



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 15, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0666

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) |

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 used excessive force on a demonstrator.

ADMINISTRATIVE NOTE:

In addition to the claim of excessive force, the Complainant also alleged that the Named Employee failed to wear a facemask. That matter was handled by the Named Employee’s chain of command as a Supervisor Action.

SUMMARY OF INVESTIGATION:

An anonymous Complainant filed this complaint with OPA. The Complainant alleged that an SPD officer used excessive force on a demonstrator – referred to here as the Subject. The Complainant stated that the demonstrators were moving back when officers rushed them. This caused both demonstrators and officers to fall to the ground. The Complainant noted that the Subject had a disability and was trying to move back to the best of their ability at the time. The Complainant said that the Subject was placed under arrest and an officer handcuffed them. During that time, the officer twisted the Subject’s hand even though the Subject said that they were not resisting, and, from the Complainant’s perspective, they clearly were not doing so. The Complainant asserted that the Subject’s mask was “displaced,” and the Subject told the officer that they could not breathe. However, the officer did not take any action, including failing to adjust the mask. Lastly, the Complainant asserted that the officer reached his hand into the Subject’s pocket to conduct a search without first asking the Subject what gender officer they wanted to conduct the search. After this occurred, the Subject stated that they wanted a female officer to conduct the search.

The Complainant did not provide any descriptive information concerning the Subject or the involved officer. OPA reviewed the BWV from that evening and determined that the Subject was arrested by Named Employee #1 (NE#1). OPA was able to identify this as the arrest in question as the Subject did, at one point, tell NE#1 that she could not breathe and asked NE#1 to remove their mask.



The BWV indicated that officers responded to vandalism that was being engaged in outside of the East Precinct. The officers believed that a large umbrella was observed being used to shield these acts. Officers deployed in front of the precinct and towards the umbrella with the intent to seize it. They told the crowd to move back. The officers then advanced and made arrests of several demonstrators, including the Subject, who were still in the street.

NE#1 was behind the officers who initially made contact with the demonstrators. He approached as the Subject was already on the ground and he took custody of the Subject and began to handcuff them. The handcuffing was fully captured on video. There was no evidence indicating that NE#1 “twisted” the Subject’s wrist or hand. Notably, at this time, the Subject did not exclaim in pain or make any other noises indicating that they were in discomfort. No other force was used by NE#1.

The BWV indicated that, early during the arrest, the Subject told NE#1 to take their mask off (the Subject was wearing a respirator) and began grabbing NE#1’s hand to get his attention. NE#1 asked the Subject what they were doing and told them to stop grabbing his hand. The video showed that he either did not hear or understand what they were saying concerning the mask. At one point, NE#1 appeared to mishear “mask” for “backpack,” and he told the Subject that their backpack would be transported with them to jail. NE#1 handcuffed the Subject, and, for the first time, the Subject said that they could not breathe. NE#1 told them to breathe through their mouth. NE#1 double locked the handcuffs. He then put the Subject in the recovery position (on the side) before sitting the Subject up. At that point, they again asked to take off their mask. NE#1 did so.

From OPA’s review of the video, the Subject’s initial claims that they could not breathe were very difficult to discern as their voice was muffled and because of all the surrounding noise. Their statements were only discerned after several times watching the BWV.

After they were handcuffed, the Subject was walked from the scene. NE#1 asked the Subject how they identified and what gender officer they wanted to conduct the search. The Subject asked for a female officer and NE#1 complied with that request. There was no indication from the BWV that NE#1 ever conducted any search of the Subject’s physical person at any time, including in their pockets.

Given the above, OPA deemed both the Complainant’s claims concerning NE#1 failing to act to help the Subject breathe and the improper search to be unsubstantiated by the evidence.

The Complainant’s excessive force claim is discussed below.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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.*)

The force used by NE#1 was completely captured on BWV. The video indicated that NE#1 took hold of the Subject’s hands and applied handcuffs. At the time, he kept a knee on the top of the Subject’s back to stabilize them. This was consistent with his training. The BWV further contradicted that NE#1 ever twisted the Subject’s hand or used any other undue force. Under the circumstances of this case, OPA finds that this force was reasonable, necessary, and proportional to effectuate the Subject’s arrest. There was no indication that NE#1 used excessive force at any time.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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