



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 4, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0293

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 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)

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 he was subjected to bias-based policing and an unlawful arrest by the Named Employee.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

On May 13, 2020, at approximately 3:20 a.m., Named Employee #1 (NE#1) was on patrol in downtown Seattle. NE#1 drove to the intersection of 3rd Avenue and Marion Street and, at this location, he observed a car stopped in the northbound lanes of 3rd Avenue. Upon further investigation, NE#1 observed that the car was running, with the driver seated in the driver's seat and apparently unconscious. Despite NE#1 flashing his patrol vehicle's lights at the car and shining a flashlight at the driver's face, the driver still did not wake up. NE#1 then attempted to speak to the driver. This woke the driver up and resulted in the car moving forward. NE#1 told the driver to stop the car and turn the engine off, and the driver did so.

The driver was identified as the Complainant. NE#1 explained to the Complainant that he had been observed passed out in the driver's seat. The Complainant indicated that he was "okay," and then stated that he would not submit to field sobriety tests. NE#1 accordingly placed the Complainant under arrest. At this time, the Complainant said that he had been arrested "because [he is] a Black man."

During arrest processing at the West Precinct, NE#1 made the determination to seek a blood draw warrant for suspected drug use. The warrant was granted, and a blood draw was taken. A supervisor was informed of the Complainant's allegation of bias policing and made an OPA referral. This investigation ensued.



As part of its investigation, OPA spoke with the Complainant. He told OPA that he should have been released from custody at the time that NE#1 decided not to test him for alcohol. He contended that this did not occur because 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-POL.) This includes different treatment based on the race of the subject. (*See id.*)

The entirety of this incident was captured on Body Worn Video. As discussed above, NE#1 observed a car stopped at an intersection and saw the driver – the Complainant – passed out behind the wheel. Given NE#1’s observations and investigation – including his conversation with the Complainant, he had probable cause to believe that the Complainant was operating a car under the influence. There is absolutely no indication that the Complainant’s race played any part in this determination. Moreover, that NE#1 chose to seek a blood draw warrant rather than test the Complainant for alcohol use does not indicate bias but only that NE#1 felt that the Complainant’s impaired condition was due to drugs. Lastly, the Complainant’s assertion that NE#1’s failure to release him at that time constituted bias is simply meritless.

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

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

Named Employee #1 - Allegation #2

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

SPD Policy requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. (SPD Policy 6.010-POL §1). Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy. Id. 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.

As explained above, it was reasonable for NE#1 to believe that the Complainant was driving while under the influence based on what he observed and his experience as a law enforcement officer. As such, NE#1 had probable cause to arrest him.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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