



## CLOSED CASE SUMMARY

ISSUED DATE:      APRIL 9, 2021

FROM:                DIRECTOR ANDREW MYERBERG  
                             OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER:    2020OPA-0587

### **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)

**Named Employee #4**

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

**Named Employee #5**

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

**Named Employee #6**

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Lawful and Proper)
# 3	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)

**Named Employee #7**

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:**



Numerous complainants alleged misconduct by the Named Employees during a Labor Day demonstration at the Seattle Police Officer's Guild (SPOG) headquarters. In general, the complaints alleged that officers used excessive force and falsely arrested demonstrators.

**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 specific incidents at issue in this case stemmed from a demonstration associated with the group Every Night Direct Demonstration (ENDD) advocating for the disbanding of unions representing police officers. This event, which was advertised on social media, was an un-permitted but pre-planned demonstration for which SPD created an Incident Action Plan (IAP). Under the IAP, a Captain, was designated as the incident commander.

In the IAP, the Captain wrote that, while his intent was to "facilitate free speech and assembly whenever possible, while preserving order and protecting persons and property and to "maintain a minimal police presence at a safe distance to facilitate the protester's lawful conduct," SPD personnel would "respond by identifying, isolating, and arresting the offenders if/when it is safe and feasible so those activities are not allowed to corrupt the lawful conduct of others." The Captain stated that the crowd would only be dispersed if disorder became widespread such that individual enforcement was no longer safe or feasible, or if there was an imminent risk to public safety, including the risk of "significant" property destruction.

The demonstration crowd, which was estimated at approximately 200 people, gathered at the International District light rail station beginning at approximately 4:43 PM on September 7. Over the course of the next hour, the demonstration group marched in an organized fashion south on 4th Avenue toward SPOG headquarters, which is on the west side of 4th Avenue. The protesters marched in a bloc with vehicles in a line in front and behind. Demonstrators were observed with signs, umbrellas, improvised shields and sticks or batons. Some wore all black clothing, helmets, goggles, and backpacks while others dressed in plain clothes.

When the group arrived at SPOG headquarters, there was no visible police presence. Police were deployed in the parking lot behind the SPOG building and a neighboring building, with the intent that they would not interact with the crowd unless required for crowd management or control. A wire fence had been erected around the SPOG building. At approximately 5:53 PM, the crowd fully blocked 4th Avenue South and the front rank of protesters facing the SPOG building deployed umbrellas and grouped in a line across the entrance to the building parking lot. Third party video showed isolated incidents of individuals in the crowd throwing objects and garbage over the wire fence.

SPD's Computer Assisted Dispatch (CAD) report of the incident, which collated updates added to the call's incident number, reflected that, at approximately 6:07 PM, SPD's Intelligence Unit reported that the "signal to act" within the crowd would be a plume of white smoke. At 6:09 PM, Intelligence reported that a male in the crowd wearing tan clothing and a pink bandana possessed approximately twelve Molotov cocktails in a box of Corona beer. OPA's analysis of security video after the fact showed an individual visible at the right of the crowd and carrying a box matching later photographs of the box of Molotov cocktails recovered at the incident scene. This individual was, in fact, wearing a



dark blue or gray hoodie and tan gloves. Two minutes after the report, the call was updated to reflect that there was probable cause to arrest the individual and a targeted arrest was approved by a Lieutenant.

As discussed more fully in the context of 2020OPA-0583, the attempted arrest was unsuccessful and the incident devolved into violence towards police officers and uses of force, including less-lethal tools, in response. As this continued, the decision was made to declare the incident a riot and to disperse the crowd. Dispersal orders were given but not initially complied with. Ultimately, officers began pushing the crowd north.

The Lieutenant who had approved the target arrest described above directed officers, including Named Employee #1 (NE#1), Named Employee #2 (NE#2), Named Employee #5 (NE#5), and Named Employee #6 (NE#6), to a parking lot where some demonstrators remained despite multiple dispersal orders being provided. At this time, NE#6, a Sergeant, observed individuals huddled together in the parking lot. They appeared to NE#6 to be mixing liquids together and had placed umbrellas around themselves in an apparent attempt to block officers' view of what they were doing. NE#6 believed it possible that they were creating Molotov cocktails to throw at officers. This suspicion was heightened by the knowledge that others in the crowd had been believed to possess such improvised explosive devices. Other officers, including Witness Officer #1 (WO#1), also observed the individuals mixing liquids together and had similar concerns that the group was creating Molotov cocktails. NE#6 notified officers of what he was seeing and told them to "step it up." Officers, including the Named Employees and WO#1, approached the group.

WO#1's Body Worn Video (BWV) showed the group huddled together as the officers approached. However, when they noticed the officers, members of the group backed away. WO#1 grabbed onto a female – referred to here as Community Member ("CM") #3 – in an attempt to place her under arrest. She moved backwards and her backpack came open, spilling its contents, which included a spray bottle with liquid inside of it. While WO#1 was doing so, another individual – CM#4 – tried to intervene. CM#4 pushed an officer – Witness Officer #2 (WO#2) – causing her to fall to the pavement and suffer injuries. NE#6 grabbed onto CM#4 and began to arrest him.

At that time, three other individuals – CM#1, CM#2, and CM#5 – approached the officers and moved towards where CM#4 was being arrested by NE#6. As they did so, NE#2 shoved CM#5 back. He did so by pushing out his hands while using his baton positioned horizontally. CM#5 fell backwards and collided with another bicycle officer – Witness Officer #3 (WO#3) – who had ridden over to the disturbance. CM#5 fell to the ground. This collision caused WO#3 to fall off his bicycle and onto the ground. CM#1 was also pushed back by NE#1. When he was pushed, he moved backwards and tripped over WO#3, who was prone on the ground at that time. CM#2 ran over to where WO#3 was lying and kicked him in the head. Named Employee #3 (NE#3) and Named Employee #4 (NE#4), who had since run over to the vicinity, as well as NE#5, took CM#2 down to the ground and placed him under arrest.

The Complainants later alleged that they were arrested for no valid reason and due to their race, as well as that they were subjected to excessive force. This investigation ensued.

### **ANALYSIS AND CONCLUSIONS:**

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

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

NE#1, NE#3, NE#4, NE#5, and NE#7 all used low levels of force to control individuals who were arrested, in some cases to pull them down to the ground and hold them there, and to handcuff them. None of these officers struck



any of the individuals or used any force that appeared to be purposed to cause injury. As such, their force is reviewed together.

When NE#1 arrived at where the arrests were occurring, he grabbed onto CM#1 and pushed CM#1 away. At that time, CM#1 was moving towards the back of a SWAT officer who was turned away from CM#1 and who was focused on an arrest occurring at his feet. NE#1 also chased after CM#2 in order to arrest him after he kicked WO#3 in the head. NE#1 grabbed onto CM#2's clothing but fell to the ground as CM#2 pulled away.

NE#3, NE#4, and NE#5 all took CM#2 down to the ground when he escaped from NE#1. They held him to the ground as they handcuffed him.

With regard to NE#7, his sole force was comprised of grabbing onto CM#4 and placing him under arrest.

All of this force was reasonable, necessary, and proportional, and, thus, consistent with policy. CM#2 was arrested for obstruction, failure to disperse, and assault on WO#2. Based on a review of the BWV, all of these charges were supported by the evidence. Given this, NE#1, NE#3, NE#4, and NE#5 had the right to arrest him and, in order to do so, to use force if needed. This was even more the case when he escaped from NE#1 and tried to flee the scene. The force used to bring him down to the ground and to control him while he was handcuffed was entirely appropriate. In addition, probable cause also existed to arrest CM#4. NE#7 used de minimis force to control him and to handcuff him. Like the force used by the other Named Employees, NE#7's actions were appropriate. Lastly, NE#1 was permitted to use force to grab a hold of CM#1 and to push him back from officers. The BWV confirmed that, at the time, CM#1 was moving towards an officer who was facing away from him. While CM#1 may not have had any ill intent, NE#1 did not and could not have known this and he was entitled to act to protect another officer from being harmed.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#1, NE#3, NE#4, NE#5, and NE#7.

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

#### **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.*)

Of all the force used by the Named Employees, NE#2's was the highest level. He used his baton to push CM#5 in her side, causing her to fall backwards and down, knocking into WO#3. His push appeared to have fairly significant momentum behind it and caused CM#5 to fall hard to the ground. While there was no indication that the push caused CM#5 to suffer anything but transitory injuries, it had the potential of doing so.



In assessing the force, OPA believes it clear based on the BWV that CM#5 was advancing towards CM#4, who was being arrested on the ground. NE#2 pushed her back as she approached. It was reasonable for NE#2 to assume that she was going to try to interfere in the arrest given the events of that day and other protests, as well as due to similar tactics often being employed by demonstrators. As such, OPA has no difficulty finding that the push backwards with the baton, which is a trained tactic, was reasonable and necessary. The closer question is whether it was proportional.

When evaluating proportionality, the overall tenor of the day is important to consider. Notably, there had been numerous incidences of demonstrators subjecting officers to physical violence, including punching officers who tried to make targeted arrests. Moreover, demonstrators had de-arrested individuals on a number of occasions, which placed officers in danger. In addition, when CM#5 approached where CM#4 was being arrested, the scene was chaotic with multiple incidences of demonstrators struggling with officers. This added to the threat that NE#2 perceived. Given the totality of these facts and circumstances and when applying a reasonable officer standard as required, OPA finds that a hard push to move CM#5 away from officers was proportional.

Accordingly, OPA concludes that NE#2's force was consistent with policy and 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)**

**Named Employee #4 - 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 #5 - 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 #6 - Allegation #1**

***5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

It was alleged that the individuals that were arrested and subjected to force by the Named Employees were initially targeted by NE#6 based on those individuals' races.

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.

Based on OPA's review of the BWV, there is no indication that bias played any role in the arrests and the force used by officers. To the contrary, the BWV clearly indicated that NE#6 initially directed officers to take action because he felt that the individuals were mixing Molotov cocktails. Moreover, force was then used to take individuals into custody who either took steps to intervene in arrests or who assaulted officers. Accordingly, OPA finds no evidence of bias and recommends that this allegation be Not Sustained – Unfounded.

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

**Named Employee #6 - Allegation #2**

***5.001 - Standards and Duties 6. Employees May Use Discretion***

As indicated in SPD Policy 5.001-POL-6, "[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment." This policy further states that "[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed." (SPD Policy 5.001-POL-6.)

When evaluating demonstration cases, OPA has expressed concerns with situations where officers made misdemeanor arrests without considering the possible escalatory result (*see* 2020OPA-0582). However, in this case, the conduct that prompted the officers to take action was not a misdemeanor, it was a possible felony – the mixing of Molotov cocktails. If true, it also presented a significant danger to officers and property. Moreover, it was not just NE#6 who believed that this was what the individuals were doing. WO#1, who also observed the individuals' conduct, had the same concerns.

Given this, even though it was likely that contacting and arresting these individuals would be escalatory, the risk was outweighed by the need to stop their perceived conduct. Accordingly, and based on the information available to NE#6 during this fast-evolving situation, OPA finds that the decisions he made did not constitute an abuse of his discretion.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #6 - Allegation #3**



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**6.010 - Arrests 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.

CM#2, CM#3, CM#4, and CM#5 were all placed under arrest. Of the four, CM#5 was de-arrested when the arresting officers were not sure what the probable cause was to take her into custody.

Based on OPA's review of the video, there was a sufficient legal basis for each arrest. As a threshold matter, all of these individuals (and for that matter CM#1) had remained in an area where they no longer had a legal right to be. An SPD commander had declared the demonstration a riot and given multiple audible dispersal orders; however, these individuals had not dispersed. Accordingly, all of them could have been arrested for failure to disperse.

Moreover, there was probable cause to arrest CM#2, CM#4, and CM#5 for obstruction. CM#4 engaged in obstruction when he tried to interfere in CM#3's arrest and CM#2 and CM#5 did so when they tried to interfere in CM#4's arrest.

Lastly, there was clear probable cause to arrest CM#2 for assault on an officer. BWV indisputably showed him kicking WO#3 in the head.

Accordingly, as probable cause existed for all of these arrests, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #7 – 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)**