



CLOSED CASE SUMMARY

ISSUED DATE: MAY 21, 2020

CASE NUMBER: 2019OPA-0834

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	16.090-POL-1 Recording with ICV and BWV 5. Employees Recording Police Activity b. When Employees Record Activity	Sustained
# 2	16.090-POL-1 Recording with ICV and BWV 5. Employees Recording Police Activity h. Employees Stating the Reasons for Stopping BWV	Not Sustained (Training Referral)
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Allegation Removed
# 4	6.010 - Arrests 6.010-TSK-1 Sergeant Screening and Approving An Arrest	Not Sustained (Lawful and Proper)

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:

During its review of a case involving the arrest of the Subject, a senior SPD employee, OPA identified that one of the arresting officers, the Named Employee deactivated his Body-Worn Video (BWV) while speaking to the Subject.

SUMMARY OF INVESTIGATION:

On November 13, 2019, the Named Employee (NE#1) was supervising an undercover Vice operation engaged in by the North Precinct Anti-Crime Team (ACT). One member of the team was working undercover as a sex worker. In all, the team effectuated five arrests that night. As discussed more fully below, all of those arrests except for one were recorded in their entirety via BWV. In general, the procedure for these arrests was for ACT to wait until the undercover officer received a proffer of payment in return for performing a future sex act. At that point, members of the team moved in and arrested the perpetrator. NE#1, who waited in his vehicle around the corner, screened the arrests. That evening, ACT effectuated four arrests without incident. The fifth arrest, which deviated from the procedure detailed above, was the catalyst for this investigation.

At approximately 2200 hours, NE#1 was notified that ACT had just detained an individual. He activated his BWV and drove his vehicle around the corner. When he arrived, his BWV showed an officer providing Miranda warnings to the individual, who is referred to here as the Subject. NE#1 appeared to recognize the Subject as a senior SPD officer. The Subject asked to speak to NE#1. NE#1 told the other officers: "I'll talk alone, he's fine." He also replied "I know" to an officer who appeared to be advising that the Subject was a Department employee.



BWV captured the first 30 seconds of the conversation between the Subject and NE#1. During the conversation, the Subject expressed that he was upset due to issues in his personal life. NE#1 replied: "we'll try to make this as...painless as possible." The Subject also stated that he had seen the undercover officer from a distance and thought he recognized her, which caused him to approach her and "see what would happen." The Subject appeared to look back at the other SPD officers and then asked if they could go around the corner of the nearby building. NE#1 agreed and stated that he would be turning off BWV. NE#1's BWV then stopped recording.

In its review of the administrative case involving the Subject, OPA watched the BWV from the incident and noticed that NE#1 turned off his BWV and that this appeared to have been inconsistent with policy. OPA subsequently commenced this investigation.

During his OPA interview, NE#1 described his contact with the Subject. He stated that he quickly recognized the Subject as an SPD Captain and was uncertain as to why the Subject was at the scene. NE#1 stated that he initially thought the Subject might have been running another operation with a different SPD unit and that the two investigations had crossed.

Once he agreed to speak to the Subject, NE#1 stated that the Subject began sharing information about personal issues in his life. He stated that it then became clearer to him that the Subject had probably committed a crime. Based on the Subject's demeanor, NE#1 interpreted the request to speak privately as being made to protect the Subject's privacy and dignity. He also said that he interpreted the request as "a request, or an order" from a senior officer. NE#1 stated that he felt he could not say no because the Subject was a "high ranking member" of SPD. He stated that he was uncertain what to do because it was an "embarrassing situation" for the Subject and one that NE#1 had never before encountered or been trained on in his career. NE#1 noted that the Subject never directly asked for BWV to be deactivated, but that the clear import of his actions was a request for privacy.

NE#1 stated that during the time that BWV was deactivated, he and the Subject primarily discussed the Subject's personal issues. NE#1 stated that the Subject understood why he was under arrest, and requested that he be allowed to make a phone call to his immediate superior, an Assistant Chief of Police, so that he could inform the Assistant Chief personally. NE#1 stated that he told the Subject that he would have to notify his own chain of command, and that the Subject indicated that he understood. NE#1 called his Captain, who agreed to the phone call as well as to the uncuffing of the Subject. NE#1 and the other officers removed the Subject's handcuffs and allowed him to call the Assistant Chief. NE#1 said that he participated in several calls with SPD leadership as they determined a course of action.

NE#1 stated that his Captain advised him to bring the Subject to SPD Headquarters rather than the North Precinct, because of significant officer activity at the Precinct. NE#1 said that there was initial confusion as to whether they would be booking the Subject at the King County Jail (KCJ) or releasing him, and that the booking decision was made at Headquarters. He stated that he did not order the Subject to be re-cuffed for transport, and that, before and after transport, he and the Subject conversed cordially. NE#1 stated that he did so to help the Subject maintain a relatively calm and positive demeanor.

At Headquarters, NE#1 stated that several members of SPD leadership arrived and spoke to the Subject in private. Afterward, the decision was made to book the Subject into the KCJ. NE#1 stated that the then-Deputy Chief of Police, who responded to Headquarters and spoke to the Subject, asked NE#1 to see if the KCJ had any expedited booking procedures. NE#1 called and determined that such a procedure existed. NE#1 said that he and another officer took



the Subject to the KCJ for booking, which took approximately 30 minutes. They then returned to Headquarters with the Subject. The Deputy Chief and an Assistant Chief took custody of the Subject and informed NE#1 that they would wait with the Subject while a member of the Peer Support Team responded. NE#1 stated that he cleared Headquarters and returned to the North Precinct to conduct an administrative writeup of the incident.

OPA also interviewed the North Precinct Captain. He recalled speaking to NE#1 on the phone multiple times and approving the decision to un-cuff the Subject. He also recalled that NE#1 informed him that he had deactivated his BWV. The Captain stated that this was a facial violation of policy, but that in his opinion NE#1's conduct fell into one of the policy exceptions. The Captain stated that, in retrospect, he found no fault with NE#1's conduct. The Captain stated that he coordinated with SPD and directed that the Subject be brought to Headquarters rather than the North Precinct. Once the Subject arrived at Headquarters, the Captain stated that decisions were made by senior SPD leadership.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

SPD Policy 16.090-POL-1(5)(b) states that when safe and practical, employees will record "arrests and seizures", as well as "questioning [of] victims, suspects, or witnesses." Officers are permitted to exercise reasonable discretion in not recording under certain situations. SPD Policy 16.090-POL-1(5)(c). Among the permissible exceptions is "when the respect for an individual's privacy or dignity outweighs the need to record an event." SPD Policy 16.090-POL-1(5)(f). That exception provides examples of where it is applicable, including "natural death scenes, death notifications, child or sexual assault victim interviews, cultural or religious objections to being recorded, and when the use of BWV would impede or limit the cooperation of a victim or witness." *Id.*

OPA finds that NE#1's decision to deactivate his BWV prior to speaking with the Subject, a senior SPD officer who had just been arrested, violated SPD policy. Specifically, NE#1 failed to comply with the clear direction in the policy that employees record arrests and suspect questioning.

Moreover, while both NE#1 and the Captain asserted that the video was turned off to preserve the Subject's dignity and privacy, doing so for a criminal suspect is not contemplated by the policy except in limited circumstances. As a general matter, a criminal suspect has waived the right to privacy and liberty by function of the commission of a crime. The exceptions to this are where the suspect is using the bathroom or receiving medical treatment. Interpreting the policy more broadly to allow turning off recordings to protect potentially embarrassing statements would be unprecedented. Indeed, OPA is aware of no other case in which an SPD employee turned off video to protect statements of a criminal suspect from being recorded.

In addition, the failure to completely record the communications with the Subject could have served to undermine the criminal and administrative investigations into this matter. For example, had the Subject made other incriminating statements during the time the recording was turned off or tried to provide explanations for his conduct, those statements would not have been captured and may have been later deemed inadmissible.



Even presupposing good intentions on NE#1's part, the need to preserve the Subject's dignity or privacy did not outweigh the probative value of the recording. Any prejudice that the Subject might have incurred by being recorded was slight. He had already been arrested for his conduct and, as the remainder of the incident showed, that arrest would shortly become a matter of public record. Additionally, NE#1 had options beyond deactivating BWV. For example, he could (and should) have cautioned the Subject that he was being recorded and reminded him of the potential that the recording could become public. Since the Subject was a senior SPD officer well versed in SPD policy, he would have had the necessary training and experience to make a well-founded decision about what to say while being recorded.

Lastly, the purpose of the BWV recording requirement extends beyond the gathering of evidence for prosecution or the establishment of probable cause. It also has probative value with respect to establishing that no officer misconduct occurred. In this situation, OPA finds that NE#1's BWV recording would have had significant probative value in establishing his own lack of misconduct.

OPA is mindful that NE#1 was faced with a difficult scenario here. NE#1 told OPA that he felt that he had been ordered to turn off the BWV by the Subject. However, as he acknowledged, the Subject never actually asked him to turn off the video. Moreover, even had the Subject done so, this would have been an order contrary to policy that NE#1 was not obligated to follow.

SPD policy is clear that turning off his BWV was improper and, while not NE#1's stated intention, his actions gave the appearance of preferential treatment to an arrested SPD employee. NE#1 would not have (and did not) give the same deference to the other arrested individuals. Doing so serves to undermine public trust and confidence in the operations of SPD.

For the above reasons, OPA recommends that 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 h. Employees Stating the Reasons for Stopping BWV

SPD Policy 16.090-POL-1(5)(h) requires that prior to deactivating BWV, employees state the reason for their decision to deactivate it and the basis for their decision. (SPD Policy 16.090-POL-1(5)(h)). Employees must also document the reason in their report or CAD update. *Id.* In practice, employees may deactivate BWV without expressly stating the reason if a reasonable person would believe their involvement in the incident had ended.

Here, NE#1 stated on BWV that he was deactivating his recording; however, he did not document the termination of the recording or the reason for doing so in a report. While OPA finds that this constituted a policy violation, OPA finds that this is better addressed through retraining rather than discipline. As such, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should remind him of the requirement that he document a deactivation of his BWV, as well as that he explains the reason for turning off the video. This retraining and any



associated counseling should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

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.)

While OPA finds that NE#1’s de-activation of his BWV constituted unprofessional conduct, this is already fully captured by the Sustained finding in Allegation #1. As such, OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegations #4

6.010 - Arrests 6.010-TSK-1 Sergeant Screening and Approving An Arrest

SPD Policy 6.010-TSK-1 concerns the obligation of sergeants to screen and approve arrests. The sergeant is required to do the following: (1) review the circumstances surrounding the incident and the physical condition of the person arrested or detained; (2) determine the appropriateness of the offense charged and the disposition of the person arrested or detained; (3) complete an arrest screening supplemental form; (4) review the reports for completeness; and (5) apply a label to the report for appropriate follow-up. (SPD Policy 6.010-TSK-1.)

While NE#1 conceded that he did not handle this arrest in exactly the same manner as he customarily screens and approves arrests, a review of NE#1’s conduct at the scene and of the subsequent reports generated indicated that he did complete all the steps required by policy. Moreover, the decision to provide the Subject with treatment more preferential than that received by the other arrestees was made by NE#1’s supervisors, not by him. As such, OPA does not believe that it would be fair to penalize NE#1 for this.

With regard to the conduct individually engaged in by NE#1, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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