



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 14, 2022

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0311

Allegations of Misconduct & Director's Findings

Named Employee #1

| Allegation(s): | | Director's Findings |
|----------------|--|-----------------------------------|
| # 1 | 5.140 - Bias-Free Policing 5.140-POL 2. Officers Will Not Engage in Bias-Based Policing | Not Sustained (Unfounded) |
| # 2 | 8.200 - Using Force 2. Use of Force: When Prohibited | Not Sustained (Unfounded) |
| # 3 | 5.001 - Standards and Duties 11. Employees Will Be Truthful and Complete in All Communication | Not Sustained (Unfounded) |
| # 4 | 5.001 - Standards and Duties 10. Employees Shall Strive to be Professional | Not Sustained (Unfounded) |
| # 5 | 16.090 - In-Car and Body-Worn Video 16.090-POL 1 Recording with ICV and BWV 5. Employees Recording Police Activity b. When Employees Record Activity | Not Sustained (Lawful and Proper) |

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 engaged in biased policing, used prohibited force, was untruthful by falsely accusing the Complainant of a crime, was unprofessional, and improperly deactivated his Body Worn Video.

SUMMARY OF INVESTIGATION:

This complaint originated following SPD's response to a large, illegal dance party that took place after hours in Magnuson Park. The Complainant alleged that Named Employee #1 (NE#1) approached him in a "hostile way" and reached his hand out to grab him, which the Complainant characterized as an assault. The Complainant also alleged that the NE#1 "accused [him] of things [he] had nothing to do with" without proof. The Complainant alleged that NE#1 told him that his belongings would be confiscated unless he cooperated and that NE#1 made him feel "extremely uncomfortable and on edge" by claiming he could be arrested. The Complainant claimed this was a result of racial profiling as the Complainant was the only person of color in a group of white people who got singled out. Finally, the Complainant alleged that he may have seen NE#1 deactivate his Body Worn Video (BWV) improperly.

OPA subsequently commenced this investigation. OPA tried unsuccessfully to contact the Complainant on three separate occasions. OPA reviewed the complaint, CAD, BWV, and Incident/Offense Report for this incident. Although the Complainant remained anonymous, NE#1's BWV only captured him interacting with one individual who's physical and behavior description matched the information provided in the complaint. NE#1's interaction with this individual,



the likely Complainant (referred to as the Complainant hereunder), was captured entirely on BWV. As such, there is no credible dispute of the facts set forth hereunder.

OPA determined that NE#1 responded, along with many other SPD officers, to a large, illegal dance party at Magnuson Park. The CAD reported that hundreds, possibly thousands, of people were drinking liquor in the closed park, there was a loud dance party, and people were setting off fireworks. After arriving, NE#1 and several other uniformed SPD officers walked in the direction of the music, towards a small collection of tents and strobe lights. As NE#1 walked by individuals, he informed them, in sum and substance, that the park was closed, and they needed to leave. Eventually, NE#1 and other officers arrived at the tent area, where people appeared – for the most part – to be packing up their belongings and leaving. NE#1 spoke briefly with an individual who appeared to be tending a small bar area. NE#1 told this person to pack up his things and leave, or else he could be fined.

After a period of time, a uniformed SPD Lieutenant approached NE#1 and other officers. The Lieutenant asked whether the DJ had been identified. NE#1 and other officers then walked back towards the tents to contact the group of people that were there, who appeared to be packing up various pieces of music equipment.

NE#1 and other officers approached two individuals – one of whom appeared to be a male of Asian or Pacific Island descent and who was presumably the Complainant, the other who appeared to be a white male (Community Member #1). Both the Complainant and Community Member #1 were underneath or near a tent that had strobe lights affixed to it and a table underneath it. Both the Complainant and Community Member #1 were also holding electronic music equipment in their hands. The officers asked both the Complainant and Community Member #1 for their identification.

NE#1 was standing nearby the Complainant and, over the next few minutes, engaged him in a discussion, wherein the Complainant asked if he did anything wrong, and NE#1 explained that the Complainant had an illegal party in a park. When the Complainant denied this, NE#1 confronted the Complainant with several facts: (1) the Complainant was wearing headphones; (2) the Complainant was standing next to all of the “stuff” – that is, the tents, strobe lights, and music equipment; and (3) NE#1 had seen the Complainant several minutes earlier mixing the soundboard – a fact that the Complainant admitted saying “fair enough.”

NE#1 also spoke with other officers to ensure that someone would get pedigree information from Community Member #1 – who had walked off with some equipment – and took down pedigree information from another individual, who was helping pack up the sound tent, and appeared to be a Hispanic female (Community Member #2).

NE#1 wrote the Incident/Offense Report. NE#1 noted in the report that he contacted three individuals in the DJ music tent at a time there was still a generator running, music playing, and strobe lights lighted. The report noted that one of the individuals – presumably Community Member #1 – was being uncooperative. The Complainant was listed in the report as carrying and operating DJ Equipment and the listed offense was for violating SMC 25.08.500(E), misdemeanor public noise disturbance.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.140 - Bias-Free Policing 5.140-POL 2. Officers Will Not Engage in Bias-Based Policing

The Complainant alleged that NE#1 engaged in biased policing, specifically that the Complainant was singled out as the only non-white person in the area.

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.*)

NE#1 contacted the Complainant along with Community Member #1 (a white male) and Community Member #2 (a Hispanic female). Although NE#1 did contact the Complainant first, this appears to be because the Complainant was the closest person to NE#1 as he approached the music tent. Moreover, Community Member #1 was contacted by another officer simultaneously. Most importantly, NE#1 explained the multiple, race-neutral reasons he contacted the Complainant in exacting detail immediately after the Complainant questioned why he was being “singled out.” There is no evidence that the Complainant’s race played any role in NE#1’s decision to contact the Complainant, or in his professional treatment of him thereafter.

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

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

Named Employee #1 - Allegation #2

8.200 - Using Force 2. Use of Force: When Prohibited

The Complainant alleged that NE#1 approached him with hostility and reached out to grab him in an assaultive manner.

SPD Policy 8.200-POL-2 states that force is prohibited: “On restrained subjects (e.g. including handcuffed or contained in a police vehicle) except in exceptional circumstances when the subject’s actions must be immediately stopped to prevent injury, or escape, destruction of property. All such force shall be closely and critically reviewed.”

NE#1’s BWV captured the entirety of their interaction. At no point did the Named Employee appear to reach towards or grab the Complainant, let alone do anything that could be considered assaultive. To the contrary, NE#1 and the Complainant had a calm, reasonable conversation, even as the Complainant politely expressed his perception that he did not do anything wrong and was being singled out.

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

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

Named Employee #1 - Allegation #3



5.001 - Standards and Duties 11. Employees Will Be Truthful and Complete in All Communication

The Complainant alleged that NE#1 falsely accused him of committing a crime.

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications.

Seattle Municipal Code 25.08.500(E) makes it a crime to cause unreasonable noise which disturbs another through "loud and raucous, and frequent, repetitive, or continuous sounds made by the amplified or unamplified human voice between the hours of 10 p.m. and 7 a.m." SMC 25.08.500(E). Similarly, another section of SMC 25.08.500 makes it a crime to cause unreasonable sounds which disturbs another through "a sound amplifier or other device capable of producing, amplifying, or reproducing sound." SMC 25.08.500(D).

Here, multiple 911 calls were made concerning a large, unpermitted dance party taking place in a closed park after-hours. Due to the size of the group, approximately 26 police officers, including multiple sergeants and a lieutenant, responded. NE#1 arrived and observed ample evidence to corroborate the reports, even approaching the sound tent area as the loud music continued to play along with strobe lights. In addition to everything else, NE#1 saw the Complainant operating the soundboard at this time, a fact that the Complainant later admitted. Given this, NE#1 had probable cause to have had the Complainant arrested; telling the Complainant as much was perfectly truthful.

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

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

Named Employee #1 - Allegation #4

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

The Complainant alleged that the Named Employee was unprofessional.

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.*) Lastly, the policy instructs Department employees to "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." (*Id.*)

Throughout the entirety of the interaction, NE#1 spoke politely and calmly. He answered the questions posed to him by the Complainant and both Community Member #1 and Community Member #2. NE#1 explained his reasons for contacting the Complainant and provided the Complainant with honest answers about the process. Contrary to the Complainant's allegations, NE#1 engaged in no conduct that could be construed as unprofessional.

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

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



Named Employee #1 - Allegation #5

16.090 - In-Car and Body-Worn Video 16.090-POL 1 Recording with ICV and BWV 5. Employees Recording Police Activity b. When Employees Record Activity

The Complainant alleged that he may have seen NE#1 turn off his BWV improperly.

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.*)

This allegation is unfounded. Not only did NE#1 record the entirety of his interaction with the Complainant, but NE#1 also recorded the entirety of his actions responding to this entire incident, from before he exited his SPD vehicle, until he was back in the parking lot returning to his SPD vehicle.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.

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