



## ***CLOSED CASE SUMMARY***

ISSUED DATE: OCTOBER 16, 2020

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0242

### **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 took law enforcement action against him because of his race.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegation #1**

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

Officers, including Named Employee #2 (NE#2) and Named Employee #3 (NE#), were dispatched to a robbery call. Two male suspects were identified by the victim. The descriptions including the clothing, tattoos, and apparent race of the two males – one of whom is the Complainant in this case. The officers were pointed to where the two suspects were situated, and the suspects were positively identified. The officers approached the Complainant and the other individual. The officers detained both men. The victim later came to the scene to conduct a show-up. The victim again positively identified the Complainant and the other individual as the perpetrators.

Named Employee #1 (NE#1), who was assigned as the Acting Sergeant during that shift, came to the scene to screen the arrests. Prior to being transported from the scene, the Complainant asserted that he was racially profiled. Specifically, he pointed to the description of him as a "Hispanic" male and that this constituted biased policing. NE#1 tried to explain the basis for the stop and that the description came from another source, not the officers. However,



the Complainant asked for another supervisor to come to the scene. NE#1 radioed for a Lieutenant; however, the Complainant was transported to the King County Jail prior to the Lieutenant being dispatched because the Complainant began kicking the transport van. NE#1 referred the Complainant's allegation to OPA, and this investigation ensued.

OPA's investigation included reviewing the Body Worn Video (BWV), which conclusively established what occurred and why the Complainant was detained and then arrested. OPA also reviewed the CAD, which indicated that the officers were not responsible for the identification of the Complainant as a "Hispanic" male and that this information was provided by 911 callers. Lastly, OPA determined that NE#1 failed to record BWV during this incident. That issue was returned to NE#1's chain of command for retraining and counseling and is not further addressed herein.

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.*)

As discussed above, the BWV showed the entirety of the officers' response to this incident, including the basis for why they detained and later arrested the Complainant. The evidence is clear that the Complainant was detained because he matched the description of one of the perpetrators and was arrested because he was twice positively identified as a suspect. As such, his conduct, not his race, was the reason for the law enforcement action taken towards him. Moreover, the fact that the Complainant was identified as "Hispanic" and the conveying of this descriptor to the officers by SPD dispatch does not constitute bias.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded as against all of 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)**