



## ***CLOSED CASE SUMMARY***

ISSUED DATE: MAY 1, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0683

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

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.140 Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.001 Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Lawful and Proper)
# 3	5.001 Standards and Duties 14. Retaliation is Prohibited	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 Unknown Employees engaged in a Department-wide campaign of harassment and bias-based policing directed towards her wife.

### **ADMINISTRATIVE NOTE:**

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 Named Employees. As such, the Named Employees were not interviewed as part of this case.

### **ANALYSIS AND CONCLUSIONS:**

The Complainant's wife – herein referred to as the Subject – was suspected of being an accomplice to the crimes of Arson in the First Degree and Possession of Incendiary Devices. A valid warrant was issued for a search of their shared residence on November 1, 2020.

This incident originally stemmed from a protest near the East Precinct. Body Worn Video (BWV) of the incident showed about 75-100 people marched to the East Precinct on September 1, 2020, including the Subject. At one point during the protest, the Subject gathered with two individuals under an umbrella. One of the individuals lit the wick of a Molotov cocktail and threw it at the East Precinct. The other individual threw a second Molotov cocktail. During each of these throws, the Subject shielded the group with the umbrella.



The Subject was identified by SPD through the BWV of the protest at the East Precinct in addition to several other incidents. The Subject was also arrested for obstruction on September 23, 2020, while participating in a march near Cal Anderson Park. Officers were able to identify the Subject because she wore the same clothes at both protests. The Subject again wore the same clothes when she was the subject of a *Terry* stop for property damage on October 12, 2020. Lastly, the Subject was arrested for illegal dumping and criminal mischief. Photographs attached to the warrant for those crimes showed the Subject again wearing some of the same clothes. From this evidence, the officers were able to determine the identity of the Subject for purposes of the search warrant that is at issue in this case.

Officers executed the search warrant of the Subject and Complainant's home on November 2, 2020. Multiple officers arrived at the home. Witness Officer #1 (WO#1) knocked and announced that officers were there to execute a search warrant. The officers asked the Complainant to step out of the residence with their baby. The Subject was handcuffed inside the home. After the house was cleared, WO#1 retrieved a blanket from the house and gave it to the Complainant and asked if it was okay for the baby. The Complainant replied that it was. WO#1 told the Complainant that if she or the baby got cold, they could be put in the back of the police car with heat on or an officer could get more clothes for them from inside.

When the Subject was arrested, Witness Officer #5 (WO#5) asked if she had shoes or a sweater because it was cold outside. WO#5 went with the Subject to retrieve a pair of shoes. However, the pair of shoes that the Subject wanted to put on needed to be searched by the officers pursuant to the warrant. The Subject had no other shoes, so WO#5 got her a pair of slippers from the bedroom. WO#5 then asked which jacket the Subject wanted, and the Subject said she would be fine without one. The Subject was then walked out of the house.

WO#1 took photographs of the different rooms in the home to be labeled while other officers took photographs of items that matched the items described in the search warrant. Witness Officer #2 (WO#2) went through two makeup bags. WO#2 emptied out the contents but made no comments. WO#2 also looked through a cabinet that contained children's toys, but similarly made no specific comments about the items.

Witness Officer #3 (WO#3) searched a satchel that was on a table near the door. WO#3 found an ID with the Subject's name on it. There was also another ID with the Subject's previous name (known as a "deadname") on it, which was issued prior to her transition. WO#3 took the Subject's current ID and insurance card and left the cards that contained the Subject's former name as they were no longer current.

Once out of the house, the Complainant told several officers that she felt that the Subject was being harassed for being involved in the protests and because she is transgender. Witness Officer #4 (WO#4) asked if the Complainant wanted him to investigate the bias complaint or if she wanted the complaint submitted to OPA. The Complainant said she wanted the complaint submitted to OPA and for it be directed at the entire Department rather than any specific officer. The Complainant was given a business card with the case number and WO#4's information.

The Complainant was interviewed by OPA and made several complaints concerning the officers' response to her residence. She said that the officers took the Subject's current ID and left the cards with the Subject's information prior to her transition, including her deadname. The Complainant also alleged that the Subject was taken from the residence without appropriate clothing for the weather. Further, the Complainant believed that the officers searched the makeup and toy bins as a way of calling into question the Subject's gender identity and ability to be a



parent. Ultimately, the Complainant alleged that these actions were taken against the Subject because of her gender identity.

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

***5.140 Bias-Free Policing 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.*)

The Complainant alleged that the Department as a whole engaged in bias-based policing. She alleged that the Subject was harassed because she is transgender and participated in the protests.

OPA does not find that the arrest of the Subject was motivated by her gender, gender identity, or any other protected characteristic. The Subject was identified pursuant to BWV of the September 1 protest at the East Precinct and subsequent incidents with members of SPD. The Subject’s actions in that footage formed the basis of the search warrant. OPA finds that the Subject’s actions were deemed illegal before the Subject was actually identified and before officers were aware of her gender identity. As such, the search warrant and arrest were unrelated to the Subject’s membership in a protected class and was instead based on probable cause for the Subject committing the crimes for which she is a suspect.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

**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.*)

Upon review of BWV, OPA does not find that any of the officers involved in this incident acted unprofessionally towards the Complainant or the Subject. None of the officers used any language that was derogatory, contemptuous, or disrespectful.

With respect to the clothing that the Complainant and Subject were given to wear, WO#5 offered to retrieve a jacket for the Subject, but she declined. The Subject was also unable to wear the shoes she wanted because they were specifically listed in the warrant as items to be seized for evidentiary purposes. Given that the Subject had no other shoes to wear, WO#5 got her slippers from the bedroom so that she would at least have something to cover her feet. These actions are not found by OPA to be disrespectful or unprofessional because the shoes were listed in



the warrant and therefore needed to be retained. Officers tried to find alternative ways of keeping the Subject warm, including offering to get her a jacket.

The Complainant also alleged that the officers were disrespectful in the manner that they went through the makeup bags and toy bins. BWV showed the officers going through these items and making minimal, neutral statements. OPA does not find that this search was conducted in an unprofessional manner or that it was in any way inappropriate.

Lastly, the Complainant alleged that the officers left the Subject with cards that contained her “deadname” from before her transition. She inferred a discriminatory intent. The officers acted pursuant to a valid search warrant when collecting the ID and insurance cards with the Subject’s most updated information. While OPA recognizes that being left with old identification materials can have a negative impact on a transgender individual, this information is legally relevant to establishing the Subject’s dominion and control over the premises searched and its seizure is not unusual for a warrant of this type.

Ultimately, OPA recognizes the service of search warrants as among the more intrusive things that police may do in the course of carrying out their law enforcement duties. As such, they are accompanied by significant procedural protections. Here, it is apparent and understandable that the Complainant felt a degree of personal violation which also affected her family. However, OPA’s review finds that the officers acted professionally throughout the search and arrest, which was legally supported and approved by a judge, and therefore recommends that this allegation be Not Sustained – Lawful and Proper

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

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

##### ***5.001 Standards and Duties 14. Retaliation is Prohibited***

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, “oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy” or “who otherwise engages in lawful behavior.” (*Id.*) Retaliatory acts are defined broadly under SPD’s policy and include “discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

SPD identified the Subject from her involvement in the September 1 protest at the East Precinct. BWV video of that event showed the Subject with two other individuals, each of whom threw a lit Molotov cocktail towards the East Precinct while she shielded them with an umbrella. This conduct formed the basis for the search warrant and subsequent arrest of the Subject. As such, the search and arrest were not done solely because the Subject attended the protest, but rather because of the Subject’s alleged criminal activity while at the protest. OPA does not find that any of the officer’s actions were in retaliation to the sole fact that the Subject was at the protest and, accordingly, recommends that this allegation be Not Sustained – Unfounded.

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