

SEATTLE POLICE DEPARTMENT MEMORANDUM

TO: Captain Paul McDonagh
East Precinct Commander

DATE: 7/20/2015

FROM: *P.M.*
Director Pierce Murphy and Captain Dick Reed
Office of Professional Accountability (OPA)

SUBJECT: Director's Certification Memo for OPA Case #2015-0117

INFORMATION FOR REVIEWER:

This Director's Certification Memo (DCM) represents the opinion of the OPA Director regarding the misconduct alleged. The DCM, while based upon the evidence and information contained in the case file, should not be considered part of the investigative process. It should be viewed as an aid to your evaluation of the Director's findings. Please review the case file in Blue Team if you have questions or further information is desired.

The Director's recommended finding for an allegation contained in this investigation is sustained; a discipline meeting will be scheduled.

CASE IDENTIFICATION:

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| OPA Case Number: | 2015-0117 |
| Incident Date: | 07/09/2014 |
| Date Reported: | 01/28/2015 |
| 180-Day Expiration Date (SPOG): | 07/27/2015 |
| Named Employee #1: | Whitlatch, Cynthia – Officer #6229 |
| Subject: | William Wingate |
| Complainant: | William Anderson Joey Gray |
| Witness #1: | Sergeant Joe Lam |
| Witness #2: | Officer Ben Archer |
| Witness #3: | Officer Christopher Coles |
| Witness #4: | Captain Pierre Davis |
| Witness #5: | Assistant Chief Nicholas Metz |
| Other Evidence: | GO 2014-222942; Related ICV, Court Records, Administrative Records |

ALLEGATIONS OF MISCONDUCT AND THE DIRECTOR'S FINDINGS:

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| Named Employee Allegation #1: | Voluntary Contact and Terry Stops: Terry Stops are Seizures and Must be Based on Reasonable Suspicion in Order to be Lawful 6.220 (1) [Issued 01/30/2014] |
| Director's Finding: | Sustained |
| Allegation #2: | Standards & Duties: Exercise of Discretion 5.001 (VII) (A) [Issued 08/15/2012] |
| Director's Finding: | Sustained |
| Allegation #3: | Use of Force Core Principles: When Time, Circumstances, and Safety Permit, Officers Will Take Steps to Gain Compliance and De-Escalate Conflict without Using Physical Force 8.000 (2) [Issued 01/01/2014] |
| Director's Finding: | Sustained |
| Allegation #4: | Using Force - Use-of-Force: When Authorized 8.100 (1) [Issued 01/01/2014] |
| Director's Finding: | Sustained |
| Allegation #5: | Bias-Free Policing - Employees Will Not Engage in Bias-Based Policing 5.140 (2) [Issued 01/30/2014] |
| Director's Finding: | Sustained |

EXECUTIVE SUMMARY:

Officer Cynthia Whitlatch arrested William Wingate on July 9th, 2014. According to the police report authored by Officer Coles, Wingate allegedly raised his golf club, struck a stop sign, and then shook the club threateningly towards Whitlatch. During her contact, Whitlatch wrote in her report that Wingate was not cooperative and obstructed her efforts to investigate his actions further. He was arrested and booked into King County Jail for Harassment-SMC 12A.06.040 and Obstructing a Police Officer-SMC 12A.16.010.

Reviewers should read the OPA Investigative Summary for additional detailed information.

FINDINGS OF FACT:

- The police report is not consistent with the Named Employee's OPA interviews describing the incident, particularly with respect to Mr. Wingate's alleged behavior prior to speaking to the Named Employee.¹

¹ The named employee's statements at her second OPA interview indicate a lack of factual basis for her actions in her encounter with Mr. Wingate. The information provided to OPA is at odds with the Named Employee's descriptions on the day of the incident and, to some degree, at her first OPA interview. However, she was not the author of the police report, although she did provide information to be included in the report. The cause of the conflicting accounts of what she actually saw as she drove past Mr. Wingate is unclear. She may (or may not) truly believe- based on assumption rather than seeing it - that Mr. Wingate tried to hit her car with a golf club.

- The Named Employee did not see Mr. Wingate swing his golf club at the police car and hit the stop sign; instead, she admits that she only saw movement out of the corner of her eye and heard a noise, leading her to assume he swung at her car and hit the stop sign.
- The Named Employee did see Mr. Wingate move his golf club from one side to the other while he was looking at her police car drive away.
- The Named Employee observed Mr. Wingate look at her with a furrowed brow and assumed that he was purposefully directing an “angry” look at her.
- Upon contact, the Named Employee repeatedly ordered Mr. Wingate to drop his golf club. As Mr. Wingate protested and said that it was his golf club, the Named Employee replied, “I’m not going to take it from you, but it is a weapon”.
- As the Named Employee continued to order Mr. Wingate to “set the golf club down”, Mr. Wingate asked her to call somebody. The Named Employee indicated she had done so. Mr. Wingate then insisted he “ain’t done nothing to nobody”. The Named Employee replied, “you just swung the golf club at me”.
- Mr. Wingate was adamant that he did not swing his club at her, and he refused to comply with her orders.
- Officer Coles arrived to assist the Named Employee and asked Mr. Wingate to give him the golf club, which Mr. Wingate immediately did.
- The Named Employee then detained Wingate applying force to his left wrist as she held him against the side of her police car and searched through his pockets. Subsequently Mr. Wingate was arrested for Harassment and Obstructing.
- The Named Employee later contacted the City Attorney’s Office to strongly encourage the office to move forward with the charges against Mr. Wingate, something she admittedly rarely does.
- Mr. Wingate was charged with Unlawful Use of a Weapon to intimidate another, in violation of SMC 12 A.14.075. Mr. Wingate pled not guilty and thereafter a Dispositional Continuance was offered to and accepted by Mr. Wingate (whereby the charges would be dismissed in two years, pending no further criminal activity by Wingate).
- Around the same time as the arrest of Mr. Wingate, the Named Employee posted comments to Facebook about “chronic black racism” and that she was “tired of hearing a black racist tell me the only reason they are being contacted [by police] is because they are black.” Community leaders contacted the City to complain about Mr. Wingate’s arrest.
- Criminal Division Chief Craig Sims at the Seattle City Attorney’s office subsequently conducted further investigation, including a review of the In-Car Video (ICV), and decided to seek dismissal of the charges against Mr. Wingate. This was approved by City Attorney Peter Holmes. Mr. Wingate’s charges were dismissed.
- The Named Employee’s (then) chain of command counseled her about the incident.
- Deputy Chief Carmen Best also met with Mr. Wingate.
- During her second OPA interview, during a discussion of why she followed up with the City Attorney’s Office about Mr. Wingate’s charges, the Named Employee - without prompting - said “let me just put this on the table” and then stated that the disposition of Mr. Wingate’s case was changed by “guess who, Judge Bonner.” She then brought up Deputy Chief Carmen Best’s meeting with Mr. Wingate. Named Employee then said “What race were these? The judge was black and the Chief is black, so I mean to me...how does that look? It, it doesn’t support the officer, that’s for sure.”

ANALYSIS AND CONCLUSIONS

Allegation #1:

Section 6.220 (1) of the Seattle Police Manual in effect at the time of the incident (enacted 01/30/2014):
Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful

A Terry stop must be based on reasonable suspicion and documented using specific articulable facts as described in this policy.

This policy prohibits Terry stops when an officer lacks reasonable suspicion that a subject has been, is, or is about to be engaged in the commission of a crime.

Searches and seizures by officers are lawful to the extent they meet the requirements of the 4th Amendment and Washington Constitution Article 1, Section 7.

A Terry stop is a seizure for investigative purposes. A seizure occurs any time an officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen. A seizure may also occur if an officer uses words, actions, or demeanor that would make a reasonable person believe that he or she is not free to go.

The Named Employee initially reported that her basis for the *Terry Stop* was the behavior she observed as she was turning left onto 11th Ave. from E. Pike street. As reported by Officer Coles in the General Offense Report documenting this incident, the Named Employee reported that as she turned her patrol car left past Wingate, she had seen Wingate look at her and “then aggressively swing his golf club in the direction of her patrol car”, striking a stop sign as it was swung. The Named Employee also reported to Officer Coles that she considered Mr. Wingate’s behavior to be “aggressive” and feared that either she or members of the public “might be assaulted by Wingate if he continued aggressively swinging his golf club in a public setting.”

When interviewed by OPA the first time, however, the Named Employee did not state the same observations of Mr. Wingate’s behavior. She said she made eye contact with Mr. Wingate as he was a pedestrian walking eastbound on E. Pike nearing 11th Ave. She indicated Wingate was using the golf club as a cane. She determined it was safe to turn and as she drove northbound on 11th Ave. As she completed the turn, she saw movement and noted that Mr. Wingate was “raising the golf club up and saw him start to swing it”. The Named Employee continued driving and reported hearing the sound of metal on metal. She looked back in the rear-view mirror and saw Wingate looking in her direction and, “swing the golf club toward my car twice” while she continued driving northbound on 11th Ave. The Named Employee activated her in-car video and drove around the block intending to contact Mr. Wingate and investigate further.

During a second OPA interview, the Named Employee gave a third version of what she actually saw and heard when she first saw Mr. Wingate. She said that as she drove past Mr. Wingate she saw a blur of motion out of the corner of her eye then heard the sound of metal on metal. The Named employee was in the driver’s seat of her police car, two to three feet from the curb as she drive past Mr. Wingate who was standing near the stop sign pole on the sidewalk facing her, approximately two to three feet from the curb. This means that the Named Employee was somewhere between four and six feet away from Mr. Wingate at the time she saw the movement heard a “clang” she took to be the sound of the club striking the pole, not the sign on top of the pole. The Named Employee did not see the club raised over Mr. Wingate’s head but held parallel to the ground. The Named Employee further stated that, as she looked back in her rear-view mirror she saw a look on Mr. Wingate’s face she described as “angry, you know, furrowed brow”.

In order for a Terry stop to comply with policy, it must be based on reasonable suspicion that an individual has been or is about to be engaged in criminal activity. Based on the Named Employee’s most recent iteration of the facts of the case, there was no reasonable suspicion here. Her conclusion that Wingate posed a threat to her and/or the public is not supported by her own statements to OPA about what she actually saw. By her own telling, she saw only a perceived angry expression she believed was directed at her while

Mr. Wingate was moving his golf club, none of which leads to a reasonable conclusion that a crime was about to be or had just been committed.

During the investigation the Named Employee documents that her justification for the initial Terry stop was to investigate the behavior of Mr. Wingate as she observed him swinging the golf club in a manner that the Officer perceived as posing a physical threat to her and/or others. She stated that this formed the basis for reasonable suspicion that Wingate had or was about to commit a crime. However, OPA finds that an examination of the evidence does not support the Named Employee's conclusion that there was a reasonable basis to believe that Wingate was engaged or was about to engage in criminal activity. Given no reasonable basis to tie Wingate to actual or potential criminal activity, or to reasonably believe that she had a duty to protect Wingate or the public from imminent harm, the Named Employee lacked the authority under SPD policy to conduct a *Terry* stop of Wingate and detain him. The preponderance of the evidence from this investigation supports the conclusion of Sustained.

Allegation #2:

Section 5.001 (VII) (A) (1) of the Seattle Police Manual in effect at the time of the incident (enacted 08/15/2012):

Professionalism – Exercise of Discretion

A. Department employees, and particularly sworn uniformed officers, are the most conspicuous representatives of government, and are legally granted significant authority to enforce the law and ensure public order and safety. The standards that govern this authority include conduct that is respectful, neutral, objective and unbiased. Specific rules and guidelines that relate to this standard include the following:

1. Exercise of Discretion

Discretion consists of the ability to apply reason, professional experience and judgment in decision-making. Employees are authorized and expected to use discretion consistent with the mission of the Department and duties of their office and assignment. The scope of discretion is proportional to the severity of the crime or public safety issue being addressed. For example, an employee's scope of discretion in dealing with a minor broader than when an employee is affecting an arrest on probable cause for a domestic violence misdemeanor or felony.

As soon as the first back-up officer arrived, Mr. Wingate handed over the golf club. It appears that this second officer was able to communicate with Mr. Wingate and calm the situation by behaving less aggressively toward Mr. Wingate. It is at this point in the encounter where there was an opportunity and an obligation for the Named Employee to pause, assess different tactics with Mr. Wingate and take a different approach to resolve the incident. Instead, the Named Employee continued to push forward with a detention and subsequent arrest of Mr. Wingate for Harassment and Obstructing.

The Department's policy on the exercise of discretion obligates an officer to "apply reason, professional experience and judgment" in making decisions regarding enforcement of the law. If the Named Employee's purpose in making contact with Mr. Wingate was to assess his mental state and determine whether or not he was a threat, this could have easily been accomplished without any charges at all, or by releasing him once her curiosity was satisfied and routing a report to the City Prosecutor for review and consideration of charges. In this case, however, the Named Employee failed to take advantage of the opportunity provided by the arrival of the second officer to pause and apply reason and judgment in deciding the best course of action. Instead, she compounded the problem caused by her unreasonable conclusion that Mr. Wingate was a potential threat to her and the public and her assertion that he was carrying a "weapon" by taking Mr. Wingate into custody, causing him to be booked into jail and lobbying the City Prosecutor to follow through with charges. The Named Employee displayed throughout this incident a distinct lack of reasoned balance and judgment.

The preponderance of the evidence from this investigation supports the conclusion of sustained.

Allegation #3:

Section 8.000 (2) of the Seattle Police Manual in effect at the time of the incident (enacted 01/01/2014):

When Time, Circumstances, and Safety Permit, Officers Will Take Steps to Gain Compliance and De-Escalate Conflict without Using Physical Force

When safe under the totality of circumstances and time and circumstances permit, officers shall use advisements, warnings, verbal persuasion, and other tactics in order to reduce the need to use force.

Officers should consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to:

- *Medical conditions*
- *Mental impairment*
- *Developmental disability*
- *Physical limitation*
- *Language barrier*
- *Drug interaction*
- *Behavioral crisis*

From the beginning of her face-to-face encounter with Mr. Wingate, the Named Employee chose to unnecessarily escalate the interaction by treating him and the situation as a clear threat. Not only was this an unreasonable conclusion based on what she had actually observed at that time, the Named Employee then persisted in this approach in spite of clear indications that her initial assessment of Mr. Wingate might have been erroneous. At that time, Mr. Wingate was not posing an immediate physical threat, nor was he leaving.

The policy required that the Named Employee consider factors that indicated Mr. Wingate was not deliberately resisting her orders, and she instead completely ignored the presence of those factors. Mr. Wingate can be heard making statements to the effect that the golf club was his walking stick. He also stated that he could not hear or understand what the Named Employee was saying and why she was talking to him. The Named Employee was in a position to observe Mr. Wingate's age, physical size and condition, possible loss of hearing and potential confusion.

The specific details of the incident show that the Named Employee had sufficient time and circumstances to attempt a variety of approaches toward her interaction with Mr. Wingate, yet the Named Employee ignored the requirements of the policy and instead repeatedly chose the most aggressive options. Once Mr. Wingate made it clear that he was not letting go of his golf club, the Named Employee escalated her interaction with him by accusing him of swinging the club at her. This resulted in an angry denial by Mr. Wingate and an erroneous assertion by the Named Employee that the alleged "assault" with the golf club was "on audio and video tape". As Mr. Wingate repeatedly asked the Named Employee to "call someone", she ordered him three times to "put it down". The Named Employee then raised the volume and pitch of her voice and shouted, "Sir, put it down!"

If it were not already clear to Mr. Wingate that he was being detained by the Named Employee, she then informed him, "You're not free to leave right now, please put it down." Mr. Wingate repeated his request that the Named Employee call someone, saying, "I want a witness." Mr. Wingate then turned to a woman passing by and began talking with her while the Named Employee continued to order him to put the golf club down, punctuating this order with a threat of arrest and two more assertions that he was not free to leave.

This confrontation by the Named Employee and Mr. Wingate's refusal to surrender his golf club until another officer was present ended as Officer Coles arrived on foot from the nearby East Precinct. Mr. Wingate immediately walked toward Officer Coles and handed him the golf club when asked. Officer Coles achieved this through verbal persuasion, by speaking to Mr. Wingate in a much more moderated tone than the Named Employee. The Named Employee followed on foot behind Mr. Wingate shouting three more times at him to "set it down". It should also be noted that, as the Named Employee followed Mr. Wingate,

she walked in front of the ICV camera in her patrol car and can be seen holding a nightstick and apparently placing it back into the holder on her duty belt. From this, it can be concluded that she had been holding the nightstick in her hand during her confrontation with Mr. Wingate.

Other than insisting that he would not put down his golf club until another officer arrived to be a witness, Mr. Wingate displayed no behavior and made no statements that were remotely threatening. Nonetheless, the Named Employee failed to modulate or alter her aggressive tone and actions, repeatedly telling him that he was not free to leave and threatening him with arrest. At some point she even had a nightstick in her hand, further defining the interaction as dangerous and escalating the situation.

It is precisely this sort of police interaction over a minor event that unnecessarily escalated into “contempt of cop” arrests and the use of force that led (in part) to calls for a Federal Investigation of the Seattle Police Department and resulted in the current Settlement Agreement between the City and the Department of Justice. In order to prevent such escalation and the unnecessary use of force, SPD enacted a Use of Force policy that specifically obligated officers to “use advisements, warnings, verbal persuasion, and other tactics in order to reduce the need to use force” when it is safe to do so and time and circumstances permit. The encounter between the Named Employee and Mr. Wingate was such a circumstance and the Named Employee failed to adjust her initial, aggressive approach.

The preponderance of the evidence supports the conclusion of sustained.

Allegation #4:

Section 8.100 (1) of the Seattle Police Manual in effect at the time of the incident (enacted 01/01/2014):

Use-of-Force: When Authorized

An officer shall use only the force reasonable, necessary, and proportionate to effectively bring an incident or person under control, while protecting the lives of the officer or others. In other words, officers shall only use objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective. The force used must comply with federal and state law and Seattle Police Department policies, training, and rules for specific instruments and devices. Once it is safe to do so and the threat is contained, and/or the subject complies with the officer's orders, the force must stop. When determining if the force was objectively reasonable, necessary and proportionate, and therefore authorized, the following guidelines will be applied:

Reasonable: *The reasonableness of a particular use-of-force is based on the totality of circumstances known by the officer at the time of the use-of-force and weighs the actions of the officer against the rights of the subject, in light of the circumstances surrounding the event. It must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.*

Factors to be considered in determining the objective reasonableness of force include, but are not limited to:

- The seriousness of the crime or suspected offense;*
- The level of threat or resistance presented by the subject;*
- Whether the subject was posing an immediate threat to officers or a danger to the community;*
- The potential for injury to citizens, officers or subjects;*
- The risk or apparent attempt by the subject to escape;*
- The conduct of the subject being confronted (as reasonably perceived by the officer at the time);*
- The time available to an officer to make a decision;*
- The availability of other resources;*
- The training and experience of the officer;*
- The proximity or access of weapons to the subject;*
- Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number of officers versus subjects; and*
- The environmental factors and/or other exigent circumstances.*

The assessment of reasonableness must embody allowance for the fact that police officers are often forced to make split-second decisions—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation. The reasonableness inquiry in an excessive-force case is an objective one: the question is whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.

Necessary: Officers will use physical force only when no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.

Proportional: To be proportional, the level of force applied must reflect the totality of circumstances surrounding the immediate situation, including the presence of an imminent danger to officers or others. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied. Reasonable and sound judgment will dictate the force option to be employed. Proportional force does not require officers to use the same type or amount of force as the subject. The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be proportional, objectively reasonable, and necessary to counter it.

The Named Employee used *de minimus* force to physically detain Mr. Wingate during an unjustified *Terry* stop. Specifically, she held Mr. Wingate's left hand on the hood of the patrol car while she searched his pockets. Because the Named Employee lacked authority under SPD policy to detain Mr. Wingate, any use of force, even *de minimus*, failed to comply with 8.100(1) which says that force may only be used to "bring a person or situation under control ... to achieve a law enforcement objective".

In addition, before the Named Employee physically took hold of Mr. Wingate's left arm, a second officer had arrived at the scene and had immediately and successfully deescalated the situation and relieved Mr. Wingate of his golf club. There was no apparent need for the Named Employee to reassert her control of Mr. Wingate and lay hands on him. In addition to being a further example of escalating behavior by the Named Employee, this *de minimus* use of force was unnecessary.

The preponderance of the evidence supports the conclusion of sustained.

Allegation #5:

Section 5.140 (2) of the Seattle Police Manual in effect at the time of the incident (enacted 01/30/2014):

Officers Will Not Engage in Bias-Based Policing

Employees shall not make decisions or take actions that are influenced by bias, prejudice, or discriminatory intent. Law enforcement and investigative decisions must be based upon observable behavior or specific intelligence.

Officers may not use discernible personal characteristics in determining reasonable suspicion or probable cause, except as part of a suspect description.

Employees shall not express—verbally, in writing, or by other gesture—any prejudice or derogatory comments concerning discernible personal characteristics.

No employee shall retaliate against any person who initiates or provides information or testimony related to an investigation, prosecution, OPA complaint, litigation or hearings related to the Department or Departmental employees, regardless of the context in which the complaint is made, or because of such person's participation in the complaint process as a victim, witness, investigator, decision maker or reviewer.

Employees who engage in, ignore, or condone bias-based policing will be subject to discipline.

Supervisors and commanders who fail to respond to, document and review allegations of bias - based policing will be subject to discipline.

The biased policing policy addresses the decisions of, and actions taken by, a police officer, not the beliefs of an officer. A preponderance of the evidence shows that the Named Employee's decisions and actions were in violation of this policy.

Here, the decision made was to approach Mr. Wingate because, as she was driving away from him, the Named Employee observed Mr. Wingate holding his golf club with one hand and swinging it back to his side while looking in the Named Employee's direction with a furrowed brow which she perceived as "angry." The Named Employee's explanation of the initial triggering event (before the "angry" stare) has altered over time, from inclusion in the police report that she saw him swing a golf club at her car to the statements in her second OPA interview, where she stated merely that she saw movement out of the corner

of her eye and, on a busy City street in summer with a nearby construction site, *assumed* that a clang she heard was Mr. Wingate hitting a stop sign with his golf club after trying to hit her police car.

Several actions were taken based on bias. First, the Named Employee approached Mr. Wingate in an extremely aggressive and confrontational fashion at the outset, with no adjustment in tone or manner whatsoever once it became clear that Mr. Wingate was having trouble hearing her and that he was confused by her request for him to put down his golf club and her reference to it as a weapon. She also ignored his seemingly genuine confusion when she stated that he had swung the golf club at her and continued addressing him aggressively. Second, she insisted on moving forward with official charges when there were other possible options available to her, as described above. The Named Employee used no slurs and never mentioned race or any other protected category in the encounter. However, in her own written and spoken words, the Named Employee provided evidence which indicates that that she views events in her workplace in a racially biased manner and that her racial views impact her reaction to the work of the police.

The Named Employee's Facebook posts about "black racism" toward white police officers provide some support for this finding. However, her two statements to OPA clearly indicate that she allowed her perception of the protected category of others to influence how she acted in the field with Mr. Wingate and generally perceives law enforcement actions and interactions. Not only did the Named Employee fail to acknowledge in hindsight that her tone/approach to Mr. Wingate might have contributed to the escalation of this incident, she instead indicated that his age and gender - and his subsequent reaction to a female police officer based on his age and gender - were the likely reason for her failure to get him to voluntarily turn over the club. Additionally, the named Employee made the impact of her racial biases on her perception of law enforcement actions clear when she, unprompted, described how she viewed the resolution of the Wingate arrest/charges, namely as an example of the impact of racial bias in her workplace by African Americans against white officers. She specifically refers to "guess who" - a judge and chief who are black - not supporting white officers (meaning herself). When an officer's perceptions are so deeply influenced by perceived black mistreatment of white officers, it is evidence that her actions towards Mr. Wingate were impacted by racially biased assumptions about him; likewise, her views indicate that race impacted the aggressive manner in which she approached him from the outset and escalated what could have been a calm interaction (as evidenced by the later officers on the scene) into one where charges were brought based on a situation which she had created.

The preponderance of the evidence supports the conclusion of sustained.