



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 12, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0494

Allegations of Misconduct and the Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Sustained
Imposed Discipline		
Suspension Without Pay		

Named Employee #2

Allegation(s):		Director’s Findings
# 1	14.090 - Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 – Use-of-Force A) & B)	Not Sustained (Inconclusive)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 3	14.090 - Crowd Management TSK–3 Issuing the Order to Disperse	Not Sustained (Lawful and Proper)

EXECUTIVE SUMMARY:

It was alleged that the Named Employee may have used excessive force on a demonstrator. It was further alleged that unknown SPD employees may have improperly deployed a blast ball and OC spray at the Complainant and did so without first providing a dispersal order.

SUMMARY OF INVESTIGATION:

This case stems from the demonstrations that occurred on July 25, 2020, and SPD’s response thereto. The demonstrations that took place on that day were the largest since the protests began in late May/early June. As a general matter, a large crowd marched from the Central District/South Seattle to the East Precinct. Along the way, individuals within the crowd caused property damage, including shattering the windows of businesses and setting trailers and other buildings on fire in a cordoned off area in the vicinity of the Youth Service Center. SPD additionally reported that demonstrators threw at least one explosive device at the East Precinct, which caused damage to the precinct wall.

As demonstrators passed the East Precinct and walked towards Cal Anderson Park, officers emerged from the precinct and proceeded towards the crowd. SPD issued a number of dispersal orders, which were not complied with. Ultimately, both groups clashed repeatedly, resulting in numerous uses of force against demonstrators and violence towards officers over a prolonged period of time. As a result, OPA received and/or initiated multiple investigations, including this case.



The incident here occurred while SPD officers began to push the demonstrators back from the vicinity of the precinct. As officers advanced, they came across several individuals who were either sitting on or standing next to a concrete retaining wall. Behind the individuals was a bus stop with an awning. As the officers moved towards the individuals, the officers told them that they needed to move back. One of the individuals said that they had been pepper sprayed; it appeared that they were receiving medical care. An officer – referred to here as Witness Officer #1 (WO#1) – told the individuals that they had to move and began to push them back with his hand.

Officers in front of WO#1 – Named Employee #1 (NE#1) and Witness Officer #2 (WO#2) – physically pushed two of the individuals. NE#1 forcefully pushed the first individual – the Complainant in this case – backwards, causing him to fall down to the ground and against the bus stop. WO#2 pushed the second individual back towards concrete wall. The momentum caused both WO#2 and this individual to fall forward onto the retaining wall. At that time, WO#1, who was behind NE#1, pepper sprayed a woman dressed in light blue nurse scrubs who advanced towards the officers and pulled the second individual back. That OC deployment was investigated under 2020OPA-0471.

The Complainant later alleged that he was subjected to excessive force when he was pushed by NE#1. He further contended that unknown SPD employees improperly deployed a blast ball and OC spray in his immediate vicinity and that this was done prior to a dispersal order being provided. This OPA investigation ensued.

As part of its investigation into this incident, OPA reviewed BWV and third-party video, as well as interviewed the Complainant and NE#1.

The Complainant said that he was taking part in the demonstration on July 25 and, at the time of this incident, he was standing in front of the crowd using his phone to videotape officers. He observed a woman who was also standing in front of the crowd get pushed down for what appeared to be no reason. A blast ball, which was thrown by an unknown officer, then detonated by his feet. He did not hear a dispersal order prior to that deployment. Officers began pushing the crowd back. The Complainant said that he was moving, as was the crowd; however, officers continued to deploy OC spray and blast balls and pull umbrellas away from other demonstrators. The Complainant saw a demonstrator sitting by a retaining wall. The demonstrator was yelling that he could not see. Another demonstrator tried to help the individual who could not see. The Complainant also moved towards them to assist. However, officers intervened to prevent this. The Complainant stated that NE#1, who had a “billy club,” used a “cross-check” to knock the Complainant and another demonstrator back and down, causing him to fall “into the bus shelter.” This resulted in the Complainant striking his head. At this time, another officer deployed OC spray over him, causing his face and hands to burn. The Complainant was ultimately able to help the individual who could not see. He also was able to wash out his own eyes. The Complainant expressed that he was concerned by the overall level of force applied by officers, including that used against him, and he felt that it was excessive.

NE#1 recalled that, earlier that day, there had been extensive violence and property damage engaged in by demonstrators. He said that multiple orders to disperse were issued and, due to an overall lack of compliance, officers began to physically move the crowd back. He said that, along with removing the demonstrators from the area, the point of pushing the crowd back was to make it harder for demonstrators to harm officers or damage property.

NE#1 stated that he observed the Complainant attempting to intervene with officers who were interacting with another demonstrator. He said that he grabbed the Complainant, who was facing away, to “spin him around” and to “get him walking” in the opposite direction from the officers. NE#1 did not hear the other demonstrator saying that he could not see.



NE#1 characterized his force as de minimis and said that it was attempted to guide and/or move the Complainant forward. He said that he did not know that the Complainant fell until he reviewed his BWV and he saw no evidence at the time that the Complainant suffered any injuries.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - 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.*)

From OPA review of the video, OPA disagrees with NE#1’s description of the force he used, as well as with his contention that the force was de minimis.

First, the BWV indicated that NE#1 forcefully pushed the Complainant down and towards the bus stop. This caused the Complainant to fall down with significant momentum and to strike the bus stop. OPA saw no evidence to support NE#1’s assertion that he used low-level force to grab and then “spin” the Complainant around.

Second, the BWV further indicated that the force used by NE#1 was, at the very least, Type I force if not a higher level. Notably, NE#1 clearly used an “open hand technique with sufficient force to cause complaint or indication of pain” and arguably used force that was “reasonably expected to cause physical injury greater than transitory pain but less than great or substantial bodily harm.” Moreover, but for the fact that the Complainant was wearing a helmet, he could have suffered very serious injuries based on the manner in which NE#1 pushed him, his momentum in falling to the ground, and his striking the bus stop with his head.

When assessing this force under SPD Policy 8.200-POL-1, OPA finds that it violated policy. Even assuming that the force was reasonable given the legitimate law enforcement interest in continuing to move the crowd back under the circumstances, it was neither necessary nor proportional.

With regard to necessity, there were other reasonably effective force options available to NE#1 rather than pushing the Complainant backwards into a bus stop. For example, NE#1 could have used his baton to move the Complainant back as he was trained to do. NE#1 also could have pushed the Complainant with less force or in a manner less likely to result in the Complainant falling backwards into a hard and immovable object. Moreover, the force used exceeded the degree necessary to effectuate NE#1’s lawful purpose.

With regard to proportionality, the level of force and the potential harm it could have caused the Complainant well outweighed the threat posed by the Complainant to NE#1 and other officers. As a starting point, from a review of the BWV, there was no indication that the Complainant posed any threat whatsoever to NE#1. Further, NE#1 did not



say that this was the case. NE#1 said that he perceived the Complainant to be moving towards officers, but he did not convincingly articulate that the Complainant's actions or demeanor suggested that he was going to imminently attack those officers or subject them to physical danger. However, and as captured by the BWV, NE#1 forcefully pushed the Complainant down without any apparent regard for the injuries that the Complainant could have suffered. This caused the force to be not proportional.

For the above reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

14.090 - Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 – Use-of-Force

OPA perceives the Complainant to be raising excessive force claims against unknown SPD officers premised on both the blast ball that was deployed at his feet and the OC spray that was deployed at the time he was pushed to the ground. OPA evaluates the blast ball deployment in the context of this allegation and the OC spray deployment in Allegation #2, below.

During its intake investigation, OPA was unable to identify the deployment cited by the Complainant or, for that matter, which officer engaged in this conduct. While OPA did verify that multiple dispersal orders were provided to the crowd prior to blast balls being deployed, this does not necessitate a finding that the deployment in question was appropriate. However, without knowing the context in which it occurred, OPA cannot determine whether the deployment was consistent with policy.

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

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

Named Employee #2 - Allegation #2

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

With regard to the OC spray that affected the Complainant, OPA believes that the Complainant is referencing WO#1's deployment that was addressed in 2020OPA-0471 and was deemed consistent with policy. Accordingly, for the same reasons as articulated in that case, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #3

14.090 - Crowd Management TSK-3 Issuing the Order to Disperse

OPA investigation in this case, as well as the other cases stemming from July 25, indicted that no less-lethal tools were used – including blast balls and OC spray – until after dispersal orders had already been issued. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.



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