



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 30, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0226

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.180 - Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies	Not Sustained (Lawful and Proper)
# 2	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director's Findings
# 1	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 2	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report	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 Named Employee #2 falsely arrested him, that Named Employee #1 improperly held and searched his phone, and that both Named Employees completed inaccurate reports.

SUMMARY OF INVESTIGATION:

Named Employee #2 (NE#2) and another officer were dispatched to an assault call. It was reported that two employees of a business had gotten into a physical fight and one of them had significant injuries. When NE#2 responded he observed the scene and spoke with one of the involved parties – the Complainant in this case. The Complainant said that the other motorist hit his car with an open door several times and, when the Complainant confronted him, the other motorist bumped the Complainant slightly with the vehicle. The Complainant said that the other motorist got out of the vehicle and swung at him. The Complainant told NE#2 that he defended himself. The Complainant later described striking the other motorist twice with an open hand. NE#2 observed the Complainant's car and did not see any damage from it being hit by a door.

NE#2 saw that the other motorist was on the ground with significant injuries, including to his head. The other motorist was largely unresponsive, and the officers believed it likely that he had suffered a traumatic brain injury.



The officers spoke to the other motorist's children, who had been seated in the vehicle. They said that, while leaving the business, the other motorist lightly bumped the Complainant's vehicle. The Complainant began filming the other motorist and this caused the other motorist to get mad and exit the vehicle. The children said that they did not see what happened next, but, when they got out of the vehicle, they saw the other motorist lying on the ground. They asked the Complainant what happened, and he told them that he "kicked [the other motorist's] ass."

The Complainant showed the officers a video he took of the incident. The video captured a partial view of what occurred. In the video, the Complainant could be heard saying "woah" and telling the other motorist that he was going to call the police because the other motorist assaulted him. The other motorist could be heard approaching the Complainant and asking him: "What is your problem?" The video stopped shortly thereafter.

NE#2 and the other officer made the decision to arrest the Complainant after consulting with a supervisor. They noted that there was no damage to the Complainant's car, that he was not injured while the other motorist had significant injuries, and that the Complainant's recitation of his actions – two open hand strikes – was not consistent with the level of injuries suffered by the other motorist. They believed that the totality of the evidence undercut the Complainant's assertion that he was acting in self-defense.

After he was arrested, the Complainant was searched. His phone was entered into evidence. The phone was later collected from evidence by Named Employee #1 (NE#1), a Homicide Detective. When she picked up the phone, NE#1 was informed that someone had been calling about it. NE#1 later received a call from the Complainant. She documented that she asked him whether he would provide consent for her to search the phone for evidence and he replied: "absolutely not." She advised him that she would obtain a warrant; however, they ultimately collectively decided that the Complainant would come to SPD Headquarters and provide written consent. The Complainant arrived at Headquarters with a woman. The Complainant and the woman met with NE#1 and another Detective. NE#1 asked the Complainant to turn the phone completely off because she believed that it was still recording. The Complainant pushed back on this request but ultimately did so. The Detectives told the Complainant and the woman that they needed to enter SPD Headquarters to open the phone and gave them visitor badges. The Complainant began to question why Headquarters was considered a secure area and was not open to the public. He referenced that his tax dollars paid for the building. NE#1 characterized him as acting confrontationally at that time. She subsequently made the determination that she would not seek consent and that, instead, she would pursue a warrant. She informed the Complainant of this, ended their interaction, and retained the phone. NE#1 later obtained a valid warrant signed by a judge.

NE#1 completed her investigation and submitted the case to the King County Prosecuting Attorney's Office (KCPAO) for a charging decision. She did so even though she believed it likely that the KCPAO would decline to file charges. The KCPAO ultimately dismissed the case, citing insufficient evidence to rebut the Complainant's self-defense claim at trial.

The Complainant later filed an OPA complaint against both NE#1 and NE#2. While the Complainant made a number of assertions in the complaint, OPA reduced them to the following claims. First, he contended that NE#2 arrested him without sufficient probable cause and inaccurately documented this incident. Second, he claimed that NE#1 improperly held and searched his phone, as well as that she also completed an inaccurate report.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

SPD Policy 6.180-POL-2 governs searches, including of property. As a general matter, searches must be effectuated pursuant to a warrant or some exception to the warrant requirement. One such exception is consent.

Here, the Complainant asserted that NE#1 improperly held his phone and did not return it to him. He also asserted that it was invalidly searched. Both of these allegations are disproved by the evidence.

First, it is clear that NE#1 had a legal right to hold the phone. The phone was collected as evidence of an assault as the arresting officers had reason to believe that there was evidence stored in it, including videos. After NE#1 collected the phone from evidence, she spoke to the Complainant in an attempt to gain his consent. He initially refused to provide consent but later agreed to give written consent. However, NE#1 deemed the Complainant to be uncooperative once she met with him and she doubted his ability to provide informed consent. As such, she made the decision to hold the phone while she sought a warrant. Again, this was permitted by law.

Second, there is no evidence suggesting that any SPD employee, including NE#1, attempted to search the phone prior to obtaining the warrant.

For these reasons, OPA finds that NE#1 complied with this policy and recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #2

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report

SPD Policy 15.180-POL-5 concerns report writing by officers. Relevant to this case, such reports must be thorough, complete, and accurate.

OPA finds no evidence indicating that NE#1's report concerning this incident and the investigation steps she completed was inaccurate. Moreover, to the extent the Complainant is upset by the report's characterization of him as "uncooperative" and "confrontational," this was NE#1's perception and, even if the Complainant disagrees with this, it does not make the report contrary to policy. Absent clear evidence that the report falsely stated information, which the Complainant did not provide, OPA declines to find that it was improper.

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

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

Named Employee #2 - Allegation #1

6.010 - Arrests 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.

When evaluating the same evidence available to NE#1 and the other officer, OPA concludes that their determination of probable cause for the Complainant's arrest was reasonable. Notably, the officers believed that the totality of the evidence undercut the Complainant's claim of self-defense, citing to the lack of damage to the Complainant's car, his not being injured at all, and the significant injuries suffered by the other motorist. They also believed that the other motorist's injuries were inconsistent with the actions that the Complainant described taking. All of this led the officers to believe that the Complainant was the primary aggressor and should be arrested for assault. Moreover, the officers screened their decision with a supervisor, and it was approved.

Given that OPA finds the arrest to have been legally supported, it recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #2

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report

In reviewing NE#2's report, OPA finds that it was consistent with the BWV. As such, OPA believes that it was accurate and disagrees with Complainant's assertion to the contrary. Indeed, OPA identified no portion of the report that was clearly inconsistent with the other evidence in this case.

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

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