



## CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 31, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0239

### **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	5.001 - Standards and Duties 5.001-POL 18. Employees Must Avoid Conflicts of Interest	Not Sustained - Unfounded (Expedited)
# 3	5.001 - Standards and Duties 5.001-POL 2. Employees Must Adhere to Laws, City Policy and Department Policy	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	5.001 - Standards and Duties 5.001-POL 18. Employees Must Avoid Conflicts of Interest	Not Sustained - Unfounded (Expedited)
# 3	5.001 - Standards and Duties 5.001-POL 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained - Unfounded (Expedited)

#### Named Employee #3

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	5.001 - Standards and Duties 5.001-POL 18. Employees Must Avoid Conflicts of Interest	Not Sustained - Unfounded (Expedited)
# 3	5.001 - Standards and Duties 5.001-POL 2. Employees Must Adhere to Laws, City Policy and Department Policy	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:**

It is alleged that, on April 30, 2022, the Named Employees arrested the Complainant without legal authority. The Complainant also alleged he was falsely arrested to protect a deli employee with whom the Named Employees have an improper relationship. The Complainant further alleged, in protecting the deli employee, the Named Employees facilitated crimes committed by the deli employee.



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**ADMINISTRATIVE NOTE:**

This case was designated an Expedited Investigation. That means OPA, with the Office of Inspector General's review and agreement, believed it could reach and issue recommended findings based solely on its intake investigation without interviewing the involved employees. As such, OPA did not interview the Named Employees.

**SUMMARY OF INVESTIGATION:**

OPA reviewed the initial complaint, Named Employees' body-worn video (BWV), General Offense/Incident report, and the Seattle City Attorney's Office declination memorandum.

*A. Initial Complaint:*

The Complainant alleged he was unlawfully arrested on April 30, 2022. The Complainant further alleged the Named Employees arrested him to assist a "criminal" deli employee. The Complainant admitted to confronting the deli employee about a theft but insisted he did nothing illegal. He further stated the Named Employees protected the deli employee, whose friends engage in criminal activity in officers' presence.

*B. Body-Worn Video*

OPA reviewed the Named Employees' and a Witness Employee's body-worn video, which showed in summary:

Named Employee #2 (NE#2) entered the deli and contacted the Complainant, who appeared to drink from a small bottle of wine. NE#2 escorted the Complainant outside to Named Employee #1 (NE#1) and Named Employee #3 (NE#3). The Complainant appeared intoxicated and agitated. As the Complainant explained why he confronted the deli employee, he stepped towards NE#3 then began to walk away. NE#3 grabbed the Complainant's right arm and handcuffed him with NE#2's assistance. NE#1 told the Complainant he was handcuffed for resisting. NE#1 issued *Miranda* warnings before questioning the Complainant. The Complainant accused the deli employee of stealing \$17,000 from him. The Complainant repeated several times that he filed a police report about the theft. Several times, NE#1 asked the Complainant to explain the deli employee's involvement in the theft. Instead of answering NE#1, the Complainant repeatedly stated the deli employee was a felon. The Complainant also alleged the Named Employees knowingly allowed the deli employee's associates to commit crimes at the deli.

NE#3 interviewed the deli employee, who stated the Complainant was a regular customer and typically quiet. However, he stated, that evening the Complainant entered the store intoxicated and accused him of stealing \$14,000 - \$17,000. The deli employee said the Complainant grabbed the back of his neck and pulled him towards the ground. Witness Employee #1 (WE#1) interviewed another deli employee who witnessed the encounter. That witness said she was outside the store washing the windows when she saw the Complainant confront her co-worker. She told WE#1 she did not hear the entire exchange but overheard the Complainant accuse her co-worker of theft. She also saw the Complainant grab the back of her co-worker's neck.



The Complainant was stated he was arrested and placed in the rear of a patrol vehicle. WE#1 also issued *Miranda* warnings to the Complainant. The Complainant was transported to the West Precinct, where the arrest was screened by a supervisor. NE#1 transported the Complainant to the King County Jail.

*C. General Offense/ Incident Report:*

NE#3 stated he encountered a male inside the deli who matched the dispatched description: “WM, 40’s, 6’00, BRO sweater and sweatpants.” NE#3 wrote he was familiar with the deli and the Complainant: “[The Complainant] is known to the [deli] as Officers and [the Complainant] frequent the establishment often for food. From my experience, [the Complainant] is often quiet and polite in brief encounters.”

NE#3 wrote the deli employee believed the Complainant’s theft accusation was based on the large amount the Complainant spent at the deli over the years. NE#3 stated he had probable cause to arrest the Complainant for assault, based on the eyewitness (the deli coworker).

**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 he was unjustifiably arrested.

Officers must have probable cause to believe a suspect committed a crime before effectuating an arrest. SPD Policy 6.010-POL-1. Stated differently, an arrest not supported by probable cause violates law and Department policy. Probable cause exists when the facts and circumstances within an officer’s knowledge are sufficient to support a reasonable belief that an offense was 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).

“[A] person is guilty of assault in the fourth degree if, under circumstances not amounting to assault in the first, second, or third degree, or custodial assault, he or she assaults another.” RCW 9A.36.041(1).

NE#3’s interview of the deli employee and WE#1’s interview of his coworker established probable cause the Complainant committed Assault in the Fourth Degree by forcibly grabbing and pulling the deli employee’s neck.

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

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

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

***5.001 - Standards and Duties 5.001-POL 18. Employees Must Avoid Conflicts of Interest***

The Complainant alleged his arrest was based on NE#1’s collusion with the deli employee. The Complainant further alleged the Named Employees allowed the deli employee and his associates to break into vehicles.



Department employees must avoid conflicts of interest. SPD Policy 5.001-POL-18. Specifically, “Employees will not engage in enforcement, investigative, or administrative functions that create or give the appearance of conflicts of interest.” *Id.* Further, “Employees will not investigate events where they are involved. This also applies where any person with whom the employee has a personal relationship is involved in the event.” *Id.*

Here, the Named Employees’ response stemmed from the deli employee’s 9-1-1 call to report the Complainant’s assault. While it appeared the Named Employees frequented the deli, the Complainant was also known by the Named Employees as a frequent and mild-mannered customer. The Named Employees arrested the Complainant based on the deli employees’ accounts corroborated by the Complainant’s theft accusation, rather than preference or familiarity. BWV did not show NE#1 do or say anything suggesting the deli employees received favorable treatment.

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

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

**Named Employee #1 - Allegation #3**

***5.001 - Standards and Duties 5.001-POL 2. Employees Must Adhere to Laws, City Policy and Department Policy***

The Complainant alleged NE#1 helped the deli employee and his associates commit crimes by diverting other officers from locations where they burglarized vehicles.

Employees must adhere to laws and City and Department policy. SPD Policy 5.001-POL-2.

BWV captured NE#1 and other Named Employees repeatedly ask the Complainant to explain the accusation in further detail. Rather than an explanation, the Complainant accused the deli employee of being a “felon.” Further, the Complainant provided, and OPA found, no nexus between the Named Employees and nearby car burglaries. OPA made multiple unsuccessful attempts to contact the Complainant for further information by phone and email.

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

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 set forth above at Named Employee #1, Allegation #1, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

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



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

***5.001 - Standards and Duties 5.001-POL 18. Employees Must Avoid Conflicts of Interest***

For the reasons set forth above at Named Employee #1, Allegation #2, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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

**Named Employee #2 - Allegation #3**

***5.001 - Standards and Duties 5.001-POL 2. Employees Must Adhere to Laws, City Policy and Department Policy***

For the reasons set forth above at Named Employee #1, Allegation #3, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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

**Named Employee #3 - 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 set forth above at Named Employee #1, Allegation #1, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

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

**Named Employee #3 - Allegation #2**

***5.001 - Standards and Duties 5.001-POL 18. Employees Must Avoid Conflicts of Interest***

For the reasons set forth above at Named Employee #1, Allegation #2, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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

**Named Employee #3 - Allegation #3**

***5.001 - Standards and Duties 5.001-POL 2. Employees Must Adhere to Laws, City Policy, and Department Policy***

For the reasons set forth above at Named Employee #1, Allegation #3, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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