



## ***CLOSED CASE SUMMARY***

ISSUED DATE: JULY 7, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0016

### **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 in Order to Effect an Arrest	Not Sustained (Lawful and Proper)

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

Allegation(s):		Director's Findings
# 1	6.120 - Impounding Vehicles 5. Officers May Impound Vehicles Without Prior Notice	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 a member of the press was unlawfully arrested and that cars were improperly towed from a demonstration.

### **SUMMARY OF INVESTIGATION:**

An anonymous Complainant alleged that the Subject, purportedly a member of the press, was improperly arrested at a demonstration. The Complainant also alleged that a vehicle was unlawfully impounded. The Complainant asserted the following:

The Constitution guarantees the right to peacefully assemble and protest. These protests should not be targeted by police. There were no crimes committed, including property destruction and vandalism. It is not a crime to block traffic during a civil right protest. The police have no right to arrest and impound cars in this situation.

After reviewing this complaint, OPA commenced an investigation. OPA determined that, on January 9, 2021, there was an unpermitted protest that occurred in the vicinity of SPD headquarters. Multiple vehicles blocked the street, preventing any traffic from moving past. The decision was made to direct the vehicles to move out of the street. The drivers were told to move their vehicles, or they would be cited. The drivers were given the opportunity to comply prior to any law enforcement action being taken.



The Body Worn Video (BWV) for an officer – referred to here as Witness Officer #1 (WO#1) – showed that he approached the driver of one of the vehicles that was stopped in the road. WO#1 asked the driver to move the vehicle and the driver refused multiple times. The driver said that they would not move their vehicle until the demonstrators departed from that area and stated that the vehicle was stopped to protect the demonstrators. WO#1 asked the driver to move the vehicle again and the driver continued to refuse. WO#1 observed that a dog was in the car, and he asked the driver to remove the dog. He then called for a tow truck to come to the scene. The vehicle was ultimately impounded pursuant to SMC 11.30.040 – which prohibits vehicles impeding the normal flow of vehicular or pedestrian traffic – and was towed from the scene.

At around the same time, Named Employee #1 (NE#1) also contacted another driver of a stopped vehicle. He told the driver to move, or they would be cited. The driver said that their actions in blocking the road was protected by the Seattle Municipal Code. NE#1 told the driver that they could argue that in court. NE#1 asked the driver for their license and registration. The driver said that they would move but NE#1 told them that they had their chance to do so earlier. After citing the driver, NE#1 began putting up police tape to block the crowd of demonstrators off from the vehicles that were being cited and potentially impounded. Some of the demonstrators began to advance forward and the officers told them to move back. Officers also pushed several demonstrators back and prevented them from crossing the tape.

NE#1 walked up to an individual – the Subject in this case – who was standing between two vehicles and in front of the police tape. NE#1 told the Subject: “Move back or you’re going to be placed under arrest.” NE#1 reached out his left hand towards the Subject’s right elbow. The Subject said: “Get your hands off of me.” While doing so, the Subject struck out with their hand, appearing to make contact with NE#1’s outstretched arm. The Subject made a swatting motion with their other arm, but this did not appear to hit NE#1. The Subject then turned and began to walk back towards the crowd. NE#1 stated: “You are under arrest. Get on the ground.” He reached for the Subject. Another officer’s BWV showed what occurred next. NE#1 grabbed the Subject by one of their arms and their backpack. NE#1 lowered the Subject to the ground, with the Subject going down to their knees and then flat on the ground. NE#1 knelt down and began to handcuff the Subject. WO#1 came over to assist. NE#1 told the Subject: “Stop. Do not move. Stop resisting. Don’t grab my hand. Stop pulling.” After the Subject was handcuffed, NE#1 told the Subject that they were under arrest for assault. The Subject did not make any complaint of pain or injury. The arrest was screened with a supervisor prior to the Subject being transported from the scene.

Based on the Complainant’s assertion that the Subject was a member of the media, OPA conducted an open-source search in an effort to corroborate this. OPA’s search yielded no indication that the Subject was affiliated with any media organization. Moreover, from a review of the BWV, the Subject was not wearing a press badge and had no other markings showing that she was affiliated with the media.

### **ANALYSIS AND CONCLUSIONS:**

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

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

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's review of the BWV indicated that NE#1 instructed the Subject to move away from vehicles that were being cited and to go behind the police tape. The Subject declined to do so and was warned that they could be placed under arrest. When the Subject still did not leave, NE#1 reached out his hand in an apparent attempt to guide the Subject away. NE#1 was permitted to request that the Subject leave that immediate area – notably, they still could have observed what was occurring from behind the closely situated police tape – and to physically compel the Subject to do so when they refused. The BWV established that the Subject then hit NE#1's hand away and tried to do so a second time. This strike was an assault. As such, there was probable cause to arrest the Subject.

As discussed above, there was no indication that, as the Complainant asserted, the Subject was a member of the press. Even if they were a member of the press, this would not have provided license to strike NE#1 and the arrest still would have been justified.

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

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

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

***6.120 - Impounding Vehicles 5. Officers May Impound Vehicles Without Prior Notice***

SPD Policy 6.120 governs when vehicles may be impounded by officers. SPD Policy 6.120-POL-5 provides specific guidance on when vehicles may be impounded without prior notice and refers to SMC 11.30.040. The statute states that one such scenario is: "1. When the vehicle is impeding or is likely to impede the normal flow of vehicular or pedestrian traffic."

Here, the BWV showed that the vehicles were, in fact, blocking traffic in a major downtown thoroughfare. Officers gave the drivers ample opportunity to move, but they did not do so. Given this, the vehicles were permissibly towed without notice pursuant to SMC 11.30.040(1). Moreover, contrary to the claim made by the Complainant, OPA is not aware of any SMC provision that allows for vehicles to block traffic, even during a demonstration. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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