



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 11, 2022

FROM: DIRECTOR GINO BETTS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0102

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.010 - Arrests 6.010-POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained - Lawful and Proper (Expedited)
# 2	5.140 - Bias-Free Policing 5.140-POL 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded (Expedited)

Named Employee #2

Allegation(s):		Director's Findings
# 1	6.010 - Arrests 6.010-POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained - Lawful and Proper (Expedited)
# 2	5.140 - Bias-Free Policing 5.140-POL 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded (Expedited)

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:

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) allegedly arrested the Complainant without probable cause based on her race.

ADMINISTRATIVE NOTE:

This case was designated an Expedited Investigation. That means OPA, with the Office of Inspector General's (OIG) review and approval, believed it could reach and issue recommended findings based on its intake investigation, without interviewing the involved employees.

SUMMARY OF INVESTIGATION:

The Complainant told a SPD supervisor NE#1 and NE#2 arrested her without probable cause based on her race. The Complainant asked the SPD supervisor to submit her complaint to OPA, which he did through Blue Team. OPA opened an investigation.



During its investigation, OPA reviewed the Blue Team complaint, Computer-Aided Dispatch (CAD) call reports, an incident and supplemental reports, and Body Worn Video (BWV). OPA attempted to contact the Complainant.¹ OPA mailed a letter to the Complainant but did not receive a reply.

The entire response to and investigation of the related DUI arrest was recorded on BWV. The relevant facts are summarized below.

SPD received two phone calls from witnesses. The first witness reportedly observed an intoxicated driver, driving at night without lights and a rear bumper. The description was a Black female in her thirties driving a white Mercedes sedan with a temporary tag. The second witness called about one hour later. The second witness reported a vehicle slowly driving around a neighborhood at night without lights for approximately forty minutes. The description was a white four door sedan with front and side damage.

BWV showed NE#1 and NE#2 respond and locate a white Mercedes sedan with temporary tags. The vehicle was stopped in the roadway in a lane of travel. The vehicle's lights were off and the Complainant was sat in the driver's seat.

NE#2 contacted the vehicle first. As NE#2 approached, the Complainant opened the door. The Complainant and the officers talked. NE#1's report document the Complainant appeared intoxicated, with slurred speech, droopy eyes, and smelled of alcohol. NE#1 and NE#2 asked the Complainant about her car's damage. Photographs and BWV showed extensive damage to the rear, including a missing piece of bumper. The Complainant denied knowledge of the damage.

Officers asked the Complainant why she was stopped in the middle of the road. She claimed she did not have the keys. NE#2 commented on BWV that the vehicle was a push-button start. As the Complainant leaned forward in the driver's seat, the car began to beep. NE#2 told the Complainant not to start the car and to exit. OPA researched and confirmed the Complainant's vehicle—a 2016 C Class Sedan—was a push button start.

After the Complainant exited the vehicle, NE#2 asked about the damage to the back of the Complainant's vehicle. The Complainant responded that someone caused that. When NE#2 asked who, the Complainant replied "probably your people." The Complainant asked why the officers stopped her. NE#1 responded she was stopped because her car was slowly driving around the neighborhood. The Complainant stated, "that you, thank you. So not about a crash like he tried to tell me?" The Complainant also said, "you told me that I crashed into people." BWV did not show officers tell the Complainant she was stopped because of a crash, but NE#2 did ask the Complainant about the damage to the back of her car and stated it looked like it either hit something or something hit it.

BWV depicted NE#2 state there was an empty bottle of liquor on the front seat of the Complainant's car, but the bottle was not captured by BWV. The Complainant was asked to do a field sobriety test but refused. NE#1 and NE#2 arrested the Complainant. After she was arrested, the Complainant made several allegations that NE#1 and NE#2 were racist, which was reported to a supervisor to screen. When the supervisor spoke with the Complainant about her allegations, the Complainant did not provide further details but stated the officers are racist and the video would show everything.

¹ A mailing address was the only listed contact information.



An experienced DUI officer, Witness Officer #1 (WO#1), assisted with processing the Complainant at the precinct. WO#1 noted in his report, "During my entire interaction with [the Complainant], I clearly detected signs of alcohol intoxication. These signs included obvious odor on breath, watery bloodshot eyes, and loud angry speech. [The Complainant] was also somewhat unsteady on her feet." BWV corroborated those assessments as the Complainant was repeatedly shown yelling, arguing with officers, and hitting her hand on a table.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged NE#1 arrested her without probable cause.

SPD Policy 6.010-POL-1 requires officers have probable cause to believe 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. Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient in themselves to support a reasonable belief that an offense has been or is being committed. *See State v. Fricks*, 91 Wash.2d 391, 588 P.2d 1328 (1979); *State v. Gluck*, 83 Wash.2d 424, 426–27, 518 P.2d 703 (1974).

The Complainant was arrested for DUI – Physical Control. *See* RCW 46.61.504. Per SPD training, if a subject is in the driver's seat of an operable vehicle, is impaired by drugs or alcohol, and has access to the keys of the vehicle, then officers have probable cause to arrest for DUI – Physical Control. *See* SPD Training Digest TD18-00001. A driver can be in physical control of a vehicle even if it is parked or standing still. *See id.*

NE#1 and NE#2 had probable cause to arrest the Complainant for DUI – Physical Control. Here, the officers encountered the Complainant in the driver's seat of a visibly damaged vehicle illegally parked in the middle of a travel lane with its lights off. The officers were responding to a call that a vehicle matching the description of the Complainant's vehicle was driving around that area with headlights off for about forty minutes. Although the car keys were not seen, the officers observed it was a push button start and NE#2 observed that, as the Complainant leaned forward in the driver seat, the car began to beep. Moreover, it would be reasonable to believe the keys were accessible to the Complainant because she was the only one present in a vehicle that was stopped in the middle of a roadway.

Moreover, NE#1 documented, when he ran the Complainant's name, there was an ignition interlock restriction on her license but there was no such device in the car she drove. NE#1 had separate probable cause to arrest the Complainant for operating the vehicle without an ignition interlock. *See* RCW 46.20.410(2).

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

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

The Complainant alleged NE#1 arrested her due to racial bias.



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

OPA observed no evidence that either NE#1 or NE#2 engaged in bias-based policing. Instead, the Complainant’s allegation of bias appears to have been premised on her disagreement with the officers arresting her. As discussed at Named Employee #1, Allegation #1, there was probable cause to arrest the Complainant.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #1

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

For the reasons stated in Named Employee #1, Allegation #1, OPA recommends this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #2

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

For the reasons stated in Named Employee #1, Allegation #2, OPA recommends this allegation be Not Sustained – Unfounded.

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