



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 3, 2022

FROM: INTERIM DIRECTOR GRAINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0499

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 (Inconclusive)

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 SPD officer – who OPA identified as Named Employee #1 (NE#1) – used excessive force during a demonstration by assaulting a protester (the Subject) with a bicycle.

SUMMARY OF INVESTIGATION:

This case arises out of the demonstrations that occurred within Seattle and across the nation in the wake of the killing of George Floyd by a Minneapolis Police Officer. These protests were unprecedented in scope and were directed at law enforcement. While most demonstrators protested peacefully, some demonstrations devolved into violence, property destruction, and looting.

On July 26, 2020, OPA received an anonymous complaint alleging that an SPD officer – later identified as NE#1 – used excessive force against a protester during a demonstration on July 25, 2020. Specifically, the complainant stated “Looks like assault to me @45s,” followed by a link to a video posted on Twitter (“Twitter Video”). The Twitter Video appears to have been filmed by a protester who was standing in a line with other protesters while facing a line of SPD bicycle officers. At about the 45 second mark of the Twitter Video, NE#1 hit the Subject with the rear portion of NE#1’s bicycle. NE#1 struck the Subject with the broad, “face side” of NE#1’s rear wheel, such that the Subject was hit with the rear portion of the wheel and/or tire (to the rear of the metal gear cogs at the center of the rear wheel). The rear wheel appeared to hit the upper, left side portion of the Subject’s body, from approximately their head to just above their waist. NE#1 hit the Subject with enough force that the collision of the wheel with the Subject is audible in the video, despite the significant ambient noise of the protest. The Subject then walked away. This investigation ensued.

a. Document Review

As part of its investigation, OPA reviewed documentary evidence related to this incident and crowd control training for SPD bicycle officers.



The Incident Action Plan (“IAP”), Incident Log, and Computer Aided Dispatch (“CAD”) document that SPD mobilized on July 25, 2020 in anticipation of a demonstration advertised to be in support of ongoing demonstrations in Portland, Oregon. The IAP noted that a flyer advertising the demonstration contained a picture of an SPD patrol car on fire and stated “Now is the time [to] show that we are not done fighting, this is a call to action, show up ready to shut it down and hold the line in solidarity, don’t give SPD an inch, keep them scared.” Relatedly, the IAP noted property destruction and the use of crowd control munitions to address life safety issues at demonstrations in Portland. The IAP further noted that large demonstrations in Seattle on July 19 and July 22, 2020 resulted in extensive property damage to government buildings and private businesses, and that SPD lacked sufficient resources to interdict criminal activity on those dates. Additionally, the IAP stated a belief that Seattle anarchist groups felt they had not achieved an appropriate level of “success” as those in Portland. SPD Headquarters, as well as the East and West Precinct buildings, were identified as possible “primary targets” based on prior events in which the SPD HQ and West precinct were attacked and a fire was set in the East Precinct lobby. In addition to a host of logistical and tactical planning, the IAP set forth the Commander’s Intent, specifically that SPD would: “facilitate, in a content-neutral manner, the rights of all gathered, the freedom to assemble and express their views within the limited conditions necessary to address public safety concerns. When required police resources will be deployed to address significant life safety emergency, they will work to stabilize events and they will attempt to reduce the potential for escalation.”

The CAD for this event originated at 10:39 A.M. for a location listed at 1519 12th Avenue. A review of the CAD from approximately 3:50 P.M. through 5:51 P.M. shows that multiple fires occurred, including at Youth Service Center, inside the East Precinct, and at a Starbucks resulting in the evacuation of residents in units above the Starbucks. The CAD also documents multiple injuries to SPD members of service from projectiles such as rocks, “IEDs,” and “mortars.” The CAD also notes multiple authorizations for the use of less lethal deployments against demonstrators, including the use of OC spray and blast balls, as well as officers, bicycle squads, and SWAT teams physically advancing police lines. Multiple arrests were made and at least one arrestee sustained a head injury.

Additionally, OPA reviewed relevant training materials for SPD bicycle units, specifically related to the use of “mobile fence lines.” A mobile fence line is a police line in which a line of officers creates a barrier in front of them with police bicycles such that the bicycles are placed horizontally (tire-to-tire) in front of the line of officers. These officers are trained in a technique to use their bicycles to move a crowd backwards. As trained, bicycle officers on a mobile fence line would, on command, give verbal orders to “move back,” lift their bicycles to chest level, then press their arms “forward into an extended position.”

b. Video Analysis

OPA analyzed the Twitter Video and Body Worn Video (BWV) from NE#1, Witness Officer #1 (WO#1), and Witness Supervisor #1 (WS#1).

i. Twitter Video

As discussed above, the Twitter Video is one minute and 27 seconds long, apparently filmed by an individual at the front of the protest line, facing the officers. The Twitter Video depicts WS#1 giving a signal for the fence line to move and the bicycle officers begin executing the mobile fence line. After advancing twice, an officer from an outside agency deploys a blast ball on the ground through the line of protesters. WS#1 gives another order to keep moving forward. NE#1 advances beyond a non-party protester, who two SPD officers then attempt to arrest. An officer then moves the Subject. The camera view then is blocked by a protester’s shield. As the Subject reappears in the Twitter Video,



NE#1 hits the Subject with the rear portion of NE#1's bicycle. NE#1 struck the Subject with the broad, "face side" of NE#1's rear wheel, such that the Subject was hit with the rear portion of the wheel and/or tire (to the rear of the metal gear cogs at the center of the rear wheel). The rear wheel appears to hit the upper, left side portion of the Subject's body, from approximately their head to just above their waist. Notably, NE#1 appears to hit the Subject by pushing only the rear wheel of his elevated bike forward in a rapid motion and not pressing both arms forward into an extended position, as trained. NE#1 hit the Subject with enough force that the collision of the wheel with the Subject is audible in the video, despite the significant ambient noise of the protest. The Subject then appears to walk out of view of the camera. Officers continue to advance as the protesters appear to continue to back away. A SWAT officer throws a blast ball. After the officers and protesters appear to fully clear the Broadway intersection. The Twitter Video then ends.

OPA used software to analyze the Twitter Video frame by frame. Using this analysis, OPA identified both the frame just prior to NE#1 striking the Subject and the frame immediately following the impact. OPA then analyzed the video between these two frames at a play rate of two frames-per-second. This analysis showed that NE#1's bike wheel first impacted the Subject in the Subject's arm/shoulder area. Although perhaps a matter of debate, based on both the physical location of NE#1's bicycle wheel at the moment of the impact and the movement of the Subject's head, it appears to OPA that NE#1's bicycle tire also struck the Subject's head and/or face.

ii. Body Worn Video

OPA also reviewed relevant sections of BWV from NE#1, WO#1, and WS#1 from this date. NE#1's BWV depicts a line of protesters, with the Subject standing at the front of the line of protesters holding a "sandwich board" in front of them. A demonstrator with a bull horn then gives an instruction for demonstrators with "shields" to come to the front. Various protesters with signs and other types of "shields" move to the front and hold the "shields" up, facing the officers. As the officers give commands for the protesters to move back, officers begin to advance the mobile fence line.

NE#1 then advances to a position where he and the subject are standing directly in front of one another. NE#1 then turns his bike sideways and strikes at the Subject's shield with his back tire in a downward motion. This knocks the sign out of the Subject's hands, but the sign appears to be tied to the Subjects hands. After this, NE#1 picks his bike up and moves around an individual who appears to be kneeling or sitting on the ground. The Subject is then visualized near NE#1's rear tire holding on to a rope on their sign and apparently reaching towards either the officers or the sign. It sounds like NE#1 tells the Subject to move back as NE#1 appears to use his bike to push the Subject. As NE#1 lowers his bike, another officer (WO#2) uses their baton – held in both hands – to strike at the Subject in a downward motion. The Subject is moved back about one step before appearing to stop. As the subject faces the officer with the baton, NE#1 then raises his back tire up, striking the Subject. However, it is not clear in NE#1's BWV where NE#1 strikes the Subject because the view is blocked by NE#1's bicycle. The subject then turns and moves away from the officer line. A short time later in the video, the Subject is again observed standing in the front of the protester line holding the same sign.

BWV from WO#1 and WS#1 both captured NE#1 striking the Subject with his bicycle. WO#2's BWV did not capture NE#1 striking the Subject with his bicycle. WO#1's BWV depicts the incident from a vantage point to NE#1's left. From this angle, it appears that NE#1's bicycle wheel did strike the Subject in their head and/or face as well as the area of their arm/shoulder. WS#1's BWV depicts the incident from a vantage point behind NE#1 and to NE#1's left. However, the WS#1's BWV of the strike itself is obscured as WS#1 is raising a can of pepper spray in front of his BWV.



c. Witness Statements

OPA interviewed WO#2 and WS#1. NE#1 no longer works for SPD and submitted a written statement in lieu of an interview. The complainant chose to remain anonymous and was not available for an interview. The Subject was neither stopped nor identified at the time of the incident and could not be identified by OPA

i. NE#1 Written Statement

NE#1 no longer works for SPD. Accordingly, NE#1 could not be compelled to provide OPA with a statement. However, NE#1 did provide OPA with a seven-page written statement concerning these allegations.

NE#1 stated that on July 25, 2020, he was working in a bicycle squad. NE#1 stated that on that date he had been assigned to a bike unit for over a year and had worked a variety of protests, demonstrations, marches, parades, and other large events.

NE#1 wrote that the standing orders for the day included that the officers were allowed to use force to protect themselves from assault. Additionally, NE#1 stated that he had received briefings concerning “Antifa” as a group of people who would incite violence against police and others, that Antifa wore all black, and that individuals affiliated with Antifa participated in large scale property destruction, arsons, and “de-arresting” those in police custody. NE#1 described de-arresting techniques as dangerous and involved assaultive behaviors against officers. NE#1 stated that he had been subjected to de-arrestors multiple times and that, in the past, he had been dragged by his helmet and duty belt, had his gun pulled on, and had various items stolen from his duty belt.

On July 25, 2020, NE#1 stated that the protests were large-scale, anti-police protests, and that commanders had declared them riots over the loudspeakers. Accordingly, NE#1 stated, the crowd needed to disperse. Additionally, NE#1 stated that he saw flags with Antifa written on them and other Antifa symbols. NE#1 wrote that the protesters had also been using improvised shields, gas masks, and body armor to counter police tactics and impede police movements. NE#1 also stated that the protesters were using shields in a stabbing motion against officers. After a series of incidents – including the fires at the Youth Service Center and explosives being thrown at the East Precinct – the officers were given orders to move the rioters away from the precinct.

NE#1 wrote that, as the bike squads attempted to move people away from the precinct, the protesters began assaulting police with explosive fireworks, rocks, glass bottles, balloons with paint, and other items from garbage cans. NE#1 also stated that earlier bike pushes were difficult because of protesters countering the pushes with shields. NE#1 also stated that officers were sustaining injuries from fireworks and that the violence and assaults on police on this day were at an all-time high.

NE#1 stated that by the time he encountered the Subject, NE#1 had been involved with crowd management for hours. NE#1 recounted that the day was hot and NE#1 had been in a gas mask, making it difficult to communicate and give orders. NE#1 also stated that he had used his bicycle to move crowds many times on that day and made arrests related to assaults on police officers. NE#1 recalled that an officer was attempting to effect an arrest to NE#1’s right, but that the crowd began to converge on the officer to attempt a de-arrest. NE#1 stated that he observed at least two demonstrators pulling on the officer’s gear and body. NE#1 stated that he stepped over this officer to push the protesters back with his bicycle, pushing his bike forward at chest level. NE#1 stated that he kept his head down to avoid being hit in the face, which had happened in the past. NE#1 stated that, as he pushed forward, stood up, and



gained his balance, he observed the Subject dressed all in black and wearing goggles and a face covering. NE#1 identified the Subject as one of the people who had been “pulling on” the officer effecting the arrest. NE#1 stated that he saw the Subject bring their hands up in an “aggressive posture,” balling their fists and standing in a “bladed stance.” NE#1 wrote that this is a common fighting position.

NE#1 wrote that he believed the Subject had just “assaulted an officer on the ground,” was resisting NE#1’s attempts to separate them from the officer, and was standing in front of him in a fighting stance. Based on this, NE#1 stated that he believed the Subject was going to attempt to assault him. NE#1 stated that he grabbed the seat post of his bike in his right hand and the stem area of his bike with his left hand. NE#1 recalled that he then lifted the bike up and “turned the bike in circular motion to the left, where the rear tire of the bike made contact with the person in the fighting stance in front of me and I pushed them with the back tire away from me.” NE#1 recalled that, after hitting the Subject, the Subject lost their balance, moved away from him, and left the area. NE#1 stated that he did not observe the Subject fall down or make any complaints of pain.

NE#1 stated that he is “confident” that the rubber tire of his bicycle made contact with the Subjects “shoulder and arm,” rendering his use of force a “very controlled and low impact motion with low probability of injuring the [Subject].” NE#1 stated that his action was reasonable and necessary to protect himself and was proportional to moving the Subject away from him and protecting himself, with a low probability of injuring the Subject.

NE#1 admitted that the “twisting of the bike and using the back tire as a push method” was not a trained technique. However, NE#1 stated that he “modified’ the trained technique during an “intense and dangerous moment” because the Subject was “standing so close to me” under which conditions, NE#1 stated, “the trained push would not be effective as I essentially would be handing the bike to the [Subject].”

NE#1 stated that he screened his use of force immediately with WS#1 and that they agreed this use of force would be a “type 1 level of force during a crowd management incident.”

ii. WO#2 Interview

WO#2 was working on July 25, 2020. After the fires at the Youth Service Center and other property damage events, WO#2’s original detail was changed and he was assigned to a police line outside of the East Precinct building. WO#2 stated that there was a large crowd of protesters there who were hostile to the police presence. WO#2 stated officers had bottled, rocks, and fireworks thrown at them. WO#2 stated that he was hit in the leg with a brick that day.

WO#2 stated that he and other officers on the police line were given orders to advance across Broadway and disperse the violent crowd. WO#2 recalled that, as the officers advanced, they faced a shield wall, which protesters used to assault police officers. WO#2 stated that he used his baton to move the Subject back because WO#2 had just been assaulted with a shield and punched/hit multiple times. Although WO#2 could not discern who had been assaulting him, he used his baton to push people away from him to stop the assault and create space. WO#2 stated that he did not observe the Subject get hit with a bicycle.



iii. WS#1 Interview

WS#1 has been an SPD member of service for approximately 13 years. During this time, he has worked extensively on bicycle squads and has been a bicycle squad instructor. On July 25, 2020, WS#1 was working as an Acting Sergeant in a bicycle squad and was NE#1's supervisor.

WS#1 recalled that on July 25, 2020, protesters had been using "shields" to obstruct officers' movements and block their views. This made mobile fence lines less effective because the bicycles were being pushed up against shields. WS#1 stated that, because of this, bicycle officers had to use other means to break up the shield walls before they could move effectively.

WS#1 recalled that, just prior to NE#1 hitting the Subject with his bicycle, there was an arrest taking place. This arrest was occurring just to NE#1's right. WS#1 stated that, as NE#1 stepped over the person getting arrested, the Subject approached and, WS#1 presumes, attempted to "de-arrest" the person who was being arrested. WS#1 stated that NE#1 first pushed the Subject with his bicycle and then struck the Subject with his bicycle. WS#1 stated that the Subject then moved off to the side and "got out of the area." WS#1 stated that they believed the Subject was attempting to de-arrest the person who was arrested because the Subject ran diagonally across the crowd towards the arrest and appeared to be bending down towards the arrest as it was occurring.

WS#1 observed NE#1 hit the Subject with his bicycle. According to WS#1, NE#1 lifted his bicycle with one hand on the stem and one hand on the seat post. WS#1 stated that NE#1 then "moved his right hand forward more which would be the rear tire, and used that to come into contact with the [Subject], because they were—would've—I think they would've been out of reach if he had just moved both hands forward at the same time." According to WS#1, the technique employed by NE#1 in which one hand is moved forward more than the other is not a trained technique. However, WS#1 would consider this level of force "the same as doing a baton push." WS#1 did not observe any injuries on the Subject. WS#1 also stated that a technique like this would not be likely to cause injury or pain because the bicycle has "two inflatable tires on the ends and that's the most likely thing to come into contact [with] somebody if you're doing that type of movement.... [i]t's rubber it's gonna bounce off of you, unless it maybe struck you straight on the nose.... I don't think it would really do much other than cause some transitory pain."

WS#1 recalled that, after the Twitter Video went public, he and several other bicycle squad supervisors had an informal discussion concerning whether NE#1's use of force would be considered the same as a baton push because the bicycle movement was not the exact "robotic" movement prescribed for a bike push. WS#1 stated that the consensus of that group was that, absent evidence of an injury, NE#1's use of force would be considered the same as a baton push.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged that NE#1 used excessive force ("looks like assault") when NE#1 struck the Subject with NE#1's rear bike tire, as depicted around the 45 second mark of the Twitter Video.



SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” 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 8.050.) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” (*Id.*) The force used must be proportional to the threat posed to the officer. (*Id.*) Lastly, officers retain discretion to make “individual decisions to use force” in a crowd management context consistent with Title 8 of the SPD Manual. (SPD Policy 14.090-POL-10(1)).

NE#1 wrote that he used force against the Subject to protect himself. Specifically, NE#1 described seeing the Subject “pulling on” another uniformed officer who was effecting an arrest, then bringing their hands up in an “aggressive posture,” balling their fists, and standing in a “bladed stance.” Based on these observations, NE#1 wrote that he believed the Subject was preparing to assault him.

NE#1’s statement is only partially corroborated by the statements of WO#2 and WS#1 as well as NE#1’s BWV. WO#2 stated that he used his baton to move the Subject away from him as he was being punched and hit by unidentified protesters. WS#1 similarly surmised that the Subject was attempting a “de-arrest” based on the Subject’s movements. Similarly, NE#1’s BWV depict the Subject in close proximity to WO#2, touching WO#2, and being moved back by WO#2. However, after being moved back by WO#2 and immediately prior to being hit by NE#1, the video shows the Subject facing WO#2 in a bladed stance with both hands partially closed, one of which appears to be clutching the rope-handle of the sandwich board. In this stance, the Subject’s body is “bladed” with respect to WO#2, not NE#1. That is, the Subject is facing WO#2 but the Subject’s chest is facing NE#1. The Subject then turns their head to face NE#1 while still clutching the sandwich board sign in one closed hand and holding their other hand open with their palm facing NE#1.

This evidence does not establish by a preponderance of the evidence that NE#1’s use of force was outside of policy. As perceived by NE#1, the Subject had just been involved in trying to “de-arrest” an arrestee by pulling on another officer. Additionally, the Subject was holding a sign “shield” and had just been forcibly moved back by another officer. Moreover, NE#1 had extremely limited time to evaluate the Subject’s actions and determine a course of action. In the moment, NE#1 used the most available resource available to him – his bike – to hit the Subject with his tire. NE#1 wrote that he was “confident” that he struck the Subject in their arm or shoulder area with the rubber “tire” portion of his rear wheel. More likely than not, NE#1 is correct that the principal point of contact with the Subject was between his rubber tire and the Subject’s arm or shoulder. In addition to the video evidence, this conclusion is corroborated by the fact that the Subject did not appear to suffer more than transitory pain from the use of force. In fact, immediately after being struck with NE#1’s bike tire, the Subject appeared to voluntarily walk away and is observed in video a short time later, apparently unharmed, standing at the front of a protest line. Finally, although the NE#1’s recollection of the Subject’s stance and gestures are not entirely consistent with his BWV, under the circumstances facing NE#1 in that moment, OPA finds that NE#1’s interpretation of the Subject’s actions was not unreasonable.¹

¹ OPA also notes that NE#1 was no longer employed by SPD by the time he would have been scheduled for an interview. Accordingly, OPA could not compel a statement from NE#1. However, NE#1 voluntarily provided a written



Nor, however, does the evidence establish that NE#1's use of force in this instance was lawful and proper. To the contrary, OPA has concerns about NE#1's decision to use the specific – and untrained – tactic that NE#1 employed in this instance. Although, fortunately, injury appears to have been avoided here, this use of force could easily have injured the Subject. OPA believes that, more likely than not, NE#1's tire did, in fact, contact the Subject's face and/or head. Even if unintended – as OPA believes in this case – this would still constitute a Type III use of force. See SPD Policy 8.050 (“The use of impact weapon strikes to the head is a Type III.”). This case illustrates how easily the use of this untrained tactic could result in greater injury to a person than an SPD member may intend or thought possible. Moreover, OPA does not find NE#1's explanation for deviating from the trained bicycle push in this instance convincing. NE#1 explained that he “modified” because the Subject was “standing so close to me” and he thought “the trained push would not be effective as I essentially would be handing the bike to the [Subject].” At the time NE#1 hit the Subject, they appeared to be standing about a foot or two away from one another. The technique NE#1 employed seemed much more in line with extending the reach of his bicycle as an impact weapon than shortening it. In fact, it's not even clear NE#1 could have reached the Subject had NE#1 employed the trained push technique—a fact perhaps obviating the need to have used any force in this instance at all.

Unfortunately, key pieces of evidence are unavailable to OPA. NE#1 is no longer employed by SPD, so OPA cannot compel a statement from him to clarify certain discrepancies, such as his recollection of the Subject's posture and his perceived need to employ an untrained tactic. Similarly, OPA was unable to identify the Subject in this matter, nor did anyone come forward to identify themselves as the Subject. Therefore, OPA was not able to inquire about the nature and extent of their injuries, if any, or their conduct prior to being struck by NE#1.

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

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

statement concerning this incident to OPA, noting that he did not have the benefit of reviewing his BWV or paperwork prior to making his statement.