



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 10, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0484

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	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)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	6.150 - Advising Persons of Right to Counsel and Miranda 1. Officers Shall Advise All Arrestees of Their Full Miranda Rights	Not Sustained (Management Action)
# 2	6.180 - Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies	Not Sustained (Unfounded)
# 3	16.130 - Providing Medical Aid 1. Recognizing the Urgency of Providing Medical Aid	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.

EXECUTIVE SUMMARY:

The Complainant alleged that she was subjected to excessive force by the Named Employees in the process of being arrested without cause. The Complainant further alleged that the Named Employees and other officers made unprofessional comments to her both during her arrest and subsequently at the precinct.

ADMINISTRATIVE NOTE:

There are multiple 180-day deadlines associated with this investigation. A DCM for three of the Named Employees was completed on February 19, 2021. Named Employee #1 in this DCM was out on extended leave at the time. The allegation against him is accordingly evaluated here.

This DCM also assesses the Complainant’s allegations against unknown SPD employees, with the exception of her professionalism allegation, which was returned to the chain of command as a Supervisor Action.



SUMMARY OF INVESTIGATION:

This case arises out of the demonstrations that occurred within Seattle and across the nation in the wake of the killing of George Floyd by a Minneapolis Police Officer. These protests were unprecedented in scope and were directed at law enforcement.

A. The Arrest of the Complainant by Named Employee #1

This incident occurred on July 25, 2020, at approximately 8:00 PM. At that time and for approximately 40 minutes prior, SPD officers had been engaged in clearing a large group of protesters from the area of 11th Avenue and Pine Street, near the East Precinct. After doing so, a group of officers, including the Named Employees, were directed to move protesters out of Cal Anderson Park. At that time, dispersal orders had been issued and any demonstrators who were remaining in the area were subject to arrest.

Involved Employee #1 (IE#1), Involved Employee #2 (IE#2), and Involved Employee #3 (IE#3), all bicycle officers, were assigned to the line of officers who conducted a sweep of the park. They followed behind a group of foot officers who walked in a line-abreast formation across a grassy field, toward a gravel path and a low concrete retaining wall. The officers were directing members of a crowd of protesters to move back and to leave the park, and most of them did so without contact from officers. A small number of individuals milled around in front of the officers and did not move back and away when ordered to do so.

Body Worn Video (BWV) of all three Involved Employees, as well as several other officers, captured this incident. As officers advanced, it appeared that at least two individuals, including one in a black t-shirt and shorts who was wearing a blue and gold hat and another in a red plastic poncho, attempted to physically obstruct the officers from advancing forward. Several of the line officers attempted to take the black-clothed individual into custody. When the line officers began arresting the black-clothed individual, IE#1 moved forward to assist in keeping other protesters from interfering in the arrest. The individual in the red poncho briefly moved toward IE#1 before retreating and leaving the area. At the time IE#1 moved toward the arrest scene, only the group of officers, the black-clothed individual, and the individual in the red poncho were visible on BWV.

From immediately behind IE#1, BWV captured an individual's voice screaming "what the fuck?" IE#1 turned around to face the area she had just been standing in, and BWV showed an individual in a teal helmet, heavy green jacket, and black jeans lying on the ground. This individual, later identified as the Complainant in this case, appeared to have fallen backward away from the arrested individual dressed in black. From reviewing BWV, it looked as if the Complainant had either attempted to de-arrest the black-clothed individual and been pushed back by officers when she attempted to do so, or refused to leave the area at the same time as that individual and was pushed by an unknown SPD officer causing her to fall down.

When IE#1 contacted the Complainant, the Complainant was lying on the ground and was not responding to officer directives to move. IE#1 shouted at the Complainant to "get out of here." IE#2, who had also ridden up to block off the arrest scene from interference by other protesters, directed the Complainant to "get on your feet and move." The Complainant could be heard stating "I was trying [...] you just threw me." IE#1 then reached toward the Complainant, and the Complainant rolled onto her side and began to scream. After approximately eight seconds of this, IE#1 grabbed the Complainant's backpack strap and dragged her several feet across the gravel path toward the concrete retaining wall. Another officer present directed the Complainant to "move" and gestured with his arms



away from the group of officers and the arrest scene. The Complainant, who was sitting on the ground, told IE#1 to “get away from [her].” IE#1 told the Complainant that if she did not leave the area, she would be taken to jail. The Complainant stood up and made an obscene gesture toward IE#1 while shouting profanity. She did not make any visible attempt to leave the scene despite clear avenues of egress in at least two directions. IE#1 grabbed the Complainant and pushed her slightly toward the low concrete wall, causing the Complainant to land against it, although she did not fall.

Named Employee #1 (NE#1), the sergeant on scene, stepped toward the Complainant and told her to leave the area or go to jail. BWV showed that the Complainant was seated on the low wall with open space behind her where officers were standing by and protesters were walking around. The Complainant turned to look at NE#1 but did not get up. NE#1 virtually immediately grabbed her, lifted her to her feet, and passed her to the officers, saying: “Jail...arrest her.” The Complainant was placed under arrest.

As part of its investigation, OPA interviewed NE#1. He said that he was assigned to disperse the remainder of the demonstrators who had remained in Cal Anderson Park after the protest that had occurred earlier that day. He said that this protest was violent and was declared a riot, with significant property damage and multiple injuries to officers. NE#1 said that the purpose of the last push was to keep the crowd moving and to get them out of the area. While this was going on, NE#1 saw the Complainant in what he described as a “pushing contest” with IE#1. He saw IE#1 push the Complainant back and observed the Complainant land in a seated position on the lip of a reservoir.

NE#1 walked over to the Complainant and told her that she needed to leave the park, or she would be arrested and taken to jail. He told OPA that, given the Complainant’s conduct and the totality of the circumstances, he was not going to give her very much time to comply. He recalled that she responded: “no.” At that point, he told the Complainant that she was under arrest. He lifted her up and he passed her off to other officers.

B. Alleged Misconduct by Unknown SPD Employees

The Complainant alleged the following misconduct against unknown SPD employees: (1) officers were unprofessional towards her; (2) officers did not read her Miranda warnings; (3) an officer caused her phone to be damaged and corrupted video evidence that she recorded; and (4) no arrestees were provided medical treatment at the West Precinct.

With regard to the Complainant’s allegation of unprofessionalism, the specific comments that she detailed in her “video testimony” were not captured on Department video and could not be corroborated. There was BWV, however, of an interaction between the Complainant and two female officers. At that time, the Complainant spoke to the officers about defunding and how the officers – both women of color – were going to be fired first pursuant to comments made by the then-Chief of Police. The officers engaged in a back and forth with the Complainant, at the end of which the Complainant told them that “McDonalds is hiring.” While OPA believed the conversation between the Complainant and the officers was unnecessary and could have been avoided, OPA did not find that it constituted unprofessionalism and returned the matter back to the chain of command to be handled as a Supervisor Action.

The remainder of the allegations are discussed below.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

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.

In assessing the Complainant's arrest, OPA notes that the BWV does not support NE#1's recollection that the Complainant said "no" when told to leave the park or be arrested. OPA also believes that NE#1 reacted very quickly and could have and should have given the Complainant more of an opportunity to comply. While OPA does not think that she would have been cooperative given her demonstrated behavior, it would have provided even more of a basis to arrest.

The above being said, the Complainant could have been arrested simply by a function of her being in that location at the time. Multiple dispersal orders were given, and demonstrators were informed that, if they did not leave the vicinity, they would be arrested. The Complainant did not do so, and she had no legal right to remain in the area. As such, even though NE#1 providing the Complainant additional time to comply with his order would have been optimal, the failure to do so did not vitiate probable cause and her arrest was lawful.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #1

6.150 - Advising Persons of Right to Counsel and Miranda 1. Officers Shall Advise All Arrestees of Their Full Miranda Rights

SPD Policy 6.010-POL-3 requires that arrestees be read their Miranda warnings "as soon as practical" after being taken into custody.

From a review of BWV, none of the officers who arrested the Complainant read her Miranda warnings. In addition, OPA could not find any evidence that any other officers, including those assigned to arrest processing, did so. Given this, it appears that this policy was not complied with by any of the officers who interacted with the Complainant.

This being said, the Complainant was not subjected to a custodial interrogation at any time and, as such, the failure to read Miranda warnings was a technical violation. It was also likely the result of the chaotic nature of the demonstration and, at times, the lack of clear roles and responsibilities between arresting officers and arrest processing officers, which can lead to the failure to provide Miranda warnings. OPA believes this is a systemic issue, rather than misconduct, that is better addressed via a Management Action Recommendation.

Recommended Finding: **Not Sustained (Management Action)**



- **Management Action Recommendation:** OPA requests that, during its planning for upcoming demonstrations and as part of its revisions of its crowd management policies, SPD ensure that officer roles are clarified to ensure that Miranda warnings are read when required.

Named Employee #2 - Allegation #2

6.180 - Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies

As discussed above, the Complainant alleged that an unknown officer caused damage to her cellphone with the purpose of corrupting videos that she had recorded documenting officer misconduct. She said that, once she left SPD custody and tried to view the video, she could not do so.

If an officer did engage in this conduct, it would constitute a clear violation of policy; however, there is simply not a shred of evidence that indicates that this was the case. BWV showed an officer ask the Complainant whether the Complainant wanted the officer to turn off her phone. The Complainant said yes. BWV indicated that the officer then turned off the phone. There was no indication that any other officer ever accessed the Complainant's phone at any other time. Moreover, OPA is aware of no technology available to SPD officers that would allow them to corrupt a phone or, for that matter, any other manner in which they could have done so.

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

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

Named Employee #2 - Allegation #3

16.130 - Providing Medical Aid 1. Recognizing the Urgency of Providing Medical Aid

The Complainant asserted that no arrestees at the West Precinct were provided with medical treatment. The Complainant did not provide any detail concerning this allegation aside from what was in her "video testimony." She did not specifically state that medical attention was not provided to her and, instead, seemed to be referring to other arrestees. However, it is unclear how she would have known this given where she was positioned at the time and her lack of visibility into other areas of the precinct.

SPD Policy 16.130-POL-2(1) concerns the provision of medical aid by officers. The policy specifically provides the following instruction: "Recognizing the urgency of providing medical aid and the importance of preserving human life, officers will request medical aid, if needed, and render appropriate medical aid within their training as soon as reasonably possible."

The Complainant's allegation was disproved by SPD records and video, as well as by Seattle Fire Department (SFD) records. Specifically, this evidence indicated that officers provided medical assistance to several arrestees and that SFD responded to the precinct to provide medical treatment to arrestees on at least three occasions.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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