



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 4, 2019

CASE NUMBER: 2019OPA-0425

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:

The Complainant alleges that the Named Employee engaged in bias-based policing when he identified the Complainant as the individual depicted in several photographs.

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 Employee. As such, the Named Employee was not interviewed as part of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Complainant contacted SPD in to report multiple fraudulent charges on six debit cards issued to three businesses that he owned. The Complainant reported that his wallet had been stolen, and that an unknown individual made a series of fraudulent charges to his business debit cards over a period of months. Named Employee #1 (NE#1), a Detective with the Fraud Unit, was assigned to investigate the case.

The first series of charges were made in January 2017 on a cruise ship, the *Allure of the Seas*. NE#1 contacted the fraud department at Wells Fargo, which managed the accounts charged on the *Allure of the Seas* and was provided information from Wells Fargo’s investigation of the charges. The information included photographs of the person who made the charges aboard the ship, which were obtained from Royal Caribbean cruise line. Among other photographs and information that Wells Fargo provided NE#1 was an “Account Overview” for a passenger on the ship at the time the charges were made. The name listed on the “Account Overview” was that of the Complainant, and the overview included a photograph of the Complainant which, in NE#1’s judgment, was the same person depicted on the Complainant’s driver’s license.

NE#1 also contacted Bank of America, which maintained one of the other accounts that the Complainant said had been charged fraudulently. That charge was for the front desk of a Las Vegas hotel, the Aria. NE#1 contacted the



Aria and was informed that the signature on the receipt for the charge in question appeared to match the Complainant's signature on his driver's license. Aria security also forwarded NE#1 a screenshot of the Complainant's public Facebook profile, which included a profile picture with the Aria hotel in the background, and a banner photo of the Complainant in a room that Aria security identified as an Aria hotel room.

According to the Complainant, he spoke with NE#1 after the investigation was completed in September 2017. During the conversation, NE#1 explained that he had compared the photographs provided by Wells Fargo, Bank of America, and Aria security to the Complainant's driver's license photograph. NE#1 reportedly indicated that the Complainant's photograph matched those of the individuals who made the charges at issue in his investigation and, as a result, NE#1 determined that the Complainant was the individual who made the charges. The Complainant relayed that NE#1 communicated that he would be referring the case for criminal charges based on filing false police reports. OPA understands that the Seattle City Attorney's Office exercised its discretion not to file charges.

On June 20, 2019, the Complainant contacted OPA. During his OPA interview, the Complainant stated that NE#1 made "racial comments and statements" in his reports. In particular, the Complainant said that NE#1 informed the Complainant that he compared security images of the person who made the allegedly fraudulent debit card charges with the Complainant's driver's license photo. The Complainant had not seen the images that NE#1 was comparing to his driver's license photo. The Complainant alleged that NE#1 mentioned the race of the person in the images and concluded that the Complainant was the person in the images based on the Complainant's race. The Complainant further stated that he had never told NE#1 that he was a Black male and that NE#1 assumed this fact. This OPA investigation ensued.

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, there is insufficient evidence to indicate that NE#1 treated the Complainant differently based on his race. As an initial matter, OPA notes that SPD employees may reference discernible personal characteristics such as race as part of a description, provided they do not determine probable cause for arrest or charges based on those characteristics alone. Put differently, race, *without more*, may not be used to determine that a person committed a crime. Here, NE#1 relied on more than race in determining probable cause, including but not limited to: security stills and a passenger photo taken aboard the cruise ship; a signature from the Las Vegas hotel; and photographs on the Complainant's public Facebook page placing him at the same hotel. That the Complainant's race matched the race of the individual depicted in the photographs provided by Wells Fargo and Bank of America is not, nor should it be, a reason to discount those photographs as evidence if, based on other factors, NE#1 determined that they depicted the Complainant. Ultimately, OPA concludes that no information in the record exists to show that NE#1 relied exclusively or impermissibly on the Complainant's race in determining that the Complainant, and not another person, made the debit card charges at issue in his investigation.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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