



## CLOSED CASE SUMMARY

ISSUED DATE:     AUGUST 9, 2019

CASE NUMBER:     2019OPA-0232

### 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	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 3	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)

**Imposed Discipline**

**Oral Reprimand**

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	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 Subject alleged that the Named Employee was unprofessional towards him, engaged in biased policing, and towed his vehicle to retaliate against him. It was further alleged that an unknown Department employee took property from the Subject’s vehicle after it was towed and did not return those items.

**ADMINISTRATIVE NOTE:**

OPA’s intake investigation revealed that a Sergeant may have failed to refer to or screen with OPA an allegation by the Subject that he was racially profiled. OPA also determined that a Lieutenant did not take action to document this matter in Personnel Appraisal System entry for NE#1 even though he was directed to do so by the West Precinct Captain. These matters were handled by the chain of command as Supervisor Actions.

**SUMMARY OF INVESTIGATION:**

Named Employee #1 (NE#1) was on patrol when he observed a vehicle pulled over on the side of the road with a flat tire. NE#1 reported that he drove up to ask whether the individual, who was seated in the driver’s seat with the door open, needed assistance. NE#1 documented that this individual (who is referred to herein as the “Subject”) said that he did not and that he had ordered an Uber to get home. NE#1 wrote that he drove off and, when he did so, he noticed that the front license plate was not the same as the rear license plate. NE#1 then turned his vehicle around and made contact with the Subject before the Subject could leave the scene in the Uber.



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What occurred after this point was captured on NE#1's Body Worn Video (BWV). The video, at around the 1:00 mark, showed NE#1 approach the Subject. NE#1 told the Subject that he had observed the Subject's vehicle with two different license plates on it. The Subject responded that he did not know what NE#1 was talking about and asked NE#1 why he had his gloves on. NE#1 said: "I wanted to put my gloves on, can I put my gloves on?" The Subject told NE#1, "you can do whatever you want to do," to which NE#1 replied, "exactly, I can. Let's walk back to your vehicle." The Subject again asked why he needed to do so and NE#1 repeated that he was investigating the different plates on the Subject's vehicle. The Subject complained that NE#1 made him miss his Uber and NE#1 reiterated that it was illegal for the Subject to have two different plates.

The Subject confirmed that the vehicle belonged to him and NE#1 asked the Subject to provide his identification. The Subject responded: "So, what's the problem? It's parked, it doesn't matter, it's parked." NE#1 identified that the problem was that the vehicle was parked on a City street with two different plates. However, the Subject still asked what the issue was. Around that time, at approximately 1:33 of the video, the Subject moved his arms up and held the straps of his backpack (which was on his back at the time) with both hands. Immediately thereafter, the Subject looked at NE#1 and, specifically, appeared to look down towards NE#1's waistband. The Subject stated: "What do you have that thing out?..." He was referring to NE#1's Taser. While NE#1's exact response could not be determined by OPA, it appeared that he stated that perceived the Subject to be approaching him aggressively. NE#1 told the Complainant to move up onto the sidewalk "right now." The Subject said: "Hold up for a second, calm down bro, what are you doing?" NE#1 again ordered the Subject to move onto the sidewalk and the Subject agreed to.

At approximately 1:43 of the video, the Subject referenced that NE#1 had a Taser in his hand. He said to NE#1: "We can walk over to the sidewalk, but I just gotta understand what's going on. What do you have in your hand?" NE#1 pointed the Taser at the Subject and said: "I got a Taser...and if you don't listen to my commands, you'll be tased." The Subject asked what he was going to get tased for and NE#1 responded that it would be "for not listening to commands." The Subject stated that NE#1 had not "even said anything," to which NE#1 replied: "I tell you, let's get some ID and you're just giving me lip." The Subject denied that this was what occurred. NE#1 went over his radio and asked for backing units to step it up; however, he further transmitted that he was under control at the time.

NE#1 holstered his Taser and he and the Subject continued to argue about the basis for the stop. Both NE#1 and the Subject raised their voices at that time and both accused the other of yelling. At approximately 2:34 into the video, NE#1 told the Complainant that he was going to be placed in handcuffs because he was not listening. At around 3:27 of the video, and after the argument continued, NE#1 said: "All I'm asking for is your fucking ID, so give me your fucking ID." Virtually simultaneous to that statement, another officer arrived on scene. The Subject asked that officer why NE#1 was talking to him like that and the officer referred the Subject back to NE#1. NE#1 then walked away from the Subject.

The Subject remained at the scene for more than an hour (even after he was told that he was free to go). During that time, he interacted with multiple officers, including NE#1. The Subject was angry and animated. He criticized NE#1 on several occasions. A Sergeant also came to the scene. The Sergeant spoke with NE#1 concerning what had occurred, as well as spoke with other officers. NE#1 self-disclosed that he was unprofessional during the outset of his interaction with the Subject. The Sergeant also spoke to the Subject. The Subject told the Sergeant that he believed that NE#1's actions were racially motivated. The Sergeant asked the Subject whether he wanted to file a complaint and the Subject stated that he was going to do so. The Subject's vehicle was ultimately towed from the scene.



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The Subject later reported to both SPD and OPA that, when he later went to retrieve his vehicle, he believed that it had been prowled. The Subject stated that several items were missing; however, he did not specifically identify what those items were. SPD officers responded to the tow lot. The Subject alleged that an officer went through his vehicle and stole the missing property. OPA attempted to locate video from the tow lot, but none existed.

As part of its investigation, OPA interviewed both the Subject and NE#1. OPA also reviewed the BWV that captured the incident, as well as reviewed the documentation that was generated by the involved officers.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegations #1**

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

The Subject alleged that the law enforcement action taken against him and NE#1's approach to this incident were inappropriately based on the Subject's race.

At his OPA interview, NE#1 denied that the Subject's race played any part in his decision-making. He stated that his actions were solely based on the fact that the Subject's vehicle had two different license plates, which was illegal.

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 OPA's review of the record – including the BWV, I find the evidence insufficient to establish that NE#1 engaged in biased policing. As articulated by NE#1, the Subject's vehicle did have two different license plates on it and, as such, NE#1 was permitted to detain and cite him. While I have concerns with NE#1's approach to this incident and his initial demeanor towards the Subject, this does not establish bias on his part.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #1 - Allegation #2**

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

The Subject alleged that NE#1's approach to this incident and NE#1's demeanor towards him were unprofessional. During its investigation, OPA further identified that NE#1's brandishing and threatening the Subject with a Taser and the use of profanity towards the Subject may also have been unprofessional.

SPD Policy 5.001-POL-10 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-10.) The policy further states the following: "Any time employees represent



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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.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

At the time of the incident, NE#1 self-disclosed to a Sergeant his belief that he had been unprofessional during the beginning of his interaction with the Subject. However, NE#1 walked this back at his interview. When asked about his professionalism at his OPA interview, NE#1 stated the following: “I think I—I handled myself professionally the entire time, I wouldn’t change anything on that front.” NE#1 cited that the Subject was being confrontational, argumentative, was deflecting everything, and was making NE#1 repeat directions over and over. NE#1 acknowledged that this frustrated him. NE#1 stated that he believed that the Subject might fight him. NE#1 also asserted that the Subject made numerous unprofessional statements towards him. With regard to the brandishing of his Taser, NE#1 told OPA that it was a form of de-escalation and that it was successful because he did not end up using force. NE#1 denied that his profanity was unprofessional as it was not directed at the Subject but was, instead, purposed to emphasize the request for identification. Ultimately, NE#1 opined that, if anything, he was too nice and that, if he could do it again, the only thing he would do differently would have been to arrest the Subject.

Based on the totality of the evidence, I find that NE#1 was unprofessional during this incident. While the Subject was certainly argumentative, NE#1’s approach to this incident, including both his statements and his actions, was aggressive from the outset. This contributed to, if not caused, the escalation of the interaction. For example, NE#1 withdrew and brandished his Taser less than two minutes into the interaction. While NE#1 asserted that he believed that the Subject was preparing to fight him, this is not supported by the video. Even though the Subject did move his arms up to his backpack straps, OPA finds that a reasonable officer would not have found that motion to constitute a threat of harm. Notably, the Subject engaged in no noticeable pre-fight indicators. He did not remove his backpack, square up to NE#1, or make any aggressive motions with his hands. Moreover, NE#1’s own words contradict his assertion that the Subject posed a threat. When the Subject asked NE#1 why he was pointing the Taser, NE#1 responded that it was because the Subject was not listening to his commands. When the Subject questioned this, NE#1 went on to tell the Subject: “I tell you, let’s get some ID and you’re just giving me lip.”

While NE#1’s profanity alone would not, in every circumstance, rise to the level of an unprofessional comment, when coupled with his demeanor and other actions here, I find that it does support a finding that he violated policy.

OPA recognizes that the Subject was argumentative and that NE#1 lost his temper during this interaction. OPA also understands that officers cannot be perfect, and it endeavors not hold them to an impossible standard. That being said, NE#1’s conduct here was aggressive, escalating, and unwarranted under the circumstances. As such, OPA finds that it was inconsistent with policy. OPA notes that, had NE#1 come to his OPA interview and recognized that his conduct was unprofessional, OPA would have been much more inclined to recommend a Training Referral. However, not only did NE#1 dispute that his behavior was not unprofessional, but he stated that he was “too nice” and that the only thing he would have changed concerning this incident was to effectuate the arrest of the Subject. This convinces OPA that training would not be appropriate here. In reaching this decision, OPA notes that NE#1 is hard working and well thought of officer and hopes that this case ultimately provides a learning experience.



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For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #3**

***5.001 - Standards and Duties 14. Retaliation is prohibited***

OPA interpreted the Subject's complaint to allege that NE#1 towed the vehicle to retaliate against the Subject. It was alleged that this retaliation was potentially based on NE#1's frustration with the Subject arguing with him concerning the basis for the stop and NE#1's actions during the stop.

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, "oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy" or "who otherwise engages in lawful behavior." (*Id.*) Retaliatory acts are defined broadly under SPD's policy and include "discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

As with Allegation #1, above, there is insufficient evidence in the record to establish that the vehicle was towed as a form of retaliation. While NE#1 clearly lost his patience with the Subject, he made no statements captured on BWV that suggested that this caused him to tow the vehicle. Notably, under the law, the fact that the vehicle had a flat tire and two different license plates provided lawful reasons to tow it. Moreover, the decision to tow the vehicle was screened with and approved by a Sergeant.

For the above reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #2 - Allegations #1**

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. If, as the Subject alleged, an officer stole property out of the Subject's towed vehicle, that conduct would constitute a violation of the law and this policy.

Based on OPA's investigation, however, there is insufficient evidence to establish not only that the Subject's property was stolen from his vehicle, but also, even if this occurred, that the theft was perpetrated by a Department employee. Notably, the Subject did not specify what property had been stolen and there is no evidence that he has filed a claim with the tow lot to recover that property given that this car was in the tow lot's custody at the time. Lastly, there is no evidence that anyone, aside from the tow driver, tow lot employees, and the Subject ever had access to the vehicle.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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