



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 21, 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	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)
# 3	6.180 - Searches-General – 2(e). Search Incident-to-Arrest / Custodial Search	Not Sustained (Lawful and Proper)
# 4	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

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. One of the involved employees, a sergeant, was on extended leave from SPD at the inception of this investigation. With SPOG’s agreement, OPA made the decision to bifurcate this case and to toll the 180-day deadline for that employee until he returned from leave and issue separate findings with respect to him.



In addition, this case contains multiple allegations against at least one unknown SPD employee. These allegations include whether the unknown SPD officers subjected the Complainant to excessive force, failed to read her Miranda warnings, failed to provide medical assistance to a detainee, and made unprofessional statements to her and others while at the West Precinct. Given that these employees have yet to be identified, the 180-day deadline normally applied to OPA investigations by the Collective Bargaining Agreement between the City and SPOG is inapplicable to those allegations.

The below DCM addresses only those allegations with the February 20, 2021, deadline that applies to the allegations against the three Named Employees who effected the Complainant's arrest. As indicated above, OPA will issue the findings on the remaining allegations in a separate DCM.

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. Narrative of Incident

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.

Named Employee #1 (NE#1), Named Employee #2 (NE#2), and Named Employee #3 (NE#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 Named 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, NE#1 moved forward to assist in keeping other protesters from interfering in the arrest. The individual in the red poncho briefly moved toward NE#1 before retreating and leaving the area. At the time NE#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 NE#1, BWV captured an individual's voice screaming "what the fuck?" NE#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 NE#1 contacted the Complainant, the Complainant was lying on the ground and was not responding to officer directives to move. NE#1 shouted at the Complainant to “get out of here.” NE#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.” NE#1 then reached toward the Complainant, and the Complainant rolled onto her side and began to scream. After approximately eight seconds of this, NE#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 NE#1 to “get away from [her].” NE#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 NE#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. NE#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. A 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. When the Complainant did not make any move to leave, the sergeant directed officers to arrest her.

NE#2 and NE#3 took control of the Complainant’s arms and took her to the ground facedown. NE#1 stood by. The Complainant began to scream “help me” while NE#2 and NE#3 handcuffed her. NE#1 told the Complainant “do not move,” and stated that she was under arrest. The Complainant continued to yell that she had not committed a crime and that officers had pushed and hit her.

NE#1 searched the Complainant incident to arrest. In doing so, another officer appeared to cut the straps of the Complainant’s backpack to facilitate its removal since she was already in handcuffs. While NE#1 conducted the search, she explained to the Complainant that the arrest was for obstruction. The Complainant continued to assert that officers had hit her and a back and forth ensued between NE#1 and the Complainant about the arrest. NE#1 told the Complainant that the arrest process was captured on BWV. The Complainant became more upset during the interaction and began to scream “help me” and “who recorded this?” OPA’s review of BWV did not show that NE#1 raised her voice or made any derogatory comments during this portion of the incident.

After the search, NE#1 attempted to get the Complainant to stand up, but the Complainant would not. NE#1, with the assistance of another officer, tried to lift the Complainant to her feet by the arms. The Complainant continued to resist, causing officers to momentarily pull on her arms when they tried to lift her. Ultimately, a third officer picked the Complainant up by her ankles while NE#1 and the second officer carried her by her arms, shoulders, and jacket.

While being carried, the Complainant stated that she was being “choked” with her jacket. NE#1 and the other officers placed her face down on the ground where she continued to scream. NE#1 stated that she had to search the Complainant and began doing so, checking her pockets and under her outer jacket. While this was happening, the Complainant stated that she was having a panic attack. NE#1 told the Complainant “hey, it’s over, you’re going to jail and that’s the end.” NE#1 began removing the Complainant’s balaclava from her face, and the Complainant said to “stop taking things off [her].”



NE#1 continued the search of the Complainant's person. The Complainant was noncompliant, and NE#1 placed her knee against the middle of the Complainant's back and told her to stop struggling. She reiterated to the Complainant that she was under arrest and told the Complainant that she had to look at her front to ensure she didn't have any property. NE#1 then rolled the Complainant onto her side and briefly searched under her jacket. NE#1 asked the Complainant if she wanted the Seattle Fire Department to respond for the panic attack, but the Complainant did not answer. She began shouting her own name to onlookers and spelling it, yelling for assistance. NE#1 repeated the spelling of the Complainant's name back once. NE#1 finished the search and NE#2 held the Complainant's arm and shoulder to keep her on the ground but did not appear to use any force beyond *de minimis* in order to do so.

NE#1 advised an acting lieutenant and a sergeant that a transport van would be necessary because the Complainant would not walk and collected the Complainant's remaining property from the ground where she was arrested. Afterward she spoke to the Complainant again. The Complainant continued to shout that her arrest was unlawful. NE#1 stated that she was still going to jail and began searching the Complainant's backpack.

The acting lieutenant attempted to speak to the Complainant. The Complainant could be heard stating again that she was having a panic attack while demanding to be let go. She stated that she was afraid of getting coronavirus because her balaclava had been removed and the acting lieutenant was not wearing a mask. When the acting lieutenant began to speak, the Complainant began screaming and continued to do so until the acting lieutenant walked away. NE#1 told NE#2 that he could put the Complainant's balaclava back on if she would stop "freaking out," but the Complainant demanded to be unhandcuffed and released so that she could do it herself. NE#1 told her that would not happen. She continued to shout about her arrest and an officer, potentially NE#2, told her to "shut up" because yelling would not help her. NE#1 walked away to consult with a sergeant about transporting the Complainant. She then returned to the Complainant, who continued to shout that the arrest was improper.

The acting lieutenant and two other officers attempted to lift the Complainant to her feet, but she remained noncompliant. NE#1 grabbed her feet and asked her if she would like to walk. The Complainant refused, and four officers carried her to the transport van.

B. Complainant's Testimony and Witness Statements

Later, the Complainant submitted video testimony to OPA detailing this complaint. When contacted, the Complainant declined to be recorded, and OPA summarized her complaint as follows based on notes taken during the call. She alleged that she was walking in Cal Anderson Park attempting to find a friend with whom she had arrived with at the day's protest. She stated that during the earlier protest she was exposed to "indiscriminate" less lethal munitions and that a blast ball was detonated in Cal Anderson immediately prior to this incident. She alleged that officers struck her with a baton, pushed her, and dragged her on the ground for no reason, and that she was given no opportunity to vacate the area prior to being arrested. She further alleged that officers ignored her statement that she was having a panic attack. She stated that her mask and goggles were removed during the incident and that she never received them after being released. She stated that she did not consent to be searched or to have her backpack removed and searched during the arrest. She stated that she was not Mirandized at the time of the incident.

Some of the Complainant's allegations related to post-arrest conduct. She alleged that she had taken video of the incident or the circumstances surrounding it on her phone, which she secured with a passcode. According to the



Complainant, the video files were “corrupted” when she received the phone back with her property on release and that SPD must have done something to her phone. She also stated that two female officers at the West Precinct made comments to her which she found unprofessional, and that when she complained her handcuffs were too tight officers at the West Precinct did not loosen them. The Complainant alleged that she subsequently suffered a loss of feeling in her thumb and exacerbated pre-existing nerve damage to her shoulder.

OPA also took statements from the Complainant’s partner and the Complainant’s friend. Neither party witnessed the incident itself. The statements of the Complainant’s partner and friend largely related to his efforts to post bail on her behalf and concerned interactions with King County Jail staff, who are not under the jurisdiction of OPA.

The Complainant also referenced a third-party video of the incident that was posted to social media. OPA examined the video, which showed a group of officers surrounding the Complainant. An officer appeared to attempt to lift the Complainant before dropping her. Another officer, NE#1, was depicted dragging the Complainant by her backpack away from the other officers. A group of officers briefly walked past, obscuring the view, and when they moved the Complainant was on her feet. NE#1 was shown pushing the Complainant, who landed on the retaining wall. The sergeant was shown yelling at her. He was then shown pulling the Complainant toward him and two other officers, NE#2 and NE#3, grabbed her arms and took her to the ground. They handcuffed the Complainant and the video ended.

C. OPA Investigation

After receiving the Complainant’s recorded statement and speaking with her and her attorney, this investigation ensued. OPA examined BWV of the incident (summarized above), as well as records from the West Precinct related to the Complainant’s detention there. Subsequently, OPA interviewed the Named Employees.

I. West Precinct Records

With respect to the Complainant’s allegations that she was treated unprofessionally at the West Precinct by two female officers, OPA was unable to identify officers fitting the Complainant’s description. OPA contacted the West Precinct for any security footage showing the Complainant. The West Precinct determined that the Complainant was not held at the West Precinct but was transferred immediately to King County Jail. However, OPA’s investigation determined that she was briefly held in the sally port of the West Precinct with other arrestees to await transfer. This appeared to be broadly consistent with the Complainant’s statement that she was held in a “concrete room.”

BWV of an officer at the West Precinct showed him assisting arrested individuals into a transport van. In the background of the recording, the Complainant could be seen seated in a chair and speaking to another arrestee. BWV did not show any female officers present. The Complainant’s conversation was not audible, but at the time of the recording she was not visibly attempting to talk to any of the officers.

OPA also examined the log sheet for officers at the West Precinct around the time the Complainant was held there for transport. Based on the log sheet, OPA did not identify any female officers assigned to the precinct at or around the time of the Complainant’s detention there. While this does not conclusively eliminate the possibility that the Complainant interacted with one or more female officers at the precinct, OPA is unable to identify an officer allegedly responsible for the conduct the Complainant alleged.



II. Named Employee Interviews

OPA interviewed the Named Employees. In her interview, NE#1 stated that, on the date in question, a riot was declared and she and other officers had been ordered by SPD commanders to disperse the crowd present at the area around 11th and Pine based on earlier acts of violence. NE#1 encountered the Complainant in Cal Anderson Park during this dispersal.

NE#1 stated that the Complainant did not comply with the general dispersal order and ended up behind the front line of officers. She did not make the decision to arrest the Complainant and was not the “initial arresting officer.” However, she stated that she did book the Complainant on obstruction charges. NE#1 explained that, in her opinion, arresting the Complainant was the best option available to officers at the time because the Complainant was noncompliant and behind the line of officers. NE#1 stated that the Complainant was getting in the way of the officers executing the dispersal order and clearing the area. NE#1 stated that because the police line had to stay together, it was “stuck” until the Complainant voluntarily departed or was arrested.

With regards to the force used against the Complainant, NE#1 stated that she believed it fell within Department policies and was *de minimis* in nature. She stated that officers are trained to use *de minimis* force to push and move large groups of people and that this is what she was attempting to do with the Complainant. She stated that she pushed and attempted to move the Complainant, and that the Complainant refused to move or leave enough times that the decision was made to arrest her. NE#1 explained her decision to drag the Complainant by reference to the fact that the police line was “stuck” based on her refusal to move.

NE#1 stated that she had minimal opportunities for de-escalation under the circumstances. She said that her options were limited to giving the Complainant “opportunities to leave” and verbal commands to do so. She stated that she used pushes to separate the Complainant from the officers and the other arrestee, but that the Complainant would not voluntarily leave.

NE#1 stated that with respect to alleged unprofessional behavior, she did not use demeaning language directed at the Complainant and did not use profanity. She stated that she attempted to explain what was happening to the Complainant as it occurred. With respect to NE#1 repeating the Complainant’s name back to her as the Complainant spelled it, NE#1 stated that she did not do so to mock the Complainant. Rather, at the time she did not know that the Complainant had ID and repeated the spelling of the Complainant’s name as a memory trick. NE#1 also stated that when the Complainant stated she was having a panic attack, NE#1 did not observe any symptoms but offered to have the Seattle Fire Department conduct a medical examination. The Complainant did not respond and continued to shout.

OPA interviewed NE#2. NE#2 described the lead-up to the incident consistent with the above. He stated that a sergeant on the scene directed the Complainant to leave and, when she did not, ordered her arrest. At that time, NE#2 went to place her into custody. He stated that he believed she was arrested for failure to disperse and obstruction. NE#2 stated that the Complainant actively resisted being placed under arrest and that it took multiple officers to gain control of her so that she could be handcuffed. NE#2 stated that her subsequent refusal to walk to the transport van required officers to carry her there.



NE#2 described the force he used. He described the amount of force as *de minimis* and stated that he used no more force and body leverage than needed to overcome the Complainant's resistance. NE#2 stated that the force was reasonable in view of the Complainant's resistance, necessary to affect an arrest based on probable cause, and proportional because he used only the force needed to overcome resistance.

NE#2 stated that he did not recall any officer striking the Complainant with a baton and did not recall her making that complaint at the time (OPA notes that review of BWV indicated that the Complainant talked about being hit with a "nightstick"). NE#2 stated that to his recollection, the officers who arrested the Complainant were all bicycle officers, and that bicycle officers are not equipped with batons.

OPA interviewed NE#3. NE#3 stated that leading up to the incident, he heard many officers giving dispersal orders and saying "leave the area" to any who remained. NE#3 said he became aware of the incident when he saw officers attempting to take the Complainant into custody. He did not know who made the decision to arrest the Complainant but went to assist. He said his force was de-minimis in nature and involved guiding the Complainant's arm and hand back to be cuffed.

NE#3 stated that when he spoke to the Complainant, he tried to do so calmly and in a neutral tone to "try to bring her down a bit." He did not believe that it was effective. NE#3 stated that he did not know if anyone read Miranda to the Complainant but did not himself do so.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Officers shall only use "objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective." Whether force is reasonable depends "on the totality of the circumstances" known to the officers at the time of the force and must be balanced against "the rights of the subject, in light of the circumstances surrounding the event." (SPD Policy 8.050.) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where "no reasonably effective alternative to the use of force appeared to exist" and "the amount of force used was reasonable to effect the lawful purpose intended." (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

OPA finds that the force used by NE#1 did not violate policy. In doing so, OPA analyzed the types of force NE#1 appeared to use on BWV, as well as the Complainant's account. BWV showed that NE#1 used force on roughly three occasions during this incident: first when she dragged the Complainant by her backpack for several feet, second when she used a series of pushes to direct the Complainant away from the incident scene toward the retaining wall, and third when she held the Complainant by her arm to carry her and later to direct her movements during the search incident to arrest.

OPA assesses the force used separately. The first use of force, dragging the Complainant over a gravel path, was potentially the most severe. While the Complainant was heavily clothed and noncompliant, it was conceivable that such force could have resulted in pain and abrasions and, indeed, some of the evidence the Complainant submitted



suggested that it did. However, the force was reasonable given the circumstances because the Complainant was at the time physically blocking the movements of the police line and mere feet from another arrest, engaging several officers and creating a plausible risk that she would interfere with the arrest. It was therefore reasonable for NE#1 to use some force to mitigate that possibility. It was also necessary for NE#1 to do so given that the Complainant's continued presence would interfere with the crowd dispersal operation. Finally, the force was proportional to the risks the Complainant's continued presence posed and her demonstrated refusal to vacate the area when ordered.

The second use of force, which involved NE#1 pushing or shoving the Complainant in the direction of a hip-high concrete retaining wall, likewise did not violate policy. At the time, the Complainant had been given numerous orders to depart. Instead of doing so, she stood up, shouted profanity at NE#1, and continued her refusal to leave despite two clear paths of egress visible on BWV. The shove, which OPA assesses as *de minimis* force, was reasonable to induce her departure without further obstruction and to prevent her from further interfering in the arrest or with the police line. It was necessary given clear indications that the Complainant would not obey verbal orders. Finally, it was proportional to the Complainant's refusal to leave and the need to secure the area.

The third use of force, which involved NE#1, NE#2, and NE#3 using various holds and control techniques to help take the Complainant into custody, likewise did not violate policy. Officers with probable cause to arrest a person may use no more force than necessary to do so and overcome any resistance. Here, it was reasonable for NE#1 to use *de minimis* force to control the Complainant's movements during the arrest process and subsequent search, and to work with other officers to carry her when she refused to walk. It was also necessary and proportional based on the Complainant's refusal to cooperate and general level of resistance, which required NE#1 and the other officers to use some force to take her into custody. NE#2 and NE#3 did not use any other force on the Complainant.

Finally, OPA did not uncover any evidence tending to suggest that NE#1 or any other officer struck the Complainant with a baton. First, none of the three named employees, including NE#1, possessed a baton or other impact weapon. Second, no baton-equipped officers were shown on BWV in the Complainant's immediate proximity, although some officers nearby did have batons. Therefore, while OPA cannot yet conclusively state that no SPD officer struck the Complainant with a baton, it can conclude that none of these three officers did.

For the above reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against all of the Named Employees.

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

Named Employee #1 - Allegation #2

8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

"De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance." (SPD Policy 8.100-POL)

The policy further instructs that: "When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution." (SPD Policy 8.100-POL-1) Officers are also required, "when time and circumstances permit," to "consider



whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors" such as "mental impairment...drug interaction...[and/or] behavioral crisis." (*Id.*) These mental and behavioral factors should be balanced by the officer against the facts of the incident "when deciding which tactical options are the most appropriate to bring the situation to a safe resolution." (*Id.*)

The policy gives several examples of de-escalation, which include: mitigating the immediacy of the threat to give officers time to use extra resources and to call more officers or specialty units; and increasing the number of officers on scene to thus increase the ability to use less force. (*Id.*) Other examples of de-escalation include, but are not limited to:

- Placing barriers between an uncooperative subject and officers;
- Containing the threat;
- Decreasing exposure to the potential threat by using distance, cover and concealment;
- Avoidance of physical confrontation unless immediately necessary to protect someone or stop dangerous behavior;
- Using verbal techniques, such as "Listen and Explain with Equity and Dignity" (LEED) to calm an agitated subject and promote rational decision making;
- Calling extra resources, including CIT officers and officers equipped with less-lethal tools.

(*Id.*) De-escalation is inarguably a crucial component of the Department's obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department's policy and expectations.

OPA finds that NE#1 did not violate the de-escalation policy. In her interview, NE#1 stated that she first used verbal commands and, when those were unsuccessful, she used what she described as *de minimis* force to induce the Complainant to leave voluntarily in order to preclude the need for an arrest. OPA's review of BWV showed that NE#1 did issue verbal commands prior to going hands-on with the Complainant. In addition, it showed that NE#1's uses of force were, initially, premised on creating space and directing the Complainant away from officers, rather than limiting her movements or provoking a physical confrontation.

Further, OPA does not read the de-escalation policy to preclude enforcement action where it is legal and necessary. Here, the Complainant refused numerous lawful orders to leave an area where a riot had been declared and multiple dispersal orders given. Her presence in proximity to an ongoing arrest and in obstruction of police actions created risks; officers could not read her mind to know that her intentions were peaceful or that she would leave if given additional time. Indeed, OPA is not certain based on her conduct that she would have done so. In these circumstances, the decision to use some force and, ultimately, to arrest did not violate the de-escalation policy. Moreover, even if the decision to arrest was too hastily arrived at, this was ultimately the responsibility of the sergeant who authorized and directed that the arrest occur, not NE#1.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #1 - Allegation #3

6.180 - Searches-General – 2(e). Search Incident-to-Arrest / Custodial Search

SPD Policy 6.180-POL-2 concerns searches and, specifically, those types of searches that are justified by an exception to the general requirement of a search warrant. At issue in this case is the exception for a search incident to arrest, which is detailed in SPD Policy 6.180-POL-2(e). The policy instructs that: “Officers may only search personal items such as wallets, backpacks, or other bags if the subject had them in his or her actual and exclusive possession at or immediately preceding the time of his or her arrest.” (SPD Policy 6.180-POL-2(e).)

The search of the Complainant’s person, including her pockets and those items attached to her, was a valid search incident to arrest and thus, did not violate this policy or the law. As this policy states, an officer may search both an arrestee’s person as well as any items such as backpacks that were in the subject’s actual and exclusive possession at the time she was arrested. This policy is lifted verbatim from *State v. Brock*, 184 Wn.2d 148, 154 (2015). That case, concerning the search of an arrestee’s backpack which was on his person at the time of arrest but not at the time of search several minutes later, is indistinguishable from the facts here. Given that *Brock* controls, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #4

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

At various points during her interaction with the Complainant, particularly at the beginning stages, NE#1 made statements that appeared to antagonize the Complainant. For example, at one point she told the Complainant: “Congratulations, you’re still going to jail.” At another point, she told the Complainant: “Stop yelling, Jesus.” On a third occasion, NE#1 went back and forth with the Complainant concerning her presence at the demonstration and refusal to disperse and told her that she was accountable for her own actions and decision-making.

In addition, early on in their interaction, the Complainant spelled her name for other demonstrators and yelled her last name. NE#1 repeated her name back to her in a sing-song type manner. While the Complainant felt that this was improper and purposed to demean her, NE#1 asserted that she did so as a mnemonic technique in order to remember the Complainant’s name if needed and if she did not later provide it. NE#1 said this was common with demonstrators who were arrested.



Ultimately, while certain parts of their interaction felt unnecessary, OPA does not believe that NE#1 violated the Department's professionalism policy. NE#1 was clearly frustrated with the Complainant and reacted as such at times. However, the Complainant was loudly screaming throughout much of their interaction, failed to comply with virtually all of the officers' directions to her, and used profanity and other insulting language on several occasions towards NE#1. This does not excuse NE#1 from being professional, but it certainly is mitigating. Lastly, OPA does not have sufficient evidence to contradict NE#1's assertion that she was using a mnemonic technique when she repeated the Complainant's name back to her. That being said, even if she was not doing so, this would not, in and of itself, warrant a Sustained finding.

For the above reasons, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should go over her interaction with the Complainant and discuss alternative communications styles she could have employed. This is important even where NE#1 may be frustrated or is dealing with a difficult individual. This counseling and retraining should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #2 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

For the same reasons as above (see Named Employee #1 – Allegation #1) OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

For the same reasons as above (see Named Employee #1 – Allegation #1) OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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