



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 8, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0290

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.010 Arrests 6.010-POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained - Lawful and Proper
# 2	5.001 - Standards & Duties 11. Employees Will Be Truthful and Complete in All Communication.	Not Sustained - Unfounded (Expedited)
# 3	5.001 - Standards and Duties 5.001-POL 2. Employees Must Adhere to Laws, City Policy and Department Policy.	Not Sustained - Unfounded (Expedited)

Named Employee #2

Allegation(s):		Director's Findings
# 1	6.010 Arrests 6.010-POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained - Lawful and Proper
# 2	5.001 - Standards & Duties 11. Employees Will Be Truthful and Complete in All Communication.	Not Sustained - Unfounded (Expedited)
# 3	5.001 - Standards and Duties 5.001-POL 2. Employees Must Adhere to Laws, City Policy and Department Policy.	Not Sustained - Unfounded (Expedited)

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 on July 1, 2022, Named Employee #1 and Named Employee #2 (NE#1 & NE#2) unlawfully arrested the Complainant for possessing sexually explicit images of minors. The Complainant also alleged NE#1 & NE#2 were dishonest with the Complainant when they told him he would not be arrested. Finally, the Complainant alleged NE#1 stole \$150.00 from the Complainant's wallet.

ADMINISTRATIVE NOTE:

This case was designated an Expedited Investigation. That means OPA, with the Office of Inspector General's review and agreement, believed it could reach and issue recommended findings based solely on its intake investigation without interviewing the involved employees. As such, OPA did not interview the involved employees.

While preparing this DCM, OPA found an administrative error was made in this case's classification. The Complainant alleged the Named Employees stole \$150 from his wallet. OPA's intake investigation showed through BWV and SPD



paperwork NE#1 recovered, counted, and transported the Complainant's money and entered it into evidence. NE#2 was also involved in bagging and transporting the Complainant's property to and from an SPD vehicle. In the classification notice, OPA only listed NE#1 as allegedly stealing the Complainant's money. However, OPA only entered that allegation for NE#2 in OPA's case management system. That caused the classification notice to only list that allegation among NE#2's allegations, rather than both Named Employees. Ultimately, the Complainant's allegations were expedited after OIG reviewed OPA's intake, which contained all of the above information. Although no allegations are sustained, for transparency and tracking purposes, the allegation for violating SPD Policy 5.001-POL-2 ("Employees Must Adhere to Laws, City Policy and Department Policy") was added for NE#1 in OPA's case management system. OPA will also send a new classification notice to NE#1 and NE#2 reflecting that change.

SUMMARY OF INVESTIGATION:

OPA reviewed the initial complaint, incident reports, the Complainant's jail booking property receipt, and body-worn video (BWV). OPA also interviewed the Complainant.

A. Body-Worn Video (BWV)

OPA reviewed NE#1, NE#2, and two Witness Employees' BWV. In summary, BWV showed:

NE#1 and NE#2 were near Harborview Medical Center on an unrelated call. While they interviewed a witness, the Complainant approached NE#2 and stated he had an important question that could not wait. NE#2 directed the Complainant to speak with NE#1. The Complainant told NE#1 he was advised not to speak to police but felt it was "the right thing to do." The Complainant stated he found a compact disc (CD) inside a dumpster near his apartment building. He said he took it home and inserted the CD into his computer. The Complainant stated the CD showed "little girls undressed... little girls with no clothes on."

NE#1 asked the Complainant where the CD was located. The Complainant replied he had two copies at home. He admitted to making the copies. He stated he copied the CD to make sure he had it to show the police. NE#1 told the Complainant the CD and the copies were illegal.

NE#1 walked with the Complainant toward his apartment. As they approached the building, the Complainant asked whether he was under arrest. NE#1 replied no, but detectives may contact him about the CD. The Complainant also stated he printed "the worst ones," and wanted to give them to NE#1. The Complainant stated he printed the images to show the police. The Complainant stated he had the CD for 2 to 10 years. He said he could not provide an exact timeframe due to memory issues. The Complainant took NE#1 inside his apartment and turned over the CDs and prints. As the Complainant handed NE#1 the prints, he stated some of the images were of an 11-year-old juvenile. The Complainant further stated one photo showed a minor "pretending to be about to have sex." The Complainant also recited an explicit caption attached to one of the photos.

NE#1 left the Complainant's apartment and called his supervisor, Witness Employee #1 (WE#1). NE#1 briefed WE#1 about the situation. NE#1 told WE#1 the images appeared to show "exposed juveniles." NE#1 asked WE#1 whether the Internet Crimes Against Children (ICAC) Unit would advise him to arrest the Complainant. NE#1 secured the materials in his vehicle and conferred with NE#2. NE#1 stated he initially believed the Complainant potentially had mental health concerns and would give NE#1 "some trash, or a Playboy, or something like that."



NE#1 told NE#2 that WE#1 attempted to reach ICAC for guidance. WE#1 called NE#1 back, informing him ICAC had not responded. NE#1 briefed WE#1 in further detail about the materials the Complainant provided. NE#1 told WE#1, "based on the photos that he handed me, I would say that we're good for probable cause- for at a bare minimum possession and manufacturing." NE#1 told NE#2 he believed there was probable cause existed for the Complainant's arrest.

NE#1 saw the Complainant walking near his apartment building. NE#1 approached and requested the Complainant's identification card. The Complainant complied. The Complainant agreed to stay with the officers while they awaited a detective's call. NE#1 called WE#1 to state they had the Complainant and felt there was probable cause to arrest. WE#1 replied, "yeah bring [the Complainant] in here."

NE#1 told the Complainant he was under arrest. NE#1 and NE#2 handcuffed him and placed the Complainant's briefcase inside their patrol car. NE#1 walked the Complainant to the front of the patrol vehicle and told him they needed to search him. The Complainant replied, "are you gonna take the gun?" The Complainant stated he had a concealed carry permit and a firearm holstered on his right hip. The officers found a holstered pistol and several loaded magazines on the Complainant.

BWV showed NE#1 removed the Complainant's wallet and put it in a paper bag with the Complainant's other belongings. NE#1 also removed cash from the Complainant's left-front hip pocket and put it inside that bag. NE#2 placed the bag inside the patrol car's left-front passenger compartment. NE#2 brought the Complainant's handgun, briefcase, and bag of property to the precinct. There, NE#1 inventoried the items. NE#1 counted \$105.46 in US currency and a 1 oz South African coin. NE#1 stated the Complainant's property, except the handgun, loaded magazines, and apartment keys, would be transported to the jail with the Complainant.

Witness Employee #2 (WE#2) transported the Complainant to King County Jail. BWV showed WE#2 placed the Complainant's property bag inside her patrol vehicle. BWV also showed WE#2 with the bag at the jail.

B. Incident Reports

NE#1's report was consistent with his BWV.

In the incident report's narrative, NE#1 explained his decision to arrest the Complainant:

After a period of time, we determined based on the photos we were already provided by [the Complainant], and his admission of duplicating these images over time, we had [Probable Cause] for the possession of depictions of minors engaged in sexually explicit conduct. With no response from detectives, I made the decision to arrest [the Complainant] and notified [NE#2]. [NE#2] and I took [the Complainant] into custody and conducted a search incident to arrest.

C. Initial Complaint and Interview of Complainant

OPA interviewed the Complainant on September 16, 2022. The Complainant alleged NE#1 told him he was not under arrest but later arrested him for "kiddie porn." The Complainant denied possessing child pornography because the images he gave NE#1 did not depict minors engaged in sexual acts. The Complainant also stated he had \$170 in cash



when the officers stopped him. He stated the money was never returned. The Complainant believed the Named Employees stole the money and illegally arrested him because they sought a promotion.

D. Complainant's Jail Booking Property Receipts

The Complainant gave OPA the property receipts he received at booking and discharge from the King County Jail.

The Complainant's property was inventoried at the jail on July 1, 2022, at 17:50 hours. The receipt indicated he had \$105.55. The receipt the Complainant received upon release on July 21, 2022 at 18:50 hours did not list any returned money. The Complainant appeared to sign both receipts.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.010 Arrests 6.010-POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

The Complainant alleged the Named Employees unlawfully arrested him for child pornography.

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe a suspect committed a crime to effectuate an arrest. Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient in themselves to support a reasonable belief that an offense has been or is being committed. *See State v. Fricks*, 91 Wash.2d 391, 588 P.2d 1328 (1979); *State v. Gluck*, 83 Wash.2d 424, 426–27, 518 P.2d 703 (1974). RCW 9.68A.070(2) states, "a person commits the crime of possession of depictions of a minor engaged in sexually explicit conduct in the second degree when he or she knowingly possesses any visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g)." RCW 9.68A.011(4)(f) defines "sexually explicit conduct" as, "[d]epiction of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for the purpose of sexual stimulation of the viewer."

Here, the Complainant admitted to NE#1 he had discs containing, "little girls undressed," and offered to provide them to NE#1. NE#1 took the discs and over a dozen prints the Complainant made. NE#1 told his supervisor, WE#1, the prints showed "exposed juveniles." Further, the Complainant suggested as he gave NE#1 the explicit photos they were for the viewer's sexual stimulation. NE#1's incident report also noted the Complainant recited an explicit caption from memory as he handed the items to NE#1.

NE#1 spent considerable time screening the incident with WE#1 and outlining his belief there was probable cause to arrest the Complainant. After NE#1 detained the Complainant, he again screened the incident with WE#1 who agreed with NE#1's assessment and directed NE#1 to arrest the Complainant.

Accordingly, OPA recommends this allegation be Not Sustained - Lawful and Proper (Expedited)

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



Named Employee #1 - Allegation #2

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

The Complainant alleged NE#1 lied by telling him he was not under arrest.

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

When NE#1 told the Complainant he was not under arrest, NE#1 did not yet have probable cause. NE#1 developed probable cause once the Complainant gave him the explicit images. There is no evidence NE#1 misled or otherwise deceived the Complainant. Rather, NE#1 investigated a potential crime and determined there was probable cause after the Complainant provided incriminating statements and physical evidence. Moreover, NE#2 was never shown on BWV telling the Complainant he was not under arrest.

Accordingly, OPA recommends this allegation be Not Sustained - Unfounded (Expedited)

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

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 5.001-POL 2. Employees Must Adhere to Laws, City Policy and Department Policy.

The Complainant alleged NE#1 stole \$170 from his wallet after he was arrested.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy.

BWV captured NE#1's search of the Complainant incident to arrest. It also captured WE#2 transporting the Complainant's property to jail.

NE#1 removed the Complainant's wallet, loose cash, and coins which NE#2 placed in a bag. NE#1 inventoried the wallet and currency at the precinct, documenting the Complainant had \$105.46 and a South African coin. WE#2 was observed placing the bag inside her patrol vehicle before taking the Complainant to jail. Upon arrival at the jail, WE#2 took the Complainant and the bag inside.

The Complainant's property receipts indicated he had \$105.55 upon booking but no record of currency upon release. The booking property receipt showed the Complainant entered the jail with 9 cents more than what NE#1 documented.

Accordingly, OPA recommends this allegation be Not Sustained - Unfounded (Expedited)

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

Named Employee #2 - Allegation #1

6.010 Arrests 6.010-POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest



For the reasons set forth above at Named Employee #1, Allegation #1, OPA recommends this allegation be Not Sustained - Lawful and Proper (Expedited)

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

Named Employee #2 - Allegation #2

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

For the reasons set forth above at Named Employee #1, Allegation #2, OPA recommends this allegation be Not Sustained - Unfounded (Expedited)

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

Named Employee #2 - Allegation #3

5.001 - Standards and Duties 5.001-POL 2. Employees Must Adhere to Laws, City Policy and Department Policy.

For the reasons set forth above at Named Employee #1, Allegation #3, OPA recommends this allegation be Not Sustained - Unfounded (Expedited)

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