



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 18, 2019

CASE NUMBER: 2019OPA-0472

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)

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)

Named Employee #3

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 the Named Employees arrested him on the basis of his race.

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 Employees. As such, the Named Employees were not interviewed as part of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

On June 28, 2019, Named Employee #3 (NE#3) was working patrol when he responded to a report that two males of unknown races were seen trying the door of a seafood restaurant at approximately 4:15 a.m. The report indicated that one male was wearing all black and was carrying a garbage bag, while the other was wearing a yellow jacket. Approximately 500 feet from the restaurant, NE#3 encountered a man — who is the Complainant in this case — who was wearing black clothing and carrying a trash bag.



NE#3 stopped his patrol vehicle and asked the Complainant, who is Black, if he had been pulling on the door of a seafood restaurant. Because NE#3 was still inside his vehicle, his Body Worn Video (BWV) did not capture the Complainant's initial responses. NE#3 told the Complainant that he had received a report regarding someone who matched the Complainant's description. NE#3 then reported over radio that he was "out with a possible." NE#3 activated his vehicle's lights, pulled over, and exited his patrol vehicle.

Named Employee #1 (NE#1), also on patrol, arrived as NE#3 was exiting his vehicle. NE#1 and NE#3 began speaking to the Complainant, and their interaction was captured on BWV. The Complainant denied that he attempted to open the restaurant door. NE#3 told the Complainant: "I'm just going to get your name and let you go. We don't have a reporting party. We don't have a crime or anything, somebody reported someone trying a door." NE#3 took the Complainant's name and birth date and ran the information through Department databases. While NE#3 searched for warrants, NE#1 continued to speak to the Complainant. NE#1 and the Complainant talked about where the Complainant was staying. NE#1 recommended several shelters. During the conversation, Named Employee #2 (NE#2) arrived in his patrol vehicle.

NE#3 identified a warrant for the Complainant's arrest and informed NE#1 and NE#2. NE#1 and NE#2 placed the Complainant in handcuffs, while NE#3 explained the details of the warrant. NE#3 told the Complainant that the warrant was for assault, had been issued by the Seattle Municipal Court, and had set bail at \$25,000. The Complainant stated that he had been told by an officer that he could pay the "ticket" when he was paid on the 3rd. NE#3 explained that it was not a ticket, but rather a signed arrest warrant issued by a judge. The Complainant continued to assert that he had been told by someone that he could pay a fine at a later date. NE#3 and NE#2 walked with the Complainant to the front of NE#1's patrol vehicle and searched him incident to arrest. NE#3 read the Complainant his Miranda rights. The Complainant became frustrated with the officers and with police generally. He further asserted that none of the items in his possession were stolen. The officers continued to search the Complainant, using minimal force to lean him against the front of the patrol vehicle. The Complainant said: "you don't have to mishandle me like that." After completing the search, NE#3 and NE#2 placed the Complainant in the patrol vehicle in order to transport him to the King County Jail (KCJ). While in the rear of the patrol vehicle, NE#1's BWV and rear In-Car Video (ICV) recorded the Complainant saying that the officers were racist. During his transport to the KCJ, the Complainant made further statements about race and racial bias.

NE#1 and the other officers arrived at the KCJ, where they met a Department supervisor who screened the arrest. The supervisor spoke to the Complainant. The Complainant told the supervisor that, two weeks prior, he had been pulled over by two officers who told him about a \$250 "ticket." According to the Complainant, the unknown officers stated that the Complainant could pay the "ticket" after he received his social security disability payment and that, afterward, it would be "over." The supervisor explained that a judge issued a warrant for the Complainant's arrest. The Complainant became frustrated and asked whether, if he paid the associated fees, people would stop "following" him. The Complainant further alleged that SPD was surveilling him wherever he went.

The supervisor asked the Complainant if the Named Employees treated him differently because of his race. The Complainant stated that officers read him his Miranda rights because he was Black, and that this amounted to different treatment because, when he had been arrested before, no Miranda rights were read. In a later conversation with the supervisor, the Complainant reiterated his bias complaint, and stated that he believed he was under police surveillance. The supervisor documented the bias complaint in Blue Team, and this OPA investigation ensued.



As part of its investigation, OPA attempted to contact the Complainant by leaving a voicemail on a phone number OPA believed to be his. The Complainant's cousin contacted OPA in response to the voicemail and stated that the Complainant suffers from mental illness with paranoid tendencies. The Complainant ultimately did not respond to OPA and, as such, he was not interviewed as part of this investigation.

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.*)

OPA finds insufficient evidence in the record to establish that the Named Employees arrested the Complainant because of his race. OPA arrives at this finding for three main reasons. First, NE#3's initial stop of the Complainant was supported by reasonable suspicion as the Complainant matched the description given of an individual seen attempting to open a locked door. Notably, this description did not include the race of the Complainant. Second, when NE#3 initially made contact with the Complainant, he told the Complainant that he was not planning to arrest him as no crime had occurred. At that time, NE#3 was aware of the Complainant's race and, had race been a motivating factor in this case, they would have simply arrested him instead of advising him otherwise. Third, NE#3 made the decision to arrest the Complainant only after identifying an outstanding arrest warrant for assault. Officers are entitled to rely on facially valid, signed arrest warrants when making arrests.

Moreover, the Complainant's allegation that NE#3's reading of Miranda at the time of arrest presented evidence of bias is unavailing. Officers are required to read Miranda warnings in all arrests prior to custodial interrogation. If true, the Complainant's statement that he was *not* read his Miranda warnings in a prior arrest presents cause for concern; however, that officers properly followed SPD procedure here is not, and should not be, construed as evidence of bias.

Ultimately, OPA finds that the record here does not support a contention that officers took the actions they did because of the Complainant's race. For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded as against all the Named Employees.

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

Named Employee #2 - Allegation #1

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), OPA recommends that this allegation be Not Sustained – Unfounded.

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



Named Employee #3 - Allegation #1

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), OPA recommends that this allegation be Not Sustained – Unfounded.

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