



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 7, 2020

CASE NUMBER: 2019OPA-0779

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	15.170 - Conducting Identification Procedures 15.170 TSK-1 Conducting a Show-up	Not Sustained (Lawful and Proper)

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 asserted multiple claims concerning his detention and arrest, including that he was subjected to an improper line-up and biased policing.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the review and approval of the Office of Inspector General for Public Safety, 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.

SUMMARY OF INVESTIGATION:

The Complainant initiated a complaint with OPA after his arrest by SPD officers. He asserted that he was subjected to an "illegal line-up." In his emailed complaint, the Complainant specified that the line-up was infirm because he was not provided counsel prior to it taking place. The Complainant also alleged that he was questioned by officers prior to being read his Miranda warnings. He further made a vague claim of biased policing based on his status as a White man in Seattle. Lastly, the Complainant asserted an excessive force claim, a claim that a sergeant was unprofessional towards him, and a complaint about the use of a spit sock on him. However, it was later clarified that these allegations were solely against employees of the King County Sheriff's Office. This investigation ensued.

During its investigation, OPA interviewed the Complainant. He again asserted that he was subjected to an improper line-up and that he was questioned without Miranda warnings first being read to him. He did not mention biased policing at that time. OPA re-interviewed him concerning his bias allegation and he supplemented his account by claiming that he was detained and arrested because he was a White man in a White neighborhood.



OPA reviewed the Body Worn Video (BWV) for this incident, as well as the reports generated as a result of the underlying investigation. This evidence revealed that officers responded to a property damage call. The victim provided a description of the perpetrator. A witness further informed officers that the perpetrator was sitting on some nearby steps. The officers approached the identified perpetrator, who was later identified as the Complainant. The Complainant was detained and handcuffed while Named Employee #1 (NE#1) went to retrieve the victim to perform a show-up. NE#1 transported the victim to the scene and the victim positively identified the Complainant as the perpetrator. The Complainant was arrested and transported from the scene. The BWV confirmed that Named Employee #2 (NE#2) and another officer asked the Complainant questions concerning whether he committed the property damage prior to reading him Miranda warnings but while he was detained and in handcuffs. From OPA's review of the video, the Complainant appeared to be experiencing a significant mental health crisis at the time of this incident.

OPA made the decision to handle the questioning prior to Miranda warnings being provided via Supervisor Actions. The improper line-up allegation is discussed below, as well as the Complainant's biased policing allegation.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

15.170 - Conducting Identification Procedures 15.170 TSK-1 Conducting a Show-up

As discussed above, the Complainant alleged that he was subjected to an improper line-up.

SPD Policy 15.170 defines methods that SPD officers may use to identify suspected perpetrators of crimes. The policy specifically calls out a line-up and a show-up. A line-up is: "An identification procedure in which a group of persons, including a suspect, is displayed in order to determine whether the victim or witness recognizes a person involved with the crime." In comparison, a show-up is:

An identification procedure in which a single suspect is presented in order to determine whether the victim or witness recognizes a person involved with the crime. This typically includes the in-person presentation of a suspect in the field and occurs close in time and proximity to the incident under investigation.

From OPA's review of the BWV, NE#1 clearly carried out a show-up, not a line-up. Specifically, he brought the victim to the place where the Complainant was detained in order to determine whether the victim could identify the Complainant as the perpetrator. He did so close in time and proximity with the incident. The show-up, which resulted in the positive identification of the Complainant, appeared to be consistent with SPD policy in all respects. Moreover, and contrary to the Complainant's assertions, he was not entitled to legal counsel at the time of the show-up.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**



Named Employee #2 - Allegations #1

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

While unclear from his OPA interview, the Complainant's bias allegation was classified against NE#2 as he was the primary officer.

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.*)

The evidence clearly indicates that there is no support for the Complainant's bias claim. Indeed, the BWV establishes that the Complainant was detained because he matched the description of the perpetrator and was pointed out by a witness. Moreover, the evidence conclusively indicates that he was arrested because he was positively identified by the victim. As such, the Complainant's conduct, not his race, was the basis for the law enforcement action taken against him.

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

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