



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 26, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0389

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 (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.200 Using Force 1. Use of Force: When Authorized	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 used excessive force on her during arrest and while she was being put into a police van.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were at the vicinity of 12th Avenue and East Pike Street where they were staffing demonstrations that were taking place. Body Worn Video (BWV) showed the Complainant sitting in front of a police bicycle line. A SDOT truck came from the left side of the road and the bike officers moved to make an opening for the truck to pass through. The Complainant got up from where she was seated and moved to the middle of the opening that was created for the SDOT truck and sat down. Officers in the vicinity began telling people that they needed to move so that the truck could get through.

NE#2 told the Complainant that if she did not move, she would be arrested. The Complainant stated that it was her First Amendment right to peacefully protest. NE#2 then told the Complainant that she was under arrest. He put his right hand on the Complainant’s right wrist, and his left hand near her elbow. NE#1 was on the left side of the Complainant. NE#1 and NE#2 both moved the Complainant’s hands behind her back, again telling her that she was under arrest. NE#2 handcuffed the Complainant and read her Miranda warnings. NE#1 and NE#2 then walked the Complainant behind the line and had her sit on the curb. While doing so, they explained to her that she does have the right to protest, but that she needs to move when told to do so by the police.



A Witness Officer (WO#1) searched the Complainant while she was seated, and the Complainant asked WO#1 to stop touching her. WO#1 alerted NE#1 that the Complainant's handcuffs were loose. NE#1 adjusted the handcuffs. He asked the Complainant to keep her wrists together because it would be painful otherwise.

NE#1 and WO#1 walked the Complainant to a prisoner van. The Complainant resisted being put into the van by pressing off the bumper with her feet and arching her back. The video showed that she slipped as she reached the top step. NE#1 and NE#2 went on either side of the Complainant, hooking their arms in her elbow area, and had her go up the stairs backwards. Neither officer was touching the Complainant's hands or wrists. The Complainant was told to watch her head as she leaned backwards into the van. Another Witness Officer (WO#2) later reported seeing the Complainant "bonk" her head on the top of the doorframe; however, the BWV did not conclusively show that she actually struck her head. In addition, she did not complain of pain at that time. The Complainant then dropped a short distance to the floor of the van. Again, the video did not show her hitting her head. NE#1 took hold of the Complainant's ankles and slid her back into the van into a seated position.

The Complainant was booked into King County Jail and was later transported to Harborview Medical Center after dry heaving and complaining that her head had been slammed during the arrest. Once at Harborview, the Complainant alleged that the officers who arrested her had used excessive force. She said that she was being manhandled as she entered the van, which caused her to slip and subsequently hit her head. The Complainant also said the handcuffs were put on too loose, which caused them to squeeze and bruise her hands.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary, and proportional. Whether force is reasonable depends "on the totality of the circumstances" known to the officers at the time of the force and must be balanced against "the rights of the subject, in light of the circumstances surrounding the event." (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where "no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose." (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

In assessing reasonableness, a threshold question is whether there was a legal authority for the arrest and, thus, a basis to use force. As a general matter, where there is probable cause to arrest a person, the law permits an officer to use not more force than necessary to effectuate the arrest. Here, OPA finds that there was probable cause to arrest the Complainant for obstruction. In reaching this conclusion, OPA finds that the First Amendment did not prohibit the arrest.

Consistent with the First Amendment, governments may impose reasonable restrictions on the time, place, or manner of speech and demonstration activity so long as the restrictions are content-neutral, serve a significant governmental interest, and leave open alternative channels for communication. *See, e.g., Berger v. City of Seattle*, 569 F.3d 1029, 1036 (9th Cir. 2009). Cities have an interest in promoting traffic flow and safety. *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 948 (9th Cir. 2011) Further, the means for doing so "need not be the least [...] intrusive," so long as they do not "burden substantially more speech than is necessary." *Id.* at 947.

The restriction on the Complainant's speech was content-neutral because it was premised on the need to clear the path for the SDOT truck, rather than the content of the Complainant's speech. It was narrowly tailored because there was no reasonable alternative to moving her consistent with allowing the SDOT truck to drive through. Moreover, the Complainant, unlike other demonstrators, moved from where she was standing and deliberately



placed herself in the direct path of the vehicle. Lastly, the Complainant was left with ample alternative channels for communication of information because the Complainant could have continued her protest in a different area, even one that was just steps away.

Given that probable cause existed to arrest the Complainant, it was reasonable for the Named Employees to lift her off of the ground, to handcuff her, and then to walk her to the prisoner van and place her inside. OPA notes that the BWV established that the officers took care not to injure the Complainant and warned her to watch her head while getting into the van.

The force was also necessary to ensure that the road be clear for oncoming vehicle traffic, including the SDOT Truck, and then again to take the Complainant into custody and transport her from the scene. In addition, the force used was of a reasonable degree under the circumstances.

Further, the force was proportional to her level of resistance and did not exceed that needed to lawfully arrest her and to place her into the prisoner van. Ultimately, while the Complainant alleged that the Named Employee purposefully caused her to suffer injuries to her hands from handcuffs and caused her to strike her head, both of these claims were conclusively disproved by the BWV.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both 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 – Lawful and Proper.

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