



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 23, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0264

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)
# 2	8.200 – Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)
# 3	11.010 – Detainee Management 9. Officers Will Seek Medical Assistance for Detainees	Not Sustained (Lawful and Proper)
# 4	5.001 – Standards and Duties 10. Employees Will Strive to be Professional	Not Sustained (Unfounded)

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 he was subjected to a false arrest and excessive force by unknown SPD officers. He further contended that he was not provided with medical attention and that the officers were unprofessional towards him.

SUMMARY OF INVESTIGATION:

The Complainant stated that he was involved in a car accident and, as a result, he was critically injured and required medical attention. Officers responded to the scene and, after obtaining the Complainant's account of what occurred, requested that he partake in field sobriety tests. He told them that he was too injured to do so. As a result, he was placed under arrest. He stated that he was handcuffed and put in the back of a patrol vehicle. He recalled that the handcuffs were extremely tight and that this ultimately caused him to lose consciousness. He said that he told officers that he could not breathe and that they laughed at him. He was later transported to a hospital; however, this was for a blood draw, not to provide him with medical care. In summary, the Complainant alleged that he was arrested without legal justification, that he was subjected to excessive force, that he was subjected to unprofessional conduct, and that he was not provided with medical attention when required.

OPA interviewed the Complainant. He told OPA that he was not intoxicated during the incident. He said that, while at the hospital, he informed doctors of the injuries to his wrist, but that they said that nothing was wrong. He felt that they were siding with the officers. He did not receive any medical attention. He claimed that the officers treated him unprofessionally while he was in the patrol vehicle and laughed at him when he said that he could not breathe. However, he told OPA that he was more concerned with his claim of excessive force.



OPA reviewed the Body Worn Video (BWV) and In-Car Video (ICV) that captured this incident. The video showed that the Complainant was not critically injured at the time that officers responded to the scene. He was able to communicate with the officers, explain what occurred, and to walk without assistance. One of the officers expressed his belief that the Complainant was potentially impaired. He asked the Complainant to participate in field sobriety tests or to take a voluntary portable breath test. The Complainant declined. When he did so, he did not inform the officers that he was too injured to comply with their requests. The Complainant was then placed under arrest, handcuffed, and seated in the rear of a patrol vehicle.

The officers spoke to a number of witnesses who provided their accounts of what occurred. One witness said, referring to the Complainant's speed, that he was "flying" prior to the accident. Others said that, after the accident, the Complainant exited his vehicle with a can of beer and then threw the can into the bushes.

Seattle Fire Department (SFD) personnel came to the scene and spoke with the Complainant. He declined medical assistance at that time.

The Complainant was transported from the scene. Prior to and during that time, he did not complain of handcuff discomfort. In addition, the rear ICV from the patrol vehicle did not corroborate the Complainant's assertion that he lost consciousness.

The Complainant was brought to a precinct and placed into a holding cell. During this time, he did not complain of injury, and he moved his handcuffs around periodically. He also did not appear to lose consciousness while in the holding cell.

The Complainant was subsequently transported to the hospital for a blood draw. When he was taken out of the holding cell in preparation to be transported, he claimed that his handcuffs were causing him discomfort. The handcuffs were taken off and reapplied. He again claimed discomfort from the handcuffs while at the patrol vehicle. Officers and a supervisor checked on the cuffs and determined that they were not too tight. In addition, from a review of the video, the handcuffs did not appear to be too tight.

During the transport to the hospital, the Complainant stated that he could not breathe and that he could not "feel" his blood pressure. However, there was no evidence from the video that he, in fact, had trouble breathing or that he ever lost consciousness. He also did not appear to lose consciousness while being transported to the King County Jail from the hospital after the blood draw was completed. He was again offered the opportunity to see SFD personnel, but he declined.

OPA's review of the video did not corroborate the Complainant's claim that the officers laughed at him when he raised his inability to breathe. While one of the officers laughed twice in the Complainant's presence, it was unrelated to his claim of injury.

Lastly, OPA obtained and reviewed the toxicology report relating to this incident. It indicated that the Complainant was well above the legal limit at the time (.22).

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.

Based on OPA's review of the evidence, the officers had sufficient probable cause to arrest the Complainant. First, he presented as intoxicated, based on the officers' physical observations of his conduct. Second, he refused to engage in either field sobriety tests or a preliminary breath test. Given this, the officers were permitted to take him into custody in order to seek a blood warrant. While the Complainant asserted that his decision to not take part in the tests was due to the injuries he suffered during the collision, this was simply not borne out by the video. Third, multiple community members provided statements to the officers supporting the belief that the Complainant was intoxicated.

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

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

Named Employee #1 - Allegation #2

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 also alleged that he was subjected to excessive force from tight handcuffing, which prevented him from breathing, caused him to pass out, and injured his wrists.

Again, the video from this incident is dispositive. The video showed that, after the Complainant stated that his handcuffs were too tight, they were adjusted by the officers. The video also established that, after that point, the handcuffs were not too tight. In addition, there was no evidence from the video that the Complainant actually had trouble breathing or that he passed out. Given this, OPA found no basis to conclude that the Complainant was subjected to excessive force.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #1 - Allegation #3

11.010 - Detainee Management 9. Officers Will Seek Medical Assistance for Detainees



SPD Policy 11.010-POL-9 requires officers to seek medical assistance from the Seattle Fire Department for detainees with “an obvious injury or illness, or when the detainee makes a complaint of injury or illness” and document that assistance in a report. (SPD Policy 11.010-POL-9). Similar to other Department rules requiring officers to seek medical assistance, OPA interprets this policy to permit officers to render assistance consistent with their training.

The video established that, immediately after the collision, the Complainant was offered medical treatment. Moreover, as discussed above, his complaints of tight handcuffing were addressed by officers and, when he was asked if he wanted additional medical treatment, the Complainant declined. Lastly, he was transported to the hospital where he had the opportunity to seek assistance from medical personnel. Whether he received that assistance or not is the responsibility of the hospital, not SPD officers.

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

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

Named Employee #1 - Allegation #4

5.001 – Standards and Duties 10. Employees Will Strive to be Professional

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (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.*)

The BWV and ICV did not support the Complainant’s assertion that SPD officers minimized and/or laughed at his medical concerns. In addition, there was no other video evidence suggesting that the officers used profanity towards the Complainant or made any statements that were derogatory or contemptuous in violation of policy.

As such, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**