



OFFICE OF POLICE ACCOUNTABILITY

Closed Case Summary

Complaint Number 2017OPA-0547

Issued Date: 11/27/2017

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 8.200 (1) Using Force: Use of Force: When Authorized (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Lawful and Proper)
Allegation #2	<u>Seattle Police Department Manual</u> 8.300-POL-6 (3) Use of Force - OLEORESIN CAPSICUM (OC) SPRAY: Officers Will Use OC Spray, Including for Crowd Dispersal or Protection, Only When Such Force is Objectively Reasonable (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Lawful and Proper)
Final Discipline	N/A

Named Employee #2	
Allegation #1	<u>Seattle Police Department Manual</u> 8.200 (1) Using Force: Use of Force: When Authorized (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Inconclusive)
Final Discipline	N/A

INCIDENT SYNOPSIS

The Named Employees were working the May Day 2017 protest.

COMPLAINT

The complainant alleged that Named Employee #1 and Named Employee #2 used excessive force on demonstrators during the protest.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complaint
2. Review of YouTube video
3. Search for and review of all relevant records and other evidence
4. Interviews of SPD employees

ANALYSIS AND CONCLUSION

This incident was captured by You-Tube video. The video showed a line of SPD bicycle officers facing a number of demonstrators, who were standing on a sidewalk. The complainant was viewed among the demonstrators and, in the beginning of the video, was blowing a red horn/vuvuzela. The officers gave the demonstrators several orders to move back and began moving their bikes towards them. While most members of the crowd did move back, two individuals appeared to stay stationary. The officers told the demonstrators to move back again and pushed forward with their bicycles. In doing so, the two individuals who did not initially move back were observed falling backwards to the ground and landing on their posteriors.

At this time, the complainant was standing to the left of the demonstrators, in the street. He was pointing the red vuvuzela at officers. He walked onto the sidewalk towards the officers and reached out towards an officer, who was later identified as Named Employee #2, with the horn/vuvuzela. When he did so, Named Employee #1 appeared to begin to remove his Oleoresin Capsicum (OC) spray from his belt in order to use it to disperse the complainant. At the time he did so, the complainant quickly turned and started to head into the crowd. Virtually simultaneously, Named Employee #1 released a short burst (approximately one second) of OC spray towards the complainant. The OC spray appeared to strike the complainant's back as he moved away from the officers. From a review of the video, the OC spray did not appear to have affected any other demonstrator aside from the complainant.

Named Employee #1 documented his use of force in a Type II statement. In that statement, Named Employee #1 indicated that he used the force in question because he observed the complainant "reach out to grab" Named Employee #2, and he was worried that Named Employee #2 was at risk of being assaulted. Named Employee #1 recalled that the burst of OC

spray lasted approximately two seconds and that, once he sprayed, the complainant turned around and fled. After writing this statement, Named Employee #1 reviewed video of the incident. He indicated that it did not change his recollection of the incident. He noted that he did not recall the complainant reaching out at Named Employee #2 with an object, as opposed to trying to grab Named Employee #2. He further noted that based on his review of the video, his burst of OC spray lasted for one second, not the two seconds he had previously estimated.

The complainant alleged that he observed an officer (identified as Named Employee #2) push someone to the ground with his bicycle and that he approached Named Employee #2 with the intent of telling the officer that he had just committed an assault. Another officer then sprayed the complainant in his back with OC 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 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.*)

SPD policy recognizes that whether force is reasonable needs to be “judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” (SPD Policy 8.000(4).) The policy also stresses that: “The calculus of reasonableness must allow for the fact that police officers are often forced to make split-second decisions—in circumstances that are tense, uncertain, dynamic and rapidly evolving—about the amount of force that is necessary in a particular situation.” (*Id.*)

Based on the OPA Director’s review of the video, it was found that the force used by Named Employee #1 – namely, the application of OC spray – was reasonable, necessary and proportional, and thus consistent with policy.

The OPA Director concluded that, at the time the force was used, Named Employee #1 believed that the complainant was reaching out towards and potentially preparing to assault Named Employee #2. Named Employee #1 was working in the context of a demonstration, which was inherently stressful and fast-paced, and was dealing with individuals who had previously failed to comply with dispersal orders. Given those circumstances, and given his belief that the complainant was preparing to possibly assault Named Employee #2, it was reasonable to use a one second burst of OC spray to prevent the complainant from doing so. Notably, this OC spray was specifically directed towards the complainant and not toward the broader crowd.

The OPA Director also concluded that the one second burst of OC spray was necessary to effectuate the lawful purpose of preventing a potential assault of Named Employee #2 by the complainant and to move the complainant out of that immediate vicinity.

Lastly, the OPA Director concluded that the one second burst of OC spray was proportional to the potential threat posed by the complainant. Indeed, it eliminated the threat and prevented the need to apply any other force.

As explained above, the video captured two individuals falling down to the ground while officers were moving a bicycle line forward and telling the demonstrators to move back. Prior to this occurring, these individuals were obscured by the bike line, which suggested, in the OPA Director's analysis, that these individuals did not comply with the initial orders to move back.

Notably, prior to the officers directing the demonstrators to move back and prior to force being used by Named Employee #1 and Named Employee #2, a Lieutenant issued two dispersal orders. However, the demonstrators remained in the area from which they had been directed to disperse.

Named Employee #2's use of force report described the force he used on that day. In that report, Named Employee #2 recalled that while he was trying to move demonstrators back as part of the bike line, a male and female demonstrator grabbed his bike. Named Employee #2 further stated that at the same time that he moved his bicycle back, Named Employee #1 dispersed OC spray at those two individuals and in their attempts to avoid the spray, they tripped over each other. This report was Named Employee #2's perception of what occurred on that day, was generated two days after the incident, and appeared to have been drafted without the aid of video. The OPA Director noted, however, that Named Employee #2's recollection was inconsistent with Named Employee #1's statement and, based on the review, inconsistent with the video evidence.

From the OPA Director's review of the video, it appeared most likely that the individuals who were knocked to the ground were knocked down by Named Employee #2's bicycle while he was moving it forward. It also appeared clear from this review that Named Employee #1 did not spray or target these two individuals with OC spray, but instead solely targeted the complainant. Notably, Named Employee #2's statement at his OPA interview was different from his initial report and adhered more closely to the OPA Director's observations and Named Employee #1's account. At his OPA interview, Named Employee #2 stated that while he was moving demonstrators back, a female demonstrator grabbed on to his bike and, when he pushed back, she fell backwards. He further stated that the OC spray occurred to his right and slightly ahead of where he was positioned, and that he did not know who was targeted.

From a review of the video, the OPA Director could not determine whether either or both of the individuals who fell to the ground were holding on to Named Employee #2's bicycle. Neither individual were ever identified and, thus, no OPA interviews of these individuals were conducted. As indicated above, the OPA Director also had questions concerning what occurred on that date based on Named Employee #2's conflicting statements. Again, these conflicts could be based on the stressful nature of the incident, differences in officer perception, the time that passed between the incident and reporting/interview, and the lack of review of video by Named Employee #2. However, these conflicts, coupled with the limitations of the video

evidence, prevented the OPA Director from conclusively finding whether the force was within policy.

FINDINGS

Named Employee #1

Allegation #1

A preponderance of the evidence showed that the force used by Named Employee #1 was reasonable, necessary and proportional. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Authorized*.

Allegation #2

A preponderance of the evidence showed that the force used by Named Employee #1 was reasonable, necessary and proportional. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Use of Force - OLEORESIN CAPSICUM (OC) SPRAY: Officers Will Use OC Spray, Including for Crowd Dispersal or Protection, Only When Such Force is Objectively Reasonable*.

Named Employee #2

Allegation #1

There was not a preponderance of the evidence either supporting or refuting the allegation. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Using Force: Use of Force: When Authorized*.

NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.