



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 7, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0569

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 failed to de-escalate prior to using force and applied excessive force during the arrest of a demonstrator.

SUMMARY OF INVESTIGATION:

The Complainant initiated an OPA complaint in which he alleged that an officer – who was later determined to be Named Employee #1 (NE#1) – used excessive force on an individual in Cal Anderson Park and failed to de-escalate prior to doing so. The Complainant asserted that the individual – who is referred to here as the “Subject” – was “tackled from behind.” The Complainant said that he did not hear any officer tell the Subject that he would be arrested for trespassing or try to prevent the Subject from entering the park prior to NE#1 using force to arrest the Subject. The Complainant stated, referring to the Subject: “The guy clearly was not complying with the orders from the police, but he showed ZERO aggression outside of vulgar and loud language” prior to force being used.

On September 1, 2020, SPD and the Parks Department conducted a joint operation to remove encampments from Cal Anderson Park. This was one of a series of similar clearings of the park, which had periodically been occupied by demonstrators and by individuals residing in tents. An Incident Action Plan (IAP) was completed prior to the operation. The IAP provided the following instruction to officers: “for those who refuse to leave, SPD would be making arrests for Criminal Trespass and Camping in the Park.”

Body Worn Video (BWV) indicated that the Subject left but then walked back into the park, where he stood in front of and blocked a Parks Department vehicle. A Sergeant told the Subject that he needed to stop blocking the truck. The Subject argued with the Sergeant, contending that the park was not closed. The Sergeant told the Subject that he was trespassing and that remaining present in the park was a criminal act. The Subject then began to walk back into the park.



At that point, NE#1 approached the Sergeant and the Subject. As NE#1 walked towards them, the Subject was walking into the park and could be heard saying: “Fuck this” and “I am not trespassing.” NE#1 took hold of the Subject’s backpack strap. He said: “you’ve been given a warning” and “you’re now under arrest.” While still holding the backpack strap, NE#1 grabbed onto the Subject’s upper left arm with his other hand. He began to move the Subject’s arm backwards and the Subject said: “let go of me.” The Subject pulled away from him, continuing to yell: “let go of me.”

NE#1 held onto the Subject and said twice: “get on the ground.” NE#1’s BWV recorded the sounds of a physical struggle but did not provide a view of what occurred given the closeness in proximity between NE#1 and the Subject at the time. The BWV from another officer – referred to here as Witness Officer #1 (WO#1) – did show what occurred. It showed that NE#1 pulled the Subject’s arms back and, as he did so and as the Subject struggled against him, they both fell forward to the ground, landing on their knees. NE#1 again informed him that he was under arrest and said: “on the ground, all the way down.” NE#1 pushed him flat onto the ground and continued trying to get the Subject’s arms behind his back. WO#1 also tried to move the Subject’s arms behind his back, but the Subject pulled away from WO#1. The Subject told the officers that they were hurting him. He denied that he was trespassing and said that he was going back into the park to meet a friend and get his things. NE#1 told him that he received a warning but that he still entered the park, justifying the arrest. Ultimately, the officers were able to handcuff the Subject.

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

When assessing NE#1’s de-escalation, it is important to look at what he was aware of at the time he first made physical contact with the Subject. When NE#1 approached the Subject, he knew that the Subject had gotten a warning to leave the park and that the Subject was walking back into the park while stating that he was not trespassing. At that point, NE#1 believed, reasonably in OPA’s opinion, that the Subject was purposefully refusing the order to exit the park and that there was probable cause to arrest him. In hindsight, OPA believes that it would have been optimal for NE#1 to try to gain voluntary compliance for at least an additional short period of time prior to making the decision to effectuate the arrest; however, OPA does not find that, under the circumstances of this case, the failure to do so violated policy.

Moreover, OPA notes that NE#1 initially did not use any reportable force on the Subject. He took hold of the Subject’s backpack to stop him and the Subject then made the decision to pull away. Notably, at that time, the Subject knew that an officer was taking hold of him to prevent him from walking forward and had given him a lawful order to stop. The Subject’s decision not to do so and to pull away from NE#1 was the catalyst for him being pulled down to the ground by NE#1. Had the Subject stopped as directed and as he was legally required to do whether or not he agreed with the basis for the detention, it is likely that no force would have been used other than that needed to handcuff him.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #1 - Allegation #2

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

From OPA's review of the evidence, NE#1 and the Subject fell forward down to the ground while they struggled against each other. The BWV does not support a finding that NE#1 "tackled" the Subject to the ground, as described by the Complainant.

At the time this force was used and as discussed above, NE#1 had a lawful basis to take the Subject into custody for failing to leave the park. When the Subject pulled away from him, NE#1 was permitted to use force to prevent the Subject from doing so. Moreover, given the Subject's physical resistance, NE#1 was allowed to bring the Subject down to the ground where he could be more easily controlled. The manner in which NE#1 chose to do so, falling forward onto his and the Subject's knees was not excessive. Moreover, using body weight and control holds to pull the Subject's arms behind his back and to handcuff him was also not excessive, particularly in light of the Subject's continued resistance. Notably, NE#1 used low-level force during this incident and did not strike or hit the Subject. He further modulated and then ceased using force altogether once the Subject was under control.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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