



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 24, 2018

CASE NUMBER: 2017OPA-1161

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)

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:

During an interview for another OPA case (2017OPA-0663), the Complainant alleged that his race played a role in Named Employee #1’s law enforcement actions towards him.

ADMINISTRATIVE NOTE:

A sergeant who is currently assigned to OPA was the supervisor on scene and interviewed the Complainant and other involved parties. Given his role in this case, the sergeant was not consulted in this matter, and neither the facts of this investigation nor my conclusions were shared with him.

STATEMENT OF FACTS:

Named Employee #1 (NE#1) was dispatched to a fight in progress in the vicinity of South King Street and Maynard Avenue South. At the time he responded, NE#1, who was driving a marked Department vehicle, activated his In-Car Video (ICV) system. 911 callers had initially reported that a male and female were fighting in the vicinity of Sixth Avenue South and South King Street, but that location was later changed to South King Street and Maynard Avenue South. A caller further reported that the male was dragging the female victim out of her vehicle. Due to the nature of the incident, NE#1 activated his vehicle’s emergency equipment and proceeded promptly to the scene.

At the time the additional call came in concerning the incident, the subject was described as a black male in his late twenties, wearing a black long sleeve t-shirt and white pants. The caller identified the female as having blond hair. Two subsequent calls were received concerning the incident and both described the suspect’s clothes differently. One described that the suspect was a black male wearing a denim jacket. The other referred to a black male suspect wearing a white sweatshirt and a second black male in the vicinity wearing a dark sweatshirt.

NE#1 arrived at South King Street and Maynard Avenue South and spoke to the witness to the incident. The witness stated that the involved individuals had just left the scene in a black BWM and turned north on Seventh Avenue South. NE#1 drove in that direction and came across a black BWM. The driver of the vehicle was a black male wearing a black sweatshirt and white pants. The passenger was also a black male who was wearing a jean jacket. NE#1 stopped next to the BWM at a red light. NE#1 asked the individuals whether they had just been in a fight. NE#1



reported that the individuals stated that they had not been in a fight and it was “some other dudes” in a different location. NE#1 thanked them and drove off. NE#1 did not stop the vehicle at that time.

NE#1 returned to the witness’s location and further spoke with him. The witness relayed additional information concerning the incident, including that the male aggressor and the female slapped each other, and that the male was choking her in the car. At this time, the witness also relayed to NE#1 that the male was wearing a denim jacket.

A short while later, another call came over the radio concerning two males and a female involved in an argument in the vicinity of 520 Occidental Avenue South, which was approximately six blocks away from NE#1’s location. The information from the call indicated that these individuals were associated with a black BWM. NE#1 went to that location and made contact with those individuals. All three individuals denied that an assault had occurred, but NE#1 thought otherwise based on the prior witness statements and the fact that the individuals matched descriptions given by 911 callers.

The subsequent interaction between NE#1 and the three involved individuals was recorded on ICV. NE#1 approached the black male wearing the white pants, who is the Complainant in this case. NE#1 told him that he was investigating a crime and directed him to stand by NE#1’s patrol vehicle. The Complainant told NE#1 that he did not do anything and did not immediately walk over to the vehicle. Once the Complainant did walk over to the vehicle, NE#1 pointed at the vehicle’s bumper and told him to sit down. The Complainant did not do so. During his OPA interview, the Complainant told OPA that he was unclear as to where NE#1 was asking him to sit. NE#1 then left the Complainant by the car and proceeded over to the female, who he walked further down the street and spoke to separately. The female reported that no physical altercation had occurred, but that there had been an argument. The female also told NE#1 that the male with the denim jacket was her boyfriend and the Complainant was her boyfriend’s brother.

After further back and forth between NE#1 and the Complainant, NE#1 detained the Complainant and used force to handcuff him. The propriety of that force was evaluated in 2017OPA-0663. Once the handcuffs were applied, they were gauged and double locked by NE#1. NE#1 told the Complainant that he was handcuffed because he failed to comply with NE#1’s commands. NE#1 then read the Complainant his Miranda warnings. At that point other officers had arrived at the scene.

NE#1 returned to the witness’s location and brought him to the scene to do a show-up. The witness identified the Complainant’s brother, who was wearing the denim jacket, as the perpetrator. NE#1 asked whether the Complainant engaged in any assaultive behavior, and the witness said no. NE#1 then placed the Complainant’s brother under arrest and released the Complainant.

A Sergeant was notified to come to scene to screen the incident in-person. While at the scene, the Sergeant interviewed the Complainant. The Complainant asserted that NE#1 was aggressive in his handcuffing and that he suffered an injury from the handcuffs being too tight. No allegation of bias was made at that time. Based on the Complainant’s allegation of excessive force and injury from tight handcuffs, the Sergeant referred this case to OPA and the investigation into 2017OPA-0663 was commenced.

During the investigation in 2017OPA-0663, OPA interviewed the Complainant. During that interview, the Complainant alleged, for the first time, that NE#1 subjected him to biased policing during this incident. As a result of that allegation,



this new investigation was initiated. As part of this second investigation, OPA relied on the previous interview of the Complainant, wherein he made the allegation of bias, and re-interviewed NE#1.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged that he was stopped and detained by NE#1 based on bias. Specifically, he contended that the stop was based on his race and that he was racially profiled. NE#1 denied engaging in bias. NE#1 told OPA that he took law enforcement action towards the Complainant because, to the best of NE#1's knowledge at the time, the Complainant matched the description of the suspect. While NE#1 admitted that part of that description included the Complainant's race, he stated that he did not impermissibly rely on this characteristic when stopping and detaining the Complainant.

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.*)

NE#1 received information that the suspect of an alleged assault was a black male wearing a black shirt and white pants. The Complainant matched that description. NE#1 also received another description of the suspect, which matched the description of the Complainant's brother. Moreover, both were standing near the black BWM that had been observed leaving the other scene, both were identified as being involved in an argument with a blond female by a witness, and both were in the location identified by the witness. As such, I find that NE#1 had a reasonable basis to detain both the Complainant and the Complainant's brother due to the multiple different descriptions received in order to conduct an investigation to determine who the perpetrator was.

As such, the Complainant's and his brother's conduct and the fact that they matched the descriptions provided by a witness formed the basis for their stops and detentions. While it is undisputable that their races played a part in these descriptions, this information was not impermissibly relied upon by NE#1. Based on the totality of the record, I find no evidence that NE#1 engaged in biased policing. Accordingly, I recommend that this allegation be Not Sustained – Unfounded.

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