



CLOSED CASE SUMMARY

ISSUED DATE: MAY 2, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0376

Allegations of Misconduct & Director's Findings

Named Employee #1

| Allegation(s): | | Director's Findings |
|----------------|---|---|
| # 1 | 6.180 - Searches - General POL - 4 Open View and Plan View Doctrines | Not Sustained - Lawful and Proper (Expedited) |
| # 2 | 5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing | Not Sustained - Unfounded (Expedited) |
| # 3 | 5.001 - Standards and Duties 5.001-POL 14. Retaliation is Prohibited | Not Sustained - Unfounded (Expedited) |

Named Employee #2

| Allegation(s): | | Director's Findings |
|----------------|---|---|
| # 1 | 6.180 - Searches - General POL - 4 Open View and Plan View Doctrines | Not Sustained - Lawful and Proper (Expedited) |
| # 2 | 5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing | Not Sustained - Unfounded (Expedited) |
| # 3 | 5.001 - Standards and Duties 5.001-POL 14. Retaliation is Prohibited | Not Sustained - Unfounded (Expedited) |

Named Employee #3

| 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 (Expedited) |
| # 2 | 5.001 - Standards and Duties 5.001-POL 11. Employees Will Be Truthful and Complete in All Communication | Not Sustained - Unfounded (Expedited) |

Named Employee #4

| Allegation(s): | | Director's Findings |
|----------------|---|---|
| # 1 | 6.180 - Searches - General POL - 4 Open View and Plan View Doctrines | Not Sustained - Lawful and Proper (Expedited) |
| # 2 | 5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing | Not Sustained - Unfounded (Expedited) |
| # 3 | 5.001 - Standards and Duties 5.001-POL 14. Retaliation is Prohibited | 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:

On January 19, 2022, Named Employees (NE) #1, #2, and #4 responded to an illegal alcohol vending call. The Complainant (Community Member #1 or CM#1) alleged that NE#1, NE#2, and NE#4 unlawfully seized his property due to racial bias. CM#1 also alleged that NE#1, NE#2, and NE#4 harassed him. Finally, CM#1 alleged, based on racial bias, NE#3 lied about referring CM#1's criminal case to the Seattle City Attorney's Office.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. That means OPA, with the Office of Inspector General's (OIG) review and agreement, believed it could reach and issue recommended findings based solely on its intake investigation without interviewing the involved employee. As such, OPA did not interview the involved employee in this case. OIG also certified this investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

OPA reviewed the complaint, computer-aided dispatch (CAD) records, body-worn video (BWV), and relevant incident reports. OPA also contacted the investigating unit and interviewed CM#1.

A. Initial Complaint and OPA Interview of CM#1

CM#1 alleged that the Seattle Police Department (SPD) unlawfully took liquor bottles from him. CM#1 further stated a detective (NE#3) told CM#1 that CM#1's case was referred to the Seattle City Attorney's Office (SCAO). However, SCAO told CM#1 his case was not in the system. CM#1 alleged NE#3 lied to him.

OPA interviewed CM#1 via telephone. CM#1 alleged NE#1, NE#2, and NE#4 lacked probable cause to seize his liquor. He further alleged NE#1, NE#2, and NE#4 "harassed" him because they were familiar with CM#1. CM#1 accused the named employees of bias-based policing.

B. Computer-Aided Dispatch (CAD) Records

On January 19, 2022, at 12:39 PM, NE#1 and NE#2 responded to a call with the following CAD note: "[INFORMATION] FROM METRO TRANSIT, IN THE BUS LANE, CHECK FOR 2 MALES W/ TABLE AND SELLING ALCOHOL." The 9-1-1 caller described the subjects as a Black male in his 40s and an Asian male in a wheelchair.

C. Body-Worn Video (BWV)

OPA reviewed NE#1, NE#2, and NE#4's BWV. NE#1 and NE#2 arrived and contacted CM#1, who arranged approximately forty liquor bottles on the sidewalk. NE#1 asked CM#1 whether he had a liquor license. CM#1 replied, "No, I don't." CM#1 told NE#2 he purchased it from a friend. NE#2 asked more questions about the liquor. CM#1 said he did not want to incriminate himself or his friend. NE#2 told CM#1 he believed CM#1 was illegally vending liquor.



NE#2 told CM#1 the officers would seize the bottles and he could pick them up at the West Precinct if he had proof of purchase.

NE#1 and NE#4 loaded CM#1's alcohol into a King County Sheriff's Office van for transport to the West Precinct. NE#2 provided CM#1 with a business card and case number after CM#1 asked for a seizure record.

D. General Offense (GO) Incident Report Information

NE#2 wrote the related incident report. NE#2 wrote he was familiar with retail thefts downtown and previously responded to a call for the selling of stolen goods near 3rd Avenue and Virginia Street. NE#2's report was consistent with BWV footage of his interactions with CM#1.

NE#2 documented that forty-four (44) liquor bottles were confiscated and taken to the West Precinct for safekeeping. NE#2 later consulted with the General Investigations Unit (GIU) because he believed the alcohol was stolen.

OPA reviewed the Custodial Property Summary, which indicated that NE#3 referred the case to SCAO.

E. Follow-up with Investigations Unit

OPA obtained an email from GIU dated November 3, 2022. That email notified a GIU sergeant that CM#1 requested the return of his liquor. The email further stated CM#1's case was referred to SCAO but had either been lost "in limbo" or was not reviewed.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.180 - Searches - General POL - 4 Open View and Plan View Doctrines

CM#1 alleged NE#1 illegally seized his property.

SPD Policy 6.180-POL-4 states the "Open View Doctrine applies when the officer sees contraband or evidence from a vantage point available to the public. To seize the contraband or evidence, it must be in an area open to the public and not protected by the Constitution." Seattle Municipal Code 12A.24.020 – Disposition of Liquor states, "It is unlawful to manufacture, sell, possess, consume, give away, use, or otherwise dispose of any liquor... except as authorized or permitted by state law."

NE#1 contacted CM#1 on a public street where CM#1 openly displayed forty-four liquor bottles for sale. CM#1 told NE#2 he did not have a license to vend liquor. That evidence established probable cause that CM#1 violated SMC 12A.24.020 and the liquor was contraband.

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

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

CM#1 alleged NE#1 engaged in bias-based policing by targeting him and seizing his property due to CM#1's race.

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. That includes differential treatment based on the subject's race. *See id.*

OPA reviewed relevant CAD information, incident reports, and BWV. While CM#1 alleged he was targeted, the CAD records indicated the named employees responded to a 9-1-1 call about his actions. Further, as stated above, CM#1 admitted to not having a liquor license while openly displaying alcohol for sale. NE#2's incident report further explained he believed CM#1 was selling liquor in an area known for the resale of stolen goods. BWV did not capture NE#1 doing or saying anything suggesting discrimination or bias against CM#1 due to CM#1's race or any other discernible characteristics.

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 14. Retaliation is Prohibited

CM#1 alleged NE#1 retaliated against him by seizing his liquor.

SPD policy precludes its employees from engaging in retaliation. SPD Policy 5.001-POL-14. SPD employees are prohibited from retaliating against a person engaged 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.*

OPA reviewed relevant CAD records, incident reports, and BWV. As discussed at Named Employee #1 - Allegation #2, NE#1 seized CM#1's liquor after establishing probable cause that CM#1 sold liquor without authorization in a prohibited location. Moreover, NE#2 told CM#1 he could pick up his property at the West Precinct if it were not stolen.

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

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

Named Employee #2 - Allegation #1

6.180 - Searches - General POL - 4 Open View and Plan View Doctrines

For the reasons 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

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

For the reasons 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 14. Retaliation is Prohibited

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

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

Named Employee #3 - Allegation #1

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

CM#1 alleged NE#3 engaged in bias-based policing by lying about referring CM#1's case to SCAO.

For the reasons set, Named Employee #3 - Allegation #2, NE#3 did not lie to CM#1 about referring the case to SCAO. As CM#1's allegation of bias-based policing was premised on NE#3 lying, this allegation is unfounded.

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

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

Named Employee #3 - Allegation #2

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

CM#1 alleged NE#3 lied when he told CM#1 that CM#1's case was referred to SCAO.

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

Here, incident reports showed NE#3 referred the case to SCAO. An email from GIU's administrator suggested SCAO possibly lost the referral or was "in limbo." Nevertheless, NE#3's statement to CM#1 was accurate.

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

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



Named Employee #4 - Allegation #1

6.180 - Searches - General POL - 4 Open View and Plan View Doctrines

For the reasons 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 #4 - Allegation #2

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

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

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

Named Employee #4 - Allegation #3

5.001 - Standards and Duties 5.001-POL 14. Retaliation is Prohibited

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

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