



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 8, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0514

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 5.001-POL 10. Employees Shall Strive to Remain Professional	Not Sustained - Unfounded
# 2	5.140 - Bias Free Policing 5.140-POL 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 5.001-POL 10. Employees Shall Strive to Remain Professional	Not Sustained - Unfounded
# 2	5.140 - Bias Free Policing 5.140-POL 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded
# 3	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an...	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:

It was alleged that on November 10, 2021, Named Employee #1 (NE#1) and Named Employee #2 (NE#2) effectuated the arrest of the Complainant, during which time the Named Employees laughed at the Complainant, refused to allow him to use the bathroom, and directed racist commentary toward him. It was further alleged that this arrest was not predicated on probable cause that the Complainant had committed a crime.

ADMINISTRATIVE NOTE:

Due to present OPA staff limitations, this is an abbreviated Director's Certification Memorandum. At the Director's discretion, an expanded Director's Certification Memorandum may be released at a later time.

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General's review and approval, believed that it could reach, and issue recommended findings based solely on its intake investigation and without interviewing the involved employees. As such, OPA did not interview the involved employees in this case.



ANALYSIS AND CONCLUSIONS:

The Office of Inspector General certified this expedited investigation as thorough, timely, and objective. OPA's analysis is that the preponderance of the evidence does not establish that any policy violations occurred or rose to the level of misconduct.

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 5.001-POL 10. Employees Shall Strive to Remain Professional

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers" whether on or off duty. (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." (*Id.*) Lastly, the policy instructs Department employees to "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." (*Id.*)

The Named Employees' interactions with the Complainant were recorded by BWV. On none of the BWVs did OPA observe any officer behaving unprofessionally by laughing at the Complainant, using any derogatory or racist language, or refusing to allow him to use the bathroom. The preponderance of the evidence shows that the behavior alleged either did not occur or did not occur as alleged.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 - Allegation #2

5.140 - Bias Free Policing 5.140-POL 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-POL.) This includes different treatment based on the race of the subject. (See *id.*)

As discussed below at Named Employee #2, Allegation #3, the Complainant was arrested based on probable cause. BWV did not show any comments by officers or anyone on scene about race, outside of obtaining physical descriptions from witnesses. The preponderance of the evidence shows that the behavior alleged either did not occur or did not occur as alleged.

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

Recommended Finding: **Not Sustained - Unfounded**



Named Employee #2 - Allegation #1

5.001 - Standards and Duties 5.001-POL 10. Employees Shall Strive to Remain Professional

For the reasons set forth above at Named Employee #1, Allegation #1, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 - Allegation #2

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

For the reasons set forth above at Named Employee #1, Allegation #2, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #2 - Allegation #3

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

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.

The Named Employees had probable cause to arrest the Complainant for DUI. Among other things, NE#2 observed the Complainant with slurred speech, bloodshot eyes, and other indicators from a field sobriety test. Moreover, the Complainant's vehicle was in the middle of the road following a collision—an event about which the Complainant was unable to recall the details.

Accordingly, this allegation is Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**