



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 18, 2020

FROM: DIRECTOR ANDREW MYERBERG
 OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0367

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Training Referral)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	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 an officer used unnecessary force against her during the May 30, 2020 protest and that other officers, who were present and witnessed it, ignored what took place.

ANALYSIS AND CONCLUSIONS:

On May 30, 2020, SPD assigned officers to manage demonstration at two locations for scheduled but unpermitted events organized in Seattle in response to the death of George Floyd. *Justice for George Floyd* was hosting “March for Justice #George Floyd” – a protest to gain awareness of police brutality starting at Seattle Police Headquarters at noon. *Not This Time* was hosting “The Defiant Walk of Resistance Against Injustice,” which was scheduled to begin with a rally at Westlake Center at 3:00 p.m., followed by a march to the Federal Court House. At approximately 1:10 p.m., Justice for George Floyd organizers encouraged the crowd to join them at the Westlake event. SPD informed officers that a large group, which was estimated at over 1,000 demonstrators, was making its way towards Westlake and there were increased confrontations between the group and police.

By 2:15 p.m., which is the approximate time this incident took place, an increasing number of protesters had gathered near Fourth Avenue and Pine Street. Information broadcasted over the police radio included multiple



reports of individuals throwing rocks and bottles at officers. SPD officers were ordered to set up a police line, which ran diagonally from Starbucks to Abercrombie & Fitch, and to maintain it. They were told that no one was supposed to come through or get behind the police line. A white SUV was occupied and parked at Westlake Park. As the crowd swelled, the vehicle began slowly moving in an obvious attempt to exit the area. Officers, who appeared as surprised as the protestors at the driver's effort to leave, assisted by asking the crowd to allow the vehicle to pass. It was during this activity that an encounter between the Complainant and an SPD officer, identified by OPA as Named Employee #2 (NE#2), took place.

OPA's investigation into this incident ensued after the Complainant filed an online complaint alleging that NE#2 used unnecessary force in getting her to move out of the vehicle's path and that she believed that one or more fellow officers claimed they did not see what took place when it was obvious that they had. OPA identified one of the fellow officers as Named Employee #1 (NE#1). OPA was unable to identify any other previously unknown officers. As part of its investigation, OPA interviewed the Complainant and the Named Employees, as well as reviewed Body Worn Video (BWV).

In her online complaint, the Complainant stated that she arrived at Westlake Center at around 2 p.m. and that the police had already created a barricade with their bicycles in front of the protestors. The Complainant wrote that, 15 minutes after she arrived, a vehicle started slowly navigating through the crowd. As it was doing so, the Complainant attempted to move out of the way but was slowed by the sheer number of people present who needed to move. It was at that point that an officer, NE#2, pushed her and shouted at her to "move back!" The Complainant responded by calmly informing NE#2 she was moving and repeatedly asked him to stop touching her. The Complainant stated that, when she raised her hand to protect herself from his contact, NE#2 forcefully shoved her. The Complainant described the shove as being hard enough that she would have been knocked to the ground had others not been so closely packed in behind her. The Complainant informed OPA that the shove was so strong that her chest was still sore the following day. The Complainant added that other officers witnessed what took place but pretended not to by stating: "I didn't see anything."

During her OPA interview, the Complainant provided the following additional details. The Complainant recalled that she was prevented from falling when "a big dude caught and righted (her)." The Complainant added that she believed NE#2 shoved her because she was not moving as fast as he wanted, adding that the vehicle presented no danger to her life as it moved slowly through the crowd. In recounting speaking to NE#1, The Complainant stated that, after she said to NE#1 that he must have known what happened, NE#1 specifically said: "I didn't see anything, I'm just doing my job." The Complainant believed that it was clear that she was referencing the "abusive and combative behavior by the police towards non-violent protestors."

NE#2 told OPA that he was assisting in getting the vehicle through the crowd safely when he "lightly" tapped the Complainant on the shoulder to inform her that she needed to move out of the way. When it appeared to NE#2 that the Complainant was not truly aware of what was going on, he verbally instructed her to move over, as he continued to use his hand to guide her away from the path of the vehicle. It was at that point that the Complainant "smacked" his hand out of the way. NE#2 told OPA that by doing so, "she actually committed assault." He stated further that the Complainant followed that action by stepping closer to him. Knowing the vehicle was still coming, NE#2 decided to push her to the side to get her away from the vehicle and him. NE#2 explained that he could have arrested her for what she did, but he decided against that to avoid causing a scene. NE#2 believed that his force was necessary because of the circumstances associated with the approaching vehicle and the fact that the Complainant had smacked his hand out of the way when he was simply trying to protect her. NE#2 described the force he used as de-



minimis force, which is not intended or likely to cause injury and is not reportable. NE#2 stated that the Complainant made no complaint of pain to him following their encounter. NE#2 stated that he made a specific effort to speak to her following the encounter to explain himself and to ensure she understood why he pushed her. NE#2 maintains that he did not violate any SPD policies during this incident as his sole intent was to prevent her from being hit by the vehicle.

NE#1 recalled the same basic facts associated with the effort to move the crowd out of the way in order to allow the exiting vehicle to pass. NE#1 stated that the Complainant told him something along the lines that NE#2 pushed her and it did not have to happen that way. NE#1 recalled telling the Complainant that he did not see what occurred. NE#1 could not recall any other specifics without reviewing his BWV footage. After doing so, NE#1 reiterated the fact that he did not see NE#2's push at the time it occurred, even though the push is visible on his BWV. He explained that his BWV is mounted on his chest area and only captures what is visible from that vantage point. It did not necessarily track where his eyes and attention were at the time. NE#1 believed that his visual attention was towards the opening that the vehicle was passing through and not on what was taking place between the Complainant and NE#2. In terms of NE#1's conversation with the Complainant at the scene, NE#1 did not believe that the Complainant was reporting misconduct. NE#1 noted that she did not complain of pain and her statement was not readily understood as being a complaint.

OPA's review of the BWV indicated that officers attempted to alert the crowd of the approaching white SUV and asked protestors to step aside and allow the vehicle to pass safely. Not all of the protestors initially moved, and some asked why they had to do so. At one point, officers moved towards a woman who was still standing in the path of the vehicle. The Complainant moved towards the officers, as if to intervene between them and the woman. She then walked back to where she was previously standing. NE#2 and other officers stepped forward to help direct the protestors to either side of the vehicle so that it could pass safely. As the vehicle turned slightly toward where the Complainant was standing, NE#2 was recorded placing his hand on the Complainant's left shoulder. The Complainant's hands were in her front pockets when NE#2 first placed his hand on her. The Complainant then turned her attention from the vehicle to NE#2. He indicated that she needed to move.

NE#2 placed his hand on the Complainant's shoulder a second time, still telling her to move. The Complainant pulled her right hand out of her pocket and moved his hand away with an upward movement. This action resulted in her making contact with NE#2's left hand/arm area, which caused NE#2's hand to come off her shoulder. The Complainant was recorded telling NE#2 not to touch her. NE#2 again told the Complainant to step back as she is going to get hit by the vehicle and placed his right hand on her left shoulder. The Complainant, in response, appeared to hold her ground and possibly step slightly forward in the direction of NE#2. The Complainant simultaneously reiterated that she did not want NE#2 to touch her. The Complainant then moved her left hand up to knock NE#2's right hand away. NE#2 responded to this action with a quick two-handed shove. The Complainant was moved backwards by the shove. Although the BWV indicated that the Complainant may have made contact with another protestor's body as she moved backwards, it did not appear that her motion was halted or braced in any significant way by another protestor.

Named Employee #1 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations



SPD Policy 5.002-POL-6 concerns the reporting of misconduct by Department employees. It specifies that minor misconduct must be reported by the employee to a supervisor, while potential serious misconduct must be reported to a supervisor or directly to OPA. (SPD Policy 5.002-POL-6.) The policy further states the following: “Employees who witness or learn of a violation of public trust or an allegation of a violation of public trust will take action to prevent aggravation of the incident or loss of evidence that could prove or disprove the allegation.” (*Id.*)

NE#1 reported that he never actually witnessed the physical encounter that took place between NE#2 and the Complainant until he later reviewed his BWV at his OPA interview. As such, he asserted that he did not witness any conduct that he felt constituted reportable misconduct. He further stated that he did not perceive the Complainant’s statements to him to be a complaint of misconduct.

OPA finds that NE#1’s assertions are supported by the BWV, which captured the Complainant stating “it doesn’t have to happen like that” and NE#1 replying: “I honestly did not see what happened until it was over.” Moreover, OPA concurs that NE#2’s conduct was not of a nature that would have triggered a mandatory reporting requirement on NE#1’s part.

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

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

Named Employee #2 - Allegation #1

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

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.*)

The BWV established that the Complainant was among those individuals who was in the path of the vehicle and who was being directed to move back. She, like some of the other protestors, did not fully comply with the officers’ requests. Indeed, at one point, she walked directly in front of the vehicle as if to intervene between officers and another demonstrator. After that, she continued to be one of the only demonstrators still partially in the vehicle’s path. While the Complainant asserted that she was moving when initially contacted by NE#2 and said that she told NE#2 that this was the case, this is not supported by the video. Instead, the video shows that she continued to remain near the vehicle and in the location that officers wanted her to move back from. NE#2 asked her to move back multiple times, but she did not do so. Moreover, the video conclusively established that, when NE#2 placed his hand on her shoulder to move her back, she pushed his hand off of her. This all preceded the eventual push.

Given the above, OPA finds that NE#2 was permitted to tell the Complainant to move back and, when she refused to do so, to use force to move her back. Optimally, this would have been comprised of guiding her back, which is what NE#2 initially attempted to do. However, once this was twice unsuccessful and after the Complainant physically pushed him away, NE#2 was permitted to raise the level of force he used. This included pushing the Complainant



back. The BWV indicated that the Complainant did not fall backwards, exclaim in pain, or appear to suffer any injuries. This force was not excessive under the circumstances.

However, that NE#1 could have pushed the Complainant, does not mean that he should have. From OPA's perspective, while NE#1 was justified in moving the Complainant back, there was no true imminent threat that she was going to get hit by the vehicle. Moreover, while she did technically assault NE#2 by pushing his hand away, this was not a situation where she punched or threw a projectile at NE#2. This informs OPA's belief that the push was more purposed to respond to the Complainant swiping NE#2's hand away, rather than being an altruistic attempt to protect her from the vehicle, as NE#2 described.

Using such force in a demonstration context where tensions are already high can result in inflaming crowds and create an escalating situation where eventually more and higher-level force is necessitated. Indeed, OPA has seen several cases in which NE#2, as well as other officers, used force or made arrests where the better long-term course of action would have been to decline to do so. While this case did not result in a significant escalation, it could have, and a number of the other cases did. This could have been and should have been avoided. Accordingly, while OPA does not find that NE#2 violated policy by using excessive force, OPA desires that he and others do a better job of exercising judgment, caution, and discretion during such situations.

- **Training Referral:** OPA requests that NE#2's chain of command discuss this incident with him and, specifically, go over NE#2's decision to push the Complainant. As indicated in this DCM, NE#2's chain of command should discuss the risk of using such force in a demonstration context, particularly when tensions are high with the crowd. OPA further requests that NE#2's chain of command encourage him to engage in better decision-making during demonstrations in order to prevent unnecessary escalation of events. This counseling and retraining should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegation #2

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

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 instructs Department employees to "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." (*Id.*)

This allegation is fully subsumed in the discussion in Allegation #1. As such, OPA recommends that this allegation be Not Sustained and refers to the above Training Referral.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #3 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations



OPA found no evidence indicating that an unknown SPD employee failed to report misconduct. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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