



City of Boston, Massachusetts
Office of Police Accountability and Transparency
Evandro Carvalho, Executive Director

CIVILIAN REVIEW BOARD-COMPLAINT #276

INVESTIGATOR: Tastery Reed Jr.

DATE OF INCIDENT: December 19, 2023

DATE OF FILING: December 21, 2023

COMPLAINANT: Anonymous

COMPLAINT SUMMARY: Complainant alleges BPD officer used homophobic slur and refused an ask for a Lieutenant.

OFFICER(S):

Officer Jonathan Marcel, Employee ID#162971

Officer Nicholas Kimaiyo, Employee ID#157656

DISTRICT: Roxbury, B-2

ALLEGED VIOLATION OF RULE:

Rule 102§4-Neglect of Duty

BPD Rule 102§4 NEGLECT OF DUTY: “This includes any conduct or omission which is not in accordance with established and ordinary duties or procedures as to such employees or which constitutes use of unreasonable judgment in the exercising of any discretion granted to an employee.”

BPD Rule 102§9-Respectful Treatment

BPD Rule 102§ 9 RESPECTFUL TREATMENT: “Employees shall, on all occasions, be civil and respectful, courteous and considerate toward their supervisors, their subordinates and all other members of the Department and the general public. No employee shall use epithets or terms that tend to denigrate any person(s) due to their race, color, creed, **gender identity** or sexual orientation except when necessary in police reports or in testimony.”



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OPAT FINDINGS AND RECOMMENDED DISPOSITION:

Officer Jonathan Marcel, Employee ID#162971
BPD Rule 102§4-Neglect of Duty–**Not Sustained**
BPD Rule 102§9-Respectful Treatment–**Not Sustained**

Officer Nicholas Kimaiyo, Employee ID#157656
BPD Rule 102§4-Neglect of Duty–**Not Sustained**
BPD Rule 102§9-Respectful Treatment–**Not Sustained**

OPAT staff recommends to the Civilian Review Board that this case be considered **Not Sustained on both charges**. Investigator Reed did not find Officer(s) Kimaiyo and Marcel in violation of Rule 102§4-Neglect of Duty and Rule 102§9-Respectful Treatment. Investigator Reed reviewed body worn camera footage of both Officers and did not hear or observe Officer(s) Kimaiyo or Marcel referring to the Complainant as a derogatory comment. Additionally, Officer(s) Kimaiyo and Marcel did in fact respond to the scene and removed the individuals from the Complainant’s apartment.

In the matter of OPAT Case #276, with regard to the two named BPD officers concerning violations of BPD Rule 102 § Sec. 4 Neglect of Duty and BPD Rule 102§9-Respectful Treatment the Civilian Review Board reached a unanimous decision (6-0) to Not Sustain

INVESTIGATION SUMMARY

Document List

1. Body Camera footage for Officers(s) Kimaiyo and Marcel	2. Police Report
3. CAD Sheet/Incident History Report	4. 9-1-1 Tape/Turret Tape

Case Summary:

On December 21, 2023, the Office of Police Accountability and Transparency (OPAT) received a complaint filed by Complainant” alleging police misconduct of Boston Police Department Officer(s) Jonathan Marcel (162971) and Nicholas Kimaiyo (157656). The Complainant alleged that on December 19, 2023 between 2:00 AM and 4:00 AM, they called BPD because there were homeless people defecating in their apartment building.



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The Complainant stated that BPD told them to go to the police station and report it. The Complainant went to the police station and asked for a police report and alleges that Officers at the station told them that they could not obtain a police report there and that they should go home and that an Officer would respond to their home shortly. The Complainant alleges that the same officer they spoke to at the station responded to their apartment. The Complainant alleges that BPD officers begin "making a joke out of everything" and not doing anything to assist.

The Complainant stated that when they pulled out their phone to record, one of the officers was being very rude, mimicking what the Complainant was saying using a "gay tone." The Complainant stated that one of the Officers used the slur "faggot" and begin arguing back and forth with them. The Complainant stated that they asked the Officer for his badge number and name. However, the Officer declined to provide it, only providing them three numbers, "273" which is not a complete badge number. The Complainant stated they asked for a Lieutenant , but their request was declined. The Complainant stated that the Officer who was arguing with them did not have their body worn camera on, but that the second Officer did. The Complainant also added that they are afraid of retaliation from the Officer who argued with them because they have their address and name.

Interview Summary:

On December 27, 2023, Investigator Reed called the Complainant who stated that on December 19, 2023, they came home from work and arrived at their residence at about 3:00 AM. The Complainant noticed defecation on their apartment floor and went to the Roxbury Police Station to obtain a police report written and other assistance. The Complainant added that they waited at least 20 minutes before speaking to anyone. The Officer at the station said they were unable to write a police report there and told the Complainant to go home and that someone should respond to the scene shortly. An Black Officer who Complainant stated finally came to the front at the station was the same Officer who responded to the scene. Once back at their home, the Officers who responded did not do anything to help until the Complainant pulled out his phone to record. Afterwards, the Complainant alleged that they were arguing with Officer Kimaiyo referring to each other as "faggots.". The Complainant added that Officer Kimaiy did not have his body worn camera on, but Officer Marcel did.



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On 1/9/24 and 2/27/24, Investigator Reed sent out an interview request to Officer Kimaiyo. However, Officer Kimaiyo did not respond to the request. On 3/4/2024, Investigator Reed sent out an interview request to Officer Marcel. He, too, failed to respond to the request.

Document/Video/Other Investigation Technique Summary:

Investigator Reed reviewed CAD sheets/Incident History records, which show that the initial call was for an “Investigate Persons.” At the 3:48 minute mark, a caller stated that there were people sleeping in the hallway of their building and wanted them removed including wanting to file threats and a vandalism report. A police report was reviewed as well and summarized what the Complainant had stated to Investigator Reed.

Investigator Reed listened to 9-1-1 tapes, which showed the Complainant wanting to make a report that people were sleeping in the hallway of their building and wanted them removed including wanting to file threats and a vandalism report. At the 3:49 mark, Officers can be heard saying that they checked the apartment building, However, Officers were unable to locate the Complainant. At the 3:55 minute mark, the operator was asking the Complainant their location and the Complainant stated that they were at the police station in Roxbury. At the 4:14 minute mark, the Operator asks the Complainant to open the door for the Officers and the Complainant asks the Operator for a Lieutenant.

Investigator Reed reviewed a video submitted by the Complainant. The video shows the Complainant talking to one of the Officers who was sitting inside the cruiser.

Summary of Officer Kimaiyo Body-Worn Camera

Investigator Reed reviewed Officer Nicholas Kimaiyo body worn camera. Officer Kimaiyo’s camera shows Officer Marcel having a conversation with the Complainant in regards to the incident. At the 4:37 minute mark, both Officer(s) Marcel and Kimaiyo enter the Complainant's apartment. At 5:50 minute mark, both Officers observe two homeless people, a man and a woman loitering on the top floor, which Officers remove and escort the individuals from the Complainant's residence. Officer Marcel can be heard telling the two individuals that they cannot come back.

Summary of Officer Marcel Body-Worn Camera



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Officer Marcel's body worn camera was reviewed, which showed the Complainant being upset with Officer Marcel because they weren't able to obtain a police report and that there were homeless people in his apartment. Officer Marcel explains that himself along with Officer Kimaiyo were waiting outside the apartment and were unable to enter the Complainant's home to remove the homeless people. The Complainant stated that the next door neighbor's kid's homeless friends have been hanging in the hallway and smoking, doing drugs, and using the bathroom in the hallway leaving feces behind. As a result, every time they called the police in the past, their vehicle was being vandalized. At the 4:42 minute mark, Officers Marcel and Kimaiyo entered the Complainant's apartment on the top floor and observed two homeless people lying on the floor, which Officers removed the two individuals. At the 6:54 minute mark, Officer Marcel approaches the Complainant's door to obtain information from them.