



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 3, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0454

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 (Inconclusive)

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 an SPD employee struck him with a baton without cause, leading to injury and causing him to lose property.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

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. This specific complaint was filed on June 19, 2020 and concerned the Complainant’s experience at the protest on May 30, 2020, the second full day of protests.

The Complainant stated that, on that date, he made his way downtown to join a peaceful protest at Westlake Park. While walking down 6th Avenue toward Westlake, the Complainant noticed a significant police presence, including officers standing shoulder-to-shoulder and carrying batons. The Complainant said that officers were blocking the path he had planned to take to the protest, so he continued walking south on 6th Avenue. When he arrived at the corner of 6th Avenue and Pine Street, he was momentarily blocked by the crowd. He recalled that he ended up standing in front of officers for approximately a minute.

The Complainant stated that, during this time, an officer “lunged” at him, striking his right arm and shoulder with his baton. The Complainant indicated that he fell to the ground and his property, including glasses and a backpack, were scattered. The Complainant described the officer as a White male, approximately 5’8” in height and 25-30 years old. The Complainant submitted two photographs of himself from the date of the incident, although they did not show the actual incident as it occurred.



OPA reviewed the Body-Worn Video (BWV) for 20 officers who were assigned to the general area where the Complainant stated that the incident occurred. Based on its review of BWV, OPA could not identify any incident matching the one described by the Complainant. OPA notes that May 30 predated the Mayor's executive order requiring officers to activate BWV whenever they reasonably believed they would be in contact with the public. At the time, officers were not permitted to record protest events outside of certain limited situations, in order to prevent a "chilling effect" on free speech and political advocacy. (See 2020OPA-0326.) It is therefore possible that an officer involved in this incident did not have BWV active when he made contact with the Complainant.

OPA searched through community member video utilized in other cases in an attempt to locate images or video of the Complainant or this incident. Unfortunately, no responsive information was found. In addition, OPA conducted Google web searches to locate additional third-party media. One image was located which appeared to show the Complainant standing at the front of a group of protesters facing the police line. The image depicted two White male patrol officers with batons in proximity to the Complainant, but neither were interacting with him at the time. The image did not depict any force or seem to reflect that force had just been used. Based on the image alone, OPA was not able to identify the officers given the distance at which the photo was taken.

Finally, OPA could not identify any Use of Force Reports concerning the force the Complainant alleged occurred. Ordinarily, officers would be expected to report the use of an impact weapon, such as a baton, as Type-II force.

Ultimately, OPA was not able to conclusively identify which SPD employees may have been responsible for using force against the Complainant or, for that matter, whether the incident relayed by the Complainant occurred as described.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Officers shall only use "objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective." 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 8.050.) The policy lists a number of factors that should be weighed when evaluating reasonableness. (See *id.*) Force is necessary where "no reasonably effective alternative to the use of force appeared to exist" and "the amount of force used was reasonable to effect the lawful purpose intended." (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

OPA was unable to uncover evidence sufficient to evaluate the force that the Complainant alleged was used against him here. Had an officer struck the Complainant with a baton for no reason, as the Complainant contended, this would be concerning as it would constitute a significant level of force with no apparent threat of harm posed by the Complainant. However, without being able to identify the officer involved, OPA cannot assess the factual circumstances underlying the force. Similarly, given the dearth of available information, OPA does not know what the Complainant was doing prior to being subjected to force and what was happening immediately around him at the time. Accordingly, OPA is prevented from determining whether that force prohibited under policy and recommends that this allegation be Not Sustained – Inconclusive.

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