



September 1, 2010

**Statement of the King County Prosecutor's Office on decision not to charge
Seattle Police Detective with Malicious Harassment**

After reviewing a thorough investigation by the Seattle Police Department, we have determined that Detective Shandy Cobane did not commit the crime of felony malicious harassment, the state's "Hate Crime" law, during an incident that took place in April of this year.

Cobane was the subject of an investigation by the Seattle Police Department for his actions during an April 17th incident in which several Seattle Police Officers detained three Latino males in connection with an armed robbery investigation outside the China Harbor Restaurant in Seattle. Cobane will not be charged with the felony crime of malicious harassment because prosecutors have found that he did not intentionally target and then threaten or assault a person because of their race or national origin, as required under the State's hate crime statute.

In order to understand the decline decision, a detailed review of the facts is warranted.

FACTS

Seattle Police were called to the China Harbor Restaurant around 1:00 a.m. on the morning of April 17th after receiving a 911 call. In the call, a man reported being robbed by a group of Latino men in the parking lot of the restaurant. The victim reported being threatened by two of the suspects while other men stood by. He told 911 that one of the suspects had held a machete to his stomach and demanded \$20. He also reported that another suspect forced him to give up an additional \$20. That suspect told the victim, "We are gangster. We can kill you right now."

As police officers began responding to the 911 call, the group of Latino men approached a second victim in the parking lot. Again, two of the men threatened the victim with a machete and this time a handgun. One of the suspects actually hit the victim with the machete causing a rip in the victim's shirt. A second suspect pulled a handgun and threatened to kill the victim. One of the victim's friends then saw the man who had the gun run over to a car and hand something off to the driver of the car. The car then sped away.

Approximately a dozen Seattle police officers responded to the scene including Detective Shandy Cobane. The 911 dispatcher alerted police that some members of the suspect group were southbound and that one Latino man was wearing a long white T-shirt and had a gun in his belt. Minutes later a K-9 officer detained three Latino males as possible suspects in the robberies near the Marina Mart, which is located just blocks south of the China Harbor Restaurant. One of the men appeared to match an earlier description given by one of the victims. One of the three men detained was later identified as Hector Veteta-Contreras. The second man detained was identified as Martin Monetti. A third man named Denis Garcia-Garcia was also detained.

Due to the reported use of a machete and gun by the robbery suspects, the police ordered the three men to get on the ground on their stomachs and to show their hands by holding their hands away from their bodies. As Monetti was going to the ground, he tossed an unknown object into the bushes. Police later determined that Mr. Monetti had thrown his own wallet into the bushes for some unknown reason. He later told police he had thrown the wallet because he was scared.

The police held the men on the ground to check them for weapons and to have the robbery victims brought to the scene to make a possible identification. One of the suspects matched the description of the man who had the gun. He was handcuffed. The other two men were not.

A portion of the detention of the three males was captured on video tape by a bystander. During the detention, several officers later reported that Mr. Monetti was not keeping his body or hands still as he had been ordered to do. The officers told him to listen to their commands. Even one of the fellow detainees told Monetti to "quit being stupid." One of the officers then moves Monetti's hands away from his body. Then Detective Cobane crouches down and moves Monetti's hands away from his body again. He is then heard telling Monetti, "Get your fucking head on the ground. (*unintelligible*) to the side, you got me? I will beat the Mexican piss out of you, you feel me homie?"

Mr. Monetti again lifted his head and moved his hand towards his face. Detective Cobane then used his foot to stomp down on Mr. Monetti's hand and drag it back away from his body. Detective Cobane held his foot down on Mr. Monetti's hand and then eventually moved both of Mr. Monetti's hands out away from his body by bending down and using his own hands.

After a short period of time, one of the robbery victims arrived at the scene. The victim identified Hector Veteta-Contreras as the man who used a machete to rob him. Neither Monetti nor the third detainee were identified as the man who used the gun in the robberies. Veteta-Contreras was placed under arrest.

Detective Cobane and the other officers then released Mr. Monetti and the third man from their custody. Additional robbery victims and other witnesses were at a nearby location identifying a second suspect, Pedro Martinez-Najera, as the man who used the handgun. Martinez-Najera was also arrested. The witnesses also confirmed that Mr. Monetti was present during the robberies with the two suspects, but did not actively participate.

Mr. Monetti had suffered scrapes to his forehead and hand during the detention. He declined medical aid at the scene. His mother later told police that she treated his scrapes by cleaning them. Both Martinez and Veteta-Contreras were charged with armed robbery. Their robbery cases are pending in Superior Court. Police could not locate a gun or a machete at the scene.

LEGAL ANALYSIS

In order to prove a charge of malicious harassment beyond a reasonable doubt, prosecutors must show that a person, "maliciously and intentionally... threatens or assaults a specific person... because of his perception of the victims' race, color or national origin..." RCW 9A.36.080.

Detective Cobane did not maliciously and intentionally target Mr. Monetti due to his ethnicity. Instead, Detective Cobane and his fellow officers lawfully detained Mr. Monetti and the other two men because they had a reasonable belief that the men were involved in two armed robberies.

Detective Cobane focused on Mr. Monetti specifically because Mr. Monetti was not complying with the officers' commands. Cobane's intent is made clear by the fact that he never directed his verbal command or his use of physical force towards either of the other two men being detained, who were also Latino.

Detective Cobane used patently offensive language referencing the suspect's ethnicity. However, using such language is not in and of itself a crime. The threat or assault must be directed specifically towards a person because of the person's race. Detective Cobane's command to stay still was directed at Mr. Monetti due to Mr. Monetti's actions and his lack of compliance, not his ethnicity.

Moreover, police officers are allowed to use physical force in the performance of their duties beyond what an ordinary citizen would be allowed to use so long as the force is reasonable in the performance of their duties. In this case, police were investigating two recent armed robberies. A gun and a machete were alleged to have been used and had not been located. Mr. Monetti was not complying with commands. Officers used escalating tactics, including telling him to stay still, moving his hands away from his body, and then using physical force to stop his movements. Although forceful, the stomp to move Mr. Monetti's hand away from his body was not unreasonable considering the totality of the circumstances that evening.

The purpose of the statute is to prosecute individuals who use a person's race, origin, orientation or disability as a target upon which to inflict threatening and assaultive behavior specifically because of their race, national origin, orientation or disability. Mr. Monetti was not maliciously and intentionally targeted and assaulted because of his race.

The analysis used in this instance is consistent with the past practices of this office. In the past, the PAO has filed a charge of malicious harassment only in instances where a suspect explicitly selects a victim because of their race or national origin. The following cases illustrate the standard:

- State v. Adamczyk: the defendant was at a bar telling people he hated Germans. When another man said he was from Berlin, the defendant pointed a gun at his head and told him, "I hate fucking Germans." He pled guilty to one count of Malicious Harassment.
- State v. Grundstrom: the defendant approached two men talking about a pink bandana and asked them if they were gay. When one man said he was, the defendant told him that all gay people were child molesters and that he wanted to kill all gay people. He then told the man, "If I see you with a child, I will kill you." The defendant pled guilty to Malicious Harassment.
- State v. Parker: the defendant confronted a man speaking in Spanish and told him, "Fuck Mexican, go back to your country. In this country speak English." The victim tried to leave but the defendant followed him, pushed him, threw a beer can at him, pulled a knife on him and told him, "Go back to your country." The defendant pled guilty to Malicious Harassment.

CONCLUSION

Based upon the plain language of the statute and the past practices of this office, we are declining to file a criminal charge against Detective Cobane. Although a charge of malicious harassment will not be filed, Detective Cobane has himself acknowledged that his words used that evening while

detaining the men were offensive and unprofessional. He has accepted full responsibility for his actions and will be subject to the Department's internal disciplinary process.

The Seattle Police Department conducted a thorough criminal investigation in this case. This investigation has allowed us to reach our decision today based upon a full review of the facts and circumstances surrounding the April 17th incident. Any internal discipline is within the purview of the Office of Professional Accountability and the Department's internal process.