



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 5, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0513

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics	Not Sustained (Management Action)
# 2	5.001 - Standards and Duties 6. Employees May Use Discretion	Allegation Removed
# 3	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	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics	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 Named Employee #1 improperly broke the window of the Complainant’s vehicle and unlawfully arrested her. It was further alleged that Named Employee #1, as well as Named Employee #2 who approved the probable cause for the Complainant’s arrest, failed to de-escalate.

ADMINISTRATIVE NOTE:

OPA initially recommended that Named Employee #1 receive a sustained finding for failing to de-escalate. At the discipline meeting in this matter, Named Employee #1’s chain of command disagreed. They pointed to the lack of clarity among officers concerning how car brigades should be handled and when and under what circumstances windows could be broken. While OPA still has concerns with how fast Named Employee #1 acted here – especially when compared to other officers – OPA agrees that there was and continues to be insufficient guidance and training in this area. As such, OPA changes its finding to Not Sustained – Management Action Recommendation.



SUMMARY OF INVESTIGATION:

OPA received complaints concerning the decision by an officer to break the window of a vehicle that was part of a protest “car brigade.” As a general matter, a car brigade refers to vehicles that travel either in front and/or behind a group of demonstrators as they move throughout the city. Demonstrators generally assert that the car brigades protect them from bad actors driving into and injuring them. Officers view the car brigades as a means to facilitate violence by demonstrators and property destruction and to prevent demonstrators from being arrested and/or dispersed.

On the date in question, officers, including Named Employee #1 (NE#1), approached the car brigade vehicles that were following a group of demonstrators. The officers decided to begin stopping the vehicles and making arrests based on discussions among each other and after receiving approval from Named Employee #2 (NE#2), a supervisor. The basis for the seizures of the vehicles and the arrests was rendering criminal assistance to those individuals in the crowd who were engaging in ongoing property damage.

NE#1 approached the driver’s side of a black Tesla that was part of the car brigade. NE#1 slapped the side of the window and, when the vehicle did not stop, he struck the driver’s side window twice with his baton. When the window did not break, he then used a tool (a window punch) to shatter the window. The driver – referred to here as the Complainant – was removed from the vehicle and was placed under arrest.

A 44 second video of the incident was posted on Twitter. The video showed the breaking of the window but did not capture sound of the interaction between the officers and the Complainant. The incident was also recorded on several officers’ Body Worn Video (BWV). NE#1’s BWV indicated that he and other officers discussed beginning to arrest the drivers of the vehicles that comprised the car brigade at the rear of the demonstrators. The four vehicles were driving at a slow speed, side to side, and were blocking both lanes of traffic. The officers picked out the black Tesla as the first vehicle that would be stopped. NE#1 approached the driver’s side and, while he did so, he slapped the rear panel in an apparent attempt to get the Complainant’s attention. At that time, someone could be heard yelling: “Speed up, speed up.” However, none of the vehicles in the car brigade actually did so. NE#1 then moved to the driver’s door. NE#1 then knocked on the window and told the Complainant to stop. The Complainant continued to move forward at a reduced speed. NE#1 yelled stop again and, this time, struck the window twice with his baton. The window did not break. The vehicle then stopped. The officers affirmed with each other that the Complainant was going to jail.

The officers told the Complainant to open the door. She did not immediately do so. NE#1 knocked on the window and again said: “open the door.” The Complainant did not look at him and stared forward. Another officer walked over and knocked on the window, saying “open the door.” Simultaneously, NE#1 used the window punch to shatter the window. From the time the Complainant stopped her vehicle to the time that NE#1 shattered the window was approximately 11 seconds. After breaking the window, the officers ordered the Complainant to open the door. The Complainant delayed for a few seconds, but ultimately did so. They then ordered her to take off her seatbelt and to get out of the car. After a few seconds, she did so and was placed under arrest.

In addition to reviewing the BWV, OPA further analyzed other documentation relating to the demonstration activities that evening. The records established that the demonstrators being led and followed by the car brigade engaged in repeated property damage, including: destroying an ATM at a Seattle Credit Union; breaking storefront windows; spray-painting surfaces such as a metro bus; rolling items into the roadway; and turning over garbage cans and dumpsters.



OPA also interviewed NE#1, NE#2, and two other witness officers – referred to here as Witness Officer #1 (WO#1) and Witness Officer #2 (WO#2).

NE#1 said that, throughout the evening, demonstrators in the group engaged in property damage and criminal behavior. The car brigade drove behind the demonstrators, moving in front of police vehicles to create distance between officers and the demonstrators. NE#2 told him that there was probable cause to begin arresting the car brigade drivers for rendering criminal assistance and left it up to the officers to decide which driver to arrest first. NE#1, who was in the center of a line of officers, picked the black Tesla in front of him. He further felt that arresting the driver in the middle would send a strong signal to the drivers on each side. NE#1 slapped the window of the Tesla and felt the car lurch forward. He recalled an incident from several months prior where he had to extract a driver from a vehicle and his experience that it could be dangerous and that the goal was to get the driver out as quickly as possible. NE#1 felt that the driver here had shown an unwillingness to stop, the possibility that she would flee, and was being non-compliant. NE#1 believed, at that point, that he needed to get the driver out of the vehicle.

NE#1 made the decision to break the window using a window punch tool. He stated that, the longer that the driver was left in the vehicle, the more possible it was for her to harm him and others. He also felt that the crowd could become hostile, so he needed to act quickly.

NE#1 believed that breaking the car window did not violate policy. He further believed that the orders he provided to the driver prior to doing so constituted de-escalation and her non-compliance indicated that further efforts in this vein would not be safe or feasible. Lastly, NE#1 contended that there was probable cause to arrest her and the other drivers.

NE#2 said that, in his opinion, there was probable cause to begin arresting the car brigade drivers. He explained that the drivers were preventing officers from taking law enforcement action to stop property destruction and were functionally allowing that property destruction to continue unabated. He believed that there was probable cause to arrest all of the drivers and this is what he meant when he told the officers to “pick one.” He did not instruct the officers how to make the arrests aside from advising them to put officers around the vehicle in a “protective bubble.” He felt that this would slow the situation down and act as a form of de-escalation. He said that NE#1 made the decision to shatter the window. He did not order NE#1 to do so. NE#2 opined that de-escalation was difficult under these circumstances and said that the drivers were aware that they needed to stop and comply based on the number of officers who were present and the repeated orders provided.

WO#1 was not present for NE#1’s decision to break the Complainant’s window. However, as discussed more fully below, he stopped another member of the car brigade. He stated that he did so because of the threat he felt that the car brigade drivers posed, as well as because of his belief that they were rendering criminal assistance to the demonstrators. NE#1 said that, after a period of time, he was able to convince the driver to get out of the car. He described de-escalating so that he did not have to break the window. This was ultimately successful.

WO#2 was NE#1’s partner during this incident. He approached the front of the Complainant’s vehicle as NE#1 shattered the window. WO#2 described that, throughout the evening, demonstrators had engaged in property damage and he car brigade had driven close to them, functionally allowing the demonstrators to do so with impunity. He felt that the arrests of the drivers were warranted and noted that NE#2 informed them that there was probable cause. He approached the front of the Complainant’s vehicle as NE#1 shattered the window. He said that he was looking at the Complainant when it occurred, and she was not complying. He said that he did not know that NE#1 was



going to break the window when he did. WO#2 said that the vehicle was stopped at the time the window was broken. He further confirmed that the Complainant was not told that the window would be broken before that occurred. WO#2 opined, however, that further de-escalation aside from the instructions they provided to the Complainant was not safe or feasible under the circumstances.

Lastly, relevant to OPA's analysis was the arrest of the car brigade driver effectuated by WO#1. There, WO#1 and Witness Officer #3 (WO#3) – stopped the vehicle and approached the driver's side window. WO#1 ordered the driver to get out of the vehicle – a white Tesla – and the driver initially refused repeatedly asking why he was being arrested. The driver did so while rolling the window nearly all the way up and remaining in the driver's seat of the running vehicle. After nearly a minute of unsuccessfully telling the driver to get out, WO#3 showed the driver the window punch, told him what it was, and explained that he was going to use it to break out the window if the driver did not get out. The driver still did not get out and started to make a phone call. For the next 10-15 seconds, the officers discussed moving forward with breaking the window. WO#1 asked the driver if there was anything he could say or do to convince the driver to voluntarily exit the vehicle without breaking the window. The driver then got out and was placed under arrest.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics

"De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance." (SPD Policy 8.100-POL-1.)

The policy further instructs that: "When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution." (*Id.*) Officers are also required, "when time and circumstances permit," to "consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors" such as "mental impairment...drug interaction...[and/or] behavioral crisis." (*Id.*) These mental and behavioral factors should be balanced by the officer against the facts of the incident "when deciding which tactical options are the most appropriate to bring the situation to a safe resolution." (*Id.*)

De-escalation is inarguably a crucial component of the Department's obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department's policy and expectations.

As discussed above, OPA initially found that NE#1 failed to de-escalate prior to breaking the Complainant's window. In reaching this conclusion, OPA cited four factors that are set forth more fully in the original DCM. OPA continues to believe that these four factors are significant; however, OPA finds that the predominant issue here is the failure of any written guidance, whether in policy or training, governing how such interactions should be handled. Accordingly, OPA now issues the below Management Action Recommendation.



- **Management Action Recommendation:** SPD should create a policy to be included in the overall demonstration management section that provides guidance on how car brigades/vehicles involved in protests are to be handled. This should include when arrests may be effectuated and when property may be damaged to do so, including the breaking of windows. The policy should also clearly state how many warnings must be provided prior to arresting or damaging property and the manner in which those warnings should be delivered.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 6. Employees May Use Discretion

As indicated in SPD Policy 5.001-POL-6, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-6.)

OPA has concerns with the decision to virtually immediately break the window of the Complainant’s vehicle. However, this conduct is already fully captured under Allegation #1 and, thus, OPA finds this allegation to be duplicative. Accordingly, OPA recommends that it be removed.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #3

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.

In evaluating the evidence, OPA finds the following facts to be conclusively established: (1) throughout the evening, demonstrators marched through the Capitol Hill area and caused felony-level damage to various property and engaged in other criminal activity; (2) throughout this time, the car brigade drove closely in front and behind the demonstrators preventing anyone, including officers from getting between the vehicles and the demonstrators; (3) the drivers in the car brigade were aware or should have been aware that the demonstrators were engaging in ongoing criminal activity; and (4) the car brigade drivers were given orders to stop and did not immediately do so.

To prove the crime of rendering criminal assistance, it must be shown that an individual engages in delineated activities “with intent to prevent, hinder, or delay the apprehension or prosecution of another person who he or she knows has committed a crime or juvenile offense or is being sought by law enforcement officials for the commission of a crime or juvenile offense.” Among the activities sufficient to establish the crime are: “Harbors or conceals such



person”; or “Prevents or obstructs, by use of force, deception, or threat, anyone from performing an act that might aid in the discovery or apprehension of such person.”

Based on the application of the facts discussed above to the elements of the crime, OPA finds that probable cause existed to arrest the drivers of the car brigade. Again, crimes were being committed in full view of the drivers behind the demonstrators and by driving slowly behind the demonstrators and blocking law enforcement officers and vehicles from stopping the property destruction the drivers prevented and delayed the arrests of those breaking the law. Moreover, by driving their vehicles behind the demonstrators, they could reasonably be construed as both harboring the demonstrators from arrest and as serving to conceal criminal acts by preventing officers from clearly seeing what was occurring. Lastly, the intent element was further establishing by the drivers continuing to operate their vehicles even after being ordered to stop.

OPA notes that, even if the elements of rendering criminal assistance were not met, there was also probable cause to arrest the drivers for obstruction and, arguably, for the traffic violations (including blocking the road and driving in the wrong lane of traffic). Indeed, this result is consistent with the U.S. Supreme Court’s decision in *Atwater v. City of Lago Vista*, 532 U.S. 318 (2000), in which the Court held that: “If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender.”

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

8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics

While NE#2 gave the general direction to start arresting the drivers of the car brigade vehicles, he did not provide specific orders to the officers, including NE#1, to shatter the windows of the vehicles in order to do so. NE#2 further did not advise NE#1 to break the window as quickly as NE#1 did and OPA finds that this was a decision made solely by NE#1.

For these reasons, OPA does not find that NE#2 bears responsibility for NE#1’s failure to de-escalate and, as such, recommends that this allegation be Not Sustained – Unfounded as against him.

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