



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 29, 2017

CASE NUMBER: 2017OPA-0078

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)
# 2	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	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	8.200 - Using Force 1. Use of Force: When Authorized	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:

On January 20, 2017, there was a protest and march related to a controversial speaker, Milo Yiannopoulos, who was to take the stage at Kane Hall on the University of Washington (UW) Campus. Several mountain bike squads were assigned to the event. Most of the bicycle squads, following demonstrators, converged on the UW Campus. As bicycle units arrived, a shooting occurred that resulted in a significant injury to a subject involved in protest



activities. The shooter was another civilian present at the demonstration. Some bicycle units assisted in the rescue of the shooting victim, while other units assisted in crowd control. The suspect involved in the shooting was at large and unidentified at the time.

Two bicycle squads, one led by NE#1 and the other led by NE#2, were tasked with securing a first aid staging area for the Seattle Fire Department (SFD) to ensure that the shooting victim could receive medical treatment. The staging area for the SFD personnel was predesignated to be the flagpole behind Kane Hall. These two bicycle squads, which included the other Named Employees, converged on this area and several orders for demonstrators to disperse the staging area were given. These orders were unheeded and use of pepper spray was authorized by two Assistant Chiefs. After orders to disperse were given, as well as warnings that pepper spray would be deployed if the demonstrators did not comply, pepper spray was used by the Named Employees. After the deployment, the demonstrators vacated the area. The Complainant, who was present at the protest, filed a complaint of unnecessary force in relation to the use of pepper spray.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged that the Named Employees used excessive and unnecessary force when they deployed pepper spray at a peaceful crowd of demonstrators. The complainant further alleged that SPD never attempted to secure the scene where an individual was shot and critically injured during the demonstration.

NE#1 and NE#2 were the supervisors of bicycle squads assigned to work a demonstration at the University of Washington. During the event, an individual was shot and critically wounded in the middle of a large crowd of demonstrators. While other bicycle squads performed a rescue of the wounded citizen, NE#1 and NE#2 were assigned by an Assistant Chief to secure the predesignated staging area for SFD. This space was designated as an emergency treatment area should anyone need emergency medical care during the event. When NE#1, NE#2, and their bicycle squads (which included the other Named Employees) arrived at that location, there were several demonstrators blocking access to the staging area.

NE#1 gave orders to the crowd that they needed to move back so that the SFD could treat the victim. The demonstrators would not vacate the area. NE#1 and NE#2 then ordered their officers to form a mobile fence line to move the demonstrators out of the area. The first movement forward of the mobile fence line did not result in any contact with demonstrators. Moreover, at that time, many members of the crowd left; however, others stayed and blocked the officers' way. A second order to move back was given by NE#1 and NE#2. At that point, they observed demonstrators lock arms and lower their bodies. The officers explained recognizing this to be a technique purposed to prevent officers from moving them out of the area.

NE#1 contacted the Incident Commander, a different Assistant Chief, over the radio and received permission to use pepper spray if warranted under the circumstances. This authorization permitted NE#1 and NE#2 to use pepper spray if it was deemed reasonable, necessary and proportional.



Based on the circumstances confronting them, NE#1 and NE#2 decided that it was warranted to use pepper spray to disperse the crowd. Once that decision was made, NE#1 and NE#2 issued an order to NE#3, NE#4, NE#5, NE#6, NE#7, and NE#8 directing them to deploy pepper spray.

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 several 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 my review, the decision by NE#1 and NE#2 to direct the other Named Employees to utilize pepper spray was reasonable, necessary, and proportional, and thus consistent with policy.

The decision to use force was reasonable given the circumstances faced by the officers. The officers needed to clear and secure the area occupied by the demonstrators in order to treat a critically wounded subject. It was not feasible to change the predesignated area during a tense and chaotic event thus delaying potentially life-saving efforts. The demonstrators were given multiple warnings to leave the area. The Named Employees further used mobile fence lines to try and encourage the demonstrators to leave, which worked, in part, when it caused many to leave at that point. The remaining demonstrators refused orders to leave the area, linked arms and lowered their bodies to apparently resist any attempt to force them from the area. Due to the life-threatening nature of the victim’s injuries, the officers were required to act quickly. After the remaining demonstrators did not comply with multiple orders to vacate that location, including warnings that if they did not leave pepper spray would be deployed, it was reasonable to use such force to disperse the crowd.

Moreover, the force was necessary to ensure that the area was secured and safe for SFD to treat a critically wounded subject. Again, the demonstrators were given multiple orders to leave that location and were warned that if they did not, pepper spray would be used. Only after that point was pepper spray dispersed. Further, only the amount of force necessary to disperse the crowd was used.

Lastly, the force was proportional to the threat facing the officers. Force was only used when the demonstrators failed to follow legal orders to vacate the area. Officers deployed pepper spray in a manner consistent with training and in a manner that was least likely to cause unnecessary discomfort.

For these reasons, I conclude that the order to use pepper spray to disperse the crowd was, under these circumstances, consistent with policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #1 - Allegation #2

8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

The Complainant alleged that NE#1 did not use de-escalation techniques prior to authorizing the deployment of pepper spray.

SPD policy requires that officers use de-escalation when safe and feasible to do so, prior to using force. “De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.” (SPD Policy 8.100-POL-1.) The policy further instructs that: “When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.” (*Id.*)

While de-escalation is inarguably a crucial component of the Department’s obligations under the Consent Decree, it is not purposed to act as a bar to enforcing the law and using force when necessary. Here, the Named Employees gave multiple warnings to demonstrators to leave the area, attempted to gain voluntary compliance by using a mobile fence line, gave additional warnings that pepper spray would be deployed, and waited a reasonable amount of time before deploying the pepper spray. Based on these facts, and on the chaotic and volatile circumstances that the officers were presented with on that day, I find that the NE#1’s actions in authorizing the deployment of pepper spray were consistent with the Department’s de-escalation policy.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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 indicated above (*see* Named Employee #1, Allegation #1), I also find that NE#2 actions on this date were consistent with policy. As such, I recommend 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

The Complainant alleged that NE#3, NE#4, NE#5, NE#6, NE#7, and NE#8 used excessive and unnecessary force when they deployed pepper spray on a group of peaceful protesters.

These Named Employees used force when they were directed to do so by NE#1 and NE#2. As such, they were following the orders of NE#1 and NE#2 to use pepper spray to disperse the crowd. The fact that they used directed



force does not relieve these Named Employees of the responsibility to ensure that the force was constitutionally permissible and it does not permit them to use force that is excessive or inconsistent with training and policy.

As discussed more fully above, the force used here was reasonable, necessary and proportional under the circumstances. For these reasons, these Named Employees' actions to use pepper spray as directed to disperse the demonstrators were consistent with policy.

For these reasons, I recommend 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 indicated above (see Named Employee #3, Allegation #1), I recommend 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 indicated above (see Named Employee #3, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #6 – Allegation #1

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

For the same reasons as indicated above (see Named Employee #3, Allegation #1), I recommend 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 indicated above (see Named Employee #3, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #8 – Allegation #1

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

For the same reasons as indicated above (see Named Employee #3, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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