



## CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 23, 2020

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0332

### Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	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 (Management Action)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 3	8.300-POL-9 Use of Force – NECK AND CAROTID RESTRAINTS 1. Officers Are Prohibited From Using Neck and Carotid Restraints Except When Deadly Force is Justified	Not Sustained (Unfounded)
# 4	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Training Referral)
# 5	6.010-POL - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 6	5.001 - Standards and Duties 14. Retaliation is prohibited	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 Subject alleged that the Named Employee, a bicycle officer, failed to de-escalate prior to using excessive force when arresting the Subject. The Subject also alleged that the Named Employee placed him in a chokehold, arrested him without cause, and did so because he was exercising his First Amendment rights. Lastly, it was alleged that the Named Employee failed to properly report his force.

#### **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.

The specific incident underlying this investigation occurred on May 31, 2020, the third day of protests. On that date, Named Employee #1 (NE#1) was assigned to a bicycle squad tasked with crowd management duties for the ongoing protests. At the time, his squad was riding parallel to protesters marching in the street on Boren Avenue. A



Lieutenant ordered the unit to move nearer the front of the group of protesters. Because the protesters were marching primarily in the street, the bicycle officers traveled on the sidewalk.

A video later posted online depicted an SPD officer, ultimately identified as NE#1, riding on his bicycle and passing an individual—the Subject in this case. NE#1 appeared to attempt to pass the Subject when they made physical contact with each other. NE#1 dismounted his bicycle and took the Subject into custody. The video showed NE#1's arm around the Subject's left shoulder and it appeared possible that NE#1 made contact with the Subject's neck area during the arrest. OPA received complaints related to this video, and this investigation ensued.

### **A. Body Worn Video**

Body Worn Video (BWV), as well as third-party video, depicted NE#1's squad moving along the sidewalk. The BWV showed NE#1 riding immediately behind another officer as they attempted to navigate the crowded sidewalk, passing several individuals walking abreast including the Subject. At the time he passed the Subject, the first officer dismounted from his bicycle and walked beside it. By doing so, he was able to pass the Subject with incidental contact.

NE#1 was riding behind the first officer. NE#1's BWV depicted that, initially, he was following the first officer closely, which is a trained tactic that allows the bicycle squad to maintain unit cohesion and move as a group through crowds. The BWV showed that, when the first officer passed the Subject, a gap was created between the first officer and NE#1. The Subject appeared to step into the gap created, and NE#1's BWV depicted him reaching up off his handlebars and out of view, as if to tap the Subject on the shoulder or push him out of the way. Third-party video showed NE#1 reaching up to tap the Subject on the back or backpack.

The third-party video showed that the Subject turned to speak to NE#1 and that they were briefly beside each other. The Subject made a pointing gesture which appeared to be directed to NE#1 and referencing the amount of space or the presence of a crowd. The third-party video showed the Subject's arm moving and NE#1's bicycle move slightly down to the side, as if bumped by the Subject as NE#1 passed him. Similarly, NE#1's BWV showed jostling consistent with being bumped or pushed slightly in the moments before NE#1 took the Subject into custody. From the BWV, it appeared that, after seeming to be bumped by the Subject, NE#1 fell slightly to the right where his fall was caught by a concrete wall. OPA notes that, while there were other people in the area, the space to the Subject's left was clear at the time of the contact between him and NE#1 on his right.

Third party video as well as the BWV from the lead officer captured NE#1's arrest of the Subject. The video showed NE#1 reaching up with his left arm behind the Subject's back, grabbing the Subject by his sweatshirt on the left shoulder. NE#1 pulled the Subject over the handlebar or front wheel of his bicycle, causing the Subject to lose his balance and his left foot to leave the ground. As he dismounted his bicycle, NE#1 brought his other arm up to wrap the Subject's right shoulder. From a preliminary review of the video, it appeared that NE#1 placed his right arm over the Subject's upper chest or neck while using his left arm to control the Subject's left arm. Using his left arm, NE#1 pulled the Subject to the left and down, and NE#1's right arm was shown pointing directly downward with his palm flat against the Subject's chest. The Subject raised his arms and resisted being pulled down to the concrete, and NE#1 used his left arm to exert pressure on the Subject's right shoulder, causing NE#1's left arm to cross the Subject's chest. The resulting position placed the Subject's face in the crook of NE#1's elbow. During this interaction, another individual moved in and attempted to de-arrest the Subject. That individual grabbed the Subject by the arm momentarily before officers who had been following NE#1 moved in and separated them.



The BWV from the lead officer also showed this portion of the arrest. NE#1 pulled the Subject backward into a planter of bushes, causing the Subject to fall on top of NE#1. A separate third-party video showed that, as soon as the Subject lay on his back, NE#1 pulled his arms up above his head and rolled him over onto his stomach. NE#1's arm stopped being in contact with the Subject's upper body. In total, this took approximately five seconds. After rolling the Subject over, NE#1 handcuffed him and placed him under arrest for obstruction.

## **B. Screening and Force Review**

After the arrest, the Subject was taken to a nearby SPD transport van and was then transported to the West Precinct. While at the precinct, the Subject was placed in a holding cell. NE#1's BWV showed that he did not screen the arrest with a supervisor while in the field since no Sergeants appeared to be available.

Ultimately, a Sergeant completed an arrest screening report for the Subject. That report stated that the screening took place at the precinct and that the Subject indicated that he was not injured during the incident and that no force was used. However, the Sergeant indicated on the form that force had been used to effect the arrest. The Sergeant who screened the incident was not equipped with BWV, so no recording of the arrest screening was available. The Sergeant's report stated that he did not have any contact with the arresting officer. The Subject was then transported to King County Jail where he was later released.

On June 19, 2020—twenty days after the incident—NE#1 completed a use of force report documenting what occurred. In it, NE#1 stated that, when passing the Subject, he tapped him on the shoulder. The Subject moved over to create space, but as NE#1 was passing the Subject “closed the space between” them, causing him to bump into NE#1 and NE#1 to lose his balance and fall. NE#1 stated his belief that the Subject's objective was to stop NE#1 from continuing up the hill, which would block the remaining officers behind him and separate them from the leading officer. NE#1 made the decision to arrest the Subject for obstruction.

NE#1 recorded the force he used. He stated that when the bystander individual attempted to de-arrest the Subject, NE#1 put his arms around the Subject's shoulders and pulled the Subject to the ground to avoid a “tug-of-war” between himself and the other individual. NE#1 placed his “left hand on [the Subject's] left shoulder, and pulled down, in order to disorient his balance, and break down his posture, so that the take down would be more controlled.” According to NE#1's UOF report, this caused NE#1 and the Subject to fall over NE#1's bicycle and into a bush. The position of NE#1's arms wrapping around the Subject's shoulders, with NE#1 behind, made it appear “as if [he] was attempting some kind of vascular neck restraint, but [his] arm never [made] contact with the neck.” NE#1 also wrote that he screened the incident with a Sergeant the day after the incident, and that later they saw the third-party video online. This caused NE#1 to complete a UOF report.

## **C. Subject's Claim for Damages and OPA Interview**

Approximately a month later, on July 13, 2020, the Subject filed a claim for damages with the City. In his damages claim, the Subject stated that NE#1 and other bicycle officers approached him from behind while he was walking during the protest. The claim stated that, while passing, one of the officers (NE#1) brushed the Subject and the officer “over reacted and assume[d] he had been assaulted.” The claim stated that the officer jumped on the Subject and “placed his arm around his neck” before throwing the Subject to the ground. The claim stated that “[w]hen [he]



asked the officer why he put him in a chock [sic] hold the officer said, "he interpreted the brush-up as a push." The claim asserted that the Subject was arrested without cause.

In August 2020, OPA interviewed the Subject in the presence of his attorney. In that interview, the Subject stated that, while he was walking on Boren Avenue, a line of bicycle officers came up behind him. The first officer passed without issue, but the second (NE#1) tapped him on the shoulder. The Subject stated his frustration that the officers were using the sidewalk instead of the road and that he believed he told NE#1 to ride on the road instead.

The Subject stated that while passing, NE#1 "nudged" his elbow. Before he was able to react, NE#1 took him to ground. He said that he scraped his wrist but was not injured. After being arrested, he was taken to the precinct and interviewed before being transported to the jail. The interview consisted of questions about the incident.

OPA played the third-party video for the Subject. He confirmed it was an accurate portrayal of the incident and stated that the hand motion he made was to wave the officer by. He stated that the arm motion in the video was the moment when his arm "caught" NE#1. The Subject also stated that he could have moved over but was instead "standing his ground."

Clarifying his damages claim with the City, the Subject stated that NE#1's arm was around his neck during the incident, but that it was not a "chokehold." He stated that, at the time, he had asked NE#1 why he was being arrested because he did not believe he had done anything wrong. He said that he felt NE#1's arm around his neck but that he did not recall his airflow being restricted, did not lose consciousness, and did not sustain injuries to his neck. He stated that he went to a doctor's appointment a few weeks after the incident and no injuries were noted.

In summarizing the contact, the Subject said that he believed it was accurate to say he "brushed" NE#1 when NE#1 tried to pass, and that there was sufficient space to get around him. He listed the policy violations which he felt were appropriate and which are those listed in this investigation.

#### **D. Employee Interviews**

OPA interviewed three SPD employees regarding this complaint. Of them, NE#1 and the screening Sergeant provided relevant information that is described below.

NE#1 was interviewed three times. The first interview took place a month after the incident, and NE#1 said that he had worked protests each day since May 31. He noted difficulty recalling specific actions he took, but, after reviewing BWV, he related the incident broadly and consistent with the facts stated above. He stated, and OPA confirmed, that he was current on training for the policies involved in this incident. He stated that he had been given an order to move to the front of the protesters and recalled following the lead officer closely as they rode up Boren Avenue. The officers elected to ride on the sidewalk because the road was occupied by protesters marching in groups. On the sidewalk, there were also many people present and limited space.

NE#1 stated that he saw the Subject move out of the way to allow the leading officer to pass. After the leading officer passed, he recalled the Subject "fill in" the resulting gap between the leading officer and NE#1. Consistent with his training, NE#1 was trying to stay with the lead officer, so he yelled at the Subject to move and then tapped his back. He began to pass the Subject but was bumped from the side and thought that the Subject was trying to push him. He said that he then took the Subject to ground to arrest him.



NE#1 said that de-escalation in this situation was safe and feasible until the Subject made physical contact with him. He stated that, at the time of the incident, he was in uniform and clearly identifiable as an officer, and that he was giving verbal commands to move. Because he was wearing a gas mask, he was not sure if he was audible, so he tapped the Subject on the back or shoulder, which the Subject appeared to understand. He said that, once the Subject bumped him, there was no additional space and he had to act quickly to prevent further obstruction or assault. He denied arresting the Subject because he was at a protest or for being critical of officers.

OPA asked NE#1 to describe his actions during the third-party video and BWV. NE#1 pointed out the tap on the Subject's back and the moment where the Subject turned to make a hand motion. He then stated that the Subject "closed the gap" with him when he passed the Subject on the third-party video. He recalled feeling the contact, losing balance, and falling to his right against the concrete wall. He stated that, in the seconds that followed, he tried to use de minimis force—defined by SPD as force to guide or control that does not cause pain—in order to gain control of the Subject. While he was trying to control the Subject, another individual tried to de-arrest him, and NE#1 took the Subject down. This caused him and the Subject to fall into the bushes with the Subject on top, and he tried to use his body weight to roll the Subject over. Once he did, he took his weight off the Subject and completed the arrest. He said that he could not arrest the Subject without using the force he did.

Regarding his decision to use his arm in the vicinity of the Subject's neck, NE#1 stated that SPD had never trained him to use a neck restraint or "chokehold" and that he did not do so here. He said that during the incident, the Subject's breathing was not restricted, and he did not appear to lose consciousness. He did not remember the Subject complaining of injuries. NE#1 confirmed that he did not actually make contact with the Subject's neck.

OPA questioned NE#1 about why he did not report using force on the Subject and did not complete a UOF report immediately, as policy generally requires. NE#1 initially stated that he screened the arrest with a Sergeant at the time of arrest. When OPA was unable to locate BWV showing a screening (NE#1's BWV did not depict it), he stated in a follow-up interview that he was likely mistaken. He recalled a Sergeant speaking to him later at the precinct about whether he was the arresting officer and recalled indicating that he did not use reportable force.

NE#1 clarified that, in his opinion, he had used de minimis force because the Subject did not complain of any pain or injury during the incident. NE#1 was ultimately prompted to complete a UOF report after he saw the third-party video circulating on Twitter. When he saw it, he realized that it appeared that it was being asserted that he used a vascular neck restraint (commonly called a "chokehold") and he wanted to clarify the force he actually did use. He stated that he delayed completing the UOF report because of the tempo of operations related to the protests.

OPA also interviewed the Sergeant who ultimately screened the arrest at the precinct. The Sergeant said that he was often assigned as a screening Sergeant for prisoner processing and was in that capacity on the date of the incident. He was assigned to a different transport van than the one which transported the Subject, so he conducted the screening at the precinct. The Sergeant said that, based on the arrest reports, he did not believe reportable force was used and did not see any injuries on the Subject. During the screening itself, the Subject did not report being subject to a "chokehold" or other neck restraint and did not complain of pain. The Sergeant did not recall speaking to NE#1 but did not believe it necessary based on the screening he conducted with the Subject.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegation #1**



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**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**

In evaluating de-escalation, OPA is required to determine whether NE#1 took sufficient steps to avoid the use of force. These steps – which constitute de-escalation, include seeking time, distance, and shielding. While de-escalation is a requirement prior to using force, this is only where it is safe or feasible.

As a general matter, when a person is actively assaulting an officer, de-escalation is no longer safe or feasible. With regard to safe, an officer is not required – or expected – to stand by idly while they are being assaulted and to permit further assaults to occur prior to taking action. With regard to feasible, where an incident is fast evolving – particularly an ongoing physical conflict as opposed to a static situation – there is insufficient time to de-escalate, thus excusing officers from doing so.

OPA’s analysis of this case is similar to that set forth in 2020OPA-0330. First, in both cases, bicycle officers were riding down the sidewalk with sufficient room between them and individuals to their left when those individuals made physical contact with the officers. Second, both officers made the decision to take the individuals into custody and used force to do so. Third, in both cases OPA determined that there was probable cause to arrest and, with that legal authority, the right to use force. Fourth and last, in both cases OPA believed that simply because the officers could have taken these actions did not mean that they should have.

OPA has seen a number of cases where individual officer decisions to take action on misdemeanor offenses have the result of escalating the crowd and leading to instances of even more force. Indeed, as noted in 2020OPA-0330, OPA can track multiple investigations stemming from one such decision and can similarly track large scale dispersals.

Given this, OPA recommended in 2020OPA-0330 and reiterates here that the Department modify its policies to place more parameters around officer discretion with misdemeanor offenses and to ensure that officers are balancing the possible escalation of tensions within the crowd against the need to make the arrest. This calculation is particularly important where the protests are directly focused on police. Such law enforcement action, even if warranted, can be perceived by crowds as illegitimate and, thus, cause unrest that creates a cycle of violence. OPA refers the Department to the specific language of its Management Action Recommendation set forth in 2020OPA-0330.

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

**Named Employee #1 - Allegation #2**

**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.*)





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For the foregoing reasons, OPA finds that NE#1's force was consistent with policy.

First, the force was reasonable because NE#1 and his squad were surrounded by a crowd which could reasonably be expected to take notice of an arrest. Indeed, as soon as NE#1 attempted to arrest the Subject, an individual attempted to de-arrest him, which required NE#1 to take the Subject to ground rather than engage in a tug-of-war which might lead to injury to any or all of them. Moreover, given (as discussed below) that NE#1 had probable cause, he had the right to use force if needed to effectuate the arrest.

Second, the force was necessary both to actually detain the Subject, and to do so quickly under the circumstances. The BWV showed the Subject raising his hands and, according to interviews, questioning the basis for his detention. While in many circumstances an officer might be able to gain voluntary compliance through discussion, the presence of others and the general hostility of the crowd meant that verbal commands and explanations were unlikely to be effective and risked increasing the risk that the situation could escalate. In addition, the force used, which was comprised of pulling the Subject to the ground and then controlling him to handcuff him, was of a reasonable degree to effect NE#1's lawful goals.

Finally, the force was proportional to the dangers of the crowd and to the Subject's initial refusal to comply with the arrest. While the Subject did not appear to pose a significant physical risk to NE#1 or the other officers, his initial resistance and the acts of others to de-arrest him nevertheless increased the danger of the situation the longer it went on. Further, the relatively low-level force used by NE#1 was no higher than needed to arrest the Subject and, as soon as the Subject was in custody, NE#1 modulated and then ceased using force altogether.

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

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

**Named Employee #1 - Allegation #3**

***8.300-POL-9 Use of Force – NECK AND CAROTID RESTRAINTS 1. Officers Are Prohibited From Using Neck and Carotid Restraints Except When Deadly Force is Justified***

At the time of this incident, SPD Policy 8.300-POL-9 governed the use of neck or carotid holds by SPD officers. The policy indicated that these tactics are strongly disfavored by the Department prohibited unless deadly force would be justified. (SPD Policy 8.300-POL-9.) The policy further required that the use of such tactics will result in a FIT investigation. (*Id.*) While the policy did not clearly define neck or carotid holds, it logically follows that they are purposeful applications of force by an officer to a subject's neck.

OPA finds, based on the statements by the Subject as well as the video evidence, that NE#1 did not apply a neck or carotid hold to the Subject.

First, NE#1 denied using a neck or carotid hold and he further stated that he did not make any contact with the Subject's neck. Second, the video of the incident was consistent with NE#1 using his arm to put pressure on the Subject's shoulders and upper arms to control the movement of his body, as NE#1 ultimately described in his interviews and reports. While it appeared that neck contact was possible from first glance at the video, a more thorough review indicated that this did not actually occur. Third, the Subject stated that he did not feel his airway or blood-flow become restricted, as is would be the case in any restraint commonly understood to be a "chokehold." This further convinces OPA that a neck or carotid hold was not used.



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Given these conclusions, OPA recommends that this allegation be Not Sustained – Unfounded.

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

**Named Employee #1 - Allegation #4**

**8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force**

SPD Policy 8.400-POL-1 requires that officers report all uses of force except de minimis force. This policy defines different levels of force and is intended to devote greater resources to reviewing more serious types of force. *Id.*

OPA notes at the outset that while NE#1 is correct that de minimis force need not be reported, the force he used here was greater than de minimis. SPD policy defines de minimis force to be “use of compliance holds without the use of sufficient force to cause pain.” (*Id.*) By contrast, it defines Type I force as: “[c]ontrolled placement/takedown that results in a complaint of pain *or causes/is likely to cause transitory pain or disorientation.*” (*Id.*) (*emphasis added*).

Here, NE#1’s UOF report indicated that he used downward pressure to “disorient [the Subject’s] balance” and permit a controlled takedown. Moreover, he recorded falling backward over his bicycle and in doing so, becoming tangled with it. A reasonable officer should infer that, in addition to disorientation, taking the Subject to ground in this manner was “likely to cause transitory pain.” While NE#1 was correct that there was no report of pain, this alone did not relieve him of the requirement that he document and report the force.

However, OPA does not believe that NE#1 intentionally concealed force. Rather, it appears that, while acting in good faith, he misinterpreted the force reporting requirements, as well as the way SPD classifies a takedown that is not accompanied by a complaint of pain or injury. Under the specific circumstances of this case, OPA does not believe that NE#1’s mistake was necessarily unreasonable. Moreover, in OPA’s experience, it is quite likely that other officers share the same misapprehension. In addition, when NE#1 discovered the recordings of the force that led to significant public concern, he consulted with a supervisor and, ultimately, completed a UOF report. That report was both thorough and accurate. The reporting delay, while unfortunate, was also attributable to the fact that NE#1 was working near-constant crowd management duty.

For these reasons and given that NE#1 is a relatively new officer who has never been disciplined for any policy violation, let alone for failing to properly classify and report force, OPA believes that retraining is the appropriate result. Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** OPA recommends that NE#1’s chain of command review with him the force classifications and associated reporting requirements, including examples to help clarify borderline cases. This training should be documented, and that documentation retained in an appropriate database.

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

**Named Employee #1 - Allegation #5**

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





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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.

OPA finds that NE#1 had probable cause to arrest the Subject for obstruction. As noted above, the probable cause requirement is an objective standard and reflects the belief of a reasonable police officer that a crime is occurring. It does not require that the officer be certain a crime has occurred, but only that he can point to specific facts and circumstances supporting that reasonable belief.

Here, NE#1 pointed to objective facts—the physical contact from the Subject that knocked him over and prevented him from moving forward, causing him to become separated from the leading officer—which supported a reasonable inference that the Subject did so purposefully. This is sufficient to establish probable cause for obstruction. While OPA agrees that there are alternative interpretations consistent with the facts – such as the Subject's contention that the contact was accidental – neither the law nor SPD policy require NE#1 to be certain of the Subject's subjective intent prior to making an arrest.

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 #6**

***5.001 - Standards and Duties 14. Retaliation is prohibited***

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, "oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy" or "who otherwise engages in lawful behavior." (*Id.*) Retaliatory acts are defined broadly under SPD's policy and include "discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

OPA did not uncover any evidence indicating that NE#1 arrested the Subject for any reason other than a belief that the Subject obstructed or assaulted him. Even had NE#1 been incorrect about the probable cause determination, this would not, without more, give rise to a belief that retaliation occurred. Given that NE#1 did in fact have probable cause for at least one crime – obstruction, his decision to arrest rested on sufficient legal foundation.

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

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