



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 30, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0637

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)
# 2	16.130 POL - 2 Officers Providing Medical Aid 1. Recognizing the Urgency of Providing Medical Aid and the Importance	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)
# 2	16.130 POL - 2 Officers Providing Medical Aid 1. Recognizing the Urgency of Providing Medical Aid and the Importance	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 (Unfounded)
# 2	16.130 POL - 2 Officers Providing Medical Aid 1. Recognizing the Urgency of Providing Medical Aid and the Importance	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 (Unfounded)
# 2	16.130 POL - 2 Officers Providing Medical Aid 1. Recognizing the Urgency of Providing Medical Aid and the Importance	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 Employees may have used excessive force on the Subject and may have failed to timely provide him with medical assistance.

ADMINISTRATIVE NOTE:



The Complainant also alleged that Named Employee #1 and Named Employee #4 may have been unprofessional. After reviewing the Body Worn Video of the incident, OPA believes that the officers could have handled this interaction better regardless of whether they disagreed with what the Complainant was saying. As this appeared to constitute a performance issue rather than misconduct, OPA made the decision to refer the professionalism allegation back to the officers' chain of command to be handled with retraining and counseling.

SUMMARY OF INVESTIGATION:

The Complainant filed a complaint with OPA concerning the Named Employees' treatment of an individual – referred to here as the Subject. She stated that she witnessed a vehicle collision. She described that there were two scenes relating to the collision and, when she walked by the first scene, she observed the Subject lying on the ground. The Subject – who was Black – was being held down by a number of White officers. She said that he was screaming that he was in pain and that the officers were hurting him. She went to her home to get a mask and, when she returned, she recalled that the Subject was limp and not responsive. The Complainant was upset by what she saw. She asked Named Employee #1 (NE#1) what was happening and why it was taking so long to get the Subject into an ambulance. She said that NE#1 began "going off" on her and that his responses were "so disturbing." NE#1 told her that the Subject was a "suspect" and asked her how she would feel if he had gotten in an accident that had hurt or killed one of her family members. She informed NE#1 that officers were not "judge and jury" and it was not up to NE#1 to decide who got medical care and who did not. She characterized NE#1 as "yelling" at her for inferring, which she acknowledged doing.

The Complainant speculated that the Subject was injured from the collision and thought that it was improper that the officers were holding him down. She felt that they held him down while handcuffed for too long and she did not understand why they did not provide medical attention to him sooner. The Complainant further speculated that, because the Subject was saying that the officers were hurting him, they must have used force. However, she did not witness any force.

As part of its investigation, OPA reviewed the Body Worn Video (BWV) of this incident, as well as reports and witness accounts. OPA determined that the Subject had stolen a vehicle and was doing donuts in the intersection when he accelerated forward striking another motorist. The impact was so significant that it broke the other motorist's back. When officers arrived, the Subject was wandering in the middle of the street. He was making incoherent statements and was walking between stopped cars without any apparent purpose. Officers, including Named Employee #2 (NE#2), made contact with the Subject and tried to convince him to get out of the street. Witnesses identified him as the cause of the collision, and he was handcuffed. The officers tried to seat the Subject into the patrol vehicle, but he refused to comply.

At that time, NE#2 informed the Subject that she was EMT-trained and began to evaluate him for injuries as they waited for Seattle Fire Department (SFD) personnel to respond to the scene. The Subject stated that he had used PCP earlier. NE#2 could not locate any injuries.

Officers again tried to get the Subject to sit in the rear of the patrol vehicle, but he continued to refuse to comply. Given his physical resistance, NE#2 and Named Employee #3 (NE#3) made the decision to take him down to the ground using a controlled takedown. He was kept on the ground on his side in the recovery position. NE#2 again inspected the Subject and determined that he may have a broken finger. SFD personnel arrived on scene and began to evaluate the Subject while he was on the ground. During this time, the Subject yelled that his finger hurt;



however, there was no evidence that he ever said that the officers were hurting him. SFD personnel informed him that they were aware of his injury and that they would get him treatment for it.

The BWV showed the interaction between NE#1, Named Employee #4 (NE#4), and the Complainant. The Complainant was clearly frustrated with the fact that the Subject had been on the ground in handcuffs for 30 minutes. She felt that he should have been removed from the scene and was upset that this was not done. The officers defended the handcuffing as the Subject was the suspect in the collision and explained that he was receiving medical attention. NE#4 erroneously told the Complainant that the Subject was extracted from the vehicle and had a neck injury. He appeared to be unaware of the officers' initial contact with the Subject as he came on the scene later.

All in all, the Subject remained on the ground for approximately 30 minutes while the officers waited for another ambulance to arrive. As discussed above, the Subject received medical treatment at multiple intervals during this time. Moreover, unbeknownst to the Complainant, the additional ambulance was delayed because there had been a shooting death and then a fatal hit and run both in South Seattle and both of which required exigent responses.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

From a review of the BWV, the only force used during this incident was to handcuff the Subject and then to take him down to the ground in a controlled manner. No further force was used on him when he was on the ground and he remained on his side in the recovery position.

OPA finds that this force was appropriate under the circumstances. Moreover, there was no evidence that any officer used excessive force and, indeed, the Complainant did not witness any. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded as against all of the Named Employees.

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

Named Employee #1 - Allegation #2

16.130 POL - 2 Officers Providing Medical Aid 1. Recognizing the Urgency of Providing Medical Aid and the Importance

SPD Policy 16.130-POL-2(1) concerns the provision of medical aid by officers. The policy specifically provides the following instruction: "Recognizing the urgency of providing medical aid and the importance of preserving human life, officers will request medical aid, if needed, and render appropriate medical aid within their training as soon as reasonably possible."

The BWV established that NE#2, who was EMT-trained, began assessing the Subject for injuries virtually immediately upon engaging with him. She provided him with further treatment when he was on the ground. In addition, the officers promptly called for SFD and they responded to the scene and also provided the Subject with medical assistance, including addressing his broken finger.



The Complainant's predominant concern was the fact that the Subject was held on the ground and in handcuffs for approximately 30 minutes without being placed into an ambulance. However, as discussed below, this did not violate policy. First, the Subject was in handcuffs because he had engaged in a significant vehicular assault with a stolen vehicle and had a felony warrant for a similar offense. This was appropriate, regardless of his finger injury. Second, it was also appropriate to take the Subject down to the ground and to keep him there while they waited for an ambulance. He had repeatedly refused to get into a patrol vehicle and was physically resistive, all which justified taking him down to the ground and keeping him there. Given his incoherence and physical state (high on PCP), it would not have been advisable to take the Subject out of the recovery position and to try to stand him up. Third, the 30-minute wait to get the Subject into an ambulance was outside of the officers' control. Care was prioritized for the other motorist who had a broken back caused by the Subject's actions. In addition, there was a delay in another ambulance arriving due to a fatal shooting and a hit and run death both of which occurred close by and at approximately the same time.

The Complainant did not and could not have known this and, even if she did, these facts may not change her mind that this incident was handled inappropriately. However, OPA disagrees and finds that, when evaluating the totality of the evidence, the officers complied with the elements of this policy. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against all of the Named Employees.

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

Named Employee #2 - Allegation #1

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

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

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

Named Employee #2 - Allegation #2

16.130 POL - 2 Officers Providing Medical Aid 1. Recognizing the Urgency of Providing Medical Aid and the Importance

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)**

Named Employee #3 - Allegation #1

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

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

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



Named Employee #3 - Allegation #2

16.130 POL - 2 Officers Providing Medical Aid 1. Recognizing the Urgency of Providing Medical Aid and the Importance

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)**

Named Employee #4 - Allegation #1

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

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

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

Named Employee #4 - Allegation #2

16.130 POL - 2 Officers Providing Medical Aid 1. Recognizing the Urgency of Providing Medical Aid and the Importance

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)**