

Pursuant to SMC 3.28.720(F), I certify the completion of the investigation and the following disposition:

OPA Certified Disposition:

Named Employee 1:

Allegation #1:

Allegation #2:

Named Employee 2:

Allegation #1:

Allegation #2:

Named Employee 3:

Allegation #1:

Allegation #2:

Allegation #3:

Named Employee 4:

Allegation #1:

Allegation #2:

[REDACTED]  
Schoenberg, Brett L. #7429

Professionalism-Profanity—Sustained

[REDACTED]  
Steiger, Casey A. #7503

Professionalism-Profanity—Sustained

[REDACTED]  
Williams, Corey W. #7472

Professionalism-Profanity—Sustained

I concur in the recommended finding of **Supervisory Intervention** on the allegation involving Searches-General/Procedures against the 4 named employees, [REDACTED] for the reasons summarized in Lt. Kuehn's Proposed Disposition Memorandum. I also concur in the recommended finding of **Unfounded** on the allegation concerning Professionalism - Profanity against [REDACTED] and the finding of **Sustained** on the same Professionalism - Profanity allegation against Officers Brett Schoenberg and Corey Williams, again for the reasons summarized in Lt. Kuehn's PDM. Though there was a recommendation for a Supervisory Intervention as to Officer Steiger's use of profanity, a determination was made by Chief Diaz to Sustain that allegation and I concur. A review of the In-Car Video with Officer Steiger's commanders indicated that the profanity he used was not as prolific as that used by the other officers, but was nonetheless unprofessional. A **Sustained** finding for Officers Schoenberg, Steiger and Williams on the issue of Professionalism - Profanity is appropriate. I also concur in the recommended finding of **Exonerated** on the allegation of [REDACTED] against [REDACTED] for the same reason outlined in Lt. Kuehn's Proposed Disposition Memorandum.

Chief's Finding:

Named Employee 2:

Allegation #1:

Final Discipline:

Named Employee 3:

Allegation #1:

Final Discipline:

Named Employee 3:

Allegation #1:

Final Discipline:

Schoenberg, Brett L. #7429

Professionalism-Profanity—Sustained

20-days suspension w/o pay; disciplinary transfer

Steiger, Casey A. #7503

Professionalism-Profanity—Sustained

15-days suspension w/o pay

Williams, Corey W. #7472

Professionalism-Profanity—Sustained

20-days suspension w/o pay; disciplinary transfer

# SEATTLE POLICE DEPARTMENT MEMORANDUM

TO: Captain James Dermody  
East Precinct

DATE: 2/10/11

FROM: Lieutenant Mark Kuehn MK  
OPA-IS

SUBJECT: Proposed Disposition for OPA-IS Case 10-0385

This action is taken pursuant to the SPD Manual and the SPOG contract.

**ACTION:**

The attached OPA-IS investigation has been completed with *proposed dispositions of* **UNFOUNDED, EXONERATED, SUPERVISORY INTERVENTION and SUSTAINED.**

**A meeting will be scheduled in the near future to discuss these findings.**

OPA-IS Case Number: 10-0385

Employee #1:  
Allegation #1:  
Allegation #2:

[REDACTED]

Employee #2:  
Allegation #1:  
Allegation #2:

SCHOENBERG, Brett L. #7429  
Professionalism-Profanity 5.001 S&D / (VII.A)(6.b)

[REDACTED]

Employee #3:  
Allegation #1:  
Allegation #2:  
Allegation #3:

STEIGER, Casey A. #7503  
Professionalism-Profanity 5.001 S&D / (VII.A)(6.b)

[REDACTED]

Employee #4:  
Allegation #1:  
Allegation #2:

WILLIAMS, Corey W. #7472  
Professionalism-Profanity 5.001 S&D / (VII.A)(6.b)

[REDACTED]

Complainant:  
Subjects:

[REDACTED]

Incident Date:  
Date Reported:  
180-Day Expiration Date (SPOG):

03/11/10  
08/26/10  
02/22/11 (from date reported)

### SUMMARY OF EVENT:

The two subjects were stopped after their vehicle was observed being driven in a reckless manner. The driver of the vehicle was eventually arrested and the passenger released from the scene. It is alleged that during the course of the traffic stop the named employees directed profanity at the subjects and searched their vehicle without proper authority. It is further alleged that one named employee used unnecessary force while handling one of the subjects.

### ISSUES:

- 1) Whether any of the named employees directed profanity towards the subjects contrary to Department policy.
- 2) Whether any of the named employees searched the subjects' vehicle without first obtaining consent or having other legal justification to support the search.
- 3) Whether a named employee used any force against a subject and, if so, was the force reasonable and necessary.

### ANALYSIS AND CONCLUSION:

#### General Information:

Much of the traffic stop and subsequent interaction between the subjects and named employees was captured on In-Car Video (ICV). A review of the ICV prompted a referral to OPA-IS by the chain of command. The appropriateness of the use of profanity and the vehicle search were both apparently questioned by the subjects' defense counsel (complainant). OPA-IS interviews of the subjects resulted in the addition of a Use of Force allegation against named employee #3.

#### Issue #1 – Professionalism-Profanity

The subjects allege and the ICV documents that officers, as well as the subjects, used profanity during the incident. The issue is to identify which officers used profanity and the circumstances under which the profanity was used. The subjects did not attribute profanity to any specific employees. The driver of the vehicle described it as, "And they were, they were just being real rude to me, calling, I mean saying all kinds of things. I don't really know exactly what they were saying." The passenger told OPA-IS:

I, I don't know. I guess one of them had used some sexual, you know, profanity telling me to suck his dick, or something... Yeah, I don't, yeah, not the, like, I don't know if he said, they were saying more other things, but I just don't remember what.

He described the officers' conduct generally as:

Yeah, like, you know, a lot of cops, they just come at, come up to you in a respectful way. If you respect them, you know, they respect you back, but these guys, I don't know, they just, they came at us in a whole different way...

Named employee #1 denied personally using profanity, though he did hear other officers use it. None of the other involved officers indicated that they heard named employee #1 use profanity. The ICV does not document named employee #1 swearing.

Therefore, a finding of **UNFOUNDED** is recommended for Professionalism-Profanity allegation against named employee #1.

Named employees #2, #3 and #4 each stated that they did use profanity while speaking with the subjects. Named employees #2 and #4 were responsible for the bulk of the employees' profanity captured on ICV, while named employee #3 reportedly used it sparingly. Each of the named employees offered similar explanations/justifications for their use of profanity.

Named employee #2 said:

Dealing with these people, they're, they're obvious gang-bangers, the way they've been talking. They've been talking about hurting officers, fighting officers, how officers deserve to be killed. They're, they're gang members that just, it's the way we have to talk to them to...de-escalate the situation.

He explained why he thought the profanity was acceptable in this situation:

Since we were dealing with known gang members from the MS-13 gang, it, it's often used to show that we're not gonna be verbally pushed around, or that—I don't know how to word it. I mean dealing with them you have to lower yourself to their level to talk the way that they do so that they can understand who we are and kind of what—to get our point across. Oftentimes it can work as a de-escalation so that we're not verbally pushed around by them, called names, all that sort of stuff, which is often a sign of weakness towards them, if they can outwit us and do that sort of stuff.

Named employee #3 described his use and justification for profanity:

I believe it's after we get the passenger out of the car, and he sits down on the front of the patrol car, and he states to me, if, or I'm an MMA fighter or something along those lines, and turn off the camera, take off your badge and we'll fight. And at that point I tell him, if we were to fight, I'd break your fucking neck. The reason I used that is because I want to put it in his head that if he decides to fight me, that it's not gonna be something where it's just gonna be an easy situation for him. I wanna de-escalate him in his mind to think that, okay, this guy's serious. So as to make it not turn into a knock-down, drag-out fight where I can cause harm for myself, to him, or any other fellow officers.

Named employee #4 provided this description for his use of some profanity:

Well, we'd been talking to him for three to five minutes, and talking to him cordially and civilly wasn't working. And right off the bat, he's, they were both active DOC, they let us know that. And he's saying that I'm not new to this, dog, I'm going to fuck you up, using that kind of language. And unfortunately with gang members, you have to get on their level or typically they're gonna, it could escalate into a use of force, and my having to get down to their level and talking to them in a way they can understand, I feel like I prevented a use of force.

He gave the following explanation for another profane statement he made:

OPA-IS: Okay. Why did you say your badge was the only thing preventing you from skull fucking the subject and dragging him down the street?

N.E. #4: That's just a non-sequitur that I picked up in boot camp. He, the whole time he was saying we're basically just a bunch of bitches and we hide behind our badge, and several occasions asked us turn off, turn off the fucking cameras, take off your badge and I'm gonna bring my homies here and well fuck you up, we're gonna come after you, we'll, we'll settle this like men right here.

OPA-IS: Sure. Do you think he was trying to bait you?

N.E. #4: Absolutely.

OPA-IS: Do you think that you fell for the bait by saying you were gonna skull fuck him?

N.E. #4: No.

OPA-IS: Okay. Do you think it was appropriate to say that?

N.E. #4: I do.

Named employee #1, who did not himself use profanity, also felt that the use of profanity was appropriate to relate to the subjects and calm them down. He added:

When the gang member, I, and I'm, I'm, I'm gonna generalize it by puffing up. Typically on the street, a gang member will puff up, puff up his chest, use harsh language towards an officer, and if an officer fires right back with that same type of language, it, it's an odd psychological thing that I don't know how to describe. It kind of levels the playing field out, and the two then either de-escalate, or the conversation is carried on in tones that in normal society people would be shocked by. But it's an everyday conversation to the felon, and it's neither insulting nor is it complimentary. It's just the way it is.

The fact that the named employees (#s 2, 3 and 4) used profanity is not disputed. They each contend that under the circumstances (dealing with DOC active gang members, who were themselves using profanity), it was justified. Department policy, DP&P 5.001 S&D / (VII.A) (6.b), states "Profanity is discouraged, but it is understood that it will occur occasionally in a law enforcement environment. The use of profanity will be judged based on the totality of the circumstances in which it is used." As evidenced by the ICV and the officers' statements, the profanity used during this incident was not the occasional, appropriate use contemplated by the policy. The phrases uttered by named employees #2 and #4 ("Don't suck my dick" and "skull fuck"), even though addressed to profanity-using gang members, lacked professionalism and served no useful purpose – contrary to the officers' assertions that they assisted in de-escalating the situation. Police officers are held to a higher standard than the general public and gang members. It seems professional officers should be able to accomplish their mission and make their point in most situations

without resorting to gutter language and without lowering themselves to another's level. The Department's expectation is that SPD officers will maintain a high level of professionalism in all situations.

Based on the above, the preponderance of evidence indicates that named employees #2, #3 and #4 each used profanity during their encounter with the subjects. Because named employee #2's and named employee #4's use of it was not an isolated occurrence but was incorporated as a more routine element of their vocabulary, a finding of **SUSTAINED** is recommended for the Professionalism-Profanity allegation against them.

Due to named employee #3's apparent single use of profanity during this incident (in an almost joking manner), a finding of **SUPERVISORY INTERVENTION** is recommended for the allegation against him. This finding will allow a supervisor the opportunity to discuss the Department's general prohibition on the use of profanity with the employee and remind him of the requirement to remain professional at all times.

#### Issue #2 – Vehicle Search

During the traffic stop, both subjects were removed from the vehicle, and officers eventually checked the vehicle's interior and the trunk. The named employees stated, and ICV documents, that this search did occur, and each of the named employees participated in it to some extent. The subjects alleged that the officers had no justification to conduct it. The ICV captured the vehicle's driver denying consent to search when named employee #2 requested it.

Each of the named employees provided OPA-IS with their understanding of what permitted their search. Named employee #1, who searched the passenger area of the vehicle, said that he was checking the area into which the passenger had been reaching when he was initially contacted. The officers were contemplating returning the passenger to the vehicle, so the frisk for weapons was an officer safety procedure. He said that he also looked behind the driver's seat in an effort to find the driver's cell phone, after the driver inquired about it.

Named employee #2 stated he conducted a search even though the driver denied consent because the vehicle was being impounded; therefore, it was a vehicle inventory. He said he also searched the vehicle for the driver's phone. Additionally, the officers observed what appeared to be a bullet hole in the vehicle's trunk, so it was opened to check for possible victims (in addition to the inventory search).

Named employee #3 based his search of the vehicle and trunk upon the inventory search and the need to check for damage/victims of the possible bullet.

Named employee #4 said that he wasn't searching, but rather was frisking the front seat area based on the passenger's furtive movements to make sure it was clear before returning the passenger back inside the vehicle.

Each of the search justifications articulated to OPA-IS by the named employees can be legally supported. Legal Bulletin #10-002 (Search of Vehicle Incident to Arrest) emphasizes that officer safety must come first, and lists a frisk of a car as an exception to the search incident to arrest restrictions imposed by the Gant decision. In this instance, the subjects were gang members, and the passenger was being uncooperative and making furtive movements inside the vehicle. It was, therefore, reasonable to check the interior prior to allowing the passenger to re-enter the vehicle. (It appears that the decision to impound the vehicle was made after officers considered returning the passenger to the vehicle but before he actually re-entered it. On ICV following the search, officers are heard offering to allow the passenger to return to the car, yet he never did.)

Department policy, 6.120 (VIA), states that "Officers shall make a routine inspection of an impounded vehicle for items of value unless the vehicle is impounded on an investigatory hold. Absent exigent circumstances, consent, or some other legal authority, nothing in this section shall be construed to authorize a search or seizure of a vehicle without a warrant where a warrant would otherwise be required." The named employees stated that the vehicle was impounded because it had been parked blocking a driveway. The driver was being arrested, and the passenger appeared to be too impaired to drive. During the inventory search, nothing of value was found, so no inventory of property was noted.

Exigent circumstances (community caretaking) could possibly justify looking in the trunk when there is the presence of a fresh bullet hole. In this instance, the exact nature and age of the hole in the trunk may not have been firmly established. To the officers, the hole appeared to have been made by a bullet and it did not appear to be old. Though they had not heard any reports of gunfire, the named employees could reasonably be expected to ensure that an injured party was not present in the vehicle.

Additionally, the driver of the vehicle inquired about the location of his cell phone. This inquiry could be interpreted as granting consent to look in the vehicle for the phone. However, considering the driver's initial refusal to grant consent to search the vehicle, it may have been prudent to clarify his desire to search it for his phone. (Arguably, looking for the phone could have been incorporated into the justifiable inventory of the vehicle.)

The above justifications for searching the vehicle were elicited during the OPA-IS interviews. The GOR makes no reference to the vehicle search/inventory. The possibility of a bullet hole is simply listed in the GOR as a one line entry under vehicle damage, and the passenger's furtive movements while seated in the vehicle are mentioned in one officer's statement but not in the main incident summary.

The driver told OPA-IS that he didn't know why his vehicle was searched, particularly after he was asked for consent and he denied it.

I was already mad and I was in the back seat (of a patrol vehicle) and I was like, no, you can't, you know, you cannot search my car. And... They just closed the door and they, I seen them go and grab my keys and they popped my trunk with their, with my keys, you know, and they just started digging in there... And they went, they popped my hood, too, the front of the car, and started digging in there. I'm like, you know, like, man. They, they were basically thinking that, you know, I don't know if it was because we're Mexicans or what, be, but, you know, it kind of goes there, you know, like why did you do that, you know?

(The named employees did not recall ever lifting the hood of the vehicle, and ICV did not record the hood being opened.) Though the officers were able to justify their actions after the fact to OPA-IS, their lack of communication with the subjects over the search issue may have led the subjects to conclude that they were the object of biased policing. Searching the vehicle, particularly after consent was refused, and not informing the subjects the reasons for the search (or documenting the justification in the GOR) would not be considered a best practice. Additionally, the named employees articulated individualized and/or personalized justifications for conducting a search/inventory, yet a unified or common justification was not presented. This could indicate a lack of communication among them or indicate that overall control of the scene by a primary officer was never firmly established. The ICV seems to document that officers on-scene were operating independently without a unity of purpose, e.g., one officer requested consent while other officers appeared to begin searching/inventorying the vehicle on their own; one officer prepared to put the passenger back into the vehicle, while others prepared to have it impounded. This disparity in justifications

could also open the door to a challenge (had anything of evidentiary value been discovered) that the inventory search was actually a maneuver to circumvent the warrant requirement.

Based on the above, a finding of **SUPERVISORY INTERVENTION** is recommended for the search policy allegation against the named employees. Though there was some legal justification for inventorying/searching the vehicle, it was clouded by the lack of articulation in the GOR and the lack of consistency among the officers' explanations for the search. This recommended finding will allow a supervisor the opportunity to discuss 1) Department policies and expectations in light of the perception the subjects in this incident expressed over the search of their vehicle, and 2) other options in directing and controlling the scene and documenting the incident in the GOR.

Issue #3 – Use of Force

The driver of the vehicle alleged that unnecessary force was used against him when his arm was pulled/twisted back. He said that he wasn't resisting or trying to fight at the time. He added that he was not injured by the action, but didn't think that the officer should have done it.

Named employee #3 stated that when named employee #1 was conducting a pat-down of the driver, the driver became verbally abusive and took his hands off the hood of the patrol car. At that time, named employee #3 took control of the driver's wrist and applied "a loose gooseneck technique," which he had been taught by the Department. Once the driver became compliant, his wrist was released. Following application of this technique, named employee #3 said that the driver became less aggressive towards officers.

ICV documents that the driver was somewhat resistant as he was brought to the hood of the patrol car. While named employee #1 attempted to conduct a frisk, the driver appeared to yell at named employee #3 and turn towards him. Named employee #3 took one of the driver's arms while named employee #1 held the other. Named employee #3 applied a wrist lock, forced the driver over the hood, and maintained his hold on the driver while named employee #1 spoke to him. Shortly thereafter, the driver was released and directed to sit on the vehicle's push bars.

The preponderance of evidence indicates that the driver was being uncooperative and resistive when officers were attempting to frisk him. Named employee #3 then used a reasonable and necessary amount of non-reportable force to control his movement. Therefore, a finding of **EXONERATED** is recommended for the Use of Force allegation against him.

PROPOSED DISPOSITION:

Please take note of information supporting the allegation and information not supporting the allegation. Your complete review of the contents of this file should assist you in determining your finding.

Employee #1: [REDACTED]

Allegation #1: [REDACTED]

Allegation #2: [REDACTED]

