



## **CLOSED CASE SUMMARY**

ISSUED DATE: MAY 10, 2019

CASE NUMBER: 2018OPA-1115

### **Allegations of Misconduct & Director’s Findings**

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	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)
# 2	6.120 - Impounding Vehicles 3. Officers Impound Vehicles When Arresting Drivers for Certain Crimes	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 Employee lacked probable cause to arrest him for Driving Under the Influence (DUI) and impounded his vehicle without cause.

#### **ADMINISTRATIVE NOTE:**

This case was designated as an Expedited Investigation. This means that OPA, with the review and approval of the Office of Inspector General, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employee. As such, the Named Employee was not interviewed as part of this case.

In addition, during its intake investigation, OPA determined that the Named Employee may have failed to properly secure the Complainant’s wallet. OPA further identified that the Named Employee’s supervisor did not timely complete an Arrest Screening Report. These matters were referred back to the chain of command for handling as Supervisor Actions.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegations #1**

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

The Complainant was involved in an accident with a patrol car. The involved officer who’s patrol vehicle had been struck reported to Named Employee #1 (NE#1), who had been dispatched to the scene, that the Complainant was possibly impaired. NE#1 began investigating the collision. As part of that investigation, he performed Field Sobriety Tests and the Horizontal Gaze Nystagmus test on the Complainant. NE#1 further conducted a portable breath test, which registered 00.00. However, based on the clues developed from the Field Sobriety Tests and the Horizontal Gaze Nystagmus test, as well as based on his training and experience, NE#1 believed that the Complainant was under the influence of drugs. NE#1 accordingly placed the Complainant under arrest.



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Following his arrest, the Complainant was transported to the East Precinct for further evaluation by a Drug Recognition Expert (DRE). The DRE determined the Complainant was not under the influence of alcohol and/or drugs. It was further determined the Complainant had a medical condition that likely caused the test clues observed by NE#1. At that point, the Complainant was released. The Complainant later filed this complaint with OPA, alleging that he was improperly arrested for DUI, and this investigation ensued.

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.

While I empathize with the Complainant concerning the inconvenience and frustration of being arrested, I find that, based on the information available to NE#1 at the time, NE#1 reasonably believed that there was probable cause to take the Complainant into custody for DUI. Notably, probable cause is not a high standard – it simply required NE#1 to have a reasonable basis to conclude that the Complainant had committed a crime. I find that this standard was met here and, as such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #1 - Allegation #2**

***6.120 - Impounding Vehicles 3. Officers Impound Vehicles When Arresting Drivers for Certain Crimes***

As detailed above, the Complainant was placed under arrest for DUI. As such, per Hailey's Law, the Complainant's vehicle was impounded. Indeed, this result was also compelled by SPD Policy 6.120-POL-3, which requires that officers impound the vehicle of a driver arrested for DUI or Physical Control. Stated differently, had NE#1 not impounded the Complainant's vehicle, he would have acted in violation of both law and policy. I further note that, once it was determined the Complainant was no longer under arrest for DUI, NE#1 contacted Lincoln Towing and requested that the Complainant's vehicle be released to him.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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