



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 6, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0134

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 2	6.010 - Arrests 1. Officers Must Have Probable Cause	Not Sustained (Lawful and Proper)
# 3	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 4	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 he was tortured by unidentified SPD officers and that this was motivated by bias.

ADMINISTRATIVE NOTE:

As this case involves unknown and unidentified SPD employees, the 180-day deadline is inapplicable. However, for administrative purposes, OPA set the 180-day deadline as the date of this DCM.

SUMMARY OF INVESTIGATION:

The Complainant submitted two online complaints to OPA in which he stated that he is a “disabled man” who was tortured by SPD officers on August 29, 2019. The online complaints were filed on March 8, 2021 and March 9, 2021, respectively. The Complainant did not identify the officer(s) who assaulted him or provide a description. He wrote that the incident occurred around 9 p.m. at Golden Gardens Park.

OPA interviewed the Complainant. He reiterated his belief that he was subjected to racial profiling and torture. He said that he was sitting in his car at Golden Gardens Park when it was surrounded by officers. He believed that the only reason they targeted him was because he was White and did not have a nice car. He also felt that a Black supervisor was biased because that supervisor smirked at him “creepily.” He said that all of the involved officers were unprofessional because they were enraged during the incident. He felt that the officers were further unprofessional when they talked about the furniture in the back of vehicle being stolen and when they repeatedly commented on the fact that he had two cell phones.



He stated that the officers tortured him by forcing him to engage in field sobriety tests. He told OPA that he had a traumatic brain injury and that this resulted in him feeling that the physical and mental tests constituted torture.

The Complainant further told OPA that he was falsely arrested for DUI and that the officers put intentionally false information in their report when they noted that he was ready to drive from the scene. He also stated that they fabricated information about him stealing furniture.

OPA reviewed the reports generated for this incident. The officers wrote that they were conducting emphasis patrols in Golden Gate Park when they noticed a vehicle that had marijuana smoke emanating from it. This was confirmed on Body Worn Video (BWV). They approached the car, and the Complainant was sitting in the front seat. The officers observed that the key was in the ignition and the Complainant pulled it out when he saw the officers approach. A Drug Recognition Expert (DRE) responded to the scene and assessed the Complainant, including conducting field sobriety tests. At this time, the Complainant disclosed multiple medical conditions, including traumatic brain injury. The Complainant was ultimately arrested for DUI physical control.

The Complainant was walked by officers to the front of a patrol vehicle where he was searched. The officers did not handcuff him because he was cooperative and because of the physical/medical conditions he disclosed. The arrest was screened by a Sergeant – the Black supervisor described by the Complainant – and the Complainant was transported from the scene. He was ultimately taken to the hospital for a blood draw.

The BWV did not show any evidence of biased policing. It did not show the officers acting enraged, raising their voices, or making any unprofessional comments. It also did not show the Sergeant smirking and/or laughing at the Complainant. Lastly, it did not show any officer use undue force on the Complainant or engage in any actions towards him that could be identified as torture.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy.

If unknown SPD employees tortured the Complainant, it would constitute a violation of both law and policy. However, the BWV clearly establishes that this did not occur. As indicated by the video, no officers used excessive force on the Complainant – except that needed to walk him to the patrol vehicle and seat him inside, let alone tortured him. Moreover, even under his account, the purported torture was forcing him to engage in field sobriety tests. However, those tests were voluntarily, and he could have stopped them at any time had they felt overwhelming to him or caused him pain. In addition, field sobriety tests are not, by any stretch of the imagination, torture.

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



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.

From OPA's review of the BWV and the other evidence, there was clear probable cause for the Complainant's arrest. The Complainant was smoking marijuana in a public park while sitting in the driver's seat of his vehicle. At the time, he had his key in the ignition. As such, he violated the law by being in physical control of his vehicle while impaired. Moreover, a DRE identified that he was, in fact, impaired had he tried to drive.

In addition, OPA disagrees with the Complainant's assertion that the officers fabricated information in their reports. Indeed, OPA could find no indication that this was case and concludes that the reports were largely consistent with the BWV for this incident.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #3

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

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."

As with the other allegation in this case, the BWV is again dispositive here. The video showed that none of the officers were enraged as the Complainant alleged. To the contrary, the officers were polite and spoke calmly with the Complainant throughout their time with him. In addition, OPA saw no evidence that the officers spoke unprofessionally about the Complainant having furniture in his vehicle or having two cell phones.

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

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

Named Employee #1 - Allegation #4

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

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.*)



There is no support for the Complainant's assertion that he was subjected to biased policing. First, the evidence indicates that the officers initially made contact with him because marijuana smoke was coming out of his vehicle, not because he was White or because he did not have a fancy car. In this respect, the Complainant's actions, not his race, were the reason for his arrest. Second, as discussed above, there is no indication that the Sergeant smirked and/or laughed at the Complainant, let alone that the Sergeant did so because of the Complainant's race.

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

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