



## **CLOSED CASE SUMMARY**

ISSUED DATE: OCTOBER 28, 2024

FROM: DEPUTY DIRECTOR BONNIE GLENN, ON BEHALF OF DIRECTOR GINO BETTS, JR.  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2024OPA-0217

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded (Expedited)

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	6.220 – Voluntary Contacts, Terry Stops & Detentions, 6.220-POL-2 Conducting a Terry Stop, 1. Terry Stops are Seizures Based Upon Reasonable Suspicion	Not Sustained - Lawful and Proper (Expedited)
# 2	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)
# 3	15.280 – DUI Investigations, 15.280-POL-9. Officers Are Not Required to Administer a Breath Test for Every DUI Arrest (Effective September 1, 2020)	Not Sustained - Lawful and Proper (Expedited)
# 4	6.010 – Arrests, 6.010-POL-2. When Taking a Suspect Into Custody, Officers Must Identify Themselves, Inform the Suspect that He or She is Under Arrest, and State the Reason for the Arrest As Early as Practical (Effective July 26, 2019)	Not Sustained - Lawful and Proper (Expedited)
# 5	5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing	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:**

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) arrested the Complainant for driving under the influence (DUI) after NE#2 administered standardized field sobriety tests (SFSTs). The Complainant alleged that NE#2 lacked reasonable suspicion to detain him, lacked probable cause to arrest him, and failed to administer a breathalyzer. The Complainant alleged that NE#2 should have Mirandized him before administering the SFSTs. The Complainant also alleged that the named employees were racially biased against him.



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**ADMINISTRATIVE NOTE:**

This case was approved for an 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 employees. As such, OPA did not interview the named employees in this case.

On September 27, 2024, OIG certified OPA's investigation as thorough, timely, and objective.

**SUMMARY OF INVESTIGATION:**

**A. OPA Complaint**

On May 14, 2024, a Seattle City Council employee forwarded to OPA a complaint from the Complainant. The Complainant wrote the following in that complaint:

The Complainant parked on a street next to a hotel with his engine running but headlights deactivated because the street was empty late at night. The Complainant intended to wait a few minutes at that spot to pick up a friend. The named employees performed a traffic stop on the Complainant and questioned him about his activities. NE#2 ordered the Complainant to exit his vehicle because NE#2 suspected the Complainant was under the influence of narcotics, which the Complainant denied. The Complainant completed NE#2's administered SFSTs "with relative ease." NE#2 said the Complainant was under arrest for suspicion of DUI, requiring NE#2 to apply for a blood warrant. NE#2 denied the Complainant's request for a breathalyzer test, believing he was under the influence of narcotics, not alcohol. The Complainant was handcuffed, transported to the East Precinct where he was placed in a holding cell, and transported to a hospital where his blood was drawn pursuant to a warrant.

Among other things, the Complainant alleged that NE#2 lacked reasonable suspicion to detain him, lacked probable cause to arrest him, and failed to administer a breathalyzer test; that NE#2 should have Mirandized him before administering the SFSTs; and that the named employees were racially biased against him.

OPA investigated the complaint by reviewing body-worn video (BWV), in-car video (ICV), the incident report, and search warrant documentation.

**B. Body-Worn Video (BWV)**

On September 5, 2022, BWV captured the following:

NE#1 drove a patrol vehicle, with NE#2 in the passenger's seat, and parked behind the Complainant's vehicle, which was parked in the middle of a street at a four-way intersection. The vehicle's engine was running, and its headlights were deactivated. The named employees approached the Complainant, who said he was waiting for his girlfriend and thought his parking location was fine because the street was empty.<sup>1</sup> NE#1 told the Complainant he could not park in the middle of the street and identified several parking spots elsewhere. NE#1 asked for documentation, and the Complainant provided his driver's license. The Complainant asked why he was stopped. NE#2 mentioned the parked

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<sup>1</sup> NE#2's incident report stated that he "immediately recognized" the Complainant's droopy eyelids, bloodshot and watery eyes, slowed and drawn-out speech, and relaxed muscles.



vehicle in the middle of a street without headlights activated. NE#2 asked the Complainant to exit his vehicle, and he complied. NE#2 and the Complainant walked to the adjacent sidewalk.<sup>2</sup>

NE#2 said he wanted to ensure the Complainant could drive. The Complainant denied consuming narcotics or alcohol and having physical conditions. The Complainant agreed to take the SFSTs. NE#2 administered the following tests: (1) alphabet, (2) counting backward, and (3) horizontal gaze nystagmus (HGN). The Complainant insisted he was sober and asked to leave. NE#2 replied that the Complainant was detained, but the SFSTs were voluntary. The Complainant requested to complete the SFSTs. NE#2 then administered the following tests: (4) 30 seconds of eyes closed, (5) finger to nose, (6) walk and turn, and (7) one leg stand. The named employees arrested the Complainant for DUI upon completion of the SFSTs. NE#2 denied the Complainant's request for a breathalyzer test, saying he did not believe the Complainant was alcohol impaired. NE#2 Mirandized the Complainant, who requested a lawyer. NE#2 said he would not question the Complainant.

### **C. Incident Report**

NE#2's incident report stated that the Washington State Criminal Justice Training Commission trained him on administering SFSTs. It also stated that he completed 40 hours of DUI investigation training with SPD, nine hours of cannabis impairment training, and over 20 DUI investigations in the field.

NE#2's incident report was consistent with BWV observations and documented the following SFST results:

- (1) Alphabet: "I asked [the Complainant] to say the alphabet without singing. [The Complainant] said the alphabet quickly and well but had some minor difficulty at the end."
- (2) Counting backward: "I asked [the Complainant] to count backwards from 53 down to 36. [The Complainant] had difficulty and asked me for clarifications on the instructions multiple times."
- (3) HGN: "[The Complainant] had no HGN; however, he had difficulty moving only his eyes and frequently moved his head and his whole body."
- (4) 30 seconds of eyes closed: "On the modified Romberg, [the Complainant] estimate[d] the passage of 30 seconds in 43 seconds and displayed eyelid tremors and body swaying."
- (5) Finger to nose: "On the finger to nose test, [the Complainant] missed most of his finger to nose. [The Complainant] displayed Lack of Convergence."
- (6) Walk and turn: "On the walk and turn, [the Complainant] performed well; however, he performed the test slowly and performed the turn incorrectly."
- (7) One leg stand: "On the one leg stand, [the Complainant] performed well."

NE#2's incident report noted, "Based on the totality of my observations and based on my training and experience, I determined that [the Complainant] was affected by or under the influence of drugs." NE#2's incident report stated that a Seattle Municipal Court judge approved a blood warrant, resulting in the Complainant's blood being drawn at a hospital.

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<sup>2</sup> NE#2's incident report stated that the Complainant struggled to stand straight and occasionally zoned out.



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**D. Search Warrant Documentation**

NE#2's search warrant affidavit mirrored his incident report. On September 5, 2022, a Seattle Municipal Court judge reviewed NE#2's affidavit, found probable cause for DUI, authorized a blood draw, and authorized the blood to be tested for alcohol and drugs.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 – Allegation #1**

***5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing***

The Complainant alleged that the named employees were racially biased against him.

Biased policing means “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well as other discernible personal characteristics of an individual.” SPD Policy 5.140-POL. It includes different treatment based on race. *See id.* Officers are forbidden from making decisions or taking actions influenced by bias and expressing prejudice or derogatory comments concerning personal characteristics. *See* SPD Policy 5.140-POL-2.

The Complainant's race was not considered when the named employees investigated DUI. The named employees were drawn to a vehicle parked in the middle of a street with its engine running and headlights deactivated. Further observations led to the SFST administration, the Complainant's arrest, and NE#2's application for a blood warrant. As captured on BWV, the named employees' contact with the Complainant did not suggest bias. Overall, OPA found no evidence supporting the Complainant's interpretation of race-based mistreatment.

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

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

**Named Employee #2 – Allegation #1**

***6.220 – Voluntary Contacts, Terry Stops & Detentions, 6.220-POL-2 Conducting a Terry Stop, 1. Terry Stops are Seizures Based Upon Reasonable Suspicion***

The Complainant alleged that NE#2 lacked reasonable suspicion to detain him.

*Terry* stops are seizures of an individual and, as such, must be based on reasonable suspicion to be lawful. SPD Policy 6.220-POL-2(1). A *Terry* stop is a brief, minimally intrusive seizure of a subject based on reasonable articulable suspicion to investigate possible criminal activity. SPD Policy 6.220-POL-1. Reasonable suspicion means specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging, or is about to engage in criminal conduct. *Id.* The reasonableness of a *Terry* stop is based on the totality of the circumstances, the officer's training and experience, and what the officer knew before the stop. *Id.* While information learned during the stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, it cannot justify the original stop. *Id.*



As noted above, NE#2 was drawn to a vehicle parked in the middle of a street with its engine running and headlights deactivated. Upon contact, NE#2 observed the Complainant's droopy eyelids, bloodshot and watery eyes, slowed and drawn-out speech, and relaxed muscles—characteristics consistent with OPA's BWV observations. NE#2 also observed the Complainant struggling to stand straight and occasionally zoning out. The totality of these circumstances sufficiently supported reasonable suspicion of the Complainant's impairment, justifying his detainment.

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

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

**Named Employee #2 – Allegation #2**

***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#2 lacked probable cause to arrest him.

Officers must have probable cause that a suspect committed a crime when effectuating an arrest. SPD Policy 6.010-POL-1. 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 sufficiently 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).

As noted above, NE#2 had sufficient reasonable suspicion of the Complainant's impairment. NE#2 administered seven SFSTs and observed the Complainant's difficulty with six of them. NE#2 observed the Complainant performing well only on the one leg stand test. Informed by NE#2's training and experience, NE#2 developed sufficient probable cause for DUI based on the Complainant's parked vehicle in the middle of a street, its deactivated lights, NE#2's observations of the Complainant's manifestations, and the Complainant's difficulties in performing some of the SFSTs.

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

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

**Named Employee #2 – Allegation #3**

***15.280 – DUI Investigations, 15.280-POL-9. Officers Are Not Required to Administer a Breath Test for Every DUI Arrest (Effective September 1, 2020)***

The Complainant alleged that NE#2 failed to administer a breathalyzer test when requested.

Officers are not required to administer a breath test for every DUI arrest. SPD Policy 15.280-POL-9 (effective September 1, 2020). An officer may seek a search warrant for blood without offering or administering a breath test when, among other things, the officer has articulable facts to believe a subject's impairment is caused by drugs alone or a combination of drugs and alcohol. *See id.*

Although the Complainant requested a breathalyzer, NE#2 denied that request because NE#2 did not believe the Complainant was alcohol impaired. SPD policy does not require NE#2 to administer a breath test. Moreover, it



permitted—but did not require—NE#2 to seek a blood warrant if NE#2 believed the Complainant’s impairment was caused by narcotics. NE#2’s incident report and affidavit articulated facts supporting such impairment, including physical observations and the Complainant’s deficient performance on the SFSTs. NE#2 appropriately sought a blood warrant and denied the Complainant’s request for a breathalyzer test under the circumstances.

The Complainant also took issue with NE#2’s affidavit, noting insufficient probable cause and his misspelled last name. NE#2 appeared to have misspelled the Complainant’s last name in only some parts of the affidavit, but NE#2 also included the Complainant’s date of birth. This error did not negate a municipal court judge finding sufficient probable cause for DUI and authorizing a blood draw.

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

Recommended Finding: **Not Sustained - Training Referral (Expedited)**

**Named Employee #2 – Allegation #4**

***6.010 – Arrests, 6.010-POL-2. When Taking a Suspect Into Custody, Officers Must Identify Themselves, Inform the Suspect that He or She is Under Arrest, and State the Reason for the Arrest As Early as Practical (Effective July 26, 2019)***

The Complainant alleged that NE#2 should have Mirandized him before administering the SFSTs.

When taking a suspect into custody, officers must identify themselves, inform the suspect that he or she is under arrest, and state the reason for the arrest as early as practical. SPD Policy 6.010-POL-2 (effective July 26, 2019).

The Complainant was not under arrest before NE#2 administered the SFSTs. At that point, the Complainant was detained during NE#2’s DUI investigation. While detained, the Complainant could have refused to answer questions or refused to perform the SFSTs, which NE#2 advised were voluntary. Once NE#2 developed sufficient probable cause for DUI, NE#2 arrested the Complainant and then Mirandized him.

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

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

**Named Employee #2 – Allegation #5**

***5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing***

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

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