



## OFFICE OF PROFESSIONAL ACCOUNTABILITY

### Closed Case Summary

Complaint Number OPA#2016-0516

Issued Date: 12/22/2016

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 6.010 (1) Arrests: Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest (Policy that was issued February 1, 2016)
OPA Finding	<b>Not Sustained</b> (Training Referral)
Final Discipline	N/A

Named Employee #2	
Allegation #1	<u>Seattle Police Department Manual</u> 6.010 (5) Arrests: Sergeants Must Screen All Arrests Prior to Booking or Release (Policy that was issued February 1, 2016)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Final Discipline	N/A

Named Employee #3	
Allegation #1	<u>Seattle Police Department Manual</u> 6.010 (1) Arrests: Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest (Policy that was issued February 1, 2016)
OPA Finding	<b>Not Sustained</b> (Training Referral)
Final Discipline	N/A

Named Employee #4	
Allegation #1	<u>Seattle Police Department Manual</u> 6.010-TSK-1 Arrests: Sergeant Screening and Approving An Arrest (Policy that was issued February 1, 2016)
OPA Finding	<b>Not Sustained</b> (Training Referral)
Final Discipline	N/A

### **INCIDENT SYNOPSIS**

The Named Employees arrested a subject.

### **COMPLAINT**

The complainant, the Force Review Board, alleged the Named Employees #1 and #4 did not provide legal justification for the arrest and/or search, and did not document the probable cause. Further allegations by complainant alleged that Named Employee #2 failed to properly screen the arrest, and Named Employee #3 approved an incomplete report.

### **INVESTIGATION**

The OPA investigation included the following actions:

1. Review of the complaint memo
2. Search for and review of all relevant records and other evidence
3. Interviews of SPD employees

## **ANALYSIS AND CONCLUSION**

The complainant alleged that Named Employee #1 arrested the subject and searched him incident to arrest without probable cause. The subject was the driver of a vehicle involved in a high risk vehicle stop. Named Employee #1 was working as a patrol officer in uniform assigned to assist in taking a passenger in the car into custody for being a felon in possession of a firearm. Named Employee #1 detained the driver during the stop and performed a search of his person. During the search he discovered a large quantity of heroin in the subject's pocket. Named Employee #1 wrote a report that stated he searched the subject incident to arrest but failed to articulate any probable cause for the arrest. Named Employee #1 was a uniformed presence assigned to detain the occupants of the vehicle during a high risk vehicle stop. Named Employee #1 had knowledge that at least one of the subjects in the vehicle was armed, he was familiar with the person he detained and knew that the subject was involved in the sale and delivery of narcotics. Based on the totality of the circumstances Named Employee #1 had a reasonable belief the subject was armed and a frisk for weapons was permitted by SPD policy. This policy and case law limit the scope of any frisk. If an officer is able to articulate specific factors particularized to a person and situation, he or she may frisk the person's outer clothing to determine if a weapon is present. During a justified frisk, an officer may not search inside a person's pockets, unless the officer reasonably believes a weapon is concealed inside the pocket. During a frisk, officers may not search inside the pockets of a detained individual to recover contraband or use the frisk as a pretext for locating contraband. Named Employee #1 stated in his OPA interview that, while patting down the outside of the subject's pocket, he felt something he believed to be narcotics inside the pocket. Named Employee #1 said he reached into the pocket and removed an ounce of heroin. Named Employee #1 told OPA he did not believe the subject was under arrest at the time that he reached into the subject's pocket and removed the heroin. Although Named Employee #1 told OPA he did not consider the subject to be under arrest at the time of the search, he wrote in his statement that the subject was "searched incident to arrest." Named Employee #1 was unable to provide an explanation for this discrepancy, other than an error in report writing.

The preponderance of the evidence supported a conclusion that Named Employee #1 did not reasonably believe at the time he first felt the item in the subject's pocket that the item was contraband. The frisk and the discovery of the heroin was poorly documented by Named Employee #1 and was made particularly problematic by his characterization of this as a "search incident to arrest." Had Named Employee #1 adequately documented his reason for believing the item he felt was likely to be contraband and, therefore, his lawful justification for searching the pocket to remove the item, this OPA investigation would not have been necessary. Named Employee #1 would benefit from training on how to adequately document the factors that formed the basis for any search he may conduct in the future.

The complainant alleged that Named Employee #2 failed to properly screen the arrest at the scene. Named Employee #2 was Acting Sergeant at the beginning of the incident. While he was on scene, a Sergeant arrived and took over command. The arrest of the subject for narcotics possession and the screening of that arrest took place after the Sergeant took over

command. At that point, Named Employee #2 was no longer the Acting Sergeant. Because he was longer an on scene supervisor he was not responsible for screening the arrest of the subject or the report that was written.

The complainant alleged that Named Employee #3 arrested the subject and searched him incident to arrest without probable cause. Named Employee #1 was the one who detained the subject and searched his pockets. Named Employee #3 merely wrote the report and Certification of Probable Cause in order to book the subject. Named Employee #3 was dependent on the information provided to her by other officers and she had no firsthand knowledge of circumstances leading to the discovery of the narcotics and the arrest of the subject. Named Employee #3 had an obligation to ensure the facts documented in her report were true and accurate to the best of her knowledge and belief. Named Employee #3 wrote that the narcotics were found during an inventory of the subject's property. She did not sufficiently inquire of those providing her with this information to establish the basis for the probable cause to arrest or the legal basis for the search. Because the scene was chaotic and confusing, it was understandable that communication between Named Employee #3, Named Employee #1 and other officers was imperfect. There was no evidence to suggest that the inaccuracy of Named Employee #3's statement of probable cause was intentional. Nonetheless, Named Employee #3 should be reminded of the importance of verifying facts and making no assumptions before submitting a sworn affidavit.

The complainant alleged that Named Employee #4 failed to properly screen the arrest or report for an arrest. Once at the scene he relieved Named Employee #2, taking responsibility for overall supervision of the scene and incident. Named Employee #4 was responsible for screening the arrest of the subject and the associated report. In his OPA interview, Named Employee #4 stated he believed the report and booking certification established sufficient probable cause for the arrest. What he failed to notice was that there was nothing in either report to document a factual basis for probable cause prior to Named Employee #1's search of the subject's pockets. One cannot use the fruit of a search as the probable cause to justify an arrest that led to the search. While it is true that the scene was confusing and involved multiple officers in different locations, it is the role of the supervisor to manage the different areas of responsibility ensuring that all vital tasks are completed appropriately. Named Employee #4 failed to recognize the absence of facts in the documentation to establish probable cause for the arrest of the subject prior to the search.

It was not entirely clear whether the preponderance of the evidence supported a conclusion that Named Employee #4 clearly had an opportunity to screen the arrest with Named Employee #1 and review the report in a deliberative manner and in a setting conducive to such a review. However, Named Employee #4 should have reviewed the report more carefully and noted the obvious problems with how Named Employee #1 described his search.

## **FINDINGS**

### **Named Employee #1**

#### **Allegation #1**

There was insufficient evidence to either support or refute the allegation. However, Named Employee #1 should clearly understand the importance of completely and accurately documenting any search, seizure of evidence and resulting arrest. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Arrests: Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest.*

**Required Training:** Named Employee #1 should receive specific and clear counseling and training regarding the proper way to document a frisk for weapons and/ or any subsequent search based on reasonable suspicion, along with adequate documentation of the discovery of any evidence during that frisk or search. He should also receive refresher training on the current case law regarding frisks, searches and seizure of evidence.

### **Named Employee #2**

#### **Allegation #1**

A preponderance of the evidence showed that because Named Employee #2 was no longer an on scene supervisor, he was not responsible for screening the arrest of the subject or the report that was written. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Arrests: Sergeants Must Screen All Arrests Prior to Booking or Release.*

### **Named Employee #3**

#### **Allegation #1**

There was no evidence to show that the inaccuracy of Named Employee #3's statement of probable cause was intentional. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Arrests: Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest.*

**Required Training:** The supervisor should review with the Named Employee the importance of accuracy in reports and affidavits. Further, they should emphasize it is her responsibility to take reasonable steps to verify the accuracy of all information given to her by other officers before including them in any report or statement.

### **Named Employee #4**

#### **Allegation #1**

Taking into account the nature of this particular incident and the unclear involvement of the FIT Commander in shaping how the discovery of the drugs was documented, a finding of **Not Sustained** (Training Referral) was issued for *Arrests: Sergeant Screening and Approving An Arrest.*

**Required Training:** Named Employee #4 should receive specific and clear counseling and training regarding the importance of carefully and thoroughly reviewing all reports submitted to him for review and approval. In particular, he should be taking note of any obvious omissions, contradictions or errors and address them before approving the report.

*NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.*