



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 4, 2018

CASE NUMBER: 2017OPA-1277

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	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 3	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Sustained
# 4	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Sustained

Imposed Discipline

Written Reprimand

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 he was arrested as a result of biased policing. During OPA’s investigation, allegations were added for professionalism, use of force, and failure to report force on the part of Named Employee #1.

STATEMENT OF FACTS:

The Named Employees were dispatched to a call of an intoxicated man who was driving a vehicle in a parking lot. When the officers arrived at the scene, they were pointed to the Complainant’s vehicle by a witness. That witness told the officers that the Complainant was intoxicated and causing a disturbance. The officers observed that the Complainant’s vehicle was stopped partially blocking one of the exits to the parking lot and was not in a designated parking space. The Complainant was sitting in the driver’s seat. When the officers approached the vehicle, the Complainant activated the parking brake and threw the car keys out of the window. The officers noticed that there was a beer can under the driver’s side of the vehicle.

Named Employee #2 (NE#2) explained to the Complainant why he was being contacted by the police. NE#2 reported that, at this time, he smelled alcohol on the Complainant’s breath and that the appearance of the Complainant’s eyes was consistent with someone who was intoxicated. The officers requested that the Complainant perform Field Sobriety Tests and take a Preliminary Breath Test, which he refused. Based on their perception of the Complainant’s



condition and on witness statements, the officers developed probable cause to arrest the Complainant for DUI and took him into custody. At the time of the Complainant's arrest, he was read Miranda warnings.

The officers' contact with the Complainant, his arrest, and his time in custody was captured on Department video. The Named Employees' Body Worn Video (BWV) is the clearest record of what occurred. During their contact with the Complainant, he was initially responsive and cooperative with the officers. However, he was very emotional at times and appeared to be unstable. Once he was placed in the patrol car, however, and informed that he was being arrested for DUI, he became more combative, including raising his voice and swearing at the officers.

During this time, NE#2 was the primary officer interacting with the Complainant. He generally spoke with the Complainant calmly and respectfully. At one point, he told the Complainant that he would speak with him only if the Complainant would talk to the officers politely. While NE#2 was interacting with the Complainant, Named Employee #1 (NE#1) ran the Complainant's name through the patrol vehicle's MDT system and closed the windows of the Complainant's car per his request. NE#1 then walked back over to the patrol vehicle and NE#2 asked if he was "comfortable" staying with the Complainant while NE#2 went to gather evidence and speak with witnesses. NE#1 said that he was and NE#2 walked away.

While together in the car, the Complainant asked NE#1 if he spoke. NE#1 responded that he did. The Complainant then asked if NE#1 had a voice and NE#1 stated: "yeah I have a voice, you hear it, don't you?" The Complainant said: "Can you respond to me right now?" NE#1 responded: "I just did twice." The Complainant began talking about his daughter getting kidnapped and appeared to meander in this area (this became a consistent trend of the Complainant's ongoing statements). He again became very emotional and spoke to NE#1 without NE#1 responding for a period of time.

NE#2 then returned to the patrol vehicle and engaged in a further conversation with the Complainant. NE#2 again explained that the Complainant was being arrested for DUI. The Complainant stated that he was simply sitting in the driver's seat and was not operating the vehicle, as demonstrated by the fact that he threw the keys outside of the window. NE#2 said that it did not matter as the Complainant was still in "control" of the vehicle as a matter of law.

After a period of time and while waiting for the tow truck to arrive, the Complainant continued to speak with the officers and argue about why he had been arrested. NE#2 began to engage with the Complainant. NE#1 began to engage with him as well. Both told him that they were doing their jobs by arresting him and making sure that he did not harm anyone while driving drunk. NE#2 told the Complainant that he would not interact with him if he was yelling. The conversation then calmed down.

The Complainant started to again argue about his arrest. NE#2 tried to redirect him to talk about his family. The Complainant started to call NE#2 "rookie" and stated that he did not do anything. The tow truck then arrived and towed the vehicle. At that time, the officers left the scene with the Complainant in the patrol vehicle.

During the transport of the Complainant to the precinct, he asked NE#1 what he was being arrested for. NE#1 stated: "What did my partner say you were being arrested for?" NE#2 then told the Complainant that NE#1 was less tolerant than he was and that the Complainant should not yell at NE#1. NE#1 told the Complainant that he was arrested for DUI. NE#1 began arguing with the Complainant concerning the basis for the arrest. The Complainant then repeatedly called NE#1 "bro." NE#1 responded that his name was not "bro." The Complainant discussed the fact that NE#1 was



from the South and he said to NE#1: “and you’re still going to do that bullshit.” NE#1 responded: “Damn right I’m going to do it, because it’s my job.” They continued to go back and forth and NE#1 raised his voice at the Complainant, telling the Complainant again to not call him “bro.” The Complainant then mentioned NE#1’s “momma” and NE#1 asked what he said about his mother, quickly got out of the patrol vehicle, and approached the rear passenger side, where NE#2 was standing. NE#2 told NE#1 not to pull the Complainant out of the car while the Complainant was angry. NE#2 suggested that they leave the Complainant in the vehicle to calm down.

After a period of time, the officers then transported the Complainant from the precinct to Northwest Hospital. While parked in front of the hospital, the Complainant continued to talk, mostly directing his attention to NE#1. At one point, NE#1 told the Complainant that he needed to stop talking so that NE#1 could communicate with NE#2. NE#1 then said: “I’m going to ask you one more time to shut the hell up I’m trying to think.” The Complainant then referenced NE#1 beating him up. NE#1 responded: “If I wanted to beat you I would have done it before we got here.” NE#1 continued to engage in a back and forth with the Complainant. At one point, NE#1 said: “At least I’m going home today, where are you going?” He repeated that multiple times, insinuating that he was going home after work but that the Complainant was going to jail. NE#2 told NE#1 to not interact with the Complainant anymore; however, NE#1 continued to do so.

After a break in the back and forth between NE#1 and the Complainant, the Complainant continued talking to himself. He spoke non-stop for virtually the entirety of his time in the patrol vehicle. NE#2 eventually left the vehicle and the Complainant started trying to get NE#1’s attention. He was ultimately able to do so. NE#1 then began arguing with the Complainant and telling him that the entirety of their conversation, including the insults, was recorded on camera. NE#2 then returned to the vehicle. He remained inside for around 40 minutes and then again departed, leaving NE#1 and the Complainant together in the car.

The Complainant asked NE#1 if he could speak with his sergeant and NE#1 stated that there was no sergeant there and that the Complainant already spoke to the sergeant at the precinct. The Complainant then alleged that the subject had assaulted him. NE#1 repeated this allegation to him and the Complainant responded that NE#1 had physically assaulted him. NE#1 did not relay the allegation of assault to NE#2 or to any other Department employee. The officers then executed the search warrant for the Complainant’s blood at the hospital. The conversation continued between the officers and the Complainant throughout that time. A sergeant responded to the hospital but the Complainant continued to complain and indicated that he wanted to file an OPA complaint.

After they left the hospital, the Complainant began arguing with NE#1. At one point, NE#1 asked the Complainant whether he was threatening him. Both officers continued to argue about this matter with the Complainant. The Complainant and NE#1 then engaged in a conversation concerning profiling with NE#1 saying that the Complainant was actually profiling him. NE#2 told NE#1 to be careful about what he said, but NE#1 indicated that he was going to engage with the Complainant. NE#1 ultimately showed the Complainant his hat and asked him if he could read or if he was illiterate. The parties continued to interact and engage in conversation through the conclusion of the incident.

This matter was referred to OPA by a sergeant to whom the Complainant made biased policing allegations. Based on OPA’s review of the video, OPA added a professionalism allegation against NE#1. OPA also alleged force and force reporting allegations against NE#1 based on the Complainant’s assertion that NE#1 physically assaulted him.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Named Employees made contact with the Complainant due to the fact that witnesses reported that he was intoxicated, engaging in a disturbance, and driving his vehicle. When the officers arrived at the scene, the Complainant was sitting in the driver's seat and threw the car keys outside of the window. Based on this conduct, I conclude that, as a matter of law, he was in control of the vehicle. The officers believed, given their experience, that the Complainant was intoxicated and observed a beer can underneath the car. As such, the officers had abundant probable cause to arrest the Complainant for DUI, despite the Complainant's contention to the contrary.

For these reasons, I conclude that the Complainant's conduct, not his race, was the basis for his stop, arrest, and detention. I find no evidence that the Named Employees engaged in any bias in this matter. Accordingly, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

Force - Use - 8.200 - Using Force 1. Use of Force: When Authorized

As discussed above, while in the patrol vehicle, the Complainant alleged that NE#1 assaulted him. There is no evidence, video or otherwise, that such force was ever used. Moreover, aside from making this claim while in the patrol vehicle, the Complainant never alleged to any Department supervisor that he had been subjected to excessive force. Indeed, the Complainant's only complaint was that the officers had engaged in biased policing. Moreover, there was no evidence that the Complainant suffered any injuries as a result of his arrest, let alone injuries consistent with an assault.

As I find that the force alleged did not occur, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #3

Professionalism - 5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

SPD Policy 5.001-POL-9 instructs that SPD employees shall strive to be professional at all times. It further states the following: "Regardless of duty status, employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." Officers "will avoid unnecessary escalation of events even if those events do not end in reportable uses of force."

At the outset, I note that the Complainant was certainly a difficult individual to deal with. He spoke, often loudly and irrationally, during virtually his entire time in the custody of the Named Employees. He took particular issue with NE#1 and spent a significant amount of time trying to interact with him and, at times, apparently trying to get under NE#1's skin. The Complainant was successful in this regard.



NE#1 continually engaged in a back and forth with the Complainant. While the Complainant made numerous inappropriate and rude comments during that time, NE#1 lowered himself to the Complainant's level and, in doing so, violated the Department's professionalism policy.

Most notably, the following comments were, in my opinion, unprofessional: "I'm going to ask you one more time to shut the hell up I'm trying to think"; "If I wanted to beat you I would have done it before we got here"; "At least I'm going home today, where are you going?" and the repeated insinuations that NE#1 was going home after work but that the Complainant was going to jail; and when NE#1 asked the Complainant if he could read or if he was illiterate.

Ultimately, officers are required to deal with individuals who are experiencing their worst moments. They have been arrested because they are suspected of committing a crime, they may be intoxicated, they may be violent, they may suffer from mental illness. Inherent in these interactions is that officers may be subjected to rude or harassing comments. Officers are held to a higher standard than these individuals. The Department and the community expects that officers will take the high road and will not engage in an insulting back and forth with those in their custody. Here, NE#1 failed to meet these expectations. He, instead, took the Complainant's bait and engaged in an unproductive and problematic ongoing dialogue, which included multiple unprofessional statements. This was the case even though NE#2 tried, on multiple occasions, to prevent him from doing so. Unfortunately, NE#1 did not listen to NE#2 and, instead, allowed the Complainant to goad him into an extremely negative interaction. I find that this conduct violated Department policy and, as such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #4

Force - Reporting - 8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

SPD Policy 8.400-POL-1 requires that officers report all uses of force except de minimis force. Here, the Complainant alleged that NE#1 "assaulted" him. NE#1 admittedly did not notify a supervisor of that allegation, document the allegation in a use of force report or any other report, or convey that allegation to OPA. When asked why he did not do so, NE#1 stated that because he did not use any force, he did not document or report it. However, NE#1 acknowledged that, pursuant to policy, he was required to do so.

Whether or not NE#1 used force in this instance (which I find that he did not), he was required to report the allegation of excessive force to a supervisor. This is mandated by policy and it is purposed to ensure that such allegations, even if meritless, are reviewed critically. He failed to do so in this case and, for that reason, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

Bias-free Policing - 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.



Seattle
Office of Police
Accountability

CLOSE CASE SUMMARY

OPA CASE NUMBER: 2017OPA-1277

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