



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 1, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0343

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.300 - Use of Force Tools 3. Officers Will Use OC Spray, Including for Crowd Dispersal or Protection, Only When Such Force is Objectively Reasonable, Necessary, and Proportional	Not Sustained (Lawful and Proper)
# 2	8.300 - Use of Force Tools 4. When Feasible, Officers Shall Issue a Verbal Warning to the Subject, Fellow Officers and Other Individuals Present Prior to Using OC Spray	Not Sustained (Lawful and Proper)
# 3	8.300 - Use of Force Tools 9. Officers Shall Assist Exposed Subjects with Decontamination and Medical Aid, As Soon as Reasonably Possible	Not Sustained (Lawful and Proper)
# 4	8.300 - Use of Force Tools 6. Officers are Required to Report the Use of OC Spray, Regardless of the Effect, as Well as the Decontamination Procedures That Followed	Not Sustained (Training Referral)
# 5	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

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)

Named Employee #3

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)

Named Employee #4

Allegation(s):		Director’s Findings
# 1	8.200 – Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

Named Employee #5

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



# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
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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 #1, Named Employee #4, and Named Employee #5 used excessive force on the Subject, including Named Employee #1 pepper spraying her, as well as were unprofessional towards her. The Complainant further alleged that Named Employee #2 and Named Employee #3 improperly arrested the Subject. Lastly, OPA alleged that Named Employee #1 may have failed to provide a warning before using OC spray, may not have promptly provided the Subject was medical attention, and may not have properly documented the lack of a warning.

SUMMARY OF INVESTIGATION:

On June 1, 2020, SPD bicycle unit officers were riding to assist other officers in responding to a demonstration that had become violent. As they did so, they observed a car stopped in the road. While the bicycle officers rode by, the car reversed towards them. The officers identified that a woman was driving the car and a man was in the front passenger’s seat. Three bicycle officers later reported that the car struck an officer and the officer who was struck confirmed this. The bicycle officers believed the driver’s actions to be intentionally purposed to hit them. The car then drove away from the scene. The car was tracked to a residence in Seattle based on the license plate. The Subject, who lived at the residence, was also identified as the driver.

Officers assigned to the Gangs Unit, which included the Named Employees, were tasked with arresting the Subject. On June 5, 2020, the Named Employees responded to the Subject’s residence. They pulled an unmarked police vehicle in front of the Subject’s driveway, stopping in front of her car. At that time, the Subject was in the front driver’s seat with her seatbelt on. The Complainant was in the front passenger’s seat and their child in common was sitting in the back. Named Employee #1 (NE#1) and Named Employee #5 (NE#5) drove up in another police vehicle that was equipped with emergency lights and sirens and In-Car Video (ICV). The emergency equipment and the ICV were both activated. The officers also recorded Body Worn Video (BWV).

NE#1, Named Employee #4 (NE#4), and NE#5 approached the Subject’s car on foot. NE#1 approached the passenger’s side and NE#4 and NE#5 approached the driver’s side. The Subject was told to get out of the car, and she responded that she could not do so. The officers continued to ask her to get out and NE#1 told her that she was under arrest. NE#1 again told her to get out of the car and said that, if she did not do so, she would be “extracted” and potentially charged with resisting arrest. She asked why she was being arrested and she was told that it was for “assault.” The door was opened, and NE#4 reached around the Subject and undid her seatbelt. Both NE#4 and NE#5 began trying to pull the Subject out of the car without success.

NE#1 walked around the back of the car from the passenger’s side to try to help NE#4 and NE#5. After continuing to struggle with the Subject, NE#1 walked back to the passenger’s side and removed the Complainant from the car. The Complainant got out and removed the child. He and the child stood to the back right of the car near the entrance to the residence. NE#1 got into the passenger’s side and tried to push the Subject out of the car. At that time, NE#4 exclaimed that the Subject struck him in the face. The Subject positioned herself with her feet up and pressed against



the dash in order to prevent herself from being removed from the car. She yelled “rape” repeatedly and claimed that an officer had his hand on her neck, and she could not breathe. NE#1 stated that the Subject was “kicking the heck” out of him. NE#1 then took out an OC canister and sprayed the Subject once. She ceased her resistance and NE#4 was able to get her out of the car and to handcuff her.

NE#4 walked the Subject to the police vehicle and the Complainant began to advance towards them. NE#5 stepped in front of the Complainant and held him back, warning him not to intervene. A crowd of people began to amass on the street and sidewalk, watching what was going on. At that point, NE#4 offered the Subject medical assistance and she accepted. The officers transported the Subject from the scene. Both NE#1 and NE#4 complained of injuries from this incident. NE#1 documented bruising to his shin from when he was kicked by the Subject.

The Complainant later filed a OPA complaint, alleging that the Named Employees improperly arrested the Subject and subjected her to excessive force. This investigation ensued.

As part of its investigation, OPA reviewed the ICV and BWV, which fully captured what occurred. OPA also reviewed the documentation completed by the officers. Lastly, OPA made multiple unsuccessful attempts to interview the Subject but was able to interview the Complainant. He said that he and the Subject did not know why they were being arrested and that the officers would not tell them. He said that the officers tried to open the doors but were unsuccessful. He recalled that the officers said that they would break the windows and used profanity towards him and the Subject. The Complainant recalled that the Subject would not get out of the car because she did not understand why she was being arrested. He stated that, ultimately, officers pulled her out by her neck. He said that an officer pepper sprayed her and that she suffered bruising to her arms. He heard officers say that the Subject kicked and punched them. He did not see this occur and he said that it would have been difficult for the Subject to engage in those actions given her and the car’s positioning.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.300 - Use of Force Tools 3. Officers Will Use OC Spray, Including for Crowd Dispersal or Protection, Only When Such Force is Objectively Reasonable, Necessary, and Proportional

SPD Policy 8.300-POL-3 governs the use of OC spray. The policy states that the deployment of OC spray may be used for self-protection and then only when reasonable, necessary, and proportional.

OPA finds that NE#1’s application of OC spray was consistent with policy.

First, at the time he used OC spray, three officers had been trying to remove the Subject from the car without success. Notably, at the time they were doing so, they had the legal authority to take her into custody and, consequently, the right to use force if needed to effectuate this goal. Not only did the Subject physically resist the officers, but she struck NE#4 with her hand and kicked NE#1, causing him to suffer an injury. Given this, the use of OC spray to end the Subject’s physical resistance and to quickly take her into custody was reasonable.

Second, the force was necessary given that other lower-level force options had been unsuccessful, and the Subject failed to comply with numerous orders from the officers to stop and to get out of the car. Moreover, from OPA’s



perspective, the other possible force options available to NE#1 at that time would have all constituted a higher level of force. NE#1 thus made the right decision to use OC spray as opposed to strikes, for example.

Third and last, the force was proportional to the physical threat posed by the Subject and the actual harm she caused to officers.

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 #2

8.300 - Use of Force Tools 4. When Feasible, Officers Shall Issue a Verbal Warning to the Subject, Fellow Officers and Other Individuals Present Prior to Using OC Spray

SPD Policy 8.300-POL-4 requires that, where feasible, officers must provide a verbal warning prior to using OC spray. NE#1 did not do so here and, as such, this allegation was classified for investigation.

NE#1 explained that, given the Subject's ongoing physical resistance (including kicking him) and her repeated refusal to obey orders, he did not feel that it was safe or feasible to provide a warning prior to using OC spray.

OPA agrees that this decision was reasonable under the circumstances. NE#1 had an interest in ending the ongoing altercation and doing so quickly. Moreover, OPA concurs that, given the Subject's behavior, the warning would have been futile.

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

8.300 - Use of Force Tools 9. Officers Shall Assist Exposed Subjects with Decontamination and Medical Aid, As Soon as Reasonably Possible

SPD Policy 8.300-POL-9 requires that officers assist subjects affected with OC spray with decontamination and medical aid as soon as reasonably possible.

Here, virtually immediately after being pepper sprayed, the Subject was removed from the car and brought into fresh air. While NE#1 did not personally offer the Subject medical assistance, NE#4 did so when the Subject was placed into the police vehicle. NE#4 explained that this delay was based on the need to ensure that the scene was secure given that a crowd had been amassing in the near vicinity and to let the situation calm down.

Given the above, OPA finds that NE#1 did not violate this policy. Specifically, the Subject was offered medical assistance by an officer and the time lapse between the pepper spraying and the offer of medical assistance was, in OPA's opinion, reasonable. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #1 - Allegation #4

8.300 - Use of Force Tools 6. Officers are Required to Report the Use of OC Spray, Regardless of the Effect, as Well as the Decontamination Procedures That Followed

SPD policy 8.300-POL-6 governs the reporting and documentation of OC spray deployments. This includes the requirement of documenting whether a warning was provided and, if not, the reason for that. While NE#1 properly documented the force he used, he did not report the lack of a warning and why one was not issued. He recognized his failure to do so at his OPA interview and stated that he was not aware of this policy requirement at the time.

Though OPA finds that NE#1 acted contrary to this policy, this is the first time he has done so during his career and he acknowledged his error. As such, OPA believes that retraining rather than discipline is the appropriate result. Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1 should be reminded of the requirement that he document an OC spray warning or the lack thereof. He should be counseled to ensure compliance with this policy moving forward. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #5

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

The Complainant asserted that NE#1, NE#4, and NE#5 acted unprofessionally during this incident, including when they used profanity towards him and the Subject and threatened to break the windows of their car.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (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.*)

Based on a review of the BWV, there is no indication that any of the Named Employees used profanity towards the Subject or Complainant during this incident, including when trying to extract the Subject from the car. While NE#5 did at one point use a curse word when referring to the car door handle, he made this statement under his breath and it was not directed at anyone in the car or purposed to be an insult.

In addition, while NE#1 did at one point tell the Complainant that he would break the window if the Complainant rolled it up, this did not constitute unprofessionalism. Indeed, given the Subject’s continued resistance and refusal to exit the car coupled with the officers’ need to take her into custody quickly and safely, breaking the window could very well have been justified.



Accordingly, OPA finds no evidence that NE#1, NE#4, and NE#5 violated the Department's professionalism policy and recommends that this allegation be Not Sustained – Unfounded as against all three officers.

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

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

The Complainant alleged that the Subject was subjected to an improper warrantless arrest. OPA classified this allegation for investigation against the lead detective – Named Employee #3 (NE#3) – and the supervising Sergeant who approved the arrest – Named Employee #2 (NE#2).

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.

At the time of the arrest, the Named Employees were aware that bicycle officers claimed that a car belonging to the Subject backed towards them, including striking one officer. That officer confirmed in a report that he had been struck. The Named Employees also knew that the Subject had been specifically identified as the person who was driving the car at the time.

As part of its investigation, OPA reviewed the BWV recorded by the bicycle officers from June 1. The video showed the Subject's car parked facing across the street. As bicycle officers rode by, the Subject began reversing, striking a bicycle officer with the rear of her car and nearly hitting others. She then drove off. As such, OPA was able to confirm that the Subject did, in fact, hit an officer with her car, verifying the legal basis to believe that she committed an assault.

Even if the Subject did not intend to strike the officer with her car, this did not affect the probable cause that existed to take her into custody. The Subject's intent, or lack thereof, was a defense that she was entitled to present during her prosecution but did not preclude her arrest.

Given the above, OPA finds that there was probable cause to arrest the Subject and, accordingly, recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#2 and NE#3.

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

Named Employee #3 - Allegation #1

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

For the same reasons as stated above (see Named Employee #2 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.



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

Named Employee #4 - 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. 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 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

The force used by NE#4 and NE#5 was completely captured on BWV. The video indicated that both officers tried to pull the Subject out of the car without success because of her resistance. NE#5 then walked over to the passenger’s side while NE#4 continued to try to pull the Subject out. To do so, he used a trained head control, which involved hooking one of his arms over the Subject’s arm and putting his other hand at the back of the Subject’s head and pushing down while pulling her forward. NE#4 felt that this was his best option given the Subject’s resistance and her continued physical assaults towards officers. There was no evidence supporting the Subject’s assertion that NE#4 made contact with her neck at any time or compromised her breathing through his actions. Once the Subject was out of the car, both NE#4 and NE#5 ceased using force.

OPA finds that this force was appropriate under the circumstances. The force used was only that needed to try to get the Subject out of the car and was reasonable, necessary, and proportional, as well as consistent with Department training. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#4 and NE#5.

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

Named Employee #4 - Allegation #2

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

For the same reasons as stated above (*see* Named Employee #1 – Allegation #5), OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #5 - Allegation #1

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

For the same reasons as stated above (*see* Named Employee #4 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #5 - Allegation #2

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

For the same reasons as stated above (see Named Employee #1 – Allegation #5), OPA recommends that this allegation be Not Sustained – Unfounded.

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