



## ***CLOSED CASE SUMMARY***

ISSUED DATE: AUGUST 2, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0744

### **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 (Training Referral)
# 2	5.140 – Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	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 Employee was unprofessional towards her and that his acts were motivated by bias against her.

### **ADMINISTRATIVE NOTE:**

The Complainant asserted allegations against one other officer. That officer is currently on extended leave and the deadline for the portion of the case against him is accordingly tolled. Once the officer returns from leave, the DCM for his allegations will be completed separately.

### **ANALYSIS AND CONCLUSIONS:**

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

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

The Complainant was arrested for a strong-arm robbery. She was transported to the West Precinct where she was held in a holding cell. While there, NE#1's partner inadvertently locked himself in the holding cell with the Complainant.

The Complainant later alleged to OPA that, when this occurred, NE#1 took a photograph of the inside of the holding cell with his phone. NE#1 stood right by the cell door looking inside when he did so. She recalled that, after taking the photograph, NE#1 stated that he was going to post the photograph online. The Complainant said that this occurred just before the partner was released from the cell by a supervisor. She opined that the supervisor's Body Worn Video (BWV) captured the taking of the photograph.



The Complainant stated that she found this to be inappropriate. She was embarrassed and said that she did not disclose what occurred to any other officer because she was in shock. The Complainant asserted that NE#1's conduct was unprofessional and also that it was based on bias towards her. The Complainant contended that, had she been a White male, NE#1 would likely not have taken the photograph of her.

As part of its investigation, OPA reviewed the supervisor's BWV. The video showed NE#1 laughing as he took a photograph of the inside of the cell. The BWV did not show NE#1 make any comment concerning posting the photograph online.

OPA subsequently interviewed NE#1. He candidly told OPA that he took the photograph because he thought it was funny that his partner was locked in a holding cell. He said that this was a very rare occurrence. NE#1 explained that the Complainant's foot was included in one photograph, but that her entire face and body were not captured. NE#1 said that he later deleted the photograph and he denied that he ever said that he would post it online.

NE#1 denied that he took the photograph because of bias and, again, asserted that he did so because he thought it was funny at the time. NE#1 recognized that taking the photograph was not a great decision and that he understood how doing so could serve to undermine public trust and confidence in him. He said that, if he had the opportunity, he would talk to the Complainant and tell her that he was sorry about how his actions made her feel and that he did not take the photograph to embarrass her.

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.)

OPA agrees with the Complainant and NE#1 that taking the photograph of the holding cell was a bad idea. While OPA believes that NE#1 did not intend to embarrass or upset the Complainant, he should have thought about how his actions could have served to do so. This being said, OPA notes that NE#1 took responsibility for his actions at his OPA interview, apologized, and made clear that he understood what he did wrong and that he would not repeat this conduct. OPA feels confident that this is the case and, accordingly, recommends that NE#1 receive the following counseling and retraining rather than discipline.

- **Training Referral:** NE#1's chain of command discuss this incident with NE#1, including his decision to take the photograph of the holding cell. The chain of command should inform him that, even if he did not act with ill intent, such actions can diminish public trust and confidence in SPD and in himself and must be avoided. This retraining and counseling should be documented, and this documentation should be set forth in an appropriate database.

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

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

##### ***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



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characteristics of an individual.” (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

While OPA believes that NE#1 taking the photograph was inappropriate, there is insufficient evidence to establish that his actions were due to bias. While this is not said to diminish what the Complainant felt and experienced, it is simply a result of the lack of available evidence supporting this allegation.

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

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