



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 28, 2020

CASE NUMBER: 2019OPA-0477

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)

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 targeted him for enforcement of a knife violation 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.

In his review of the incident, a Department supervisor determined that the Named Employees should have called a Sergeant to the scene of the incident when the Complainant made his initial bias allegation. The supervisor further determined that the Named Employees may have failed to timely inform the Complainant that he was being audio and video recorded, as required by policy. The supervisor handled both matters with the Named Employees at the chain of command level. OPA concurred with the supervisor's handling of these issues and did not investigate them further.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

On July 1, 2019, Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were searching for a male suspect who was wanted for murder.

The suspect was known to frequent an area on Aurora Avenue, and NE#1 and NE#2 went to a Starbucks where the suspect had been seen before. While they did not locate the suspect, they saw a different man inside of the Starbucks—the Complainant in this case—who was carrying a backpack with a small, fixed-blade knife visible in one of its pockets. After the Complainant exited the Starbucks, the Named Employees detained him and asked him to sit down on a nearby planter.

Body Worn Video (BWV) captured the Named Employees' interaction with the Complainant. NE#1 told the Complainant that he had noticed the knife, and that it "wasn't a big deal." However, NE#1 explained that, in Seattle, fixed-blade knives of that length were prohibited. NE#1 said that he was just going to talk to the Complainant to educate him about the law. He asked if the Complainant had identification on his person. The Complainant replied that because he was homeless, he had no identification. NE#1 said that he was not going to arrest the Complainant and asked him for his name. The Complainant gave a surname that eventually turned out to be fake.

NE#1 asked the Complainant for his first name. He reiterated that the knife violation was "not a big deal" and asked the Complainant what was wrong. The Complainant stated that it was a big deal. He asked NE#1: "why'd you even come in there?" NE#1 said that they had been looking for another person (the murder suspect) when they saw the Complainant with the knife. The Complainant reiterated that it was a big deal. NE#1 asked the Complainant if he had a warrant for his arrest, and the Complainant said that he did. He specified that the warrant was for failure to appear. NE#1 asked the Complainant why he was wanted, but the Complainant said that it did not matter. The Complainant said that police officers "just pick people and do that to them," and that NE#1 and NE#2 "didn't get the guy you wanted, so you got the next best thing." He stood up and placed his hands behind his back while NE#1 and NE#2 handcuffed him.

NE#1 then asked NE#2, referring to a woman who he observed: "Did you see where she went?" The Complainant said: "Oh, so you did see someone you wanted." While NE#2 read the Complainant his Miranda rights, NE#1 radioed to request that other officers apprehend a female he had just referred to and who he had appeared to observe boarding a southbound bus. NE#1 described the female as 25 years old, blonde, and just over five feet tall. The Complainant, who was Black, began to laugh and said, "Get the Black man, let the ho go." The Complainant said that NE#1 was a liar and alleged that NE#1 "profiled a black man." He said that NE#1 and NE#2 allowed the woman to go so that they could stop a homeless person. NE#1 said that he understood that the Complainant was upset and asked him to sit down, which the Complainant did.

NE#1 pointed out a second woman and asked NE#2 if she was someone that they were familiar with. The Complainant said; "oh, yeah. Let the White girl go. Let her go." NE#1 explained that because the Complainant was in their custody, they would not be able to stop the woman. The Complainant laughed again and said, "You know damn well that was her." NE#1 got on the radio and advised the unit pursuing the first female that he and NE#2 were unable to respond because they had the Complainant in custody. NE#1 thanked the unit and said he would handle "the paper."

After conducting a search of the Complainant's person and bag incident to arrest, NE#1 and NE#2 placed him in the patrol vehicle for transport to the precinct. During transport, the Complainant reiterated his bias complaint. On arrival, NE#1 and NE#2 notified a supervisor who screened the arrest. The supervisor also informed the Complainant that, while he did not have an active warrant as he had believed, his possession of a dangerous weapon violated the terms of his release by the Department of Corrections (DOC). The supervisor asked the Complainant about his bias complaint. The Complainant stated that the officers made the decision to arrest him for a misdemeanor (possession of a knife) instead of seeking the "felony warrant" they were initially investigating. The Complainant appeared to believe that officers had been at the Starbucks seeking the female who got on the bus and that they made the decision to arrest him rather than her on the basis of his race.

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 the totality of the record – including the BWV, OPA finds insufficient evidence to determine that the Named Employees made the decision to arrest the Complainant on the basis of his race. Rather, NE#1 and NE#2 had probable cause to arrest the Complainant for carrying a fixed-blade knife. Moreover, the Complainant was incorrect in his contention that NE#1 and NE#2 allowed other suspects of different genders and races go so that they could make this discretionary arrest. Rather, by the time NE#1 observed the two White female suspects, he and NE#2 had already made contact with the Complainant and were not able to pursue those females. They instead notified other units of the location of the females. Officers are not required to release individuals already in custody to pursue a person they see who is wanted for a different or “worse” crime. As such, the Named Employees decision not to do so here fails to establish bias.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#2.

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)**