
From: Mitchell Kagen <Mitchell.Kagen@tucsonaz.gov>

Sent: Tuesday, July 13, 2021 1:09 PM

To: Mickey Petersen <Mickey.Petersen@tucsonaz.gov>; Joe Puglia <Joe.Puglia@tucsonaz.gov>

Subject: IPA Disagreement with Finding in OPS # 21-0100

This is written to disagree with the Not Sustained finding regarding Allegation 305, Profanity in OPS # 21-100.

There were three earwitnesses to Focus Officer Stevenson's alleged profanity:

██████████

"Get off the fucking phone. Get turned into this fucking area. Get the fuck off the phone. Roll your fucking window down."

██████████

"I told you to pull into this fucking neighborhood. Get off your fucking phone. I told you to fucking pull over. Pull the fuck over. Get the fuck off your phone and pull the fuck over."

Chris Tuck:

"Get the fuck off the phone. Get the fuck out of the car."

█████ was the driver. She was a juvenile and had just recently gotten her driver license. █████ was her juvenile passenger. Chris Tuck is █████ father. █████ called him during her exchange with Stevenson.

Lt Gilder wrote in a Personnel Report in support of a Not Sustained finding, "The statements he (Focus) is alleged to have said and the timing is inconsistent amongst the three statements (Tuck, █████ █████ Based on their interrelationships, none of the complaints can be considered independent witnesses."

Exact word-for-word recall cannot be expected. The two in the car were terrified juveniles based on having just been in a motor vehicle collision with a police officer and that officer aggressively approaching and addressing them (Sustained violation). █████ told his mother he's afraid to drive now. █████ had only recently gotten her Arizona Driver License. Chris Tuck only heard a snippet of the real-time exchange between Focus and the two juveniles when his daughter called him on her phone.

Burden of proof for sustaining a violation is preponderance of the evidence. What is more likely the case. The raised issue of "inconsistencies" is minor. The primary question is, Is it more likely than not that Focus used profanity when addressing the juvenile(s)? To that end there is no inconsistency. All three heard Focus say the word "fuck" in some form when addressing either or both juveniles and all in the same context.

That Gilder discounted the three earwitnesses assessing them not to be independent is not significant. Chris Tuck heard real-time profanity and addressed Focus and his sergeant on scene about the profanity. This was not a situation where there was time for collusion to create something from nothing.

It is unclear to what Gilder refers when he says Focus's "intentions were good." That conclusion does not itself support there was no profanity and certainly does not jibe with the likelihood Focus did in fact use profanity.

The Personnel Report states, "It should be noted..." and goes on to report that Focus's son was harassed at school by █████ and/or her boyfriend after her exchange with Focus at the collision and that parties affiliated with Tuck flipped off Focus as he was being loaded into an ambulance at the scene. Why should that be noted? This does not lend itself to weighing credibility. Had this school harassment occurred prior to the collision, there might then be significance in so noting. It could be suggested that the "subsequent" harassment and flipping Focus off might in fact support Focus's use of profanity. If Focus had been polite as suggested, why would Focus's son be targeted or Focus flipped off?

That a responding CSO did not hear profanity is insignificant. CSO arrived after the alleged exchange. Additionally, based on Gilder's discounting of the three as not independent, would that same claim not be made for the CSO?

Focus adamantly denied profanity. In the Personnel Report, Gilder states, "profanity is not a normal part of his vocabulary." What does that mean, "normal part?" Was this exchange between the juveniles and focus "normal?" That under less-heated conditions (normal?), Focus may not have used profanity means nothing here. Gilder seems to support there was no profanity by stating Focus, "has been an exemplary employee while under my command." It should be noted that in OPS #07-0671 (0710050896), Stevenson received a written reprimand on January 17, 2008, for yelling at a citizen after a traffic encounter (similar to aggressive approach to juveniles in the instant matter) and using profanity, "Motherfucker, you almost killed me you sonofabitch." Although Stevenson in that matter said it was "possible" he used profanity, the allegation was sustained as the profanity was heard by another officer.

Boiled down, the only question is, "Is it more likely than not Focus Officer Stevenson said the word, "fuck" even once in any context in his encounter with █████ and █████ on March 4, 2021? Based on the above, it is requested the finding in Allegation 305 (Profanity) be revisited.

Thank you for your consideration.

Respectfully,

Mitchell A. Kagen
Independent Police Auditor
City of Tucson
(520) 837-4003
Mitchell.Kagen@tucsonaz.gov