



## CLOSED CASE SUMMARY

ISSUED DATE: JULY 24, 2018

CASE NUMBER: 2018OPA-0255

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 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	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Unfounded)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	6.010 - Arrests 6.010-TSK-1 Sergeant Screening and Approving An Arrest	Not Sustained (Lawful and Proper)
# 2	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Unfounded)

***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:**

It was alleged that Named Employee #1 effectuated an arrest without probable cause. It was further alleged that his supervisor, Named Employee #2, did not recognize that the arrest was unlawful and, instead, approved the arrest. Lastly, it was alleged that both Named Employees abused their discretion.

**ANALYSIS AND CONCLUSIONS:**

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

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

On the date in question, Named Employee #1 (NE#1) and other officers assigned to the East Precinct responded to a report of a fight in progress in front of a bar. The officers arrived at the scene and viewed a large disturbance. The officers reported witnessing two males involved in a physical fight with other individuals surrounding them. One of the males involved in the fight was the subject.

NE#1 stated that he approached the combatants and was concerned because they kept moving towards the street. He was worried that if the altercation continued, someone could get seriously injured. NE#1 announced himself as a Seattle Police officer and the emergency equipment of his patrol vehicle was activated at that time. NE#1 stated that he got in between the subject and the other male in order to break up the fight. NE#1 recounted that he repeatedly identified himself as a police officer and that other individuals in the crowd referenced that the police were there. NE#1 stated that he pushed the subject back with a straight arm, while again identifying himself as an officer. The subject then grabbed NE#1’s vest and positioned his hand with a closed fist in a position that NE#1 identified as a



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threat. Specifically, NE#1 believed that the subject was about to strike him. NE#1 stated that he also viewed the subject's facial expression – namely, the subject's clenched cheeks and teeth – and smelled intoxicants on the subject, who was within arm's reach of NE#1. NE#1 told OPA that the subject began to swing and, at that time, NE#1 struck the Complainant once in the face. NE#1 reported that this strike resulted in preventing an imminent assault, was force used in self-defense, and eliminated the ongoing threat. The subject was then taken down to the ground and placed under arrest.

A supervisor, Named Employee #2 (NE#2), arrived at the scene and screened the arrest and the force. NE#1's conversation with NE#2 concerning the incident was captured by Department video. NE#1 told NE#2 that he was unsure whether the subject knew that NE#1 was an officer at the time of the attempted assault. NE#2 tried to interview the subject after the incident, but the subject requested an attorney and declined to provide a statement. NE#2 reported observing that the subject appeared to be intoxicated.

NE#2 approved the arrest and told OPA that he believed that there was probable cause that the subject had assaulted NE#1. The arrest was then reviewed and approved by a lieutenant. NE#2 noted that the lieutenant did not question that probable cause existed for the arrest. OPA determined that the case was referred to the Seattle City Attorney's Office for prosecution. The assigned Assistant City Prosecutor ultimately declined to bring charges. In doing so, the Assistant City Prosecutor was clear that the decline was not due to the absence of probable cause but was based on other factors.

This case was later reviewed by the Department's Force Review Board (FRB). The FRB raised the issue that the subject likely did not know that NE#1 was a police officer at the time of the purported assault. The FRB thus believed that there may not have been probable cause for the arrest and that NE#2 acted inappropriately when he screened and approved it. FRB then referred this matter to OPA 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.

Here, the subject was arrested for assault. A detective later referred this case to the Seattle City Attorney's Office and recommended that the prosecutor consider charging assault in the third degree. The FRB was concerned that there was no basis for the arrest because the subject may not have known that NE#1 was a police officer at the time; however, based on OPA's review, that does not mean that there was insufficient probable cause.

RCW 9A.36.031, which concerns assault in the third degree, states the following: "A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree: (g) assaults a law enforcement officer or other employee of a law enforcement agency who was performing her or her official duties at the time of the assault." Notably, there is no explicit intent requirement to prove this offense. This was affirmed in *State v. Brown*, 94 Wn. App. 327, 343 (1999) ("Likewise, applying our Legislature's guidelines, we conclude that RCW 9A.36.031(1)(g) should not be construed as embodying an unexpressed requirement that the defendant know the victim to be a law enforcement officer performing official duties at the time of the assault."). Here, NE#1 exercised his lawful authority to stop a physical fight. In doing so, the Complainant acted aggressively towards NE#1, including engaging in assaultive behavior that placed NE#1 in fear of imminent physical harm. As discussed above, whether the subject knew that NE#1 was a police officer at the time is irrelevant when deciding



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whether or not probable cause existed for the arrest. Moreover, even if it was a relevant factor, I note that NE#1 had probable cause to arrest the Complainant for a number of other offenses, including obstruction (SMC 12A.16.010) and fighting (SMC 12A.06.025).

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

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

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

***5.001 - Standards and Duties 6. Employees May Use Discretion***

It was alleged that, by arresting the subject, NE#1 abuse the discretion afforded to him as a police officer. As indicated in SPD Policy 5.001-POL-5, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-5.)

This policy is reserved for those situations in which an officer makes a decision that is so unreasonable and outside of the norms of policing that it represents an abuse of the officer’s discretion. Here, not only was there probable cause to arrest the subject for assault, but there also existed a lawful basis to take him into custody for several other crimes. As such, and based on the subject’s conduct and the totality of the circumstances, I find that both NE#1 and NE#2 properly exercised their discretion in this instance.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against the Named Employees.

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

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

***6.010 - Arrests 6.010-TSK-1 Sergeant Screening and Approving An Arrest***

SPD Policy 6.010-TSK-1 concerns the responsibilities of a sergeant when screening and approving an arrest. The policy states that the sergeant must do the following: (1) review the circumstances of the arrest; (2) determines the appropriateness of the charge of arrest and the disposition of the arrestee; (3) completes a supplemental report using the arrest screening template; and (4) reviews and reporting for completeness. (SPD Policy 6.010-TSK-1.)

This allegation was classified against NE#2 based on the allegation that he failed to recognize that there was insufficient probable cause for the subject’s arrest. As discussed above, I find that there was probable cause for the arrest and, specifically, for an arrest pursuant to RCW 9A.36.031. For these reasons, I find that NE#2’s screening and approval of this arrest was appropriate and consistent with policy. Accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper.

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



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

***5.001 - Standards and Duties 6. Employees May Use Discretion***

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

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