



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 5, 2022

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0283

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.180-POL-3 – Exigent Circumstance 1. Officers Will Not Conduct Warrantless Searches or Seizures Unless...	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director's Findings
# 1	15.410 – Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause	Not Sustained (Lawful and Proper)

Named Employee #3

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

Named Employee #4

Allegation(s):		Director's Findings
# 1	8.200 – Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	6.010 – Arrests 3. Officers Shall Advise All Arrestees of Their Full Miranda Rights	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 alleges that the Named Employees unlawfully entered his apartment, detained him without probable cause, used excessive force against him, and failed to advise him of his *Miranda* rights.

ADMINISTRATIVE NOTE:

OPA also identified that Named Employee #3 may have engaged in minor unprofessionalism and that Named Employee #3 and Named Employee #4 may not have secured the Complainant in the rear of the patrol vehicle. These allegations were returned to the chain of command to be handled as Supervisor Actions.



SUMMARY OF INVESTIGATION:

The Named Employees responded to a disturbance call that ultimately resulted in the Complainant's arrest for a domestic violence (DV) assault. The Named Employees' response to the call—including their contact with the Complainant, his girlfriend (Witness #1) and her houseguest (Witness #2)—was recorded on multiple officers' Body Worn Videos (BWV). OPA reviewed the Computer Aided Dispatch for this incident, the Incident/Offense Report, BWV, the complaint, and the Complainant's interview.

OPA's investigation determined that, on March 21, 2021, Witness #2 called 911 to report that an intoxicated male was yelling at her and Witness #1. Witness #2 also reported that the intoxicated male had pushed Witness #1. The Named Employees responded to the address along with another officer – referred to here as Witness Officer #1 (WO#1). As these officers approached the address, they heard yelling coming from within. Named Employee #1 (NE#1) knocked on the door and Witness #2 answered, allowing the officers inside.

After coming inside, the Complainant—who was visibly intoxicated—confronted the officers, stating that they did not have a warrant and telling them to leave. The Complainant acted combatively, holding his cell phone directly in multiple officers' faces and stepping within inches of officers. During this time, Witness #1 audibly stated: "I can talk here, I live here also." NE#1 then spoke to Witness #1, who was sitting on a couch inside the apartment with two small children, one of whom is the child of Witness #1 and the Complainant, the other of whom is Witness #2's child. Named Employee #2 (NE#2) and WO#1 further spoke with Witness #2 in the hallway outside of the apartment.

Witness #1 told NE#1 that, among other things, both she and the Complainant were on the lease for the apartment and lived there with their child in common. In sum and substance, Witness #1 stated that the Complainant came home drunk and was upset that Witness #1 had invited Witness #2 and her small child to stay in the apartment for a couple days. Witness #1 stated that the Complainant was getting in Witness #2's face, so Witness #1 pushed him away and the Complainant pushed her back. Witness #1 also confirmed information—given to the officers by Witness #2—that the Complainant "probably" grabbed Witness #1 and threw her.

Outside the apartment, Witness #2 told NE#2 that the Complainant "put hands on" Witness #1 and "flung her away." Witness #2 also stated that: "it was like a two, three-minute ordeal in front of the kids...it happened two or three times where they kind of tumbled." Based on this information, NE#2 indicated to Named Employee #3 (NE#3) and Named Employee #4 (NE#4) that the Complainant was under arrest for DV assault. WO#1 then assisted NE#2, NE#3, and NE#4 with arresting the Complainant. After the Complainant was placed under arrest, Witness #2 confirmed her allegations against the Complainant to WO#1.

Following his arrest, the Complainant was processed at the West Precinct for misdemeanor domestic violence assault and transported to King County Jail.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.180 Searches General POL 3 Exigent Circumstance 1 Officers Will Not Conduct Warrantless Searches or Seizures Unless...

The Complainant alleged that Named Employee #1 entered his apartment without consent or a warrant.



SPD Policy 6.180-POL-3 provides that SPD officers “will not conduct warrantless searches or seizures unless there is both subjective and objectively reasonable basis to believe that exigent circumstances exist.” The policy also sets forth a series of factors considered by courts to determine whether exigency exists. (*Id.*)

NE#1 – and the other SPD employees who responded to the scene – did not violate policy when they entered and remained inside the Complainant’s apartment. The officers were responding to a call for a reported crime of violence (that an intoxicated male had pushed Witness #1). Based on the call location and the fact that the officers heard screaming coming from within the apartment after they arrived, they had reason to believe that the suspect was still on the premises at the time. Moreover, the officers – all of whom were in uniform – knocked on the door and identified themselves as “Seattle Police” twice, once before the door was opened, and again after Witness #2 opened the door and allowed them to peaceably enter. After being allowed inside the apartment, the Named Employee #1 observed Witness #1 crying on a couch in the back of the apartment and was confronted aggressively by the Complainant. Under these facts there was ample exigency for the officers to remain in the apartment at least long enough to determine the safety of the occupants, two of whom were small children sitting next to an adult woman who was visibly crying. This exigency was not diminished by the Complainant repeatedly and aggressively asserting – without any kind of proof – that he was the owner of the apartment and ordering the officers to leave.

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

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

Named Employee #2 - Allegation #1

15.410 Domestic Violence Investigation POL 2 Officers Make Arrests with Probable Cause

The Complainant alleged that NE#2 arrested him without probable cause.

SPD Policy 15.410-POL-2 directs that officers are required to make an arrest in a domestic violence incident where there is probable cause that the subject committed an assault or violated a court order within the past four hours. The policy further provides that arrests are otherwise discretionary. (SPD Policy 15.410-POL-2.)

After responding to the apartment based on the report that an intoxicated male had pushed Witness #1, the officers heard screaming coming from inside the apartment. A short time later, Named Employee #2 spoke with Witness #2, who informed him that the Complainant “put hands on” Witness #1 and “flung her away.” Witness #2 also stated that “it was like a two, three-minute ordeal in front of the kids...it happened two or three times where they kind of tumbled.” Based on this report from an identified, present eyewitness, it was reasonable for Named Employee #2 to believe that the Complainant had committed a crime.

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

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



Named Employee #3 - Allegation #1

8.200 – Using Force 1. Use of Force: When Authorized

The Complainant alleged that Named Employees #3 and #4 used excessive force against him during his arrest and by applying his handcuffs too tightly, then refusing to loosen them.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” 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 8.050.) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

Contrary to the Complainant’s claims, multiple BWV recordings captured his arrest, as well as the force used against him. The video indicated that the force was minimal and within policy and training standards. Similarly, multiple BWV recordings showed officers checking and adjusting one or both handcuffs at various times while the Complainant was in custody.

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

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

Named Employee #4 - Allegation #1

8.200 Using Force POL 1 Use of Force: When Authorized

For the same reasons set forth above for Named Employee #3, Allegation #2, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #4 - Allegation #2

6.010 Arrests POL 3 Officers Shall Advise All Arrestees of Their Full Miranda Rights

The Complainant alleged that NE#4 failed to read him his full *Miranda* rights. SPD Policy 6.010-POL-3 requires that arrestees be read their *Miranda* warnings “as soon as practical” after being taken into custody.

BWV captured four different officers read the Complainant his *Miranda* rights on five separate occasions. Notably, NE#4 advised the Complainant of his rights just prior to the Complainant leaving the scene and being transported to the West Precinct. In light of the Complainant’s continuous stream of verbal complaints to the officers at the scene and his confrontational actions, NE#4 advised the Complainant of his rights “as soon as practical.”



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

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