




CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 27, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0279

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 to Effect an Arrest.	Not Sustained - Lawful and Proper
# 2	5.001 - Standards and Duties 5.001-POL-11. Employees Will Be Truthful and Complete in All Communication.	Not Sustained - Unfounded

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 to Effect an Arrest.	Not Sustained - Lawful and Proper
# 2	5.001 - Standards and Duties 5.001-POL-11. Employees Will Be Truthful and Complete in All Communication.	Not Sustained - Unfounded

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 to Effect an Arrest.	Not Sustained - Lawful and Proper
# 2	5.001 - Standards and Duties 5.001-POL-11. Employees Will Be Truthful and Complete in All Communication.	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.

ADMINISTRATIVE NOTE:

This case was designated an Expedited Investigation. That means OPA, with the Office of Inspector General's (OIG) 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 involved employees. OIG also certified this investigation as timely, thorough, and objective.

EXECUTIVE SUMMARY:

The Complainant alleged he experienced a stroke when the Named Employees encountered him. He further alleged Named Employee #1 (NE#1) and Named Employee #2 (NE#2) disregarded his medical emergency and arrested him.



The Complainant also alleged NE#3 falsely documented that he refused a breathalyzer when the Complainant's medical condition made it impossible.

SUMMARY OF INVESTIGATION:

Computer-Aided Dispatch (CAD) Data

OPA reviewed the CAD data related to the 9-1-1 call. CAD is an emergency response system used to manage and track calls for service, dispatch units, and note real-time updates. In summary, the CAD data showed a 9-1-1 caller, who identified herself as the Complainant's ex-wife, reported:

[Ex-husband] IS OUTSIDE BANGING ON THE DOOR TRYING TO GET IN. CURRENTLY YELLING AT [9-1-1 CALLER]. [SUSPECT IS] KNOWN TO CARRY KNIVES.

Before the Named Employees' arrival, the following updates were attached to the call:

- Suspect also broke in and stole house keys earlier today
- [9-1-1 caller] and daughter blocking the door with their bodies
- Suspect identified as the Complainant
- Suspect now throwing rocks at window
- Suspect is intoxicated
- Suspect trying to push door again
- Suspect threatened to kill [9-1-1 caller] 20 min ago
- Suspect has been [there] for 30 min
- Suspect now kicking the door
- Suspect making threats to kill [9-1-1 caller] again
- The situation was a chronic issue for 10 years

NE#1 and NE#2 were primary officers and there were six backing officers, including NE#3.

Incident Report

NE#1 wrote the incident report. NE#1 wrote officers initially encountered the Complainant "laying in the [southbound] lane...[and]...as our headlights illuminated him, he got up and went to the driver's side door of a...Ford...that was registered to him." NE#1 wrote he interviewed the 9-1-1 caller, whose account was consistent with the CAD notes. Additionally, NE#1 documented the 9-1-1 caller stated she and her 17-year-old daughter refused to let the Complainant into the house because he was aggressive when intoxicated. The 9-1-1 caller also confirmed the Complainant kicked her door and threatened to kill her and slash her tires. Moreover, NE#1 wrote photos showed the Complainant fled a hit-and-run earlier that day in the same car he had on the scene. Further, NE#1 wrote the Complainant's driver's license required his car to be equipped with an ignition interlock, which it was not. The Complainant was arrested for attempted residential burglary (domestic-related), felony harassment, hit-and-run, theft (domestic-related), property destruction, driving under the influence, and an ignition interlock violation.¹

¹ A Seattle Municipal Court search showed the harassment, property destruction, criminal attempt, DUI, and ignition interlock charges were dismissed without prejudice. That means the prosecutor can elect to reinstate those charges within a defined period.



Body Worn Video (BWV)

OPA's BWV review was consistent with NE#1's incident report. It showed the Complainant laying in the street. It also showed him tell NE#1 and NE#2 he did not do anything, with slurred speech. The Complainant sat on the patrol car's bumper when asked. It also showed the 9-1-1 caller and her daughter's separate interviews, which both alleged the Complainant's criminal behavior. A search incident to the Complainant's arrest revealed a knife on his person. The Complainant's car keys were also in the ignition. NE#3 arrived and NE#1 briefed him on the call. NE#3 approached the Complainant, who stood unassisted, and asked for the 9-1-1 caller's house key they believed he took. NE#3 also told the Complainant, "You can't be driving a car as drunk as you are." At the precinct, the Complainant exited the patrol car without issue. There, NE#3 asked the Complainant to take a breath test. He replied, "If I cooperate, I won't fail..." The Complainant then agreed to take it. NE#3 asked whether the Complainant had physical impairments. He indicated COVID-19, mental health issues, and a limp. The Complainant also admitted to drinking beer. When NE#3 presented the Complainant with the Blood Alcohol Concentration device, he replied, "What the fuck...I ain't taking no breath test..." After some discussion, the Complainant again agreed to take the breathalyzer followed by another retraction: "Hold on, you didn't see me driving. I don't give a fuck what the neighbors say. I wasn't driving. I don't feel like I got to take that." After more discussion, the Complainant again agreed to take the test followed by another refusal.

OPA Interview

On September 6, 2022, OPA interviewed the Complainant. He told OPA all criminal charges were dropped. The Complainant also stated when the Named Employees encountered him on the night in question he was experiencing a stroke, rather than intoxication. He stated the stroke prevented him from doing the breathalyzer or talking. The Complainant stated the jail immediately transported him to a hospital, where his blood pressure was found to be 200/180. He said he was admitted for a week. The Complainant also reported two strokes since the incident for which he is undergoing therapy. He agreed to return a medical waiver for OPA to access his medical records but did not do it.

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 to Effect an Arrest.

Officers must have probable cause that a suspect committed a crime to effect an arrest. SPD Policy 6.010-POL-1. A police officer may make a warrantless arrest upon probable cause to believe the arrestee committed an arrestable offense. See *State v. Gillenwater*, 96 Wash. App. 667, 670, 980 P.2d 318, 320 (1999). '[P]robable cause to arrest exists where the totality of the facts and circumstances known to the officers at the time of arrest would warrant a reasonably cautious person to believe an offense [was] committed.' *Id.* Probable cause to arrest requires more than "a bare suspicion of criminal activity," *State v. Terrovona*, 105 Wash.2d 632, 643, 716 P.2d 295 (1986), but does not require facts that would establish guilt beyond a reasonable doubt. *Id.*

Here, the Named Employees had probable cause to arrest the Complainant at least for felony harassment, hit-and-run, theft (domestic-related), driving under the influence, and an ignition interlock violation.

Harassment



A person is guilty of harassment if, without lawful authority, he/she knowingly threatens to cause bodily injury to another immediately or in the future. See *RCW 9A.46.020*.

Here, the Named Employees had the 9-1-1 caller and her/the Complainant's 17-year-old daughter's account describing the Complainant beating their door, calling the 9-1-1 caller a bitch, and threatening to kill her. Those accounts coupled with the Complainant's apparent intoxication and on-scene behavior was enough to "warrant a reasonably cautious person to believe" he committed that offense.

DUI

A person is guilty of driving while under the influence if the person drives a vehicle within the City under the influence of or is affected by intoxicating liquor. See *Seattle Municipal Code 11.56.020.A.1.c*.

Here, before the Named Employees' arrival, the CAD call indicated the Complainant was intoxicated. Upon arrival, the officers found him lying in the street near his car. The Complainant's keys were in the ignition, and he later told officers he drunk beer. Interviews with the 9-1-1 caller and her/the Complainant's 17-year-old daughter established he was at their home earlier and "everything was fine," but he returned intoxicated, aggressive, and threatening. They also indicated, during his intoxicated state, the Complainant left and returned. Those circumstances suggested the Complainant initially left the 9-1-1 caller's house sober, returned intoxicated, left, and returned. The keys in the ignition and him lying near his car suggested he drove.

Ignition Interlock Violation

No person whose driving record includes a notation, under *RCW 46.20.740*, that the person may operate only a motor vehicle equipped with a functioning ignition interlock device shall operate a motor vehicle that is not so equipped, unless the notation resulted from a restriction imposed as a condition of release and the restriction has been released by the court prior to driving. See *SMC 11.56.350*.

Here, the Named Employees ran the Complainant's driver's license. CAD showed his license was restricted:

DRIVER RESTRICTION: Ignition Interlock Device, DRIVER RESTRICTION: Financial Responsibility, DRIVER RESTRICTION: Probationary License.

However, the Complainant's car, which was registered to him, was unequipped with an ignition interlock device. Moreover, there was no indication that restriction was lifted. Therefore, once the officers found probable cause the Complainant drove there was a sufficient basis for this charge.

Although the Complainant appears to believe his dismissed criminal charges (without prejudice) proved he was unjustifiably arrested, clearly probable cause is a much lower legal standard than beyond a reasonable doubt.

Accordingly, OPA recommends 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 5.001-POL-11. Employees Will Be Truthful and Complete in All Communication.

Employees will be truthful and complete in all communication. SPD Policy 5.001-POL-11.

The Complainant alleged the Named Employees misrepresented his behavior as alcohol influence when he suffered a stroke. Specifically, the Complainant stated the stroke impeded his speech and ability to participate in a breath test. Here, however, OPA found no evidence of dishonesty. BWV showed, although slurred, the Complainant spoke with officers throughout the encounter. He answered and asked questions, and never indicated a physical ailment other than COVID-19 and a limp. Moreover, the Complainant repeatedly suggested his reluctance to take the breathalyzer was because he did not want to go to jail. When the Complainant was finally prepared about to take the test, he refused and stated he had to use the bathroom: "I'm good. I got to pee. I got to pee." NE#3 told the Complainant he would mark him as refusing to take the test. He replied, "Okay. Can I go pee?" There was no mention of a stroke until OPA interviewed the Complainant. The Complainant agreed to sign a waiver granting OPA access to his relevant medical records but did not do it.

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

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

Named Employee #2 - Allegation #1

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

For the reasons outlined at Named Employee #1 – Allegation #1, OPA recommends this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #2

5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication.

For the reasons outlined at Named Employee #1 – Allegation #2, OPA recommends this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - Allegation #1

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

For the reasons outlined at Named Employee #1 – Allegation #1, OPA recommends this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #3 - Allegation #2

5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication.

For the reasons outlined at Named Employee #1 – Allegation #2, OPA recommends this allegation be Not Sustained – Unfounded.

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