



## CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 20, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0536

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	6.010-POL-1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 2	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 (Lawful and Proper)
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 4	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

**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 (Lawful and Proper)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)

**Named Employee #3**

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 she was unlawfully arrested and subjected to excessive force. She further contended that she was treated unprofessionally.

**ADMINISTRATIVE NOTE:**

There are multiple 180-day deadlines associated with this investigation. The allegations against Named Employee #1, Named Employee #2, and Named Employee #3 are addressed in this DCM. During this investigation, OPA identified the officer who may have deployed blast balls that affected the Complainant. The allegations against that officer are governed by a different timeline and will be written about separately.



In addition, the Complainant alleged that an officer did not properly secure a detainee in a prisoner van. That allegation was addressed via a Supervisor Action and was returned to the chain of command for retraining and counseling.

**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.

The Complainant initiated this complaint with OPA. She contended that she attended a Youth March on July 25, 2020. The Complainant alleged that, at that time, she was illegally arrested by Named Employee #1 (NE#1).

The Complainant also asserted that she was subjected to excessive force when she was pushed by Named Employee #2 (NE#2) and Named Employee #3 (NE#3), pepper sprayed by NE#1 and NE#2, and hit with blast balls used by unknown SPD employees. The Complainant further alleged that NE#1 made unprofessional statements towards her, including saying after her arrest: "Oh you got pepper sprayed? We all did!" This OPA investigation ensued.

OPA reviewed Body Worn Video (BWV) recorded by the Named Employees and other witness officers. The BWV showed that there were two distinct interactions between the Complainant and the Named Employees. Prior to the first interaction, OPA observed numerous projectiles and what appeared to be explosives thrown at officers (these also could have been blast balls that were kicked back towards officers by demonstrators). Multiple orders to disperse were provided to the crowd, including to the Complainant. However, neither she nor the group she was with dispersed. BWV showed the Named Employees ride towards the crowd and tell them to back up. NE#1 came up to a man walking in the street and told him to back up twice, pushing him back towards the sidewalk. The Complainant stepped between them, holding the man back. She stood in front of a group of individuals who were standing near a retaining wall and by a bus stop. A number of the individuals had umbrellas pointed towards the officers and at least one person had a wooden shield. The group was huddled together and was not moving away as the officers had directed.

NE#3 moved up to the group and pushed the Complainant back, saying: "Get back." As he physically engaged with the crowd, NE#1 raised her OC spray canister towards the Complainant but did not appear to deploy at that time. NE#3 continued to try to grab umbrellas and a shield away from demonstrators. It appeared that a demonstrator dressed in black made physical contact with NE#3 at that time. The Complainant, who was standing next to the demonstrator dressed in black, appeared to reach her right hand out towards the demonstrator and NE#3 and begin to take a step towards them. At that moment, NE#1 deployed pepper spray at her. The Complainant recoiled and then began to take a step forward. Virtually simultaneously, NE#2 deployed pepper spray towards her, again moving her back. Officers continued to pull umbrellas away from the group and, at one point, NE#1 fell over while doing so. Ultimately, the group retreated behind the bus stop and down the street away from officers.

Just minutes later, officers advanced down the street towards a line of demonstrators that stretched nearly from side to side. Again, the demonstrators had umbrellas and shields facing the officers. At that time, dispersal orders could be heard, and officers continued to tell the demonstrators to move back. The Complainant was with what appeared to be the same group of individuals as before at the left side of the line of demonstrators. Officers were



actively engaging with that group and trying to move them back. An explosion went off in the vicinity of officers and appeared to come from that area of the demonstrators' line. NE#1 advanced towards the group and the Complainant. The Complainant and others with her were pushing back against the officers. NE#1 and other officers pulled umbrellas away from them. The majority of the group began to back up, but some demonstrators remained standing by the advancing officers. The Complainant took off her backpack and quickly moved towards those demonstrators to pull them back to the line. At that time, NE#1 sprayed the Complainant, who turned partially away from her.

The officers continued to move forward and the Complainant again advanced back towards the officers to pull demonstrators down the street. An officer pushed the Complainant and told her to get out of there. She stepped towards the officer and then retreated. As the officers moved closer, she moved between an officer and another demonstrator. The officers pushed towards them and the Complainant extended her right arm and appeared to make physical contact with the officer. NE#1 reached out, grabbed hold of the Complainant's backpack, and pulled the Complainant backwards and down. This caused the Complainant to fall to the ground on her posterior. The Complainant began to try to stand but NE#1 grabbed her and told her that she was under arrest several times. NE#1 and NE#2 struggled with the Complainant but were eventually able to hold her down and move her onto her stomach where she was handcuffed. The struggle caused the Complainant's shirt to rip.

After handcuffing her, NE#1 told the Complainant that she was going to pull items out of her pockets. NE#1 informed the Complainant that she was arrested for obstruction. The Complainant said that she was trying to pull someone out of the bushes. NE#1 said that it did not matter and that she was told to leave the area multiple times. The Complainant said that she was trying. NE#1 continued by saying: "And you shoved back at an officer and that's all that counts." The Complainant stated that she could not see. She repeated that statement a few seconds later and also said that she was "sprayed in the face." NE#1 told her that she had a mask on at the time. NE#1 picked up the Complainant's gas mask and put it in the Complainant's backpack. The Complainant told NE#1 that she could not "really hear," and NE#1 responded: "Neither can I."

NE#1 walked the Complainant to a prisoner transport van. An officer read Miranda warnings to the Complainant. A sergeant then screened the Complainant for injuries. NE#1 asked the Complainant if she wanted NE#1 to adjust her ripped shirt. The Complainant said yes, and NE#1 did so. The Complainant stated: "My hair is burning." NE#1 replied: "Yep, we've all got pepper spray in our face." Another officer then told the Complainant how she could decontaminate. NE#1 told the sergeant that the Complainant was arrested for obstruction and possibly assault. She then stated that she had pepper spray in her eyes and walked away to decontaminate. Neither NE#1 nor any of the other Named Employees had any further interactions with the Complainant after that point.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegation #1**

#### ***6.010-POL-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.



NE#1 documented that she arrested the Complainant for obstruction. She noted that the Complainant purposefully interfered with officers moving the crowd back, including making physical contact with an officer in the form of what NE#1 perceived to be a push.

As discussed above, the BWV confirmed that the Complainant stepped between officers and demonstrators on several occasions, preventing the crowd from being moved back. The video showed that, immediately before her arrest, she held out her arm and appeared to make physical contact with an officer. At that point, NE#1 pulled her down to the ground and took her into custody. OPA notes that, while the Complainant presently contends that she was falsely arrested, at the time of her arrest she told the officers that she was trying to pull demonstrators from the bushes. That she made this statement, rather than a blanket denial of culpability, suggests to OPA that she was aware that she may have engaged in criminal conduct at the time.

The Complainant's conduct constituted obstruction as a matter of law and, accordingly, NE#1 had probable cause to arrest her. For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #1 - Allegation #2**

***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***

SPD Policy 14.090-POL-10 governs when officers may make the individual decision to use OC spray and/or blast balls. The policy provides that such use is appropriate to: “defend oneself; defend someone else”; and/or “prevent significant destruction of property.” The force must also be consistent with the general requirements of reasonableness, necessity, and proportionality. OC spray must be directed at the specific threat in question.

Both NE#1 and NE#2 deployed OC spray at the Complainant. Both asserted that they did so to defend officers. With regard to NE#1's deployments, she sprayed the Complainant twice when, in her perspective, the Complainant was actively preventing officers from dispersing the crowd and was engaging in actions that NE#1 felt endangered other officers. During the first deployment, she observed NE#3 trying to push the Complainant and the crowd back and the crowd staying static. She deployed to move the Complainant, who was at the front of the crowd and directly interacting with NE#3, because she felt that it would, in turn, move the crowd, which would further officer safety. With regard to the second deployment, she observed the Complainant advance towards officers after being told to disperse and to pull demonstrators away. She deployed pepper spray because, similar to her first deployment, she felt that the Complainant's actions constituted a continued threat to officers and needed to be stopped.

NE#2 explained that, when he deployed OC spray towards the Complainant, he did so because he observed the Complainant moving towards the officers that were trying to push her back in what he perceived to be an aggressive manner. He had also previously seen her standing her ground despite orders to disperse and pushing against officers. Due to the Complainant's conduct, coupled with the overall violence from demonstrators towards officers and the need to remove the crowd from the area, he felt that his force was appropriate.

The BWV showed that the Complainant was not moving back and that she was in front of a crowd that had repeatedly indicated that it was not going to comply with orders to disperse. At the time NE#1 deployed, the video indicated that NE#3 was directly interacting with the Complainant, was having difficulty moving her back, and was



in the immediate vicinity of a number of other demonstrators. The video further indicated that NE#3 was involved in a physical altercation with a demonstrator and the Complainant appeared to reach out towards them. Under these circumstances, and when looking at the totality of the incident, OC spray was appropriate to ensure officer safety. OPA reaches a similar conclusion with NE#1's second deployment. Indeed, there was even more of a basis to deploy here as the Complainant had advanced towards officers and was pulling demonstrators away. Moreover, just moments before, an explosive had come from the immediate vicinity of the Complainant's group towards officers. It was reasonable to believe that the Complainant and her continued actions presented a threat and to deploy OC spray accordingly.

The BWV also corroborated NE#2's assertion that he saw the Complainant moving towards officers. Indeed, immediately prior to his deployment, the video showed the Complainant take a step towards NE#3, who was hands-on with another demonstrator. While the Complainant may not have been planning to harm NE#3 at that time, NE#2 could not know that and could only base his decision-making on her visible actions. As such, OPA finds that NE#2's belief that the Complainant posed a threat was reasonable and his deployment of OC spray was justified.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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

### **Named Employee #1 - Allegation #3**

#### ***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. 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.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

NE#1 used force on the Complainant to pull her down to the ground and take her into custody. As discussed above, at the time of the force, there was probable cause to place the Complainant under arrest. With the authority to arrest came the right to use appropriate force to do so. Here, NE#1's decision to pull the Complainant back and down to the ground was reasonable under the circumstances. It was a method of getting the Complainant, who was facing away from her, down to the ground quickly in order to handcuff her. It was also necessary as, given the Complainant's positioning, there were not many other options available to NE#1. Moreover, NE#1 considered the Complainant's refusal to depart the area and interfering with other officers, which further influenced her decision to take the Complainant into custody quickly and informed the tactics she used to do so. Lastly, the force was proportional under the circumstances. While injury was possible, pulling the Complainant down on her posterior was much less likely to harm her than a face-forward tackle or a hard takedown.

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



---

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

**Named Employee #1 - Allegation #4**

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

The Complainant alleged that NE#1 was unprofessional when, after the Complainant complained of pain, NE#1 said that everyone had pepper spray on them. The Complainant felt that this minimized her discomfort and what she experienced.

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 states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*)

At her OPA interview, NE#1 denied that her statement was unprofessional. She said that she was asserting a fact – that she also had pepper spray on her face due to the events that had transpired. She stated that she did not tell the Complainant this to minimize what she was feeling. NE#1 noted that, shortly thereafter, another officer told the Complainant how she could decontaminate.

From OPA’s review of the BWV, this statement did not rise to the level of a professionalism violation. NE#1 did, in fact, also have ill-effects from pepper spray. Indeed, shortly after making that statement to the Complainant, she ran back to the precinct to wash her eyes out with water. Even if the statement was made out of frustration, it was not malicious or meant to be pejorative towards the Complainant.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

**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 a & b***

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #2 - Allegation #2**

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

There was no indication that NE#2 used force on the Complainant other than OC spray. As such, OPA recommends that this allegation be Not Sustained – Unfounded.



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

**Named Employee #3 - Allegation #1**

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

NE#3 pushed the Complainant and others prior to NE#1 and NE#2 deploying pepper spray at her. The Complainant asserted that this force constituted excessive force.

NE#3 told OPA that, at the time he pushed the Complainant back, she and the group she was with had repeatedly failed to disperse down the street. He said that this was despite the Complainant and others receiving many dispersal orders, which were based on the explosive device thrown at the precinct and other violence towards officers. He explained that it was dangerous for officers to allow that group to get behind their moving line. Moreover, he indicted that the mere fact that they were remaining in that location was a crime.

He recalled that the Complainant stood in front of the group and was not backing away. This was the case even though the group had a clear lane of egress down the sidewalk. Others behind and beside her pointed shields and umbrellas towards the officers and took a posture suggesting, when coupled with their repeated non-compliance, that they were not going to move.

NE#3 then pushed the Complainant back as part of moving the group. He also pulled shields and umbrellas away from demonstrators. He believed that this force was appropriate under the circumstances.

After reviewing the video, OPA agrees. The Complainant and the group that she was with did not have a legal right to remain in their location. They were given multiple orders to disperse and had failed to do so. Moreover, this was not an occasion where the Complainant and others were proceeding down the street, albeit slowly. Instead, they closed ranks and faced off with officers, deliberately refusing to move. NE#3 and the other officers were legally permitted to physically move them under these circumstances, and that included pushing the Complainant.

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

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