



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 31, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0620

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Management Action)

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Management Action)

Named Employee #3

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Management Action)

Named Employee #4

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Management Action)

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 the Named Employees acted unprofessionally when they gave preferential treatment to an SPD Captain who had been arrested.

SUMMARY OF INVESTIGATION:

A. Arrest of the Captain

On February 13, 2019, an SPD Captain was arrested in North Seattle for patronizing a prostitute. This conduct is currently being investigated by OPA under 2019OPA-0832.



He was taken into custody by SPD officers, who notified a supervisor. The supervisor, an SPD Sergeant, responded to the scene and spoke with the Captain. During that conversation, the beginning of which was recorded on Body Worn Video (BWV), the Captain told the Sergeant that he was going through a divorce and the Sergeant responded: "Okay brother, well we'll try to make this as painless as possible..." The Captain then began to give the Sergeant an explanation for what occurred and started to talk about some of his ongoing personal issues. The Captain asked the Sergeant if they could go around the corner further away from the scene. The Sergeant agreed, told the Captain that he was going to de-activate his BWV, and he turned off the camera.

B. Investigation of Preferential Treatment of the Captain by the Sergeant

In 2019OPA-0834, OPA investigated the Sergeant's turning off of his BWV and what appeared to be preferential treatment of the Captain. During his OPA interview, the Sergeant stated that, during the time that BWV was deactivated, the Captain requested that he be allowed to make a phone call to his immediate superior, Named Employee #4 (NE#4) – an Assistant Chief of Police, so that he could inform her of what occurred personally. The Sergeant recalled telling the Captain that he would have to run this through his own chain of command, and the Captain indicated that he understood. The Sergeant called his precinct captain – Named Employee #1 (NE#1), who agreed to allow the phone call, as well as to permit the uncuffing of the Captain. The Sergeant and the other officers removed the Captain's handcuffs and allowed him to call NE#4. The Sergeant said that he participated in several calls with SPD leadership, including with Named Employee #2 (NE#2) – an Assistant Chief of Police – and NE#4, as they determined a course of action.

The Sergeant stated that NE#1 advised him to bring the Captain to SPD Headquarters rather than the North Precinct, because of significant officer activity at the precinct. The Sergeant said that there was initial confusion as to whether they would be booking the Captain 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 Captain to be re-cuffed for transport, and that, before and after transport, he and the Captain conversed cordially. The Sergeant stated that he did so to help the Captain maintain a relatively calm and positive demeanor.

The Sergeant stated that, while at Headquarters, Named Employee #3 (NE#3) – then the Deputy Chief of Police – and NE#4 arrived and spoke to the Subject in private. Afterward, the decision was made to book the Subject into the KCJ. NE#1 stated that NE#3 asked the Sergeant to see if the KCJ had any expedited booking procedures. The Sergeant called and determined that such a procedure existed. The Sergeant said that he and another officer took the Captain to the KCJ for booking, which took approximately 30 minutes. They then returned to Headquarters with the Captain. NE#3 and NE#4 took custody of the Subject and informed the Sergeant that they would wait with the Subject while a member of the Peer Support Team responded.

OPA found that the Sergeant violated policy by turning off his BWV while speaking with the Captain. With regard to the allegation of preferential treatment, OPA found that the Sergeant admittedly handled the arrest of the Captain differently than other similar arrests. However, given that this treatment of the Captain was approved by the Sergeant's supervisors, any finding of misconduct rested with those higher ranked individuals, not the Sergeant. OPA then initiated an investigation into the actions and decision-making of the Named Employees.

C. Investigation of Preferential Treatment of the Captain by the Named Employees



As part of its investigation into the allegations of preferential treatment, OPA interviewed all of the Named Employees.

1. Named Employee #1

NE#1 was notified of the arrest by the Sergeant. He did not respond to the scene or to Headquarters but made a number of phone calls, including to NE#2, NE#3, the Sergeant, and to a representative of Code 4 Northwest (an employee assistance program). NE#1 said that, upon hearing of the Captain's arrest, he felt it was "unfortunate" and his first reaction was to release the Captain at the scene and to not impound his car. He felt that this was consistent with other similar arrests but acknowledged that he did not ask or determine how the arrests of other individuals for the same crimes were handled that evening. NE#2 made the decision that the Captain should be booked, and his vehicle impounded. While NE#1 had no concerns with booking the Captain, he felt that it was not necessary to tow the Captain's vehicle as impoundment did not always occur in these cases. NE#1 stated that he did not tell the Sergeant to turn off his BWV.

NE#1 felt that it was appropriate to transport the Captain to Headquarters as opposed to booking him at the North Precinct. NE#1 believed that booking at Headquarters was done to "avoid embarrassment" as numerous officers were at the precinct and Headquarters was mostly empty. NE#1 stated that he had processed arrests similarly in the past and booking at the precinct was not a "hard and fast rule."

NE#1 was aware that the Captain was unhandcuffed at the scene. He did not recall authorizing this. However, the unhandcuffing did not concern him as, in his opinion, the Captain was cooperative, not combative, and did not pose a flight risk. Again, NE#1 told OPA that keeping handcuffs on at all times was not necessarily required and could depend on the conduct and demeanor of the arrestee.

NE#1 was concerned for the Captain's wellbeing, both because of what the Captain had done earlier and because he knew of an officer who had committed suicide after an arrest. He thus decided to notify Code 4 Northwest to get assistance for the Captain.

NE#1 disagreed that his actions were unprofessional or constituted preferential treatment for the Captain. He noted that the Captain was arrested, had his car impounded, was booked into jail, and was criminally charged.

2. Named Employee #2

NE#2 was notified of the Captain's arrest by NE#1. Given how surprised he was, he felt at first that NE#1 was joking with him. However, he quickly realized that the arrest actually happened. NE#2 interpreted NE#1 as seeking his guidance on what to do. NE#2 told NE#1 that they need to "go through all the steps." He gave authorization to transport the Captain to Headquarters rather than the North Precinct. He explained that he did so because he felt it would be more embarrassing for the Captain to go to the precinct because of all of the officers there. He called NE#4 as she was the Captain's direct supervisor. He also notified OPA of the arrest.

He subsequently spoke to NE#1 again and stated that the Captain needed to be booked and his car impounded. He also had a conversation with NE#3, his supervisor. NE#3 said that he wanted to handle the incident personally. NE#3 went to Headquarters. NE#2 chose not to go.



NE#2 later learned that the Captain's handcuffs were removed and that the Sergeant turned off his BWV. He felt that this could be construed as preferential treatment and should not have been done. To the contrary, he did not feel that the decision to transport the Captain to Headquarters was preferential treatment and instead felt that it was an appropriate use of his discretion. NE#2 again pointed to the significant attention this case would receive and said that he was trying to "slow down the circus of the whole matter."

NE#2 said that he would have isolated the Captain in an interview and would not have allowed him to roam around Headquarters. He assumed that the Captain was in some sort of crisis at the time. He also would not have allowed the Captain to make phone calls, including to SPD employees. He felt that this was inappropriate.

NE#2 also later learned that the Captain's booking was expedited. This did not surprise him as he felt that the Captain would not be there very long time anyway and described a screening process that looked at the arrestee's prior criminal history and then released the arrestee on their own recognizance.

NE#2 stated that, had the arrest been "covered up," it would have been a clear violation of policy. However, this was not done here, and he made sure of that. He understood after the fact why some people might view what occurred as problematic, but he noted that everything was documented and on video and no one was trying to hide anything. Ultimately, he did not believe that he acted contrary to policy.

3. Named Employee #3

NE#3 received a call notifying him of the arrest. He could not remember who called him. He then notified the then-Chief of Police. He was off duty at the time but began making his way into downtown Seattle. During this time, he spoke with NE#1, NE#2, NE#3, and the Sergeant.

NE#3 gave the order to have the Captain transported to and booked at Headquarters rather than the North Precinct. NE#3 explained that he did this for two main reasons. First, he felt that booking the Captain at the precinct would result in numerous officers observing this and could negatively impact both the Captain and other officers. Second, he knew that he had to take custody of the Captain's badge, gun, and access cards, and he felt that this was better done at Headquarters.

NE#3 arrived at Headquarters before the Captain and the Sergeant. NE#3 made the decision to place the Captain in his office rather than in a holding cell. He did not feel that it was necessary to put the Captain in a holding cell under the circumstances as there was no safety risk. He also felt that, given that he was going to collect all of the Captain's property, he felt that it was more practical to keep the Captain in his office. NE#3 said that the Captain was never left alone. NE#3 noted that other arrestees had been allowed to bypass booking at a precinct and it was not unprecedented.

NE#3 spoke with the Captain and told him that he was going to be booked and the case would be referred for charges. NE#3 further notified the Captain that an OPA referral would be made and that he would be placed on administrative leave. NE#3 told the Captain that he did not want to talk about the underlying incident, but he did speak with the Captain concerning some of his personal problems.



NE#3 was not aware of the Captain being unhandcuffed at the scene or the Sergeant turning of his BWV until after the fact. NE#3 did not believe that the unhandcuffing was necessarily improper and stated that officers had discretion to choose when to do so. He did not give approval for the Captain's handcuffs to be removed.

NE#3 stated that the Captain did not receive any favoritism. He noted that the Captain was booked and charged. He explained that the Captain received an expedited booking, which meant that he was still brought to the jail, fingerprinted, and photographed, prior to charging being relayed to him and him being released. This process took 30 minutes and would normally take substantially longer. NE#3 did not believe that this expedited booking was improper. NE#3 pointed to the fact that there were administrative steps that needed to be taken and, given his concern for the Captain's welfare and mental state, NE#3 could not guarantee support being available for the Captain depending on when he was released from jail. NE#3 also told OPA that, unlike other arrestees, the Captain was not permitted to go home after he was released from jail and was required to deal with administrative processes.

NE#3 ultimately did not believe that policy was violated here. He noted that the Captain was held accountable and everything that should have been done was done. He explained that officers had been arrested for similar incidents in the past and had been released from the scene without being booked. In this respect, the Captain was subjected to significantly more process than would normally occur.

4. Named Employee #4

NE#4 was woken up by a call from the Captain in which he told her of his arrest. She said that she was surprised and had never received a similar phone call like that from an employee. She got dressed and went to Headquarters, where she understood the Captain to be.

When NE#4 arrived at Headquarters, NE#3 was already there. The Captain was seated in an office. She eventually went inside and sat next to the Captain, who was "uncontrollably sobbing." NE#3 came in and out of the office. While she was not with the Captain the entire time he was held at Headquarters, she believed that someone was, and he was not left alone. She recalled being concerned about someone in the Captain's state having access to a firearm. NE#4 recognized that placing the Captain in an office rather than in a holding cell could be viewed as preferential; however, she did not believe any of the treatment of the Captain violated the public's trust and confidence as he was fully processed criminally, including getting booked and charged.

She recalled discussing not booking the Captain at the North Precinct and instead transporting him to Headquarters, as well letting the Captain sit in an office. She stated, however, that she was not the primary decision-maker for either. With regard to the decision to not book the Captain at the precinct, NE#4 stated that booking the Captain at his "home" precinct would have been embarrassing. She pointed to SPD policy that required that officers take steps to ensure that arrestees were not "belittled or ridiculed."

NE#4 stated that, while she could see how people could view the Captain's treatment as preferential, she did not believe that this was the case. She noted that he went through the criminal booking process and that SPD did not influence or make the decision to charge him. She noted that SPD tries to treat every arrestee with dignity and, given the multiple personal issues facing the Captain at that time, she felt that this situation was not handled inappropriately.



Lastly, NE#4 said that there was a gap in policy concerning how to handle similar situations. Indeed, she stated that there was no policy in this area. She opined that such a policy should be created and that it should include steps that supervisors and officers were expected to take.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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.) This allegation was added based on the possibility that the Named Employees’ actions constituted preferential treatment of an SPD employee and, thus, constituted unprofessionalism.

In assessing this allegation, OPA notes that the Captain received much, but not all, of the same treatment that was provided to the other arrestees. He was arrested, handcuffed, booked into jail, and charged with a crime. Moreover, his car was impounded from the scene. The significant differences between how his arrests and the other arrests were handled were that: he was permitted to call NE#4; he was unhandcuffed; he was brought to Headquarters rather than the North Precinct; he was allowed to remain in his office rather than in a holding cell; and his booking was expedited. Given the above, it is clear that the Captain received some benefits based on his employment with SPD; however, he also had some detriments. For example, unlike the other arrestees, he was well known by the members of the law enforcement agency that arrested him. OPA finds it likely that he would have suffered significantly more embarrassment being processed at the precinct than would the other arrestees. Similarly, unlike the other arrestees, there were administrative steps that needed to be taken prior to the Captain being allowed to go home. This included him being relieved of duty and placed on leave. Moreover, with regard to some of the benefits he received, none were clear violations of policy. For example, as several of the Named Employees explained, it was within the discretion of officers to unhandcuff an arrestee or to decide to bypass booking at a precinct or at all.

In hindsight, OPA does not think that the Captain should have been unhandcuffed, permitted to remain in his office rather than in a holding cell, and allowed to go through an expedited booking process, but OPA cannot say any of those violated policy. Ultimately, the Captain faced the same consequences as everyone else arrested on that date and, indeed, received even more public exposure given his employment. Neither the Named Employees nor anyone else at SPD tried to cover this up or influence what occurred.

OPA notes, as indicated by NE#4, that there is no policy governing how arrests of SPD employees are to be handled. Indeed, the only policy that comes close to providing any guidance is within SPD Policy 15.390-PRO-1(10) – (12), which governs situations where SPD employees are arrested for domestic violence offense. Even in those policy sections, the information provided is barebones and includes: the notifications that must be made; informing the employee that they are being placed on leave; and taking the employee’s duty weapon, badge, and identification. There are no requirements for where, how, or whether the employee should be booked or for most of the other issues that faced the Named Employees during this incident.



OPA concludes that the lack of any such guidance in policy yields outcomes such as the one that was seen here. In reaching this finding, OPA recognizes that this incident caused significant concern with many members of the public. The thought that the Captain would receive special treatment simply because of his rank infuriated people and created the feeling of unfairness. However, in evaluating the totality of the evidence and hearing the explanations provided by the Named Employees, OPA does not believe that any of them acted with ill intent or with the goal of providing any improper benefit to the Captain. To the contrary, OPA's perspective is that they tried to handle an extremely rare situation (a SPD commander being arrested within Seattle) as best as they could, even if they fell short.

For these reasons, OPA recommends that the Department create a policy governing how the arrests of SPD employees are to be handled and provide training to all SPD officers and command staff concerning this policy. This policy should provide guidance on the steps that should be taken by all ranks (from officer to chief) and should discuss handcuffing and the removal of handcuffs, booking and expedited bookings, and the other issues that arose in this case. OPA requests that it be included in the drafting and review of this policy.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #2 - Allegation #1

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

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

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #3 - Allegation #1

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

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

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #4 - Allegation #1

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

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

Recommended Finding: **Not Sustained (Management Action)**