



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 6, 2020

CASE NUMBER: 2020OPA-0156

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)
# 2	6.010 - Arrests 3. Officers Shall Advise All Arrestees of Their Full Miranda Rights	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	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 Employee violated the 14th Amendment when he continued to question the Complainant after the Complainant invoked his Miranda rights. The Complainant further alleged that the Named Employee was unprofessional when he provided inaccurate information to the Complainant about his past arrests. The Complainant also alleged that the Named Employee was biased towards him and that SPD is "negligent" against "Blacks."

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.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

Named Employee #1 (NE#1) was on patrol when he pulled behind a car stopped in a left turn only lane. When the light turned green, the car did not move. This was the case even though NE#1 observed that the car was running and had its brake lights on. NE#1 used his airhorn but the car did not move even after another light change. NE#1 could see someone in the car, but that person was not moving. NE#1 activated his patrol vehicle's emergency equipment, exited, and approached the stopped car.

When NE#1 arrived at the driver's side, he observed the Complainant slumped over in the driver's seat. After a short period of time, the Complainant roused and looked at NE#1. He greeted NE#1 and NE#1 told him to put the car in



park. The Complainant did so and told NE#1 that he had just fallen asleep. The Complainant stated that he did not hear NE#1's airhorn or see the patrol vehicle's emergency equipment. He explained that he was on his way from his home in Beacon Hill (South Seattle) to a 7-Eleven store on Denny Way. However, NE#1 noted that he was over a mile from that location. NE#1 later documented in his report that the Complainant was, however, near another 7-Eleven and close to high drug activity locations, and that this raised his suspicions that the Complainant could be under the influence.

NE#1 asked the Complainant if he would take voluntary Field Sobriety Tests (FSTs) and he agreed to do so. When the Complainant got out of his car, NE#1 observed what he believed to be the remnants of drug use. When asked about it, the Complainant stated that a number of people had been inside of his car and he was not necessarily responsible for items found therein. Based on the FSTs, NE#1 concluded that the Complainant was under the influence. NE#1 placed the Complainant under arrest and read him Miranda warnings. In response, the Complainant stated that he understood his rights. NE#1 located evidence (a brownish-white coating on the Complainant's tongue and "several beige crumbs" in the Complainant's coat pocket) that was consistent with the recent usage of crack-cocaine. The Complainant was transported to the West Precinct and his car was impounded.

The Complainant later initiated this complaint with OPA. He alleged that NE#1 acted contrary to policy in three main respects. First, he claimed that NE#1 violated the 14th Amendment when he continued to question the Complainant after the Complainant invoked his Miranda rights. Second, the Complainant asserted that NE#1 was unprofessional when he provided inaccurate information to the Complainant about his past arrests. Third, the Complainant alleged that NE#1 was biased towards him and that, as a general matter, SPD is "negligent" against "Blacks." This OPA investigation ensued.

As part of its investigation, OPA reviewed the documentation concerning this incident. OPA also reviewed the BWV, which fully captured the Complainant's arrest and the interactions between him and NE#1. Lastly, OPA interviewed the Complainant. During that interview, OPA attempted to obtain additional information concerning the Complainant's various allegations. Specifically, OPA tried to understand why the Complainant believed that his arrest was based on bias and what he meant when he asserted that SPD was "negligent" against "Blacks." Despite OPA's best efforts, OPA could not obtain clarity concerning this aspect of the Complainant's claims.

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 Complainant's bias claim against NE#1 is easily disposed of. The Complainant was initially contacted because he was non-responsive in a running vehicle and did not take a left turn even after NE#1 honked at him and turned on his patrol vehicle's emergency equipment. Notably, prior to approaching NE#1 could not discern the Complainant's race by looking through the rear of his car. Moreover, when contacted by NE#1, the Complainant was unresponsive and appeared impaired. Ultimately, the Complainant was arrested because he failed the FSTs, not because of his race or membership in any other protected class.

The complainant's second allegation is a little more difficult to address simply because OPA does not know what he means. Notably, even despite OPA's attempts to discern the nature of this allegation during the Complainant's interview, OPA could not do so. However, there is no evidence in the record establishing that NE#1 or any other



unidentified officers were “negligent” towards the Complainant. Similarly, there is no evidence that SPD is, collectively, “negligent” towards African American people.

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

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

Named Employee #1 - Allegation #2

6.010 - Arrests 3. Officers Shall Advise All Arrestees of Their Full Miranda Rights

SPD Policy 6.010-POL-3 requires officers to read arrestees their Miranda warnings as soon as practical after taking the arrestee into custody. Implicit in this policy is that officers must also comply with the protections set forth in Miranda.

Virtually immediately after placing the Complainant under arrest, NE#1 read him Miranda warnings and the Complainant said that he understood. After that point, NE#1 asked several questions concerning the contents of the Complainant’s pockets and, specifically, if the Complainant had any needles or weapons. NE#1 also asked the Complainant to extend his tongue. When the Complainant did so, NE#1 asked him about the “whitish-brown stuff” on his tongue. NE#1 also asked the Complainant about the beige crumbs on his jacket. The Complainant referenced his right to remain silent. NE#1 asked the Complainant whether he wanted to continue to speak with him about these issues and the Complainant said that he did not. At that point, NE#1 ceased questioning him.

Given the above, there is no evidentiary support for the Complainant’s allegation that he was subjected to a custodial interrogation after invoking his right to remain silent. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegations #3

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

The Complainant alleged that NE#1 was unprofessional when he provided incorrect information to the Complainant concerning the Complainant’s past arrests.

Based on OPA’s review of the BWV, at one point, NE#1 noted to the Complainant that he had previously been arrested for DUI. The Complainant asserted that the charge against him was dismissed and appeared to contend that, as a result, there should be nothing in his record indicating his culpability.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*)



OPA's analysis of the BWV and, specifically, the exchange identified by the Complainant, yields the conclusion that NE#1 did not act unprofessionally. NE#1 did not assert that the Complainant was convicted or otherwise found culpable for DUI in the past. NE#1 simply referenced the prior arrest, which was a fact. As such, NE#1 did not misstate the Complainant's prior arrest record. For the above reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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