motorist would not get cited and held accountable.

However, there was absolutely no indication that either of the Named Employees engaged in biased policing. To the contrary, they investigated the collision and the potential biased statements made by the Complainant thoroughly and objectively. The decision to cite the other motorist was based on the evidence and the decision to not issue citations for the other potential violations did not constitute either bias or an abuse of discretion under the circumstances of this case. The same goes for the officers' decision to not arrest the Complainant for her potential bias statements.

Given that OPA finds no evidence of biased policing on the part of the officers, OPA recommends 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), OPA recommends that this allegation be Not Sustained - Unfounded.

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