



## ***CLOSED CASE SUMMARY***

ISSUED DATE: NOVEMBER 13, 2020

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0265

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Lawful and Proper)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Lawful and Proper)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	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 the Named Employees conducted an illegal search and were unprofessional during a traffic stop.

### **ANALYSIS AND CONCLUSIONS:**

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

##### ***6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement***

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) conducted a traffic stop after they observed the subject make a lane change without using a turn signal. The officers noted that the subject took an unusual amount of time to pull over. NE#2 approached the subject's vehicle on the passenger side and observed multiple items of drug paraphernalia inside the vehicle. NE#2 then ordered the passenger out of the vehicle. The passenger subsequently admitted to ingesting narcotics and told the officers that she had narcotics in her purse, which was still located inside the vehicle. The passenger gave NE#2 permission to retrieve her purse from inside the vehicle and to search it, which he did in front of the passenger. NE#2 found numerous narcotics in the passenger's purse and placed her under arrest.



NE#1 contacted the driver and conducted a records check. He determined that the driver was a convicted felon and had been arrested as recently as 2019 for a DV assault while in possession of a firearm. Upon a request by NE#1, the driver consented to a search of his car, but not his glovebox. Prior to searching his vehicle, NE#1 informed the driver of his Ferrier Rights. These rights require officers, prior to entering a home (*or a car*) to inform the person from whom consent is sought that they may lawfully refuse to consent to the search and that they can revoke, at any time, the consent that they give, and can limit the scope of the consent to certain areas.

During NE#1's search of the car, he located a baggy that contained bullets. The driver told NE#1 that he purchased the bullets for a friend. NE#1 believed that, based on what was found in the car, that he had probable cause to seize the vehicle. The passenger was arrested, and the driver was released at the scene.

The anonymous Complainant, who witnessed the traffic stop while he was walking in the area, believed that NE#1 harassed the driver into consenting to a search of the vehicle. The anonymous Complainant also asserted to OPA that he thought that the Named Employees engaged in their actions because the driver had a warrant for failure to pay child support.

SPD Policy 6.180-POL-2 concerns searches and seizures, including entries into residences. It specifically references the various exceptions to the search warrant requirement. One such exception is where consent is given for the search. (SPD Policy 6.180-POL-2(a).) Consent must be given voluntarily and not coerced, and the consenting person must have authority to consent to the search. (*Id.*)

This entire incident was recorded on In-Car and Body Worn Video. Here, the video conclusively established that the passenger and the driver provided the Named Employees with consent to search passenger's purse and all but the glovebox of the driver's vehicle. There was no evidence on the video supporting the allegation that the search was illegal and that the Named Employees were badgering the driver such that he was compelled to provide his consent. Furthermore, there is no indication that the Named Employees' actions were predicated on anything but what they observed, discovered, and were told by the passenger and driver.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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

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

##### ***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." 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.*)



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As described above, there is no evidence that the Named Employees were badgering or otherwise acting in a manner that was unprofessional during this encounter. Video evidence contradicts the Complainant's claim otherwise and establishes that the Named Employees treated both occupants professionally during this incident.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#2.

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

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

***6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement***

For the same reasons as stated above (see Named Employee #1, Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #2 – Allegation #2**

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

For the same reasons as stated above (see Named Employee #1, Allegation #2), OPA recommends that this allegation be Not Sustained – Unfounded.

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