



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 15, 2020

FROM: DIRECTOR ANDREW MYERBERG
 OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0437

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	16.090 – In-Car and Body-Worn Video 5. Employees Recording Police Activity b. When Employees Record Activity	Not Sustained (Lawful and Proper)
# 3	16.090 – In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video	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 the Named Employee subjected them to an improper arrest. It was also alleged that the Named Employee may have failed to record Body Worn Video.

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

On the evening of May 31, 2020, Named Employee #1 (NE#1) and other SPD officers were on bicycle patrol in downtown Seattle, responding to ongoing protests in that area. As the bicycle officers rode south upon the driving surface of 3rd Avenue, they encountered a loose-knit group of protestors, most of whom remained on the western sidewalk. During this time, one of the protestors – who was later identified as the Complainant – moved away from the western sidewalk, headed east across the four lanes of 3rd Avenue, and situated themselves directly in the path of NE#1’s moving bicycle. Although NE#1 attempted to maneuver around the Complainant, his ability to move became restricted by the eastern curb of 3rd Avenue. At this point, NE#1 and the Complainant made physical contact with one another.

NE#1 asserted that the Complainant used their “body force” to come into contact with him and force him to dismount his bicycle. The Complainant was subsequently placed under arrest for assault in the third degree.



The Complainant later asserted that their contact with NE#1 was a “bump” and that they did not try to dismount him from his bicycle. The Complainant claimed that NE#1’s account of the incident was inaccurate and, as a result, NE#1 caused them to be improperly placed under arrest. This OPA investigation ensued.

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. With regard to the crime of arrest, assault in the third degree is established where an individual “[a]ssaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault.” RCW 9A.36.031(1)(g).

It is not in dispute that NE#1 was riding his bicycle as an on-duty, sworn police officer at the time of the incident. The Body Worn Video (BWV) recorded by another officer also indicated that, prior to the contact occurring, the Complainant walked out of their path of travel across four lanes of traffic to stand directly in front of NE#1. This prevented NE#1 from riding around the Complainant and caused a collision between the two of them. Under the circumstances, which again are based on the incontrovertible evidence, NE#1 had a sufficient basis to arrest the Complainant. Even if the Complainant’s intent was not to harm NE#1, it would have been reasonable for NE#1 to believe that this was the case based on their conduct. As such, the elements of assault in the third degree were met and the Complainant’s arrest was supported by probable cause.

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

16.090 – In-Car and Body-Worn Video 5. Employees Recording Police Activity b. When Employees Record Activity

During its intake investigation, OPA identified that NE#1 did not record BWV during this incident. OPA further identified that there was no indication in the records relating to this incident as to why this was the case.

Ultimately, OPA determined that this was due to NE#1 not being required to utilize BWV pursuant to his union’s collective bargaining agreement with the City of Seattle and the fact that he, accordingly, was not assigned a BWV camera on the date in question.

As NE#1 was not required to record BWV, OPA recommends that both Allegation #1 and Allegation #2 be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #3

16.090 – In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video



For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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