



## CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 5, 2020

CASE NUMBER: 2019OPA-0578

### Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)
# 2	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Training Referral)

***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:

OPA received an anonymous complaint regarding the arrest of a juvenile female at a demonstration. It was alleged that the Named Employee was unprofessional and abused his discretion when he took the juvenile female into custody.

### SUMMARY OF INVESTIGATION:

Officers, including Named Employee #1 (NE#1), responded to a demonstration at Seattle City Hall. NE#1 was in plain clothes on that date as he was acting as the Field Training Officer (FTO) for a student officer who was in his final rotation. The officers were dispatched to a call of property damage during a protest. Specifically, City Hall security guards reported that two demonstrators had spray painted on a wall. When NE#1 and the student officer arrived, security guards pointed out the two suspects. One was a 34-year-old man and the other was a 13-year-old girl. The student officer moved towards the two individuals and another demonstrator stepped in his direction. The student officer moved the demonstrator away and NE#1 directed the demonstrator to move back a second time. The student officer detained both individuals and asked them to sit down on the stairs in front of the building. The officers were informed that the female was only 13 years old. The girl began to cry.

The man began to explain to the student officer that they thought it was chalk spray paint. At that time, NE#1 could be heard stating: “get them out of here, we’re not going to play this game.” The student officer then had the girl and the man to stand up and he put them into handcuffs. The girl continued crying as she was walked to the patrol vehicle. A female demonstrator asked NE#1: “You realize she’s 13 years old?” The female demonstrator began to say that the girl did not know what she was doing. However, NE#1 cut her off and said: “That’s great, we’ll figure it out at the precinct. We’re not going to sit here while we’re surrounded by a bunch of people who want to make their opinions known.” The man and the girl were then transported to the scene to a police precinct.

OPA received multiple complaints concerning this matter and, as a result, initiated this investigation. OPA reviewed video, including Body Worn Video (BWV), In-Car Video (ICV), security video from City Hall and third-party video that was in the public domain. The City Hall video showed the man and the girl spray painting the wall with a cannister. The video recorded the girl looking at the cannister and showing it to another woman who shook her head.



The girl then laughed. The video depicted security guards approaching the girl and indicated that she identified the man who provided her the cannister. The security guards tried to wipe off the spray paint without success. The girl appeared to laugh, but then seemed to grow worried, at one point wiping a tear away. She received a hug from one demonstrator and consolation from others.

The third-party video depicted what occurred after the officers arrived and the girl and the man were being taken into custody. The BWV and ICV showed the same.

OPA also obtained a picture of the cannister that was used to spray paint the wall. "Chalk" was written on the cannister in large font and beneath that in smaller font read "decorative paint."

While the student officer technically made the arrests, he appeared to do so based on NE#1's direction. As such, the allegations were classified for investigation against NE#1.

As part of its investigation, OPA interviewed NE#1. NE#1 recalled the incident. He said that, when he and the student officer responded, they saw the suspects. He stated that the student officer approached them, and a male demonstrator stepped in front of him. NE#1 recounted that the student officer moved the demonstrator out of the way. NE#1 stated that he saw the demonstrator turn around and start saying something to the student officer. NE#1 asserted that, at this time, he believed it possible that the demonstrator could assault the student officer. NE#1 stated that he also moved the demonstrator away.

NE#1 told OPA that he then returned to where the student officer was. At that time, the student officer was interviewing the suspects. NE#1 said that it was a peaceful protest, but the demonstrators started taking out their phones and filming the officers, as well as yelling and screaming at them. NE#1 believed that the situation was potentially unsafe. Based on this, NE#1 made the decision to remove the suspects from the area and to transport them to the precinct.

NE#1 confirmed that the girl was handcuffed and stated that it was compliant with policy to do so. He did not believe that being a juvenile was a justification for not handcuffing her. NE#1 said that, while people were yelling that the girl was only 13, her parents were not at the scene and he had no way of knowing that. He did not believe that it would have been safe to remain at the scene in order to verify the girl's age. He did not feel that there was any other way to appropriately handle this matter other than effectuating a custodial arrest.

NE#1 was asked whether he believed that his statements to demonstrators were unprofessional. He denied that they were and said that he was not required to provide them with any information concerning the arrest. He also denied that the arrest of the girl constituted an abuse of his discretion.

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

##### **Named Employee #1 - Allegations #1**

##### ***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 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.*)

OPA was frustrated with a number of the statements made by NE#1. Specifically, his statement that the officers were “no longer playing this game,” his retort that he would figure the girl’s age out at the precinct, and his assertion that the officers were “not going to sit here while we’re surrounded by a bunch of people who want to make their opinions known” all served no purpose other than to anger and agitate the people that heard them.

NE#1 could have engaged in a much more positive manner with the demonstrators, including acknowledging their concerns about the girl’s age. While NE#1 said that he did not owe them any information, this is exactly the attitude that causes distrust and frustration with police on the part of community. Indeed, NE#1 is a public servant and works for the exact community that he spoke dismissively to. NE#1’s lack of communication skills is even more concerning given that he was selected by the Department to be an FTO and was thus responsible for teaching and setting an example for newer officers.

While OPA is frustrated with NE#1’s statements and his overall approach to this incident, OPA recognizes that he did not use profanity, he did not use derogatory or contemptuous language, and he did not yell at any of the demonstrators. As such, OPA cannot conclude that he violated the Department’s professionalism policy. Were NE#1 still employed by SPD, OPA would issue him a Training Referral and, accordingly, even though no training can be provided given his employment this is the finding that is recommended here.

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

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

#### ***5.001 - Standards and Duties 6. Employees May Use Discretion***

As indicated in SPD Policy 5.001-POL-6, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-6.)

At the outset, OPA finds that there was a lawful basis to arrest the man and the girl for spray painting the wall. This was the case even if they mistakenly believed that they were using chalk instead of paint. However, that an arrest could have been made does not necessarily mean that this is what should have occurred.

Based on a review of all of the video evidence, OPA struggles to see what NE#1 referred to as “yelling and screaming” of demonstrators. OPA also did not observe any indication of danger to the officers. To the contrary, the demonstrators, while defensive of the girl, were passive. Moreover, the march was entitled “Strike for our futures” and was focused around teenagers who comprised the vast majority of the attendees. There was no evidence suggesting that these children posed a threat of harm to NE#1 and the other officers present.

NE#1 pointed to this purported danger as the reason for why he could not cite the girl and the man at the scene, as well as for why he could not take a few additional minutes to verify the girl’s age or to conduct a further



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investigation into whether there was actually an intent to spray paint the wall. However, whether intentionally or unintentionally, NE#1 simply exaggerated this alleged danger and overreacted. Contrary to his assertions, there were numerous other ways in which he could have handled this case, all of which would have resulted in more public trust and confidence than the actions he took.

While OPA believes that NE#1 engaged in poor decision-making during this incident, as he no longer works for SPD recommending a Sustained finding would serve no purpose. Instead, OPA believes it more impactful to issue a Training Referral to the Training Unit to request that this case be used as an example for student officers concerning the exercise of discretion. OPA believes that there are many lessons that can be learned from this case and that, by training the next generation of officers to avoid NE#1's errors in judgment, positive change can be effected.

- **Training Referral:** OPA requests that the Training Unit use this case, including relevant video, when training student officers on the exercising of the discretion to arrest. The Training Unit should discuss the other options available to officers in this type of situation and the implications that overreactions can have on public trust and confidence.

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