



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 3, 2018

CASE NUMBER: 2018OPA-0225

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Lawful and Proper)
# 3	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 4	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity d. Recording in Sensitive Areas	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Lawful and Proper)
# 3	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)

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:

The Complainant alleged that the Named Employees engaged in biased policing. It was further alleged that the Named Employees may not have limited the Terry stop of the Complainant to a reasonable scope, that there may not have been probable cause to arrest the Complainant, and that Named Employee #1 may have recorded Body Worn Video while inside of a hospital in potential violation of policy.

STATEMENT OF FACTS:

The Named Employees responded to a call of a suspicion person/vehicle. The call indicated that there was a woman who was wearing a multicolor sweater and was standing next to a grey Ford Windstar. It was reported that the subject was potentially intoxicated, was holding a bottle of liquor, and was asking people passing by for a jump for her vehicle.



When the officers responded to the scene, they observed the vehicle in question and the woman – who was later identified as the Complainant – sitting in the front seat. The vehicle was running. The officers contacted the Complainant and quickly developed the belief that she was potentially under the influence. They based this both on the Complainant’s physical appearance/conduct and on what they observed in the vehicle. With regard to her appearance, the officers reported that she had watery and bloodshot eyes, as well as that she was agitated. The officers observed a case of beer between the front driver’s and passenger’s seats. They also observed empty and partially full bottles, which the Complainant explained were left over from a party that occurred the previous evening. The officers additionally saw needles in the car, suggesting drug use on the part of the Complainant.

The officers ran the Complainant’s name and learned that she was driving with a suspended license. The officers asked the Complainant whether she would perform Field Sobriety tests and she declined. The officers had the Complainant exit the vehicle and told her to sit on the front bumper. She then fled the scene. She was chased by the officers, caught, and arrested.

At the time of her arrest, she admitted to the officers that she had two drinks earlier and that she was also taking medication for mental illness (“psychosis”). She was taken into custody for DUI control and was brought to the precinct. Her vehicle was impounded. At the precinct, she twice blew a 0.00 on the Blood Alcohol Content machine. Named Employee #1 (NE#1) then obtained a search warrant for the Complainant’s blood. She was transported to the hospital and was informed of the warrant. Her behavior became more and more erratic and volatile. After weighing the risk that the Complainant could become violent, the possibility of harm to both her and NE#1 if this occurred, and her overall lack of cooperation, NE#1 made the decision to book her into the King County Jail instead of executing the warrant. The Complainant was ultimately charged with both DUI control and obstruction.

During the stop and prior to fleeing, the Complainant asserted that the officers’ treatment of her was based on her race. She repeated this assertion to a Department supervisor (who she also referred to as the “devil”). Based on her allegation, the supervisor referred this matter to OPA. In addition to the claim of bias, OPA also investigated whether the initial detention of the Complainant went beyond a reasonable scope, whether there was probable cause supporting the arrest of the Complainant, and whether NE#1 improperly recorded Body Worn Video (BWV) while with the Complainant at the hospital.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

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.) This includes different treatment based on the race of the subject. (*See id.*)

Based on my review of the evidence and, most notably, after watching the Department video of this incident, I find no evidence that the Named Employees engaged in biased policing in this instance. To the contrary, the law enforcement conduct that they engaged in was lawful and was supported both by reasonable suspicion and probable cause. The Complainant’s conduct and decision-making in this instance, not her race or her membership in



any other protected class, was the basis for her arrest. I conclude that the Named Employees acted consistent with policy and, as such, I recommend that this allegation be Not Sustained – Unfounded as against both of them.

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

Named Employee #1 - Allegation #2

6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope

SPD Policy 6.200-POL-3 requires that officers limit a seizure to a reasonable scope. The policy further states that: “Actions that would indicate to a reasonable person that they are being arrested or indefinitely detained may convert a Terry stop into an arrest requiring probable cause or an arrest warrant.”

The officers responded to a call concerning a woman standing by a grey Ford Windstar, who was reported to be around if not in control of the vehicle and holding a bottle of liquor. When they arrived at the scene, they observed the Complainant, who matched the description and was sitting inside the running vehicle. The Complainant appeared under the influence to the officers at that time and was virtually immediately aggressive towards them. Moreover, the officers observed alcohol in plain view in the vehicle and within hands-reach of the front seat, including at least one open container with some alcohol inside. Further, the officers viewed syringes suggesting drug use by the Complainant.

Based on these observations and under the totality of the circumstances, it was reasonable to order the Complainant out of the running car and to request her to be seated. This was purposed to ensure that the officers could conduct their investigation into the Complainant’s conduct without her driving away or presenting a danger to the officers, herself, or others.

For these reasons, I find that the Terry Stop of the Complainant was limited to a reasonable scope. Moreover, I find that the steps that the officers took during the seizure – including removing the Complainant from the vehicle and ordering her to be seated – were consistent with policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #3

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy.

As discussed in the context of Allegation #2, above, there were a number of facts that supported probable cause to believe that the Complainant had committed DUI control. She appeared intoxicated, was behaving unstably, and there was alcohol and drug paraphernalia in the car. Moreover, when first observed by the officers, she was seated



in the running car. That she later blew a 0.00 twice and that NE#1 did not execute the blood warrant does not vitiate this probable cause. Indeed, DUI control was later charged by a prosecutor, which further supports a determination that this arrest was legally supported.

There was also probable cause to arrest the Complainant for obstruction. The officers informed her that she was being detained for investigation of DUI. When she ran, she violated a lawful order and engaged in criminal behavior.

Lastly, while discretionary, the officers could also have arrested the Complainant for driving with a suspended license.

As there were multiple crimes for which the officers could have arrested the Complainant, I find that they had sufficient probable cause to take her into custody. Accordingly, I conclude that the officers acted consistent with both policy and law, and I recommend that this allegation be Not Sustained – Lawful and Proper as against both of them.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #4

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity d. Recording in Sensitive Areas

SPD Policy 16.090-POL-5(d) states that: “Employees will not record in restrooms, jails and the interiors of medical, mental health, counseling, or therapeutic facilities unless for a direct law enforcement purpose, such as a crime in progress.”

As discussed above, NE#1 recorded with his BWV while in the hospital. He did so in order to document the Complainant’s behavior, which he believed constituted ongoing obstruction. He noted that he balanced his need to document her conduct against the risk of recording other patients in the hospital. To that end, he stated that he attempted to direct the camera towards the Complainant at all times. NE#1 believed that his behavior was consistent with policy.

Based on my review of the BWV and under the totality of the circumstances, I find that NE#1’s decision to record was reasonable. I reach this decision due to my belief that recording a subject’s irrational and potentially illegal behavior falls within the definition of a direct law enforcement purpose. Moreover, I note that SPD Policy 16.090-POL-5(c) specifically states that: “Employees reasonably exercising discretion under policy subsections 5c – 5g [which includes the policy section at issue here] will not be subject to discipline for the decision to record or not record those portions of an event.” As I find that NE#1 reasonably exercised his discretion here, I conclude that he acted consistent with policy. I accordingly recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**



Named Employee #2 - Allegation #1

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

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #2

6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #2 - Allegation #3

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**