



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 19, 2020

CASE NUMBER: 2020OPA-0288

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.140-POL - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	6.010-POL - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)

EXECUTIVE SUMMARY:

The Complainant was arrested for DUI. He alleged that his arrest was not supported by probable cause and was based on his race.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

Named Employee #1 (NE#1) responded to a report of a hit-and-run collision to a parked motorcycle. Upon arriving, he spoke to an individual who reported that his motorcycle had been struck. The witness, who NE#1 observed to be intoxicated, complained that his parked motorcycle had been hit by a driver who subsequently walked away after refusing to exchange information. The witness described the driver as being a tall black male with a black jacket. NE#1 went to look for the driver but did not locate him and returned to the scene. As NE#1 was attempting to discuss the next steps in the investigation with the witness, the Complainant returned to the scene and the witness identified the Complainant as the driver who had hit his motorcycle. The Complainant agreed to participate in field sobriety tests. Upon the completion of those tests, NE#1 placed the Complainant under arrest for DUI.

The Complainant, who is Black, alleged that NE#1's decision to arrest him was based on 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-POL.) This includes different treatment based on the race of the subject. (See id.)

As more fully discussed below, probable cause existed for the Complainant's arrest. But even had it not, no evidence supports the assertion that NE#1's decision to arrest the Complainant was based on bias. Indeed, considerable evidence suggests otherwise.

First, in an interview with OPA, the Complainant was unable to identify any actions or statements made by NE#1 that he believed were evidence of bias. The Complainant stated his belief that NE#1 had already made up his mind against him. However, when asked to elaborate on this belief, the Complainant referenced only "the current situation globally" and declined to provide further detail. OPA's review of the video and documentary evidence from this incident revealed no evidence of bias.



Second, the Complainant expressed concern about the witness, who was White, being biased. The Complainant described his initial confrontation with the witness as hostile. He stated his belief the witness was exercising his “White privilege” and was condescending to the Complainant. While this may or may not have been the case, NE#1 was required to investigate the witness’ claims. NE#1 did not uncritically accept the witness’ account of what had occurred, and documented in his police report the witness’s obvious intoxication, belligerent demeanor, and NE#1’s initial “doubt that the scenario had played out as [the witness] was describing.”

Finally, NE#1’s discretion in this incident was limited. Unlike with some misdemeanor crimes, in which an arrest may be highly discretionary, engaging in DUI poses a significant risk to the public. SPD employees are expected to take appropriate action to investigate DUI incidents that occur within the city. (See SPD Policy 15.280 - DUI Investigations.)

Lastly, while OPA is sympathetic to the Complainant’s concerns that racism may have played some part in this incident, the evidence provides to basis for OPA to conclude that this was not the case here.

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

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

Named Employee #1 - Allegation #2

6.010-POL - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

The Complainant alleged that NE#1 lacked probable cause to arrest him for DUI. SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy. Probable cause exists when the facts and circumstances within an officer’s knowledge are sufficient in themselves to support a reasonable belief that an offense has been or is being committed.

Here, based on the totality of the evidence, NE#1’s decision to arrest the Complainant was based on probable cause. In reaching this decision, OPA finds it significant that NE#1 is a Drug Recognition Expert who has experience with thousands of DUI investigations. OPA believes that this determination is consistent with the video evidence and documentation produced by NE#1, which revealed that:

- The Complainant left the scene of a collision where he had collided with a parked car.
- The witness identified the Complainant as the driver and described him as “possibly high or intoxicated.”
- The Complainant admitted to driving the vehicle and to having left the scene without calling 911.
- The Complainant can be seen losing his balance and becoming confused during the field sobriety tests.
- NE#1 reported that the Complainant’s speech was slow, his eyes were watery, and he smelled of alcohol.



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- NE#1 reported seeing a greenish residue consistent with marijuana use on the Complainant's tongue. In addition, OPA finds it compelling that, after reviewing these same facts, a Seattle Municipal Court judge agreed that probable cause existed to believe the Complainant had been DUI. Washington State courts have held that a collision, combined with evidence that a driver was consuming intoxicants, may amount to probable cause for DUI. *See State v. Inman*, 409 P.3d 1138, 1143 (Wash. App. 2018). Moreover, even if the Complainant was ultimately acquitted of DUI during a later criminal trial, this would not necessarily undermine the existence of probable cause, which requires only facts sufficient to support a "reasonable belief" that a crime has been committed – not proof beyond a reasonable doubt.

For these reasons and based on the great weight of the evidence, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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