



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 13, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0331

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	11.020 – Detainee Management 11.010-POL 9. Officer Will Seek Medical Assistance for Detainees	Not Sustained (Training Referral)
# 2	11.050 – Detainee Property 1. Officer Secure Detainee Property	Not Sustained (Training Referral)
# 3	5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 4	5.001 – Standards and Duties 10 Employees Shall Strive to be Professional	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 2	5.001 – Standards and Duties 10 Employees Shall 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:

It was alleged that the Named Employees may have engaged in a violation of law and were unprofessional. It was further alleged that Named Employee #1 failed to obtain medical attention for an arrestee and did not preserve the property of an arrestee.

SUMMARY OF INVESTIGATION:

This incident arises out of the protests that occurred throughout Seattle after the killing of George Floyd by a Minneapolis police officer. This specific case stems from the third night of the protests, during which there was looting and property damage in multiple downtown locations.

The Named Employees responded to ongoing looting at a Target store. A community member recorded them breaking the window to the store prior to entering. Complainants, who had presumably reviewed the video, made OPA complaints, positing that the Named Employees were “breaking into” the store in violation of law. After reviewing this



and other video, including Body Worn Video (BWV), OPA added allegations of professionalism against both Named Employees. OPA further alleged that Named Employee #1 (NE#1) may have failed to summon medical attention for an arrestee and that NE#1 also may have failed to preserve the property of an arrestee.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

SPD Manual Section 11.020 – Detainee Management 11.010-POL 9. Officer Will Seek Medical Assistance for Detainees

When the Named Employees entered the Target store, they apprehended a number of individuals who were illegally inside and who were engaging in looting. Pursuant to policy and as the on-scene Sergeant, NE#1 screened the arrests. As part of that screening process, and again pursuant to policy, NE#1 asked the arrestees whether any had injuries. One arrestee stated that he wanted to see medics for an injury to his arm. NE#1 responded: “Yeah, yeah we’ll worry about it at jail buddy.” Contemporaneous medical treatment was not provided for this arrestee.

SPD Policy 11.010-POL-9 requires officers to seek medical assistance for detainees. The policy specifies that: “Officers will request Seattle Fire Department respond when a detainee has an obvious injury or illness, or when the detainee makes a complaint of injury or illness.” (SPD Policy 11.010-POL-9.)

During his OPA interview, NE#1 acknowledged that he did not call for immediate medical assistance for the arrestee. He told OPA that there was no obvious injury to the arrestee’s person and, even if there was, it did not appear to be serious or life-threatening. He told OPA that, had he observed such injuries, he would have treated the arrestee himself. He further said that, in a normal arrest scenario, he would have called the Seattle Fire Department (SFD) to the scene; however, this was simply not feasible under the circumstances facing him here. NE#1 said that, as a general matter, SFD would have been unable to safely access the location given the ongoing demonstrations and criminal activity. He further stated that it just was not practical to wait at the scene with the arrestees for these same reasons. In addition, NE#1 noted that the arrestees would receive medical treatment when they were brought to the King County Jail, which NE#1 indicated was to occur imminently after their arrests.

NE#1 acknowledged that his failure to call for immediate medical attention was a technical violation of the plain language of the policy. However, NE#1 asserted that such a deviation was reasonable in this case. OPA ultimately agrees with both points. OPA interprets the policy to require officers to call for medical treatment when it is requested; however, OPA also believes that some normal arrest procedures, such as this one, were simply not practicable under the circumstances. Again, the demonstrations that were ongoing were unprecedented in scope and, that evening, the largely peaceful protests had devolved into rioting and looting. Officers had limited personnel and had to make difficult decisions all throughout the evening regarding what they could and could not do. This was one such decision and OPA cannot find that NE#1 acted so unreasonably to warrant discipline. Instead, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** Even considering the circumstances facing him during this incident, NE#1 should be reminded of the Department’s expectation that he will provide medical attention for detainees when requested. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.



Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #2

SPD Manal Section 11.050 – Detainee Property 1. Officer Secure Detainee Property

It was alleged that NE#1 may have failed to safeguard the property of an arrestee. SPD Policy 11.050-POL-1 requires officers to safeguard such property.

The BWV showed that NE#1 conducted the search incident to arrest for an individual. In order to do so, NE#1 reached into the individual's pockets. The video indicated and NE#1 later told OPA that, when he did so, he was stuck by a needle inside of the individual's pocket. He dropped that needle to the ground. NE#1 also withdrew other items out of the individual's pockets, including: additional syringes and caps; a piece of paper; an EBT card; and several coins. He dropped those items to the ground. NE#1 later recovered the EBT card and placed it with the arrestee's other property. The card and the other property were transported with the arrestee to the jail. NE#1 did not recover the paper or coins; the syringes were not required to be placed into evidence and were permissibly discarded.

The question here is whether NE#1's failure to collect the piece of paper and coins and to include those items with the arrestee's property violated policy.

At his OPA interview, NE#1 explained that, while he was stuck with a needle, he did not seek medical treatment or fill out forms concerning the potential exposure. He said that there was not time to do so under the circumstances. He told OPA that he was worried about the criminal activity going on throughout the City and the low number of officers on duty to handle this. He was also concerned that he was standing in a significant amount of alcohol from broken bottles and he felt it possible that someone could throw something flammable in the store.

He told OPA that, normally, he would collect all of an individual's property and ensure that it was transported to the jail. However, during this incident, it was extremely chaotic and there were many things going on at once. He opined that he either did not know whose property was whose, or that he simply did not think to pick up the items that were on the ground given their nature.

As with Allegation #1, OPA concludes that NE#1's failure to collect the piece of paper and the coins from the ground constituted a technical violation of policy. However, and again similar to the finding in Allegation #1, OPA finds that the extreme circumstances facing him that evening and the general lack of supporting resources was the primary causal factor behind the failure to pick these items up. Under the circumstances, OPA does not believe it fair to discipline NE#1. Instead, OPA recommends the below counseling and retraining.

- **Training Referral:** NE#1 should be reminded of the Department's expectation that he will secure arrestee property when required and that he strive to do so even in high-stress situations. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**



Named Employee #1 - Allegation #3

5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

As discussed above, anonymous Complainants alleged that the Named Employees themselves violated the law by “breaking into” the Target store. If true, this conduct would violate SPD Policy 5.001-POL-2, which requires that employees adhere to laws, City policy, and Department policy.

The totality of the video clearly indicates that this allegation is patently false. The Named Employees observed individuals inside of a Target, looting the store. The store window was already broken when they arrived. The Named Employees used their batons to break portions of the glass to ensure that their entry into the store to effectuate arrests would be safe. They did not break and enter as was posited on social media.

Given this, OPA recommends that this allegation be Not Sustained – Unfounded as against both Named Employees.

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

Named Employee #1 - Allegation #4

5.001 – Standards and Duties 10 Employees Shall Strive to be Professional

It was alleged that NE#1 may have engaged in unprofessional behavior and may have made unprofessional statements during this incident.

While OPA identified concerns with NE#1’s failure to provide medical treatment to one detainee and his failure to preserve the property of another, this conduct is fully addressed in Allegation #1 and Allegation #2, respectively. As such, it cannot also form the basis for a finding of unprofessionalism.

From a review of the BWV, OPA did not identify any other behavior on NE#1’s part that was unprofessional. Moreover, there was no indication that NE#1 made any statements to individuals who were in the store and/or who were taken into custody that were unprofessional.

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

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

Named Employee #2 - Allegation #1

5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained – Unfounded.

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



Named Employee #2 - Allegation #2

Allegation #2 – SPD Manual Section 5.001 – Standards and Duties 10. Employees Shall Strive to be Professional

BWV showed that, upon arrival at the Target, NE#2 said to NE#1: “Are we going to arrest these fuckers?” This statement was made outside of the presence of the individuals inside of the Target and those outside on the street and, as far as OPA is aware, was only recorded on BWV and not by any community members. It was alleged that this statement may have been unprofessional.

At his OPA interview, NE#2 explained that, on his way to the Target, he and NE#1 saw a number of other stores that were being looted. However, given a lack of resources and the chaotic situation that was ongoing, they could not take action and make arrests. He found this to be extremely frustrating. He made the statement to NE#1 when they got to the Target to ask whether they were actually going to be able to take action there and prevent further looting. NE#2 said that the statement represented his exhaustion and frustration. He had worked two consecutive 15-hour plus shifts within only four hours of rest in between. He was further demoralized by the lack of available officers available to deal with ongoing criminal activity. He said that he made the remark solely to NE#1, that no one else overheard it, and it was not specifically purposed to insult specific individuals.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (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.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

In evaluating this allegation, OPA believes it to be helpful to compare this case to 2020OPA-0324. In the latter case, OPA found that statements made by an officer responding to looting during the protests were unprofessional. Specifically, OPA determined that the officer directly insulted a demonstrator and used profanity while discussing prospective force to be used on people engaging in criminal activity. Here, NE#2 did not make a statement directly to a specific demonstrator or criminal perpetrator or, for that matter, articulate his statement within the near vicinity of other individuals. In addition, NE#2 did not use profanity to discuss an impending use of force.

Ultimately, when evaluating the facts and circumstances of this incident and when considering NE#2’s physical and mental condition, OPA does not believe that his remark to NE#1 constituted unprofessionalism. This conclusion is buttressed by the fact that, despite being one of the most proactive officers in an incredibly busy precinct and watch, NE#2 has never had an allegation of professionalism made against him, let alone a Sustained finding.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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