



CLOSED CASE SUMMARY

ISSUED DATE: JULY 31, 2018

CASE NUMBER: 2018OPA-0113

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	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 3	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Unfounded)
# 4	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Not Sustained (Lawful and Proper)
# 5	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	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 her vehicle was stopped without reasonable suspicion, that the stop and her subsequent arrest were based on bias on the part of the Named Employee, that the Named Employee subjected her to excessive force, and that the Named Employee was inaccurate and dishonest in his reporting and trial testimony.

STATEMENT OF FACTS:

Named Employee #1 (NE#1) was driving in his patrol vehicle when he pulled behind a car that was sitting at a green light. The subject car remained in that fashion for nearly 20 seconds prior to driving through the light. When it pulled through, the subject car drove parallel to another vehicle, at times coming close to the dividing line. The subject car came close enough to the line that it caused the vehicle next to it to apply its brakes on several occasions. The subject car passed through an intersection and moved onto if not over the split between the lanes. This again caused the vehicle next to it to apply its brakes. NE#1 activated his lights and siren in order to effectuate a traffic stop. The subject car merged into the lane to its left. NE#1 followed the subject car and was heard on his In-Car Video (ICV) saying: “what is she doing.” The subject car then took a wide turn across both lanes and drove right down a side street. NE#1 remarked: “oh my gosh.” The subject car then pulled over to the side of the road.

NE#1 approached the vehicle and let the driver – who was later identified as the Complainant – know the reason for the stop. He asked her why she was standing at the light for multiple seconds. NE#1 then asked her whether she had been drinking that evening. She admitted to having one drink at that time. NE#1 reported smelling alcohol on her breath and that her eyes were red and glossy. NE#1 asked the Complainant for her identification and she had repeated



difficulty finding it, even though NE#1 saw it in her bag. She eventually provided it to him but could not locate her proof of insurance. NE#1 took the Complainant's identification and returned to his patrol vehicle. A backing officer then arrived at the scene and NE#1 updated him as to what he had observed.

NE#1 came back to the Complainant's car and asked her to turn it off. NE#1 explained that her driving was erratic (the Complainant completed his sentence by also stating that her driving was erratic). He asked her if she would take voluntary sobriety tests and she agreed. NE#1 then performed the Field Sobriety Tests (FSTs). In his General Offense Report, NE#1 wrote that the Complainant failed the FSTs. From a review of the ICV, she clearly swayed and lacked balance during the tests. The Complainant was then informed that she was being arrested for DUI. She began to argue with the officers concerning the arrest. She was walked in front of NE#1's patrol vehicle and was searched incident to arrest by a female officer. NE#1 read the Complainant her Miranda warnings twice and each time she stated that she did not understand them.

The Complainant was then walked to the side of NE#1's patrol vehicle but refused to sit inside. The officers tried to convince her to do so repeatedly. The Complainant made a number of statements to the officers, including: "what are you going to do, mace me or something?" and, when asked to sit in the patrol vehicle, "no, you can use force or whatever. Kill me, Tase me, shoot me, whatever you want to do." During this time, the officers spoke with her calmly; however, she refused to comply. At this point, NE#1 was holding the Complainant against the car and a witness officer was behind him. NE#1 asked the female officer to go to the other side of the vehicle, presumably to help pull the Complainant inside.

The Complainant then pushed towards NE#1, as if she was trying to rush past him. NE#1 held on to her arms as she moved around him. They both spun around and their momentum caused them to fall to the ground. The video depicted NE#1 losing his footing and, when he did so, it caused the Complainant to strike the ground with her right shoulder. The officers then collectively lifted her off the ground. The Complainant told the officers that "all of this hurts." The male and female witness officers seated her in the backseat of another patrol vehicle. She continued to argue with the officers, but they were able to get her inside and close the door.

The officers summoned medical assistance and the Seattle Fire Department (SFD) came to the scene. SFD provided her with medical treatment and she reported pain to her wrists. SFD noted abrasions to her wrists and right shoulder (from the fall) but no other injuries. The Complainant was then transported to the precinct where she consented to a Blood Alcohol Content (BAC) test. She took the test twice, with both results above the legal limit for intoxication. It was determined that this was her second conviction for DUI in the past 10 years. The Complainant was then transported to the King County Jail. The Complainant was charged and prosecuted in Seattle Municipal Court. She moved to dismiss her case and to suppress evidence. Her case was dismissed with prejudice due to "proof" issues; however, the Municipal Court Judge provided no written order memorializing her reasoning in this regard.

The Complainant then filed this complaint with OPA. In her complaint, she contended that she was stopped without reasonable suspicion, that her stop and arrest were based on bias on the part of NE#1, that NE#1 subjected her to excessive force, and that NE#1 was inaccurate and dishonest in his reporting and in his trial testimony. This investigation ensued. OPA reviewed the documentation generated as part of this case, as well as the Department video and documents from the criminal court proceedings. OPA also interviewed the Complainant, as well as NE#1 and both witness officers.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant contended to OPA that her stop, arrest, and the force used against her were premised on bias. Specifically, she asserted that, had she been White, she would not have been subjected to the same law enforcement action.

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.*)

As discussed more fully herein, I find that there was reasonable suspicion for the stop of the Complainant’s car. Moreover, I find that there was more than sufficient evidence establishing probable cause to arrest her for DUI; most notably, the smell of alcohol on her person, her red and glassy eyes, her failing of the FSTs, and her blowing more than the legal limit twice on the BAC test. Moreover, she suffered injury not because of her race, but because she attempted to push past NE#1 while under arrest causing them to both lose their balance and fall to the ground. This conduct, not her membership in any protected class, was the basis for the law enforcement action taken towards her. I find no evidence to suggest that NE#1 treated her any differently than he would a similarly situated person of a different racial or ethnic group. For these reasons, I find no basis to conclude that she was subjected to biased policing and I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

8.200 - Using Force 1. Use of Force: When Authorized

The Complainant told OPA that NE#1 subjected her to excessive force. She claimed that as a result she lost consciousness and, when she came to, she was being forced into a patrol vehicle. She further stated that she suffered injuries to her wrists, shoulder, and head.

At his OPA interview, NE#1 recounted that he was trying to get the Complainant into the patrol vehicle but she would not comply. She then stood up and tried to push past him. NE#1 stated that when he tried to hold on to her, they both lost their balance and fell to the ground. NE#1 stated that the Complainant landed on her shoulder and, at no time, appeared to lose consciousness. He told OPA that she continued to speak throughout the incident and even after the force, which is confirmed by the video. He indicated that he called for medical assistance and the Complainant was treated by SFD at the scene. The male witness officer, who was present for when the force occurred corroborated NE#1’s account. More importantly, NE#1’s recitation of the events is corroborated by the video that recorded the entirety of the incident.

To the contrary, several of the statements made by the Complainant that were germane to the use of force were unsupported by the evidence. For example, there was no indication that the Complainant lost consciousness.



Indeed, even after the force, she continued to argue about her arrest and complained of pain. Moreover, she complained that she suffered injuries to her head and that she did not receive medical treatment at the scene. However, she did receive medical attention from SPD before being transported to the precinct and there was no evidence that she complained of a head injury at that time or at any future time while in SPD custody.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

Ultimately, the ICV provides conclusive evidence in my mind concerning the permissibility of the force used by NE#1. At the time the force was used, the officers had placed the Complainant under arrest and were attempting to convince her to get inside of the patrol vehicle. She was actively refusing to do so and continued to argue with the officers. She then attempted to push by NE#1 and he tried to hold on to her. The Complainant did not provide a clear explanation as to what she was doing at that time. Based on my review of the video, however, it appears that the Complainant could have been attempting to flee the scene. At the very least, it was not unreasonable for NE#1 to perceive her behavior in that fashion. Given that, it was permissible to use force to prevent her from doing so. The force used was largely inadvertent. NE#1 held on to the Complainant to prevent her from moving past him and, when doing so, they lost their balance and both fell to the ground. While it is unfortunate that the Complainant suffered an injury to her right shoulder, I find that NE#1’s force was reasonable under the circumstances.

I further find that the force was necessary in that it was reasonable to effect the lawful purpose of preventing the Complainant’s apparent attempt to escape. Moreover, based on the circumstances of this case and on NE#1’s OPA interview, I find that he rationally believed that there was no reasonable alternative to using force.

Lastly, I find that the force was proportional. The Complainant was argumentative and was refusing to comply with the officers’ requests that she get inside of the patrol vehicle. When she then made purposeful physical contact with NE#1 and, apparently, tried to push past him, she was a threat to flee the scene and to potentially cause harm to herself and others. The specific force used here – NE#1 holding on to the Complainant and their joint momentum causing them to fall to the ground – was proportional to this threat. Notably, no further force was used on the Complainant other than that needed to handcuff her.

For these reasons, I conclude that the force used in this case was consistent with policy. In reaching this finding, I agree with the thorough and critical reviews completed by NE#1’s chain of command, the Department’s Force Review Unit, and the Department’s Force Review Board. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #1 - Allegation #3

5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication

SPD Policy 5.001-POL-10 requires Department employees to be truthful and complete in all communication. In her OPA complaint, the Complainant asserted that: "There is no evidence to support the statements in [NE#1's] police report." She further claimed that NE#1: "changed his story on the stand from my driving

Based on my review of the ICV, I see no evidence of any untruthful or incomplete statements. First, while the Complainant asserted that there was insufficient evidence that her vehicle crossed the median line and even if the Municipal Court Judge agreed, I think NE#1's perception that she did so was reasonable. Notably, the Complainant's vehicle veered close to the line on multiple occasions, causing the vehicle next to her to brake in apparent concern of being sideswiped by the Complainant. Moreover, I agree with NE#1 that the Complainant's vehicle crossed, even if slightly, in to the median when she entered the intersection. I do not think that there needs to be an actual painted line on the pavement for her conduct to be deemed unsafe and suggestive of a possibly intoxicated driver. Indeed, this was borne out by the fact that the Complainant failed the FSTs and blew higher than the legal limit twice on the BAC test.

Second, NE#1 did not "change his story" when he testified at trial concerning the Complainant remaining at a green light for nearly 20 seconds. This behavior was explicitly called out in his General Offense Report as one of the factors that suggested to NE#1 that the Complainant was intoxicated. In addition, this was virtually the first thing that NE#1 mentioned to the Complainant concerning the basis for the stop when he pulled her over.

For these reasons, I find no evidence that NE#1 was dishonest in his reporting or during his trial testimony. Indeed, I conclusively find the opposite – that NE#1 consistently and accurately reported this incident. For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #4

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report

SPD Policy 15.180-POL-5 requires officers to document primary investigations on a General Offense Report. Such reports must be thorough, complete, and accurate. (SPD Policy 15.180-POL-5.)

The Complainant alleged that NE#1's General Offense Report was not in compliance with this policy because he did not document the force he used therein. However, the Complainant lacks understanding of how SPD officers write reports when force is used. In such situations, officers are instructed to write both a General Offense Report, which documents the basis for the arrest, and a use of force report, which itemizes the force used and the legal justification for that force. Officers are not required to include information concerning their force in the General Offense Report. As such, that NE#1's General Offense Report did not contain this information was entirely consistent with policy and the Department's expectation of his conduct.

I further find that, based on my review of the entirety of NE#1's paperwork, it was thorough, complete, and accurate. 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 #5

6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful

SPD Policy 6.220-POL-1 governs Terry stops and stands for the proposition that Terry stops are seizures of an individual and, as such, must be based on reasonable suspicion in order to be lawful. SPD Policy defines a Terry stop as: “A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion in order to investigate possible criminal activity.” (SPD Policy 6.220-POL-2(b).) SPD Policy further defines reasonable suspicion as: “Specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging or is about to engage in criminal conduct.” (*Id.*) Whether a Terry stop is reasonable is determined by looking at “the totality of the circumstances, the officer’s training and experience, and what the officer knew before the stop.” (*Id.*) While “[i]nformation learned during the stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, it “cannot provide the justification for the original stop.” (*Id.*)

Based on my review of the totality of the evidence, I believe that there was reasonable suspicion underlying the stop of the Complainant’s car. I reach this finding for several reasons. First, it was abnormal for the Complainant’s car to be stopped for nearly 20 seconds at a green light, particularly when other vehicles were moving around her. Second, I believe that the video established that she veered towards the median on several occasions, which caused the vehicle next to her to brake in apparent fear of being sideswiped. Moreover, I find that, when she passed through an intersection right before NE#1 initiated the stop, her car did cross, even if slightly, into the lane next to her. This again caused the vehicle next to her to brake to avoid a potential accident. I find that these facts, when evaluated together, were specific, objective, and articulable facts that created a well-founded suspicion in NE#1’s mind that the Complainant was operating her car while intoxicated.

The Complainant’s main defense in this regard is that a Municipal Court Judge found that she did not pass into the median and, as such, there was no reasonable suspicion for the stop. As a starting point, the Municipal Court Judge did not issue a written order, so, aside from the Complainant’s assertions, I have no idea what the Judge’s rationale was for her decision. Moreover, the Judge was required to use the beyond a reasonable doubt standard that applies to criminal proceedings, while OPA uses the lower preponderance of the evidence standard. Lastly, I am not bound by the Judge’s decision and, indeed, here I disagree that there was no reasonable suspicion underlying the stop.

I additionally note that the Complainant’s driving after the stop was initiated – namely, pulling into the left lane and then taking a right turn across two lanes of traffic – was further evidence of her possible intoxication. She also failed the FSTs, which appears to me to be supported by the objective video evidence, and twice blew over the legal limit during the BAC test. While this does not bear on the initial reasonable suspicion for the stop, it is conclusive evidence that she was, in fact, intoxicated while driving her car and, thus, presented a hazard to herself and the other community members in her vicinity.

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

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