



## ***CLOSED CASE SUMMARY***

ISSUED DATE: JUNE 12, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0748

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

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

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	11.020 - Transportation of Detainees 5. Officers Ensure Detainees are Appropriately Restrained for Transport	Not Sustained (Management Action)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	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 the Named Employees subjected her to excessive force during her arrest. The Complainant claimed that this caused her to suffer significant injuries. OPA further alleged that Named Employee #2 and another officer may have failed to seatbelt the Complainant during her transport from the scene.

### **ADMINISTRATIVE NOTE:**

This DCM concerns the allegations against Named Employee #1 and Named Employee #2. This case also involves allegations against Named Employee #3; however, he is on extended leave and has not yet been interviewed. Accordingly, the portion against Named Employee #3 is currently tolled until he returns to duty and no findings are issued against him here. Named Employee #3 is referred to herein as Involved Officer #1 (IO#1).

### **SUMMARY OF INVESTIGATION:**

#### **A. Complaint of Misconduct**

The Complainant and her attorney filed an OPA complaint in which they alleged that she was subjected to excessive force by three SPD employees – Named Employee #1 (NE#1), Named Employee #2 (NE#2), and Involved Officer #1 (IO#1). The Complainant's attorney initially alleged that she suffered significant injuries from this incident, including an exacerbation of a previous shoulder injury, a broken nose, and multiple bruises and contusions. The force was described as unnecessary and the officers' actions were alleged to have been escalatory. This OPA investigation ensued.



OPA reviewed an email exchange between OPA and the Named Employee's supervisor in which allegations made by the Complainant were screened as potentially unsubstantiated. Included in this screening were the Complainant's allegation that an officer grabbed her breast, as well as a claim of excessive force. After reviewing the Body Worn Video (BWV), OPA deemed that the lifting of the Complainant's shirt was inadvertent and that the video indicated that neither NE#2 nor IO#1, who were holding onto her at the time, touched her breast, let alone purposefully did so. OPA did not see any evidence of excessive force at that time but noted that the case would be reviewed by the Department's Force Review Board and the decision on initiating an OPA investigation would be held until that time. However, OPA commenced its investigation into this incident once a complaint was received from the Complainant.

### **B. Complainant's OPA Interview**

As part of its investigation, OPA interviewed the Complainant in the presence of her attorney. She said that, at the time she was handcuffed, she had an injured shoulder and a broken wrist with a cast on it. However, the officers tried to force her hands behind her back. She stated that the officers led her out of her home through the garage. As she neared the patrol vehicle, she looked back towards the house to see whether a dog had run outside. She stated that, at this point, the officers pushed her face into the patrol vehicle, causing a bloody nose. The Complainant noted that the push into the patrol vehicle was "very forceful" and that she was not resisting at the time. She stated that she was not handcuffed when this occurred. She could not identify the specific officer who pushed her. The Complainant clarified that she did not suffer a broken nose as previously reported by the Complainant's attorney. She was then pushed further into the patrol vehicle.

The Complainant reported injuries to her arm above her cast and bruising to various parts of her body, including her face. She said that her injuries were not photographed at the jail. Photographs were not taken until she was released from jail several days later. She stated that the officers' actions exacerbated her previously existing shoulder injuries. She said that she now needs surgery, but it has been delayed due to COVID.

Both the Complainant and her attorney asserted that the officers escalated the incident and that the force used was excessive. This was based on the Complainant's recollection of the incident as neither she nor her attorney had watched the Body Worn Video (BWV) for this incident.

OPA asked the Complainant about NE#2's report that the Complainant was digging her fingernails into his arm and trying to bite him. The Complainant said that she had no recollection of this portion of the incident, but generally denied that she would dig her fingernails into an officer's arm or try to bite an officer. She further denied recollection of her previous allegation that an officer grabbed her breast during this incident but said that she stood by whatever previous statement she may have made.

### **C. Review of Body Worn Video**

The BWV showed the officers' response to this incident. The video indicated that the Complainant's daughter reported that the Complainant assaulted her by striking her with a cellphone and pulling her hair. The officers also interviewed the Complainant. She was extremely agitated and was yelling. She said that she was "done," and the officers should just take the daughter's story as what happened. The officers subsequently made the decision to arrest the Complainant.



The officers told the Complainant to put her hands behind her back so that she could be handcuffed. She did not do so, citing injuries. The officers took hold of her arms and tried to move them behind her back. There was no indication that the officers pulled her arms with force or jerked them back. When the officers did so, the Complainant said “ow,” complained about pre-existing injuries, and continued to scream and complain. The officers stopped trying to handcuff the Complainant and discussed how to best secure her. They ultimately decided not to handcuff the Complainant. NE#2 and IO#1 began walking the Complainant out of her home. The officers each took hold of the Complainant and escorted her out. Prior to this point and during the escort, she said that the officers were hurting her, told them not to touch her, and asked where they thought she was going to go. She further referenced “pills” that she needed and a “black jacket” that she wanted to put over her cast.

As she walked outside, the Complainant referenced her dogs. She began moving around and screaming. The officers told her to stop. At one point, she exclaimed in pain. NE#2 told her to “quit.” NE#2 then stated in a raised voice: “Do not hurt me. Do not bite me.” The officers continued to struggle with the Complainant and told her to stop. NE#2 again directed her not to harm him. She began to yell that the officers were “raping” her. They collectively moved towards the patrol vehicle, with the officers trying to control the Complainant and her yelling and physically resisting. At one point, she yelled “ow” and referenced her nose. This appears to be the moment that she struck her nose. This occurred as the Complainant and the officers collectively moved towards and into the side of the patrol vehicle.

She was ultimately seated in the rear of the patrol vehicle. Her nose was bleeding, and she asked to go to the hospital. Once she was secured in the rear, NE#2 told another officer that the Complainant was grabbing his arm and digging her fingernails into it. NE#2 asked her if she needed medical attention. The Complainant said yes and stated: “You broke my nose you fucking asshole.”

Seattle Fire Department (SFD) personnel responded and began to treat the Complainant. Her nose had stopped bleeding at that time. A Sergeant also responded to the scene and spoke with the Complainant. SFD subsequently informed the Sergeant that the Complainant’s nose was not deformed and was not bleeding. SFD did not believe that her nose was broken. The Sergeant spoke with the Complainant and asked her what occurred. The Complainant acknowledged that she had been arguing with her daughter but denied assaulting her. She further said that an officer pushed her face into the patrol vehicle “bars” on the open window causing her to break her nose. She said that she was then pushed into the patrol vehicle. The Sergeant photographed the Complainant’s injuries. At that time, she told him that an officer lifted up her shirt and grabbed her breast. She said that she was allowed to “defend” herself. She also told the Sergeant that the officers hurt her upper arm. She had a bruise. She said that it could have happened in her home or when she was thrown at the patrol vehicle. The Complainant was then transported to the scene and taken to Harborview Medical Center.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - 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 Complainant alleged that officers, including NE#1, may have used excessive force when they attempted to handcuff her. As discussed below, the Complainant also alleged that she was subjected to excessive force when she was led to the patrol vehicle and then pushed against it; however, NE#1 was not involved in this.

The attempted handcuffing of the Complainant was completely captured on BWV. There was no evidence that any of the officers involved, including NE#1, used excessive force at that time. The officers attempted to handcuff the Complainant, pursuant to policy; however, she continually yelled, exclaimed in pain, and complained of pre-existing injuries. The officers largely remained calm with her, even in spite of her heightened level of agitation. In addition, given what they observed and based on what the Complainant was saying, the officers made the decision to stop trying to handcuff the Complainant and to walk her out of the house and into the patrol vehicle unsecured.

In assessing the Complainant’s claim, it is clear to OPA that the officers did not use excessive force during the handcuffing. To the contrary, they took significant steps to not cause the Complainant pain while trying to ensure that she – as the perpetrator in a domestic violence assault – was secured. NE#1’s actions in this regard were consistent with policy. Accordingly, OPA recommends that this allegation be Not sustained – Lawful and Proper.

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

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

##### ***11.020 - Transportation of Detainees 5. Officers Ensure Detainees are Appropriately Restrained for Transport***

SPD Policy 11.020-POL-5 states that: “When transporting a detainee in a Department vehicle, officers will handcuff detainees behind the back.” The exemption to this requirement is as follows: “Officers may handcuff the detainee in the front if officer safety is not compromised and the detainee’s physical ability is limited.” The policy does not allow for a detainee to be transported completely unsecured.

Here, the Complainant was not handcuffed after her arrest and was walked out of the residence unsecured. She was then put into the rear of the patrol vehicle, again without handcuffs. She was not restrained until she was put onto a gurney prior to being transported to Harborview Medical Center.

NE#2 explained that they tried to handcuff the Complainant but that it was complicated by the fact that she was wearing a cast. He further said that her constant complaints of injury and overall demeanor made it difficult to place her into handcuffs. He told OPA that the Complainant was not handcuffed based on a suggestion from IO#1, who was the senior officer on scene and who was primary on the call.

NE#2 recognized that not applying handcuffs was not contemplated in the policy. He said, however, that handcuffing her in the back was not working under the circumstances and the officers did not believe that handcuffing her in front was practical.

This case is unique in OPA’s estimation. OPA has rarely if ever seen incident where an arrestee was not handcuffed altogether. OPA agrees with NE#1 that this is technically contrary to policy. That being said, handcuffs were not



applied here for a legitimate reason. OPA believes that the policy should be expanded to allow for officers to not handcuff an arrestee in their discretion, particularly where either double-cuffs or front handcuffing is not sufficient. As such, OPA issues the below Management Action Recommendation.

- **Management Action Recommendation:** SPD should consider further expanding SPD Policy 11.020-POL-5 to address situations where an arrestee's physical condition or some other compelling circumstance justifies not handcuffing an arrestee, and where front handcuffing and double-cuffs are not sufficient.

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

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

***8.200 - Using Force 1. Use of Force: When Authorized***

The Complainant alleged that NE#2 engaged in excessive force in three respects: first, when he caused her pain during her handcuffing inside of the residence; second, when he gripped her arm with undue pressure; and, third, when he pushed her face into the bars on the patrol vehicle window.

With regard to the first claimed excessive force, OPA applies the same reasoning as discussed in the context of NE#1. NE#2, like NE#1, attempted to handcuff the Complainant but was unable to do so. The BWV showed no evidence of NE#2 or any other officer using excessive force at that time.

With regard to the second claimed excessive force, NE#2 was walking the Complainant outside when she began to yell and physically resist while calling for her dogs. At that time, the Complainant was not handcuffed and NE#2 was holding onto her arm to guide her to the patrol vehicle and to ensure that she, as an arrestee, did not flee. In addition, the BWV captured NE#2 exclaiming in pain and telling the Complainant not to cause injury to his arm. She also exclaimed in pain shortly thereafter. While not clear given the positioning of NE#2's camera, it may very well have been the case that, when the Complainant began to dig her fingernails into NE#2's arm, he tensed his grip on the Complainant's arm as a reaction. There is no evidence in the record indicating that he did so to retaliate against the Complainant or for some other improper reason. Ultimately, this does not constitute excessive force.

With regard to the third claimed excessive force, when evaluating the totality of the video, OPA does not find that NE#2 or any other officer deliberately pushed the Complainant into the patrol vehicle in order to injure her. While she did make contact with the patrol vehicle, striking her nose, this appears to have been the result of her physical struggles with the officers and their attempts to control her. This was exacerbated by the fact that she had just injured NE#2's arm seconds before and she was not handcuffed. OPA finds that her injury and her striking the patrol vehicle was an inadvertent result of her behavior and did not constitute excessive force.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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