



CLOSED CASE SUMMARY

ISSUED DATE: MAY 21, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0726

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime	Not Sustained (Lawful and Proper)
# 2	14.090 Crowd Management 9. Crowd Dispersal a. Upon Determining That There are Acts or Conduct Within a Group of Four or More Persons That Create a Substantial Risk of Causing Injury to Any Person or Substantial Harm to Property, the Incident Commander May Order That the Crowd Be Dispersed	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 they were wrongfully arrested during a demonstration and that no dispersal order was provided.

SUMMARY OF INVESTIGATION:

On the evening of November 14, 2020, there was a protest focused on police that occurred in north Seattle. The protest, advertised as “Squash the Police State” and “An Action against Police Brutality,” was attended by approximately 40 people. The demonstrators marched on 3rd Avenue Northeast and 5th Avenue Northeast. This area of the city had limited lighting, predominantly from streetlamps. It was also raining throughout the evening. The group marched against traffic and, at one point, the ground stopped at 3rd Avenue Northeast and Northgate Way, blocking the intersection.

At approximately 5:45 p.m., a 911 caller reported that demonstrators within the group were blocking traffic and were striking vehicles that were stopped at red lights. In addition, demonstrators in the group were observed dragging orange traffic cones and large construction barriers to block traffic.

Named Employee #1 (NE#1), a Lieutenant, gave a dispersal order to the group, directing them to move out of the roadway. Additional warnings were also provided. Ultimately, the group moved from the vicinity. At around 6:25 p.m., another 911 caller reported that the demonstrators were again walking in the street, causing traffic to be required to drive around them. The group again became stationary in the roadway. At 6:30 p.m., NE#1 again gave an



order to disperse. NE#1 then provided authorization for arrests to be made of demonstrators who remained in the roadway.

The Complainant was one of the individuals who was arrested. At the time the Complainant was arrested, they were part of the group within the roadway. When officers tried to take another individual into custody, the Complainant held onto that individual and tried to pull the individual away. Both the Complainant and the individual went down to the ground. The Complainant was then taken into custody.

The Complainant later filed an OPA complaint alleging that they were arrested without probable cause. The Complainant further stated that no dispersal order was provided and that no warning was given before officers began rushing in and making arrests. This OPA investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime

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.

The Complainant was ultimately arrested for four separate offenses: failure to disperse – 12A.12.020; obstruction – 12A.16.010; pedestrian interference – 12A.12.015; and hindering law enforcement – 12A.16.020. If even one of these allegations was supported by probable cause, the Complainant's arrest was justified.

The Body Worn Video (BWV) for this incident confirmed that NE#1 provided a dispersal order to the demonstrators and lawfully instructed them to leave the roadway. When the Complainant, along with other demonstrators, did not do so, she engaged in a failure to disperse. Moreover, the Complainant and the other demonstrators walking in and against traffic, blocking intersections, and placing items in the roadway presented a danger to motorists and the demonstrators themselves. This was particularly the case given the limited light and visibility, the fact that it was evening, the ongoing rain, and the Complainant and others wearing dark clothing. This constituted pedestrian interference. Lastly, the Complainant's decision to remain in the roadway even after receiving an order to disperse, as well as their attempts – as captured on BWV – to prevent another demonstrator from being arrested constituted obstruction and hindering law enforcement.

As there was lawful authority to arrest the Complainant for numerous crimes, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

14.090 Crowd Management 9. Crowd Dispersal a. Upon Determining That There are Acts or Conduct Within a Group of Four or More Persons That Create a Substantial Risk of Causing Injury to Any Person or Substantial Harm to Property, the Incident Commander May Order That the Crowd Be Dispersed



SPD Policy 14.090-POL-9(a) states the conditions under which an Incident Commander (IC) may order a crowd to be dispersed. SPD Policy 14.090-POL-9(a). The policy goes on to state that prior to ordering a crowd to be dispersed, the IC: “shall consider whether less restrictive means of crowd management are available. Such means may include strategies such as area denial and/or seeking voluntary compliance.” (*Id.*) It goes on to state that the IC must ensure there is a viable avenue of egress to allow the crowd to disperse, and that where feasible, the IC or a designee should issue a dispersal order prior to ordering officers to disperse the crowd. (*Id.*)

The Complainant alleged that arrests were effectuated prior to any warning being given and without dispersal orders being provided.

These claims were disproved by the BWV. The video indicated that NE#1 provided multiple formal dispersal orders over an amplified system, as well as other warnings to the demonstrators to leave the roadway. Arrests were effectuated after the demonstrators continued to fail to disperse.

Moreover, while not specifically alleged by the Complainant, OPA finds that the dispersal orders, themselves, were permitted under policy. NE#1, and other officers, articulated that the demonstrators’ conduct in walking through the roadway, blocking intersections and traffic, causing vehicles to need to drive around them, moving items into the street, and striking vehicles constituted acts of four or more individuals creating a substantial risk of harm to other persons. In addition, NE#1 gave the demonstrators more than enough time to comply and the demonstrators had multiple avenues of egress had they chosen to leave the roadway.

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

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