



OFFICE OF PROFESSIONAL ACCOUNTABILITY

Closed Case Summary

Complaint Number OPA#2014-0132

Issued Date: 03/26/2015

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 5.001 (VII) (A) (1) Exercise of Discretion (Policy that was issued 08/15/12)
OPA Finding	Not Sustained (Unfounded)
Allegation #2	<u>Seattle Police Department Manual</u> 5.001 (V) (C) Miscarriage of Justice (Policy that was issued 08/15/12)
OPA Finding	Not Sustained (Management Action)
Allegation #3	<u>Seattle Police Department Manual</u> 15.180 (I) (A) (a) Primary Investigations – Accurately Recorded Facts (Policy that was issued 03/26/10)
OPA Finding	Not Sustained (Unfounded)
Final Discipline	N/A

INCIDENT SYNOPSIS

The named employee was the primary investigator of events centered on criminal activity where witness #1 was the victim of a crime. The named employee prepared a photo montage for witness #1 based on his investigation. Witness #1 made a positive identification of the complainant. Based on showing a single photo to witness #1 the named employee requested charges be brought against the complainant and the complainant was arrested.

COMPLAINT

The complainant, through his attorney, stated when he was released from jail that he had been wrongly arrested and incarcerated, stating that the named employee failed to confirm the full name of the person he was seeking and assumed that the complainant was the correct suspect.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complaint e-mail
2. Email exchanges with complainant's attorney
3. Search for and review of all relevant records and other evidence
4. Interviews of SPD employees

ANALYSIS AND CONCLUSION

The weight of the evidence showed that the named employee incorrectly used a single photo identification method as the basis for the warrant request but the named employee honestly thought that he was using the correct procedure as told by a fellow officer. It is recommended that the Department more thoroughly document and regularly train its detectives on best practices regarding the identification of a suspect through photographic arrays and montages.

FINDINGS

Named Employee #1

Allegation #1

While the named employee believed that a single photo identification method had been approved by a prosecutor, the practice is not and should not be viewed as an approved and viable investigative method. The evidence does not support that the named employee engaged in enforcement or investigative activities appearing to rise from conflict of interest, dishonesty, or criminal activity. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Exercise of Discretion*.

Allegation #2

It appears that the training and protocols used by the Department has not clearly communicated that single photo identification is a prohibited method. The named employee honestly thought he was using an approved method. It is recommended that the Department more thoroughly document and regularly train its detectives on best practices regarding a suspect's identification through photographic montages. Therefore a finding of **Not Sustained** (Management Action) was issued for *Miscarriage of Justice*

Allegation #3

The named employee believed that the identification of the complainant was accurate based on the selection by witness #1 of the photo. This selection was relied upon by the named employee when he sought charges and the arrest of the complainant. Therefore a finding of **Not Sustained (Unfounded)** was issued for *Primary Investigations – Accurately Recorded Facts*.

The OPA Director's letter of Management Action recommendation to the Chief of Police is attached to this report.

NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.



December 23, 2014

Chief Kathleen M. O'Toole
Seattle Police Department
PO Box 34986
Seattle, WA 98124-4986

RE: MANAGEMENT ACTION RECOMMENDATION (OPA2014-0132)

Dear Chief O'Toole:

In early 2013 a warrant was issued for the arrest of an individual suspected to be an accomplice in the kidnapping and assault of a woman for the purposes of human trafficking. The warrant was based on the sworn testimony of a detective from the Seattle Police Department (SPD) that the victim of this violent crime had positively identified the person named in the warrant as one of the persons involved. Based on this warrant, the individual was arrested and held in jail for seven days. He was released after it was discovered that the victim was not certain about the identification. It was later determined that a different person with the same first and last name, but a different middle initial, had been involved in the crime.

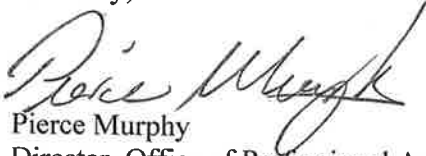
The person arrested and then released subsequently filed a claim with the City of Seattle alleging the SPD detective conducted an "inadequate and careless" investigation and an improper photo line-up, resulting in the false arrest of the claimant. As a matter of routine practice, the Office of Professional Accountability (OPA) was notified of this claim and conducted a preliminary review of available documents to determine if a misconduct investigation should be initiated. Based on this intake investigation, the matter was classified for investigation. While the investigation did not result in a sustained finding of misconduct against the involved detective, it brought to light the need for improved training, clearer guidelines and increased supervision with respect to the use of photo line-ups (photomontages) in identifying criminal suspects. In this particular case, the investigating detective showed the photograph of the target of his investigation to the victim in ways that were not consistent with best practices and, as it turned out, resulted in an incorrect identification of the target as the perpetrator. However, the detective had not been recently trained in best practices for photo line-ups, and the last guidelines for preferred practices had been published in a training bulletin in 2009. As a result, I have recommended a finding of Not Sustained (Management Action).

Recommendation: It is recommended that SPD establish a policy and clear set of procedures to govern the use of live and photographic "line-ups" used for the purpose of identifying persons involved in criminal activity. Broad research into best practices and consultation with national experts on the topics should precede the development of this policy and these procedures. Furthermore, it is recommended that specific training in the understanding and use of this policy and these procedures be given to all new detectives and detective supervisors, as well as to all existing detectives and their supervisors on a regular, refresher basis. Given the risk and ramifications of an innocent person being misidentified as having been involved in a crime, this policy and these procedures must be strictly enforced and closely followed.

Pierce Murphy
December 23, 2014
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Thank you for your prompt attention to this important topic. Please keep me informed of your response to this recommendation and, should you decide to take action as a result, the progress of your response.

Sincerely,

A handwritten signature in cursive script that reads "Pierce Murphy". The signature is written in black ink and is positioned above the printed name.

Pierce Murphy
Director, Office of Professional Accountability