



## CLOSED CASE SUMMARY

ISSUED DATE: JULY 16, 2019

CASE NUMBER: 2019OPA-0092

### 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)

*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 his arrest for DUI was not supported by probable cause.

### ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General’s review and approval, 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.

### 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***

Named Employee #1 (NE#1) responded to Bellevue Place and Belmont Avenue East regarding a report of an occupied and running vehicle that was blocking the eastbound lane. The 911 caller noted that the occupant was sleeping and appeared high. NE#1 arrived and contacted the driver, who was later identified as the Complainant. The Complainant told NE#1 that he had taken a half of one Xanax and smoked some marijuana hours earlier. The Complainant agreed to participate in standardized field sobriety tests (SFSTs). After conducting the SFSTs, NE#1 wrote that based on his observations of the Complainant’s performance on those tests, the manner in which he drove the vehicle on the roadway, and his admission to consuming medications and drugs, NE#1 determined that there was probable cause to place the Complainant under arrest.

NE#1 noted in his report that the Complainant offered to take breathalyzer test and that it came back negative. NE#1 added that the reading from the breathalyzer test was inconsistent with his observations of the Complainant’s performance on the SFSTs and how his running vehicle was situated. Given the evidence available to him and based



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on his training and experience, NE#1 opined that it was likely that the Complainant was impaired by drugs or medications. NE#1 sought and received a search warrant to obtain a sample of the Complainant's blood.

The Complainant later alleged that NE#1 lacked probable cause to arrest him because of the negative results of the breathalyzer test. The Complainant's allegation was referred 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.

Based on the totality of the evidence available to him at the time, NE#1 had sufficient probable cause to arrest the Complainant for DUI. This was due to the Complainant's admissions concerning the drugs and medication he had consumed just hours prior to the incident, as well as due to the fact that the Complainant was blocking a lane of traffic with his running vehicle and his performance on the SFSTs. Moreover, that the breathalyzer test was negative does not, standing alone, vitiate the probable cause underlying the arrest. Indeed, drug and medication use are not detectable by a breathalyzer, which explains why NE#1 sought and obtained a warrant for a blood sample. Given the above, I find that the Complainant's arrest was justified and that NE#1 acted consistent with policy during this incident. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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