



## CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 30, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0439

### **Allegations of Misconduct & Director’s Findings**

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics	Not Sustained (Lawful and Proper)
# 2	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 the Named Employee subjected her to excessive force when he deployed OC spray at her.

### **ADMINISTRATIVE NOTE:**

The Complainant filed a complaint with OPA in which she asserted allegations against several SPD officers. She first contended that an officer – referred to here as Witness Officer #1 (WO#1) – subjected her to excessive force when he deployed OC spray at her. She also reported that she was grabbed and shoved by other officers. She characterized this as assaultive behavior on the officers’ part. OPA identified that Named Employee #1 (NE#1) was likely the officer who grabbed the Complainant but did not find evidence of any officers shoving her. Accordingly, OPA alleged that NE#1 may have failed to de-escalate and that he may have subjected the Complainant to excessive force.

Shortly after OPA initiated its investigation, NE#1 went out on military leave. Given the length of his anticipated leave, OPA tolled the portion of the case concerning him and proceeded with the investigation against WO#1. Findings were issued regarding WO#1’s use of OC spray on January 3, 2021, with OPA concluding that the deployment was consistent with policy.

Once NE#1 returned from military leave, the 180-day timeline for this case again began running. As OPA had already conducted video analysis, reviewed relevant documentation, and conducted interviews of the Complainant, a witness identified by her, and WO#1, OPA’s sole additional step taken here was to interview NE#1.

### **SUMMARY OF INVESTIGATION:**



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The Complainant alleged that, on June 7, 2020, she was subjected to excessive force by SPD officers. In her electronically submitted complaint, the Complainant wrote the following:

I was protesting peacefully outside of the East Precinct with a group. We were sitting on the ground outside of the barricade when a group of bike cops began to trample us, hitting us with bikes, while cops in riot gear advanced from the front. I was shoved twice by officers and then grabbed by one, who pepper sprayed me in the face from less than one foot away for multiple seconds. When I turned away, he continued to spray the back of my head, neck, and clothes. I was able to escape and dropped to the ground outside of the crowd where I was helped by volunteer medics.

As part of its investigation, OPA interviewed the Complainant. She said that, on June 7, she was peacefully protesting at a police barricade in the vicinity of the East Precinct. She was with her partner. She said that she was sitting down at the barricade with around 100 other demonstrators present. She recalled that, around 7:00 p.m., officers wearing riot gear approached the barricade. In response, demonstrators stood up and opened up umbrellas to protect themselves from blast balls and OC spray. The Complainant stated that, while the officers in riot gear approached, a group of bicycle officers came behind the demonstrators, effectively preventing them from moving either forward or backward.

The Complainant said that, at some point thereafter, a flash bang was deployed into the crowd. Then the officers in riot gear began moving into the crowd of demonstrators. The Complainant recalled being disoriented by the flash bang and she saw that her partner had been hit by shrapnel. She stated that she tried to move away by proceeding towards the edge of the crowd. At that time, she was pepper sprayed in the face by an officer who was standing a foot away.

The Complainant reported turning away from the officer; however, the officer continued to spray the back of her head and neck. She was then forcefully shoved. She struggled to make her way to the edge of the crowd and then fell to the ground. She was assisted by other demonstrators. She began breaking out in hives and ultimately went to the hospital where she was treated for an allergic reaction and given an EpiPen.

OPA also interviewed a witness identified by the Complainant. The witness was with the Complainant for portions of the incident. She said that she saw officers putting on gas masks, so she put on her mask and told the Complainant to also do so. She recalled that the Complainant began having a “panic attack” and that she walked away. Officers gave warnings and then began moving the crowd. An individual got trapped under an officer’s bicycle. The officers began using pepper spray on demonstrators; however, she did not see pepper spray used on the Complainant. When she located the Complainant, the Complainant was receiving medical treatment for pepper spray and was hyperventilating. The Complainant began to have a bad reaction to the pepper spray, including her neck growing red. Medics told the Complainant to go to the hospital and she did so. The Complainant remained at the hospital for approximately one to two hours and was told that she was having an allergic reaction but that it was not overly serious. The Complainant went back to the hospital the following day.

OPA identified Body Worn Video (BWV) that captured the incidents set forth in the Complainant’s complaint. This allowed OPA to determine that two officers made physical contact with or used force on the Complainant. The first – WO#1 – pepper sprayed her. The second – NE#1 – grabbed onto her arm and began pulling her towards him immediately prior to the pepper spray occurring.



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The BWV indicated that the Complainant was at the front of the group of demonstrators at the barricade. There were officers wearing riot gear that began walking towards the barricade. A squad of bicycle officers advanced towards the line behind the officers. The sergeant supervising the bicycle squad walked up to the barricade and asked the demonstrators to move to the side to allow emergency vehicles to proceed through. The Complainant was to the front left of the Sergeant and could be heard yelling at officers: "get the fuck away from us!" The demonstrators did not move in response to the Sergeant's request, and several shook their heads indicating that they would not do so. The Sergeant informed demonstrators that if they did not move, they would be arrested. The Complainant continued to yell at the officers to get away from them.

Officers began to open the barricade, and, at that time, demonstrators sat down in an organized fashion and positioned umbrellas in front of themselves. Officers started to walk through the seated demonstrators, continuing to say: "move back." The Sergeant directed that those demonstrators who did not move should be arrested, and officers began taking people into custody. At that time, a demonstrator wearing a red sweatshirt quickly advanced towards an officer and pushed him back from a demonstrator who was being taken into custody. The officer stood up and pushed the demonstrator back. They then faced each other. Another demonstrator, who was dressed in all black and had a florescent orange backpack, moved forward into the bicycle line and placed himself in between the officers and the individuals lying on the ground. The individual with the orange backpack began pulling demonstrators back from the officers. The demonstrator with the red sweatshirt advanced towards other officers who were moving back the crowd and he was pepper sprayed. The individual with the orange backpack was also pepper sprayed and pushed backwards by the officers.

The clearest view of where the Complainant was positioned at that time was captured by a video posted on Twitter. It showed her to the left of the scuffle between the officers and the demonstrators in front of them. A blast ball was deployed, and the Complainant moved back from the barricade. At that time, additional bicycle officers came up behind her and one officer moved her back and towards other demonstrators. The video indicated that, at this time, the Complainant had at least two avenues of egress away from the officers. The Complainant appeared to plant her feet and push back against the officer who had a hand on her back and was trying to move her away. A smaller group of demonstrators, directly next to her, began to move close to each other, in an apparent attempt to block officers from clearing a path. The officers kept moving forward and instructed demonstrators to "move back."

The Complainant then turned away from the officer that had been trying to move her back and towards the officers at the barricade. As she stepped towards them, NE#1 reached out to grab her arm and began to pull her away from the officers that she was walking towards. She was simultaneously sprayed once with OC spray by WO#1. She then turned and walked into the crowd and away from the barricade.

At his OPA interview, NE#1 said that he did not recall his interaction with the Complainant or making physical contact with her. This was the case even after he reviewed his video and the Twitter video in an attempt to refresh his recollection. However, NE#1 generally recalled what he was doing at the time. He said that a Lieutenant had entered the crowd of demonstrators in an attempt to convince them to leave the area and, if successful, to avoid using force to disperse them. However, this was not productive as the demonstrators were engaging with officers and, as a result, OC spray and at least one blast ball were deployed in the immediate vicinity of the Lieutenant. Moreover, the Lieutenant was surrounded by demonstrators. Given this, NE#1 and other officers decided to wade into the crowd in order to form a protective barrier around the Lieutenant and move him out. NE#1 said that his role was to move the demonstrators back to form a buffer around the Lieutenant. He and other officers were yelling "move back," but the



demonstrators were not listening. He recalled that one tried to grab his bicycle, which had OC spray and blast balls on it. At this time, NE#1 further observed officers making an arrest of an individual who was on the ground.

When asked to describe the propriety of his force as captured by the video, NE#1 asserted that it was consistent with policy. NE#1 denied that he ever shoved the Complainant as she contended but stated that, had he done so, it would have been permissible under the circumstances. He said that, at the time of the force, officers were dealing with an individual on the ground and were trying to disperse the crowd. The Complainant was not dispersing and, instead, was trying to walk towards those officers. NE#1 believed that, if allowed to do so, the Complainant could interfere in the arrest or potentially cause injury to the officers. NE#1 felt that he was entitled to prevent this by moving her away. NE#1 also explained that, at the time he made contact with the Complainant, the crowd had been ordered to disperse and less-lethal tools had been used. He opined that everyone in the crowd would have been aware that they were required to leave. He further noted that, given the lawful orders to disperse, the Complainant could have been arrested at that time for remaining in the area.

Lastly, NE#1 said that the multiple lawful orders provided to the crowd by numerous officers, including himself, constituted de-escalation. Only after that point and after an opportunity was provided to demonstrators to leave was any force used to remove individuals, including the Complainant, from the area.

#### **ANALYSIS AND CONCLUSIONS:**

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

##### ***8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics***

“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.*) Officers are also required, “when time and circumstances permit,” to “consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors” such as “mental impairment...drug interaction...[and/or] behavioral crisis.” (*Id.*) These mental and behavioral factors should be balanced by the officer against the facts of the incident “when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.” (*Id.*)

De-escalation is inarguably a crucial component of the Department’s obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department’s policy and expectations.

OPA agrees with NE#1 that the numerous orders to demonstrators, including the Complainant, to disperse, constituted de-escalation. Also constituting de-escalation was the Lieutenant’s unsuccessful attempt to convince demonstrators to depart. The demonstrators were on notice that they needed to leave the area and were given lawful directions to do so. However, the vast majority of demonstrators, again including the Complainant, refused to do so



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both physically and verbally. When this occurred, further de-escalation was neither safe nor feasible and officers were permitted to use reasonable, necessary, and proportional force to disperse the crowd. As discussed more fully below, NE#1 did just this, using only that level of force needed to move the Complainant away.

For these reasons, OPA find that NE#1 complied with SPD's de-escalation policy and recommends that this allegation be Not Sustained – Lawful and Proper.

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

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

***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.*)

From a review of the video, NE#1 used force only once on the Complainant when he took hold of her arm and pulled her towards him and away from the other officers. NE#1 asserted that this force was de minimis and OPA agrees. NE#1 denied that he ever shoved the Complainant and OPA found no video evidence indicating that he did so. In addition, OPA found no video evidence that any SPD employee shoved the Complainant during this incident.

With regard to the force NE#1 used, OPA finds that it was reasonable, necessary, and proportional. At the time, the demonstrators, including the Complainant, had been given a lawful order to leave the vicinity. The Complainant did not do so. Moreover, it is undisputed from the video that, when NE#1 made physical contact with the Complainant, she had taken a step towards where the other officers were located. While the Complainant may not have been intending to interfere in an arrest or to cause those officers harm, NE#1 did not know that, and he was entitled to move the Complainant back and away. The force he used to do so was thus both reasonable and necessary under the circumstances. Moreover, the force, which was of a low level, was also proportional. Again, NE#1 did not shove the Complainant, but only grabbed her arm to begin pulling her back. He did not even fully do so as she was simultaneously OC sprayed by WO#1 and then NE#1 let go of her. Notably, NE#1's force did not appear to cause the Complainant any injury, did not cause her to fall back, and did not result in her falling to the ground.

The video indicates that NE#1 did not subject the Complainant to excessive force and that, to the contrary, the force he used was consistent with policy. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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