




## CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 7, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0207

### **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)

*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:**

Named Employee #1 (NE#1) arrested the Complainant for a domestic violence (DV) assault. The Complainant alleged NE#1 arrested him without probable cause based on his girlfriend's false statements.

### **ADMINISTRATIVE NOTE:**

This case was approved for Expedited Investigation. That means OPA, with the Office of Inspector General's (OIG) agreement, believed it could issue recommended findings based solely on its intake investigation without interviewing the named employee. As such, OPA did not interview the named employee involved in this case.

On June 23, 2023, OIG certified OPA's investigation as thorough, timely, and objective.

### **SUMMARY OF INVESTIGATION:**

OPA received a complaint and opened an intake investigation. During its investigation, OPA reviewed the OPA complaint, body-worn video (BWV), incident report, and court records. OPA also interviewed the Complainant.

#### **A. OPA Complaint**

On May 16, 2023, the Complainant filed a web-based complaint. The Complainant wrote, "I WAS KIDNAPPED/UNLAWFULLY ARRESTED AND DETAINED ON FALSE STATEMENTS."



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## **B. Body-Worn Video (BWV) and Incident Report**

NE#1's BWV captured the following events on July 18, 2022. NE#1 arrived at an apartment.<sup>1</sup> Community Member #1 (CM#1)—the reporting party—was in the lobby and spoke with NE#1. CM#1 said she and the Complainant—the father of her child—argued over money. CM#1 said the Complainant grabbed her neck using both hands and threw her to the ground while she held their child. CM#1 expressed pain in her neck and at the back of her head when she fell. CM#1 said the Complainant threatened to kill her and their child, put their bodies in a suitcase, and take them to Las Vegas so that no one would know. CM#1 said she went to the lobby, saw the building's maintenance person,<sup>2</sup> and called 9-1-1 using his phone. NE#1 and WO#1 examined CM#1's neck and head but did not find any visible injuries. CM#1 said the Complainant—who lived with her—was in her apartment unit and gave officers consent to enter. NE#1 told other officers that he had probable cause for assault and felony harassment.

NE#1 and two other officers went to CM#1's apartment unit. NE#1 identified himself and repeatedly asked the Complainant to open the door, but the Complainant refused and, instead, talked to NE#1 through the door. NE#1 asked the Complainant about the physical altercation, which he denied. NE#1 told the Complainant that he was under arrest for assault and said there was no reason not to believe CM#1. The Complainant refuted NE#1's account and refused to open the door. NE#1 left while the two officers remained next to CM#1's door.

NE#1 returned to the lobby and found out that the Seattle Fire Department (SFD) examined CM#1 but found no visible injuries. NE#1 went outside the apartment building and briefed Witness Supervisor #1 (WS#1)—a sergeant. WS#1 said, "If [the Complainant] was compliant, this would be a felony arrest regardless." NE#1 said he only heard CM#1's side of the story since the Complainant denied her allegations. WS#1 told NE#1 to get a warrant since the Complainant refused to open the door. NE#1 drove to a precinct to draft a search warrant application. NE#1 returned to the apartment building after securing the search warrant. SWAT officers executed the warrant and arrested the Complainant.

NE#1 wrote an incident report consistent with the events captured on BWV.

## **C. Court Records**

The King County Prosecuting Attorney's Office filed a motion with the King County Superior Court titled, "Motion, Finding of Probable Cause, and Order Directing Issuance of Summons or Warrant and Fixing Bail." The motion asked the court to find probable cause that the Complainant committed, among other crimes, DV assault in the second degree and DV felony harassment. The motion incorporated SPD's certification for determination of probable cause, which cited the evidence summarized above. The court found probable cause that the Complainant "committed an offense or offenses charged in the information herein based upon the police agency certification/affidavit of probable cause" and issued an arrest warrant for the Complainant. The court signed the order on July 20, 2022.

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<sup>1</sup> NE#1 wrote in an incident report that he responded to an apartment after dispatch broadcasted that the father of the reporting party's child choked the reporting party.

<sup>2</sup> Witness Officer #1 (WO#1) wrote in a supplement report that the maintenance person said he saw CM#1 exit the elevator crying, looking scared, and yelling, "Call 9-1-1."



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**D. OPA Interview**

OPA interviewed the Complainant. The Complainant said he was falsely arrested based only on CM#1's allegations. The Complainant said CM#1 had a history of making false claims against him. The Complainant said, in this case, CM#1 alleged that he strangled her and threw her to the ground, but when SFD examined her, CM#1 appeared to be uninjured. The Complainant said his criminal charges were dropped due to insufficient evidence. The Complainant expressed concern about SPD's investigation and said that his criminal history influenced the officers' decision to arrest him.

**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 that NE#1 lacked probable cause to arrest him for committing a crime.

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. Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient in themselves to support a reasonable belief that an offense has been 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).

Here, NE#1 believed he had sufficient probable cause for assault and felony harassment. CM#1 reported that the Complainant grabbed her neck using both hands and threw her to the ground while she held their child. CM#1 also reported that the Complainant threatened to kill her and their child. NE#1 asked many follow-up questions and noted no inconsistencies in CM#1's account. As such, NE#1 said there was no reason not to believe CM#1. Additionally, an independent witness—the building's maintenance person—reported that he saw CM#1 exit an elevator crying, looking scared, and yelling, "Call 9-1-1," which partially corroborated CM#1's account. At least two other officers—WS#1 and the detective who drafted the certification for determination of probable cause—believed there was probable cause that the Complainant assaulted CM#1 and threatened to kill her. A judge approved SPD's search warrant application for CM#1's apartment unit, which meant that the judge determined there were sufficient facts supporting probable cause and permitted SPD officers to search for evidence of a crime in CM#1's apartment unit. Two days later, a King County Superior Court judge also found probable cause and issued an arrest warrant based on these facts. NE#1 had sufficient probable cause to arrest the Complainant for committing at least two crimes.

The Complainant expressed several concerns. First, the Complainant noted that SFD saw no visible injuries on CM#1. However, a mandatory arrest for DV assault does not require a visible injury. *See* SPD Policy 15.410-POL-2 (providing that a mandatory arrest is required when a DV assault occurred, which resulted in bodily injury to the victim, "whether the injury is observable by the responding officer or not"); RCW 10.31.100(2)(d)(ii). Second, the Complainant said that officers inappropriately considered his criminal history when they decided to arrest him. Officers were permitted to consider the Complainant's criminal history in their decision-making process. *See* SPD Policy 15.410-POL-2 (providing that officers, when determining who was the primary physical aggressor, will try to consider the "history of domestic violence of each person involved, including whether the conduct was part of an ongoing pattern of abuse"); RCW 10.31.100(2)(d)(ii)(C). Third, the Complainant said CM#1 had a history of making false claims against him. The



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Complainant's allegation regarding CM#1's credibility was a legal defense against his criminal charges, not a policy violation.

The Complainant alleged NE#1 arrested him without probable cause. The evidence showed by a preponderance of the evidence that NE#1 arrested the Complainant and had probable cause to do so.

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

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