



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 13, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0230

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Lawful and Proper)

Named Employee #3

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)

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 improperly arrested by the Named Employees. It was also alleged that the Named Employees may have improperly arrested other protestors for non-violent crimes.

SUMMARY OF INVESTIGATION:

This incident occurred on May Day, May 1, 2021. Protestors had gathered in the vicinity of the East Precinct. A small group of protestors were blocking off all lanes of an intersection. Video showed several vehicles pull up to the intersection and turn after approaching the protestors. A white car proceeded up to the intersection. A protestor – later identified as the Complainant – waved at the car with a light. The car stopped approximately one vehicle's length away from the Complainant. After waiting several seconds, the car pulled forward. The Complainant took a step to the left, remaining in front of the car, and continued to wave the light. Another demonstrator holding a large sign like a shield was behind the Complainant. The car attempted to move forward through the intersection. The Complainant stepped to the right, directly in front of the car. The video showed the Complainant grab onto the hood of the car and hang on as the car moved slowly forward. The car stopped and then reversed while turning. The Complainant remained hanging on the hood while other protestors ran towards the car and converged on it. The car then accelerated quickly forward through the light and intersection while the Complainant remained hanging onto the hood. The car proceeded for around one block prior to being stopped by the police.



SPD officers investigated the incident, including speaking with the Complainant, the driver, and two witnesses. The Complainant stated the following:

I was standing in front of the intersection, telling people to go around. And I had a flashlight with, like, a flashy light. So, I...unintelligible...hit because I was wearing fucking black...He was acting – I could tell the posture that he wasn't going to turn around and he got closer. And then he just ran right into me.

The Complainant said that they went up on the hood on their “front” and held onto the “windshield wipers.” The Complainant told the officers: “I was literally directing traffic—and I asked him nicely. He'd come around—and then he just got closer...and then just...suddenly just slammed on the—accelerator and I was on the car.” The Complainant asserted that the driver accelerated on purpose. The Complainant said that they were exercising their First Amendment rights at the time. The Complainant stated: “I just want to make sure that you're not like...oh, now we're going to charge you with obstruction because you were standing in the roadway – it's your fault because you were playing in traffic.”

An officer who is a drug recognition expert evaluated the driver. The officer did not find any evidence of impairment. The driver, an elderly male who worked for a ride-sharing company, asserted that he was “attacked” by the demonstrators.

The first witness said that he did not see the impact but then observed the car driving up the street with the Complainant hanging onto it. An officer asked the first witness if it appeared that the driver was trying to get away, and the first witness said yes. The second witness told the officers: “They're obviously blocking the lane of traffic and stuff and the guy was trying to get his way though and they were not letting him through.” The second witness said, referring to the Complainant: “The guy jumped on the front of his car.” The second witness continued: “He got up on his car...he was holding on, like, he got up on the guy's car. He was not hit by him.” The second witness further explained: “Yeah, he jumped on the guy's hood and then when the guy came up here – he just, slammed his brakes and the guy slid off. He didn't really hit him.”

The incident was screened with Named Employee #2 (NE#2), a Sergeant who was the supervisor on scene. The decision was made to arrest the Complainant for pedestrian interference with NE#2's approval. In making this decision, NE#2 conferred with Named Employee #1 (NE#1), who was assigned as an Acting Lieutenant. NE#1 also agreed that there was sufficient probable cause to make the arrest.

After the arrest, the Complainant received medical attention at the scene from the Seattle Fire Department (SFD). The Complainant reported pain to their lower back and declined to be transported to the hospital at that time. The Complainant received treatment again while they were at the West Precinct. At that time, they complained of lower back pain and head pain. SFD personnel did not observe any visible injuries and noted that the helmet they were wearing at the time had no defects or other evidence suggesting trauma. The Complainant was transported to Harborview Medical Center and was subsequently released from custody.

The Complainant later filed this complaint, alleging that they were improperly arrested. They contended that they were the victim, and the driver should have been taken into custody instead. OPA proceeded with this investigation, which included reviewing video and reports, as well as interviewing the Complainant and the Named Employees.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 6. Employees May Use Discretion

OPA's investigation – including the interviews of NE#1 and NE#2 – indicated that NE#2 made the decision to approve the Complainant's arrest. As such, this allegation properly lies against him, not NE#1. Regardless, as OPA finds that NE#2 did not abuse his discretion during this incident, OPA reaches the same conclusion concerning NE#1.

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

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

Named Employee #2 - Allegation #1

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.)

In making the decision to arrest the Complainant and not the driver, the officers appear to have relied heavily on the account provided by Witness #2. He characterized the Complainant as preventing the driver from moving forward and then jumping on the hood and holding on. The officers were also aware that the Complainant and other demonstrators were blocking traffic for a sustained period of time. Lastly, the officers evaluated the driver's sobriety and took into consideration the fact that he was an older person driving for a ride-share company. This suggested to them that he was scared and trying to avoid the situation, rather than that he was seeking to cause the Complainant and others harm.

OPA believes it clear that there was probable cause to arrest the Complainant for pedestrian interference. Despite the Complainant's assertion to the contrary, the Complainant did not have an unfettered First Amendment right permitting the violation of law. There was no march ongoing, and the positioning of the Complainant and others created a danger to themselves and other motorists, particularly given that the incident occurred in the evening. Moreover, even if OPA would not have made the arrest, it cannot be said NE#1's decision to do so was contrary to policy.

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

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



Named Employee #3 - Allegation #1

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

It was alleged that, along with the arrest of the Complainant, unknown SPD employees arrested other non-violent demonstrators without cause.

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 evaluated two other arrests that occurred on the evening of May 1. The first arrest was relating to an individual who spray painted the wall of the East Precinct. The second arrest was for obstruction.

OPA found no evidence indicating that there was a lack of probable cause to make both of these arrests. Moreover, while these arrests were for non-violent crimes, this does not preclude them from occurring. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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