



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 10, 2020

FROM: DIRECTOR ANDREW MYERBERG
 OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0406

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)

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)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	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:

The Complainant alleged that he was arrested without probable cause, that an unknown officer stole his personal property, and that another unknown officer acted unprofessionally during this incident.

ANALYSIS AND CONCLUSIONS:

On June 1, 2020, at around 3:00 a.m., the Complainant was taken into custody by SPD officers. The arrest stemmed from an encounter between SPD officers and protesters in downtown Seattle. The Complainant was among a group of around twenty protesters who were downtown past the curfew set by a Civil Emergency Order. That curfew stated that no person was permitted to enter or remain in a public place between the hours of 5:00 p.m. and 5:00 a.m. each night. This Order was issued by Mayor Durkan in response to ongoing protests that included instances of violence and property destruction. The Order was validly issued pursuant to the Mayor’s emergency powers under the SMC and, at that point, had not been challenged, overturned by the City Council, or otherwise undermined.

Between the hours of 1:00 a.m. and 3:00 a.m., the protesters were followed and monitored by a group of officers supervised by Named Employee #1 (NE#1). The officers documented witnessing the protesters walking in the roadway and some of the protesters “throwing garbage, moving cones to block roads, hitting buildings and vehicles



with sticks, and generally causing a disturbance.” Officers gave numerous orders to the protesters to stay out of the roadway and to move onto the sidewalk. Additionally, NE#1 gave the protesters repeated notice that they were defying the imposed curfew. His warnings ultimately caused most of the protesters to cease their earlier disruptive activities, move onto the sidewalks from the roadway, and depart from the downtown area. However, the Complainant and another individual decided to remain downtown and to continue to disobey the curfew order and the warnings provided by officers. Just before 3:00 a.m., NE#1 made the decision to arrest the Complainant and the other individual. The arrest was based on their repeated disobeying of the curfew, as well as their continuing to knock over street signs and barriers. The Complainant was taken into custody and searched incident to arrest. During the search, a fixed blade hunting knife was found on his person. The Complainant was taken to the West Precinct and booked for failing to obey the curfew and his possession of a dangerous weapon.

In his initial complaint to OPA, the Complainant contended that he was improperly arrested. He also stated that some of his property, including the knife and a feather that was an important part of his religious practices and cultural identity, was stolen while he was in custody. Lastly, the Complainant asserted that an unknown SPD officer was unprofessional towards him. The Complainant specifically alleged that the officer told him to “shut up” and made a threat that, if he kept asking questions about his arrest, he would go to jail instead of being released from the precinct.

As part of its investigation, OPA reviewed Body Worn Video (BWV), which fully captured the Complainant’s conduct, the orders given to him, his arrest, the search incident to arrest, and the ultimate return of his property to him. The BWV confirmed that there was probable cause to arrest the Complainant. The BWV indicated that the Complainant’s property, including the feather, were returned to him when he was released from custody. The BWV further indicated that the Complainant verified that all of the items that had been within his backpack were returned to him. The sole exception to this was the knife. OPA determined that the knife was entered into evidence as part of the prosecution against the Complainant. As of the time of OPA’s investigation, the charges related to the Complainant’s possession of the knife were still pending in Seattle Municipal Court.

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.

As discussed above, it is undisputed that, at the time of the Complainant’s arrest, there was an active curfew order that prohibited the Complainant and the other protesters from being in the downtown area. The BWV confirmed that the Complainant was downtown in violation of the order. Moreover, the Complainant, along with other protesters, engaged in property damage and other violations of law. However, the Complainant, unlike the other protesters, did not stop doing so and leave downtown after being repeatedly warned by NE#1 and other officers. As such, there was abundant probable cause for his arrest and NE#1 was justified in ordering officers to take the Complainant into custody.

For these reasons, 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 2. Employees Must Adhere to Laws, City Policy and Department Policy

The Complainant asserted that unknown SPD employees stole his personal property from him. If true, this conduct would violate SPD Policy 5.001-POL-2, which requires that Department employees adhere to laws, City policy, and Department policy.

As discussed above, the BWV conclusively established that all of the Complainant's property, with the exception of his knife, were returned to him upon his release from custody. Indeed, the Complainant orally confirmed this and made no allegation at that time that his property had been "stolen." With regard to the knife, it was properly entered into evidence. This did not represent "theft."

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

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

Named Employee #3 - Allegation #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

As noted above, the Complainant claimed that he was told to "shut up" and was threatened by an unknown SPD employee.

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.*)

As part of its investigation, OPA reviewed BWV of the Complainant's time in custody. This BWV captured virtually every interaction between the Complainant and officers. There was no evidence supporting the conclusion that any officer was unprofessional or rude towards him. OPA found no indication that an officer told the Complainant to "shut up" and did not find any indication of threats being made.

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

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