



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 2, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0564

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)

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 he was subjected to excessive force by officers during his arrest on May 30, 2020.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1
8.200 - Using Force 1. Use of Force: When Authorized

On May 30, 2020, the Named Employees and other officers employed by both SPD and other regional law enforcement agencies responded to reports of a large-scale protest and possible looting of downtown Seattle businesses. After arriving in the vicinity of 5th Avenue and Pike Street, SPD personnel issued multiple dispersal orders to individuals present instructing them to leave the area. However, the Complainant remained and, when officers approached him, a physical altercation ensued. The Named Employees and an unknown officer from another police agency arrested the Complainant. During the arrest screening, the Complainant alleged that he was “beat up” by officers and that he suffered an injury to his eye and leg. The Complainant’s allegations were referred to OPA and this investigation ensued.

As part of its investigation, OPA reviewed Body Worn Video (BWV) and use of force reports. OPA also attempted to interview the Complainant; however, the Complainant declined to provide further information about the incident. As such, he was ultimately not interviewed.



The BWV confirmed that the Complainant was in the vicinity of 5th Avenue and Pike Street when the dispersal order was given. As a line of officers advanced up the street and in the direction of the Complainant, the video showed the Complainant moving slowly away and up the street. An officer from another police agency pushed the Complainant in the back with a baton. The Complainant responded by turning around and forcefully pushing Named Employee #3 (NE#3). Named Employee #1 (NE#1), Named Employee #2 (NE#2), and NE#3 then moved in to effectuate the arrest of the Complainant. The video indicated that the Named Employees used control holds and body weight during the arrest. The BWV further confirmed that no punches or other strikes were used by the Named Employees. However, the BWV did capture higher-level force being used by the non-SPD officer, including him striking the legs of the Complainant multiple times with his baton. This same officer was subsequently recorded using his knees to hold the Complainant's legs down as the arrest concluded. OPA was unable to determine the name or badge number of that officer, but he appears to have been employed by the Kent Police Department (KPD).

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.*)

As indicated above, the BWV establishes that the Named Employees used low-level force to take the Complainant into custody. Specifically, they used trained holds and their body weight to control the Complainant's body, to handcuff him, and to prevent him from engaging in assaultive behavior. Given the circumstances of this incident – the ongoing demonstrations, an environment filled with CS gas, and the Complainant's physical push of NE#3 and continued struggling against the officers – the force used by the Named Employees was objectively reasonable and necessary. Moreover, given the level of active resistance by the Complainant, which included him kicking his legs at officers, pushing officers off him, and trying to stand up, the Named Employees' force was also proportional.

OPA notes that the KPD officer used significantly higher force than the Named Employees. However, OPA does not have jurisdiction over this officer and, accordingly, cannot opine as to whether or not the force used was improper. Moreover, OPA similarly does not have jurisdiction over the officer's decision to initially use his baton to push the Complainant forward, which arguably served as a catalyst for the entire incident. That being said, OPA has referred the officer's conduct to KPD for evaluation and investigation by their internal affairs personnel.

With regard to the force used by the Named Employees, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against all of them.

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)**

Named Employee #3 - 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)**