




## CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 20, 2023

FROM: DIRECTOR GINO BETTS, JR.   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0235

### Allegations of Misconduct & Director's Findings

#### Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Will Strive to be Professional	Sustained
# 2	16.090-POL-1 Recording with ICV and BWV 5. Employees Recording Police Activity b. When Employees Record Activity	Not Sustained - Training Referral
# 3	6.010 - Arrests 6.010-POL 3. Officers Shall Advise All Arrestees of Their Full Miranda Rights	Not Sustained - Training Referral
# 4	15.180 - Primary Investigations 15.180-POL 9. Involved Officers Shall Complete Statements for Felony Arrest	Allegation Removed
# 5	13.030 - Emergency Vehicle Operations 13.030-POL 4. Officers Use Emergency Lights for Emergency Response	Not Sustained - Unfounded
Imposed Discipline		
Written Reprimand		

***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 Named Employee #1 (NE#1) was unprofessional with an arrestee and improperly issued *Miranda* warnings. NE#1 also allegedly improperly activated emergency equipment, unjustifiably deactivated in-car video (ICV) and failed to complete a felony arrest statement.

### SUMMARY OF INVESTIGATION:

On August 2, 2022, an SPD supervisor sent OPA a Blue Team complaint alleging NE#1 prematurely deactivated his ICV. During OPA's intake investigation, OPA additionally identified potential professionalism, *Miranda*, ICV, emergency vehicle operations, and primary investigation policy violations.

OPA opened a full investigation, where OPA reviewed the complaint, Computer-Aided Dispatch (CAD) data, body worn video (BWV), in-car video (ICV), and an AXON Evidence Audit Trail report. OPA also searched SPD's Mark43 Records Management system for any report NE#1 generated concerning this incident. Finally, OPA interviewed NE#1.



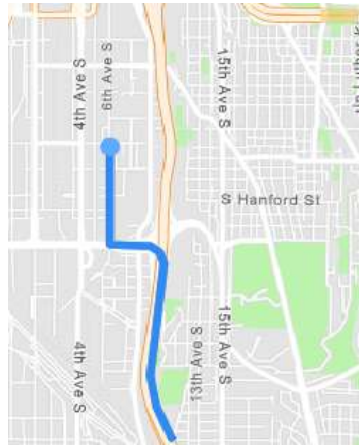
***a. Computer-Aided Dispatch (CAD) Data and Mark43 Search***

CAD data showed NE#1 responded to a 911 call concerning a man (the Subject) at a Caribbean restaurant reportedly in crisis and armed with a knife. At 12:22 PM, CAD data showed NE#1 was en route. At 12:26 PM, the call was updated to note the situation was under control. At 12:32 PM, NE#1 arrived on scene. There were no CAD notes concerning NE#1's ICV system. See SPD Policy 16.090-POL-1(4) ("If an employee discovers an operational issue with ICV . . . the employee will . . . note the issue in a CAD update."). OPA's Mark43 search did not locate any statement or report produced by NE#1 for this incident.

***b. In-Car Video (ICV) and AXON Evidence Audit Trail***

NE#1's ICV related to this incident was three minutes and five seconds. The first minute did not contain sound<sup>1</sup> but showed NE#1 driving northbound on I-5 near the Columbian Way exit. NE#1 exited at Spokane Street. A dispatcher radioed the situation was under control. NE#1 turned right onto 6<sup>th</sup> Avenue S and stopped at a redlight at S Lander Street. While stopped, NE#1's BWV equipment beeped twice, two seconds later NE#1 said something<sup>2</sup>, and the ICV ended three seconds thereafter. NE#1's emergency equipment did not appear to be activated throughout his ICV activation.

**NE#1's Direction of Travel**




OPA reviewed NE#1's AXON Evidence Audit Trail, which logged NE#1's ICV activity. The log showed at 12:28 PM NE#1's ICV was automatically activated due to speed and at 12:30 PM it was manually deactivated "using Axon View XL."

<sup>1</sup> This was a standard buffering period for ICV.

<sup>2</sup> ICV did not clearly capture NE#1's comment.



**NE#1's Evidence Audit Trail (ICV activity)**

#	Date	Time	User	Activity
1	27 Jun 2022	12:28:07 (-07:00)		Recording started due to speed activation
2	27 Jun 2022	12:28:09 (-07:00)		GPS added to video metadata using Axon View XL
3	27 Jun 2022	12:30:12 (-07:00)		Recording stopped using Axon View XL

**c. Body Worn Video (BWV)**

OPA reviewed NE#1's BWV. BWV captured an hour and twenty-eight minutes of NE#1's response, including his interactions with the Subject. Upon arrival, NE#1 found the handcuffed Subject sitting on a curb. An officer told NE#1 the Subject "resisted arrest" prior to NE#1's arrival. NE#1 replied, with the Subject nearby, "Oh, Mr. (Subject) why did you do that? These are not the people to resist against." NE#1 chuckled and said, "Uh, not a great decision." The Seattle Fire Department (SFD) arrived to aid the Subject. An SFD employee asked NE#1 what happened to the Subject. In the presence of the Subject, SFD, and other officers, NE#1 altered his voice into babytalk and stated, "Oh, he had a big morning, right? He had a big morning. He had a big morning. Yeah." NE#1 also stated the Subject had "Some boo-boos on the arms."

**Subject's Arms**



An SFD member questioned NE#1 about the Subject, but NE#1 replied, "I just know he had a big morning, now he's a little tuckered out. Right, [officer's name]? He's a little tuckered out." A short time later, NE#1 told an SFD member the Subject would be "ITA anyway."<sup>3</sup>

Without issuing *Miranda* warnings, NE#1 conversed with the Subject about the incident. NE#1 asked, "what happened this morning with these people? . . . what happened that you were screwing around over there?" The Subject gave a

<sup>3</sup> ITA is short for the Involuntary Treatment Act, which provides the statutory framework for civil investigation, evaluation, detention, and commitment of individuals experiencing a mental disorder or a substance use disorder whose symptoms are so acute that the individual may need to be treated on an involuntary basis in an Evaluation and Treatment facility (E&T) or Secure Withdrawal Management and Stabilization facility (SWMS). See Chapter 71.05 RCW.



mumbled response, after which NE#1 summarized, "So we got the bank. Then we got some silly stuff with knives. We got some Caribbean food. Your girlfriend." After discussing the Subject's concerns about his property, NE#1 also followed up, "Well, what happened with the knife and these people?"

The Subject and NE#1 engaged in a conversation about the Subject's girlfriend, who the Subject stated lived in Columbia City. The Subject also complained about an individual he stated was harassing him. The Subject stated something indecipherable, to which NE#1 responded, "Somehow you ended up in police custody though. So, there's a little bit of a stumbling block." The Subject interjected, "Hey, make fun." NE#1 responded, "I'm not making fun of you. I'm just trying to figure out what's going on."

The Subject complained about handcuff discomfort. NE#1 and another officer adjusted the Subject's handcuffs. The Subject told the officers to just take him to jail. NE#1 responded "So you're not going to jail at all . . . when you get in the ambulance, you can ask them if they'll take you to see the girl, your girlfriend. I don't know what they'll say, but maybe if you're nice, they can work something out with you later. That's my recommendation to you."

An ambulance (AMR) arrived to transport the Subject. NE#1 told an AMR employee, with the Subject nearby, "This is Mr. [Subject]. He's gonna ask many times about wanting to go engage in some physical activity with his girlfriend. Don't be swayed and take him there." While AMR employees prepared a gurney for the Subject, an SPD acting sergeant told the Subject he was arrested for harassment. NE#1 stated, "whoops, never mind."

NE#1 then read the Subject *Miranda* warnings. NE#1 concluded with, "Do you understand these rights as I have read them to you?" The Subject responded, "they lied to me!" NE#1 replied, "listen, check me out . . . just say yes, you understand." The Subject stated, "no, I don't understand." NE#1 responded, "No, you don't understand? OK, well I tried." The Subject replied, "let me go!" NE#1 stated, "just say yes, you understand the rights." The Subject responded, "let me go!" NE#1 replied, "one is not predicated on the other."

AMR employees strapped the Subject to a gurney and lifted him into an ambulance. NE#1 walked away for several minutes to speak with a witness. After speaking with that witness, NE#1 relocated to the open rear doors of the Subject's ambulance. NE#1 asked the Subject, "Do you have a doppelganger out here? Someone who looks like you? Sammy Hagar, maybe?" The Subject asked for a ride to his girlfriend. NE#1 laughed and responded, "Oh man, dude, you gotta tone down that libido baby." The Subject replied, "what libido?" NE#1 responded, "What libido? You've been asking to go bang your girlfriend for thirty minutes!" The Subject mumbled a response, including, "Why you?" NE#1 interjected, "I don't wanna bang your girlfriend!" After NE#1 repeatedly called the Subject "dude," the Subject agitatedly shouted "Dude? I'm a man just like you are. I ain't no dude." NE#1 told an AMR employee, "gotta amuse yourself and reinvent . . . I'm reinventing the wheel here. The job has changed so much." Simultaneously, the Subject engaged in an apparent prayer. The Subject interrupted NE#1's conversation with the AMR employee to shout "Hey, don't interrupt me talking to God!"



With the Subject secured in an ambulance, NE#1 went to take an audio recorded witness statement, enter information on his laptop, and confer with other officers. About half an hour later, NE#1 entered the ambulance to escort the Subject. NE#1 radioed, "I'll be riding in the back of AMR with a suspect." The Subject responded, "I'm not a suspect. I'm a gentleman." NE#1 emphatically and apparently sarcastically stated, "and a scholar!" NE#1 also stated, "So listen, check me out though. Actually, I actually, read, uh, your police reports that you made about Mr. [Last Name]. Don't be messing with that guy, man. He doesn't sound like good news. You know, just focus on your girlfriend... Be a gentleman and a scholar, not a dude. Also, a man. Keep your relationship with God squared away, but we also don't need to hear it. And let's keep the party moving, you know, sound like a good situation?" The Subject agitatedly replied "this ain't no party. It ain't a laughing matter. Would you like to be harassed illegally against the law for twenty-nine years and eight months?" NE#1 responded, "well, that's unrelated to us hanging out. I just like to have fun at my job, you know what I'm saying?" The Subject replied, "fuck that." NE#1 asked, "you don't like to have fun at your job?" The Subject stated he would sue the City of Seattle. NE#1 responded, "That's cool. Well, what we do know is that several years down the road, when you do file this lawsuit, probably like twelve to twenty-five people are gonna watch my whole video and me talking, talking nonsense to ya. They probably won't laugh even though I've laughed. And then we'll go on." The Subject stated, "you guys fucked up." NE#1 responded, "How did we fuck up? I'm out here kicking it with you, trying to be friendly." The Subject replied, "You're not friendly at all. You're making fun of me. You think this is funny."

About six minutes later, the ambulance arrived at King County Jail and awaited admittance. NE#1 told AMR employees, "Oh, just so you guys know, they've lost total standards and credibility. They don't give a crap anymore. Like we could be sitting here for a while." NE#1's BWV ended about eight minutes later.

**d. OPA Interview – Named Employee #1 (NE#1)**

On December 28, 2022, OPA interviewed NE#1. NE#1 stated the Subject was in custody when NE#1 arrived. NE#1 stated he read the Subject *Miranda* and "spent a good bit of time with [the Subject] just providing security while officers attended to other tasks, and then I ended up riding in the ambulance with [the Subject] to jail."

NE#1 described the Subject as "fairly belligerent." NE#1 stated, because the Subject was arrested for a violent crime, he wanted to keep the Subject talking to prevent him from being combative.

OPA asked NE#1 to respond to a section of his BWV where NE#1 stated the Subject was "tuckered out" and referred to the Subject having "boo boos." NE#1 characterized those statements as attempts to "lower the intensity of the situation." NE#1 also claimed his "Sammy Hagar" comment was not an intended insult. When OPA asked whether NE#1 intended to antagonize the Subject, NE#1 stated he was just "communicating" with the Subject to "find ways to make light of it for myself so that . . . I'm able to perform to the best of my duties, so I communicate in that way, and also to keep the person distracted so they're not going to turn violent."

NE#1 also claimed, "none of my communications with him seemed to particularly bother him. There was back and forth." OPA then confronted NE#1 with the Subject's statements "You're not friendly at all. You're making fun of me."



NE#1 denied mocking the Subject and suggested he only intended to assess the Subject's credibility about prior police reports.

OPA also confronted NE#1 about his response to the Subject's threat to file a lawsuit. Specially, OPA questioned NE#1 about stating "Well, what we do know is that several years down the road when you file this lawsuit, probably like 12 to 25 people that watch my whole video and be talking, talking nonsense to you. They probably won't laugh even though I laugh..."

**OPA:** Do you feel that, for any reason, that maybe other people might not have found the same humor in your interaction?

**NE#1:** Yes.

**OPA:** Is there anything else you want to add about that?

**NE#1:** No

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegation #1**

##### ***5.001 - Standards and Duties 10. Employees Will Strive to be Professional***

It was alleged NE#1 was unprofessional with the Subject.

SPD employees must "strive to be professional." SPD Policy 5.001-POL-10. Further, "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers" whether on or off duty. *Id.* Additionally, employees must "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." *Id.* Moreover, the policy states: "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.* Last, employees, while on duty or in uniform, will not publicly ridicule: "the Department or its policies, other Department employees, other law enforcement agencies, the criminal justice system or police profession. This applies where such expression is defamatory, obscene, undermines the effectiveness of the Department, interferes with the maintenance of discipline, or is made with reckless disregard for truth." *Id.*

Here, OPA found NE#1's behavior and comments unprofessional.

Generally, while interacting with the Subject, SFD members, and AMR employees, NE#1 made several wisecracks and taunts that undermined the seriousness of the situation and antagonized the Subject for no apparent purpose beyond NE#1's amusement. Given, on BWV, NE#1 admitted he intended to amuse himself by "talking nonsense," his explanation to OPA, that his banter was a technique to "calm" the Subject is unconvincing. BWV showed NE#1's behavior clearly had the opposite effect on the Subject. Even the Subject, who the incident report described as "drinking alcohol and was most likely on some type of unknown narcotics," picked up on NE#1 making fun of him,





where he twice confronted NE#1 about it. NE#1's mistreatment of the Subject was particularly troubling because he knew the Subject was possibly in crisis. The dispatcher noted he was possibly in crisis and NE#1 told SFD members, when they first arrived, the Subject would be "ITA anyway."

Specifically, OPA found the following unprofessional:

- Characterizing the injured Subject as having "boo boos," being "tuckered out," and stating the Subject had a "big morning" in babytalk.
- Mocking the Subject's appearance by asking "Do you have a doppelganger out here? Someone who looks like you? Sammy Hagar, maybe?" The Subject shared common features with musician Sammy Hagar, stout middle-aged White men with wavy shoulder length blonde hair.
- Immature banter about the Subject's girlfriend, including stating "I don't wanna bang your girlfriend!"
- Gratuitously referencing issues and words that previously triggered the Subject, who was restrained in the back of an ambulance, like "You know, just focus on your girlfriend... Be a gentleman and a scholar, not a dude. Also, a man. Keep your relationship with God squared away, but we also don't need to hear it. And let's keep the party moving, you know, sound like a good situation?"
- Disparaging the King County Department of Adult and Juvenile Detention by telling an AMR employee "Oh, just so you guys know, they've lost total standards and credibility. They don't give a crap anymore."

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

#### **Named Employee #1 - Allegation #2**

#### ***16.090-POL-1 Recording with ICV and BWV 5. Employees Recording Police Activity b. When Employees Record Activity***

It was alleged NE#1 deactivated his ICV prior to arriving at the call.

SPD Policy 16.090-POL-1(5)(b) requires employees, when safe and practical, to record "[d]ispatched calls, starting before the employee arrives on the call to ensure adequate time to turn on the cameras."

Here, NE#1's ICV was automatically triggered into activation by his speed while en route to this call. The AXON Evidence Audit Trail report showed NE#1's ICV was manually deactivated about two minutes prior to his arrival at the call. In response, during NE#1 OPA interview, he stated, "I mean, I'm guessing I turned it off." NE#1 could not provide a reason for prematurely deactivating the ICV.

While OPA acknowledges SPD Policy defines "[f]ailure to use ICV when required" as a serious violation (see SPD Policy 5.002-POL-5), the totality of the circumstances show NE#1's violation was less than serious. Here, NE#1 self-dispatched to this call and deactivated his ICV after the dispatcher indicated the situation was under control, about two minutes before he arrived at the call and activated his BWV. Moreover, NE#1 does not have prior discipline for failure to activate ICV, where this requirement would have been reinforced. Therefore, where OPA found a possible, but not willful, violation of policy not rising to the level of misconduct, a training referral is recommended.

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.



- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1, review SPD Policy 16.090 with NE#1, and provide any further retraining and counseling it deems appropriate. Any retraining and/or counseling should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

**Named Employee #1 - Allegation #3**

**6.010 - Arrests 6.010-POL 3. Officers Shall Advise All Arrestees of Their Full Miranda Rights**

It was alleged NE#1 attempted to coerce the Subject into agreeing he understood *Miranda* warnings.

Arrestees must be read *Miranda* warnings "as soon as practical" after being taken into custody. SPD Policy 6.010-POL-3

Here, prior to issuing *Miranda* warnings, BWV showed NE#1 probing the handcuffed Subject about the events leading to his detention: "Well, what happened with the knife and these people?" After advising the Subject of his *Miranda* rights, the Subject indicated he did not understand. Rather than re-reading the warnings, NE#1 twice directed the Subject to state he understood. During NE#1's OPA interview, his SPOG representative suggested policy only requires an employee to read *Miranda* rights. However, SPD Policy 6.150-POL-1(3) requires sworn employees to "establish [an arrestee's] understanding" of *Miranda* warnings. OPA acknowledges policy does not instruct officers how to respond when a subject denies understanding *Miranda* warnings. Nevertheless, NE#1 directing the Subject to feign an understanding was clearly unacceptable.

Overall, NE#1 did issue the Subject's *Miranda* warnings, but his dismissive attitude about the Subject's incomprehension demonstrated an underappreciation for the significance of *Miranda* warnings. Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1, review SPD Policies 6.010-POL-3 and 6.150 with NE#1 and provide any further retraining and counseling it deems appropriate. Any retraining and/or counseling conducted should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

**Named Employee #1 - Allegation #4**

**15.180 - Primary Investigations 15.180-POL 9. Involved Officers Shall Complete Statements for Felony Arrest**

It was alleged NE#1 failed to complete a statement following a felony arrest.

SPD Policy 15.180-POL-9 requires involved officers to complete statements for felony arrests. Notably, there is no exception for felony arrests that involve Type II or III force or for cases later investigated by SPD's Force Investigation Team. See SPD Policy 15.180-POL-9.

Here, OPA could not locate NE#1's narrative or officer statement related to this arrest. In his OPA interview, NE#1 admitted he did not complete a statement.





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Although NE#1 was neither the arresting officer nor involved in using force against the Subject, he had significant interaction with the Subject. As noted in the Blue Team complaint: “[NE#1] failed to complete an involved officer statement for a felony arrest, so there is no written explanation [for his ICV deactivation]. (The lack of a statement is being addressed by the COC with coaching/counseling and a PAS entry).”

As it appears this, under the circumstances, minor policy violation was addressed by NE#1’s chain of command, OPA removed this allegation.

Recommended Finding: **Allegation Removed**

**Named Employee #1 - Allegation #5**

***13.030 - Emergency Vehicle Operations 13.030-POL 4. Officers Use Emergency Lights for Emergency Response***

It was alleged NE#1 failed to activate his emergency equipment during an emergency response.

An officer must “use emergency lights for emergency response” and use “audible signals when necessary to warn others.” SPD Policy 13.030-POL-4. “[E]mergency response” means “operating an authorized vehicle in a manner that is substantially outside of a normal traffic pattern.” SPD Policy 13.030-POL-1.

Here, ICV did not appear to show NE#1 drive outside normal traffic patterns. ICV automatically activates when patrol cars exceed 70 MPH. Although NE#1’s ICV automatically activated, suggesting he exceeded 70 MPH in a 60 MPH zone on I-5, ICV showed several vehicles keeping pace or passing NE#1 at the time. That indicated NE#1 was not “substantially” outside the normal traffic pattern.

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

Recommended Finding: **Not Sustained - Unfounded**