



## LEXINGTON POLICE DEPARTMENT

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150 East Main Street • Lexington, KY 40507 • (859) 258-3600

November 30, 2021

Mrs. Elisha Swain

RE: Formal Complaint PIU2021F-020 - Officer Brian Misik

Dear Mrs. Swain,

The Public Integrity Unit completed the investigation of your Formal Complaint against Officer Brian Misik for violation of General Order 1973-02K Disciplinary Procedures of Sworn Officers, Appendix B, Operational Rule 1.07 – Conduct Towards the Public.

After reviewing the investigative summary and the body worn camera video, Chief Lawrence Weathers determined the disposition of the complaint as “Unfounded” due to insufficient evidence. Chief Weathers has recommended that no further action be taken with regard to this complaint.

Formal Complaint PIU2021F-020 regarding Officer Brian Misik is closed.

Please feel free to contact the Public Integrity Unit if you have any questions regarding this determination.

Sincerely,

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Lieutenant David Biroshik  
Bureau of Investigation  
Public Integrity Unit  
(859) 258-3625



Lexington-Fayette Urban County  
 Division of Police  
**MEMORANDUM**  
 Lexington, Kentucky

DATE OF ISSUE  
 November 29, 2021

EFFECTIVE DATE

NUMBER  
 COP:  
 21-0199

TO: Kenneth Armstrong, Commissioner  
 Department of Public Safety

SUBJECT: Disciplinary Recommendation  
 PIU2021F-020  
 Officer Brian Misik

FROM: Lawrence B. Weathers  
 Chief of Police

I met with Officer Brian Misik on November 29, 2021, and am recommending this case be administratively closed as "Unfounded" due to insufficient evidence for violation of General Order 1973-02K, Disciplinary Procedures of Sworn Officers, Appendix B, Operational Rule 1.07 – Conduct Toward the Public.

I find that there does not appear to be sufficient evidence produced to sustain this complaint. Body Worn Camera and Public Integrity Unit synopsis was reviewed.

I have included the summary of this formal complaint for your review.

*Lawrence B. Weathers*

Lawrence B. Weathers  
 Chief of Police

LBW/rmh

Attachment



LEXINGTON POLICE  
DEPARTMENT  
**MEMORANDUM**  
Lexington, Kentucky

DATE OF ISSUE  
November 9, 2021

EFFECTIVE DATE

NUMBER  
PIU 21-125

<p>TO: Lawrence Weathers Chief of Police</p>	<p>SUBJECT: Formal P.I.U.21.F.020 Officer Brian Misik Summary</p>
<p>FROM: Lieutenant David Biroshik Bureau of Investigation Public Integrity Unit</p>	

This memorandum will provide a synopsis of the investigation; however, other supporting documents may be viewed in conjunction with this memorandum.

On September 27, 2021 Ms. Elisha Swain filed a formal complaint against Officer Brian Misik for the violation of General Order 1973-02K, Disciplinary Procedures of Sworn Officers Appendix B, Operational Rule 1.07 – Conduct towards the Public

**Allegations:**

On September 24, 2021 Officer Misik conducted a Traffic Stop on the Complainant Elisha Swain, for the allegation of Disregarding a Traffic Control Device. The alleged offense occurred on South Broadway at Vine Street where Ms. Swain admitted to going through the intersection while the red light on the signal was illuminated.

During the stop Ms. Swain alleges that Officer Misik was extremely rude, inconsiderate and unprofessional with the way he handled the stop. She felt he was biased against her due to her race and religious "signs" she had on her car.

If the above allegations are true, Officer Misik is in violation of General Order 1973-02K, Disciplinary Procedures, Appendix B, Operational Rules:

**1.07 Conduct toward the Public**

- Officers shall interact with the public in a civil and professional manner that conveys a service orientation that fosters public respect and cooperation.
- Officers shall treat individuals with courtesy, respect and dignity.
- Officers shall not use language that might belittle or ridicule individuals and shall be tactful in the performance of their duties, shall control their tempers, exercising the utmost patience and discretion.
- Officers shall perform their duties equitably in both the enforcement of laws and the delivery of law enforcement services within the community and shall strive to maintain public trust by conducting all law enforcement business in an unbiased, fair, and impartial manner.

## **Ms. Swain's Interview**

Ms. Swain was interviewed in the lobby of Headquarters on September 27, 2021 when she came in to file the Formal Complaint on Officer Misik. Along with her allegations already listed, she describes her encounter with Officer Misik as followed.

On September 24, 2021 she was on South Broadway approaching the light at Vine Street when it changed to yellow, she crossed the "stop bar" as the light turned red. She knew she was going to be pulled over so she just stopped in the roadway, where Officer Misik pulled in behind her. She states that Officer Misik exited his cruiser and approached her car, stopping to read the bumper stickers she had on her vehicle. She advised he stood there for 5 minutes reading the stickers, which were religious in nature, he then went back to his cruiser and came back to read the stickers for an additional 2 more minutes. After doing this, he finally approached her window and demanded her operator's license from her.

She said he had an attitude and continually yelled at her to produce her license and registration. She was on the phone at this time with her husband attempting to locate the appropriate paperwork and felt that Officer Misik should have recognized this and gave her a moment to locate them. She also believed that producing the paperwork was not necessary because Officer Misik could have just ran her tag through his computer and got the information he needed.

Ms. Swain then stated Officer Misik began talking about the vehicle she was driving, which was a Toyota Sienna Mini-Van. He demanded the registration for the vehicle and asked her multiple times if the van was in her name. Ms. Swain stated she asked him multiple times why he had an attitude and Officer Misik stated she was driving a Toyota and he needed to see if it was in fact registered in her name. Ms. Swain's opinion was that Officer Misik believed the vehicle was too nice for her to be driving and was being harassed because of it.

Ms. Swain's overall opinion of her interaction with Officer Misik was that he was offended by the religious stickers/signs she had posted on her vehicle and because of it he was extremely aggressive, rude and unprofessional because of it.

## **Investigation**

On September 24, 2021 Officer Misik was assigned to work a Special Assignment in the downtown area observing for traffic violations. While sitting at a red light on South Broadway at Vine Street he observed Ms. Swain travel through the intersection after the light turned red and had been so for approximately 7-8 seconds. He activated his emergency lights and pulls through the intersection behind her car that has come to a stop in the right lane just past Vine Street.

During Officer Misik's initial approach he is unable to advise Dispatch that he has conducted the stop, due to multiple other units tying up the channel. He slowly walks towards the vehicle stopping just prior, waiting for the radio traffic to clear. He stops behind the car and waits for 18 seconds and then he approaches the car, still unable to advise Dispatch of his stop. He identifies himself to Ms. Swain, explains why he stopped her and ask for her Operator's License, Proof of Insurance and Registration. Ms. Swain hands her Operator's License to Officer Misik and starts looking for the remaining documents in the vehicle console.

While Ms. Swain is looking for her documents Officer Misik walks towards the back of the vehicle and provides the license plate information to Dispatch, who he is finally able to contact. He then immediately walks back up to the window and ask Ms. Swain to pull over into a parking area in front of the Hilton Hotel. He made sure traffic was clear and it was safe for her to move prior to her pulling in, he then again pulled in behind her.

Once safely out of the roadway, Officer Misik walked back up to the window of Ms. Swain's vehicle and inquired if she were able to locate her proof of insurance and registration. Ms. Swain stated her husband normally keeps track of all of their paperwork and she was on the phone with him attempting to find it. Officer Misik then asked if the vehicle was in her name, she stated it was and then immediately became defensive and argumentative. She inquired if Officer Misik was attempting to be funny or something, based on his question and insinuated he was only asking it, because of the type car she was in. Officer Misik attempted multiple times to explain to Ms. Swain that he was only trying to confirm ownership and that Kentucky State law requires people to carry both insurance and registration with them at all times while operating a vehicle.

Ms. Swain continued to be argumentative and told Officer Misik to run the license plate to get all the information. He attempted again to explain why he needed the paperwork, but decided to stop and go back to his cruiser to complete the citation when it was obvious he was not going to be able to talk with Ms. Swain.

While completing his citation in his cruiser, Dispatch contacted Officer Misik and advised him that Ms. Swain had called in and was requesting a supervisor. Officer Misik acknowledged the transmission and continued working on the citation until Commander Newman arrived at the scene. Once there he explained the situation to her and finished up his citation while Commander Newman talked to Ms. Swain. Officer Misik did not have any further contact with Ms. Swain from this point. When he completed the citation, Commander Newman presented it to Ms. Swain while he stayed back by his cruiser.

### **Officer Misik Interview**

Officer Misik was interviewed in the Public Integrity Unit on October 14, 2021 at approximately 1849hrs. Officer Misik described the violation he observed, the traffic stop involving Ms. Swain and her actions during the stop. He was very confused on how Ms. Swain took anything he said as negative or condescending. He also stated at no time did he read the stickers or signs on the back of Ms. Swain's vehicle and they had no bearing on what he did during the stop.

### **Conclusion**

It is very apparent by watching the Body Worn Camera footage that Ms. Swain committed the offense Officer Misik cited her for. BWC footage also shows that Officer Misik was extremely professional throughout the encounter. His behavior was in-line and consistent with what he has been taught at the Lexington Police Department and within all policies. It appears Ms. Swain misinterpreted Officer Misik's actions while he was approaching her car and her opinion of the stop was negatively warped from there. She became upset from her perceptions and therefore did not allow Officer Misik to explain his actions, or why he needed the information

he was requesting. There was never a time that Officer Misik raised his voice, demanded something from her, nor did he speak in a belittling manner.

The allegation of Officer Misik acting extremely aggressive, rude and in an unprofessional manner would be an inaccurate description and statement. I recommend the Formal Complaint against him be marked as Unfounded.



Lexington Police Department  
**MEMORANDUM**  
Lexington, Kentucky

DATE OF ISSUE  
September 28, 2021

EFFECTIVE DATE

NUMBER  
PIU:21-108

TO:  
Assistant Chief Shawn Coleman  
Bureau of Special Operations

FROM:  
Lieutenant David Biroshchik  
Bureau of Investigation  
Public Integrity Unit

SUBJECT:  
FORMAL COMPLAINT

**COMPLAINANT:** Mrs. Elisha Swain

**ACCUSED OFC.:** Officer Brian Misik

**ALLEGATION:** Violation of General Order 1973-02K, Disciplinary Procedures, Appendix B, Operational Rules: 1.07 Conduct Toward the Public

**ALLEGED CIRCUMSTANCES:** On September 24, 2021 Officer Misik conducted a Traffic Stop on the Complainant Elisha Swain, for the allegation of Disregarding a Traffic Control Device. The alleged offense occurred on South Broadway at Vine Street for the allegation of Ms. Swain disregarding a traffic light by going through the intersection while it was showing red.

During the stop Ms. Swain alleges that Officer Misik was extremely rude, inconsiderate and unprofessional with the way he handled the stop. She felt he was biased against her due to her race and religious "signs" she had on her car.

**ACTION REQUESTED:**

- The Bureau Commander and Officer Misik should sign the Acknowledgment Sheet and process this complaint.
- The Commanding Officer should provide the attached copy of the Form 111 and the Officer's Rights Packet to Officer Misik.
- Officer Misik should contact the Public Integrity Unit to arrange for a time to provide a formal statement.

DATE

TIME

Bureau Commander J Newman 9-28-21 1236  
Supervisor D. Selby 41917  
Officer B 46611

Accused officer would like the Public Integrity Unit to notify the FOP President or their designee that a formal complaint is filed against them. (Circle One) YES or NO

Returned to the Public Integrity Unit W. [Signature] 9/30/21

LT. D. Birochik  
Lieutenant David Birochik  
Bureau of Investigation  
Public Integrity Unit

mrv

enclosures

cc: Chief Lawrence Weathers  
file - PIU2021F-020



**Lexington Police Department  
Formal Complaint  
Form 111**

File #: PIU2021F-020

Member(s) Involved Officer Brian Misik		Employee No. 46611	D.O.B.	D.O.E 12/10/2001	Present Assignment BOSO / CLEAR
Complainant Elisha Swain		Address-Apt. No. - Zip Code			Telephone No.
Employed By N/A		Business Address - Zip Code N/A			Telephone No. N/A
Date of Incident 9/24/2021	Time of Incident 2230	Location of Incident S. Broadway / Vine St.		Date and Time Reported 09/27/2021 / 1430	How Reported: <input type="checkbox"/> Letter <input type="checkbox"/> Phone <input checked="" type="checkbox"/> Person <input type="checkbox"/> Email

**Brief Description of Allegations:**

On September 24, 2021 Officer Misik conducted a Traffic Stop on the Complainant Elisha Swain, for the allegation of Disregarding a Traffic Control Device. The alleged offense occurred on South Broadway at Vine Street for the allegation of Ms. Swain disregarding a traffic light by going through the intersection while it was showing red.

During the stop Ms. Swain alleges that Officer Misik was extremely rude, inconsiderate and unprofessional with the way he handled the stop. She felt he was biased against her due to her race and religious "signs" she had on her car.

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- Officers shall perform their duties equitably in both the enforcement of laws and the delivery of law enforcement services within the community and shall strive to maintain public trust by conducting all law

I swear/affirm that the facts set out above are true to the best of my knowledge and belief.

Elisha Swain Date: 9/27/21  
(Complainant)

Subscribed and sworn before me this date: 9/27/21 (Date) Crystal R. Votaw (Notary) KYNP 20919

My Commission Expires: 2-3-2025

Witnesses:  
Name \_\_\_\_\_ Address \_\_\_\_\_ Phone Number \_\_\_\_\_

**Chief of Police (or "Designee"):**

Policy Violation	Finding
GO 1973-216 OR 1.07 CONDUCT TOWARDS THE PUBLIC	<input type="checkbox"/> Proper Conduct
	<input type="checkbox"/> Improper Conduct
	<input type="checkbox"/> Insufficient Evidence
	<input type="checkbox"/> Policy Failure
	<input checked="" type="checkbox"/> Unfounded

**Chief of Police Recommendation**

Recommend Case Be Closed     Corrective Training Recommended     Below Disciplinary Action Recommended

Comments:

COMPLAINT UNFOUNDED BFC. MISIK'S BWC WAS REVIEWED

Signature: *Sam Weather* Date: 11/29/21

**Disciplinary Review Board**

Policy Violation	Finding
	<input type="checkbox"/> Proper Conduct
	<input type="checkbox"/> Improper Conduct
	<input type="checkbox"/> Insufficient Evidence
	<input type="checkbox"/> Policy Failure
	<input type="checkbox"/> Unfounded

**Disciplinary Review Board Recommendation**

Recommend Case Be Closed     Corrective Training Recommended     Below Disciplinary Action Recommended

Comments:

Signature: Date:

**Chief of Police 2nd Recommendation**

Recommend Case Be Closed     Corrective Training Recommended     Below Disciplinary Action Recommended

Comments:

Signature: Date:

**Commissioner of Public Safety:**

Approved Recommendation of Chief of Police     Disapprove Recommendation of Chief of Police

Comments:

Signature: Date:

**Proper Conduct:** Allegation is true; the action of the agency or the officer was consistent with agency policy.  
**Improper Conduct:** The allegation is true; the action of the agency or the officer was inconsistent with agency policy.  
**Insufficient Evidence:** There is insufficient proof to confirm or to refute the allegation.  
**Policy Failure:** The action of the agency or the officer was consistent with agency policy, but the policy did not take into account the circumstances present in this instance.  
**Unfounded Complaint:** Either the allegation is demonstrably false or there is no credible evidence to support it.