



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 16, 2020

CASE NUMBER: 2017OPA-0768

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director's Findings
# 1	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)

Named Employee #3

Allegation(s):		Director's Findings
# 1	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)

Named Employee #4

Allegation(s):		Director's Findings
# 1	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)



Named Employee #5

Allegation(s):		Director's Findings
# 1	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)

Named Employee #6

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	8.300 - Use of Force Tools 8.300-POL-5 Use of Force - OLEORESIN CAPSICUM (OC) SPRAY	Allegation Removed
# 3	14.090 - Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 - Use-of-Force a & b	Not Sustained (Lawful and Proper)
# 4	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 5	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)

Named Employee #7

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	8.300 - Use of Force Tools 8.300-POL-5 Use of Force - OLEORESIN CAPSICUM (OC) SPRAY	Allegation Removed
# 3	14.090 - Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 - Use-of-Force a & b	Not Sustained (Lawful and Proper)
# 4	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 5	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)

Named Employee #8

Allegation(s):		Effective Date:
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	8.300 - Use of Force Tools 8.300-POL-5 Use of Force - OLEORESIN CAPSICUM (OC) SPRAY	Allegation Removed
# 3	14.090 - Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 - Use-of-Force a & b	Not Sustained (Lawful and Proper)
# 4	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 5	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)



Named Employee #9

Allegation(s):		Effective Date:
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	8.300 - Use of Force Tools 8.300-POL-5 Use of Force - OLEORESIN CAPSICUM (OC) SPRAY	Allegation Removed
# 3	14.090 - Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 - Use-of-Force a & b	Not Sustained (Lawful and Proper)
# 4	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 5	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)

Named Employee #10

Allegation(s):		Effective Date:
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	8.300 - Use of Force Tools 8.300-POL-5 Use of Force - OLEORESIN CAPSICUM (OC) SPRAY	Allegation Removed
# 3	14.090 - Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 - Use-of-Force a & b	Not Sustained (Lawful and Proper)
# 4	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 5	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)

Named Employee #11

Allegation(s):		Effective Date:
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	8.300 - Use of Force Tools 8.300-POL-5 Use of Force - OLEORESIN CAPSICUM (OC) SPRAY	Allegation Removed
# 3	14.090 - Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 - Use-of-Force a & b	Not Sustained (Lawful and Proper)
# 4	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 5	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)



Named Employee #12

Allegation(s):		Effective Date:
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	14.090 - Crowd Management 9. Crowd Dispersal a. Upon Determining That There are Acts or Conduct Within a Group of Four or More Persons That Create a Substantial Risk [...]	Not Sustained (Unfounded)
# 3	14.090 - Crowd Management 9. Crowd Dispersal b. The Incident Commander Shall Have Authority to Direct the Use of Blast Balls and OC Spray to [...]	Not Sustained (Unfounded)

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 Complainants, who are members and organizers of a liberal/left wing counter-protest opposing an Anti-Sharia march, alleged that the Named Employees were biased against them for their political views and subjected them to excessive force.

ADMINISTRATIVE NOTES:

Due to heavy caseloads at the time and given a request for additional investigation by the OPA Auditor, OPA was unable to timely complete this case. As such, this DCM is submitted past the expiration of the 180-day deadline.

STATEMENT OF FACTS

The demonstrations in this case occurred amid similar demonstrations nationwide. Many of these demonstrations involved violence between demonstrators associated with the left (anti-fascists/anarchists) and right (Proud Boys and other similar right wing/Alt-Right groups). These demonstrations culminated in the Unite the Right rally that took place in Charlottesville. This rally resulted in the murder of a counter protestor, mass injuries, and wide-spread public disorder. After Charlottesville, a right-wing group planned to hold a demonstration in the City of Seattle and received a permit to do so. The demonstration, which was entitled the "Anti-Sharia March," was planned to be held at Seattle City Hall Plaza. A counter protest was also planned by a group called "Seattle Stands with Our Muslim Neighbors" (hereafter, "Neighbors"). This counter protest was unpermitted, but organizers did notify the City prior to their march. The counter protestors planned to meet at Occidental Park and then march to City Hall Plaza.

A. The Demonstrations

Participants involved in the Anti-Sharia March began arriving at City Hall Plaza around 9:00 a.m. By approximately 9:45 a.m. it was estimated that there were 100 people amassed there. At around the same time, it was estimated that there were around 300 people in Occidental Park. Among the demonstrators at Occidental Park were some individuals identified by the police as belonging to the Black Bloc, an anarchist/anti-fascist group. These individuals were identified as wearing black clothing and masks and, according to police reports, were in possession of various improvised weapons. Another group began gathering at Westlake Park. This group, which was estimated at around 80 with approximately one third appearing to be anarchist/anti-fascist, also planned to march to City Hall Plaza to demonstrate against the Anti-Sharia March.



The demonstration at City Hall Plaza began, including various speakers airing their views. Simultaneously, the individuals gathered at Occidental Park and Westlake Park began marching in that direction. Both groups arrived and began loudly demonstrating against the Anti-Sharia March. The tenor of the protest became more negative and officers reported concern that physical altercations between opposing groups could occur.

At around 10:30 a.m., groups of Proud Boys began interacting with counter protestors in the crowd. The incident remained peaceful until approximately one hour later when fights began breaking out in the vicinity of Cherry Street and Third Avenue. Bicycle officers intervened and broke up the fight. Proud Boys began interacting with anti-fascists/anarchists in the vicinity of Cherry Street and Fourth Avenue. This was again broken up by bicycle officers. At one point, officers warned a demonstrator affiliated with the Anti-Sharia March that if he continued to incite the crowd he would be arrested. Additional altercations occurred over the next several hours, with officers intervening to prevent violence.

The most serious physical altercations occurred in the vicinity of Washington Street and Third Avenue. As a result, officers used OC spray to disperse the crowd. The usage of OC spray was recorded on video. Notably, demonstrators from both groups were among those sprayed.

During that altercation, the officers were directed to form a mobile bicycle line and did so. They pushed the line forward in an attempt to separate the dueling protestors. The bicycle line was led by Named Employee # 11 (NE#11), then a sergeant. The line was met with resistance, largely from protestors affiliated with the anti-fascist/anarchist contingent. It was at this time that the officers made arrests. Ultimately, dispersal orders were given and the crowd dispersed over time. There were additional minor altercations that were broken up by police.

All in all, three individuals were arrested. All three were counter protestors. According to the General Offense Report, officers became aware of a cellphone video taken earlier that showed a male yelling and becoming escalated at demonstrators affiliated with the Anti-Sharia march while his hand was placed on a firearm that he was open-carrying on his hip. In that video, recorded earlier on Columbia street, a bike unit was required to intervene to prevent the situation from escalating dangerously. No force was recorded on the video.

B. The Resulting Arrests

During the disturbance in Occidental Park, the same armed individual from earlier and a female attempted to disrupt the officers' bike fence. During this time, one of the bicycle officers fell, thus breaking the fence line. The two individuals pushed through the line behind NE#11 and laid down while bear-hugging each other and tangling themselves in the officers' bikes and legs. At the time, elements of both the Anti-Sharia and the Neighbors group were trying to engage each other in fistfights and officers were trying to interpose their fence line between the groups and being met by resistance.

Officers nearest the two individuals observed these events. Named Employee #4 (NE#4) reported using his bicycle to push back members of the crowd to give the fallen officer space to stand. NE#4 directed the individuals to move. When they did not, he and Named Employee #2 (NE#2) took them into custody. While they were in the process of arresting the two individuals, a third protester grabbed one of the officers from behind and attempted to pull him off the two individuals lying down in an attempt to "un-arrest" them. Named Employee #1 (NE#1), one of the officers in the group, grabbed the third individual and pulled him away. NE#1 took that individual into custody with the assistance of Named Employee #5 (NE#5). In his interview, NE#1 stated that he made the decision to arrest the third individual only after observing him attempt to obstruct officers. NE#4, who witnessed these events, was not able to identify the officer that the third protester attempted to grab.



The arrested individuals were transported to the West Precinct. While there, they were examined by Seattle Fire Department, which determined that none of them had any serious injuries as a result of the arrest or deployment of OC spray. The first and second individuals were screened by SFD and found to be uninjured. The third individual arrested was treated for OC spray exposure as well as injuries that occurred during an assault in the crowd.

C. Force Used

As discussed above, officers used OC spray to disperse protestors in one location. The video evidence established that, at this time, there was an ongoing and serious physical altercation between opposing demonstrators. The OC spray was utilized in the middle of the group in order to disperse it. From OPA's review of the video, no single protestor or group of protestors was targeted. Moreover, the individuals ultimately affected by the OC spray included demonstrators from both groups.

From a review of the available evidence, it appears that de minimis and Type I force was used to break up numerous fights, to separate opposing groups, to advance the bicycle line, and to effectuate the arrests of the three individuals discussed above. No blast balls were used. Moreover, there did not appear to be applications of any higher-level force.

D. OPA Complaints

Approximately a month and a half after the date of the protests, organizers of the "Neighbors" group and other members of the community sent an open letter to the then-Mayor of Seattle, the then-Police Chief, and OPA. They alleged that SPD's response treated protesters associated with the "Neighbors" group and the left generally differently and worse than those associated with the Anti-Sharia group. It specifically alleged bias-based policing based on political viewpoint, as well as wrongful deployment of pepper-spray. Generally, the complaint alleged that SPD only chose to arrest left-aligned protesters, while ignoring actions of the Anti-Sharia groups. This OPA Investigation ensued.

E. OPA's Investigation

During its investigation, OPA learned that in a roll call briefing prior to the demonstrations, the Department reiterated its priorities for officers during the law enforcement response to the demonstrations. Most notably, the Department stressed that the officers were to ensure the safety of all participants in the demonstrations, provide for community members to exercise their First Amendment rights regardless of what their views were, to deter criminal activity, and to take appropriate action when crimes were committed against persons or property. OPA did not identify any Department documents or supervisors that made reference to treating the participants differently based on their alignment with one or the other group demonstrating that day as part of the operational plan.

OPA also interviewed the Named Employees, including NE#11, the supervisor of the bike squad that deployed OC spray and made arrests. NE#11 stated that, at the time OC spray was deployed, he observed groups of individuals fighting on the police line, as well as individuals in the crowd who possessed weapons. He said that he ordered the use of OC spray because it was too dangerous for individual officers to break their line and enter the crowd to disperse fights. NE#11 gave the order to use OC spray to defend members of the crowd who were being assaulted, without risking officer safety. He recalled that individuals in the crowd displayed signs of OC spray exposure, but he did not recall anyone seeking medical attention.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

NE#1 and NE#5 observed a male individual grab an officer from behind in an attempt to prevent that officer from arresting two other protesters. The Complainants alleged that all three protesters were taken into custody because of their political beliefs and, accordingly, that these arrests were unlawful.

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy. Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient in themselves to support a reasonable belief that an offense has been or is being committed.

OPA's review of video, including the footage provided by individuals who attended the protest, establishes that NE#1 and NE#5 had probable cause to arrest the individual for obstructing officers. They observed him grab an officer from behind for the purpose of trying to "un-arrest" two other protesters, giving the officers probable cause to believe that the individual was committing the crime of obstruction. In addition, OPA's investigation revealed no facts which would support an inference that NE#1 and NE#5 had some other, bias-based motive to arrest the individual. While department policy would prohibit the officers from arresting an individual solely because he aligned himself with a particular group of protesters, it does not prevent officers from making an arrest when they observe an individual commit a crime simply because he does so in the context of a protest. For this reason, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#1 and NE#5.

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

Named Employee #1 - Allegation #2

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

SPD policy prohibits biased policing, which it defines as "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual." (SPD Policy 5.140.) This includes different treatment based on the political affiliation of the subject. (*See id.*)

As discussed above, the law enforcement action taken by NE#1 and NE#5 was based on their observations of criminal activity, not on any improper motive. There is no evidence that either officer engaged in biased policing or discriminated against any of the protestors in any manner. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded as against NE#1 and NE#5.

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

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional

SPD Policy 5.001-POL-9 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-10.) The policy further states the following: "Any time employees represent the



Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

OPA did not uncover any evidence indicating that any of the Named Employees behaved unprofessionally. The Complainant’s did not allege, and the investigation did not reveal, any basis to conclude that the Named Employees used profanity, spoke in a derogatory manner to any person, or otherwise acted disrespectfully. Further, OPA’s investigation revealed that the officers arrested only those individuals who were attempting to obstruct officers from enforcing public order and dispersing fights happening around them. Indeed, had the Named Employees allowed this conduct to continue, that inaction would have undermined public trust in SPD’s willingness to enforce the law and prevent assaults. For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded as against NE#1, NE#2, NE#3, NE#4, NE#5, NE#6, NE#7, NE#8, NE#9, NE#10, and NE#11.

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

Named Employee #2 - Allegation #1

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

NE#2 was involved in the arrest of the female individual who laid down on the ground and tangled herself in the officers’ bikes in an attempt to impede the officers’ line and prevent them from separating the groups of protesters. This conduct, which was recorded on video, constituted the crime of obstruction.

Given the above, the arrest was lawful and there was no indication that it was based on any improper motive, including the political affiliation of the female individual. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#2.

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

Named Employee #2 - Allegation #2

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

For the same reasons as stated above (see Named Employee #2 – Allegation #2), OPA recommends that this allegation be Not Sustained – Unfounded as against NE#2.

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

Named Employee #2 - Allegation #3

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained – Unfounded as against NE#2.

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



Named Employee #3 - Allegation #1

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

NE#3 participated in the arrest of the male individual who laid down on the ground and tangled himself in the officers' bikes in an attempt to impede the officers' line and prevent them from separating the groups of protesters. The male individual also attempted to un-arrest the female individual. This conduct, recorded on video, constituted the crime of obstruction.

As discussed in the context of the other Named Employees, there is no indication that this arrest was based on the male individuals' political affiliation, his exercise of his First Amendment rights, or any other reasons suggesting bias.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#3.

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

Named Employee #3 - Allegation #2

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

For the same reasons as stated above (see Named Employee #3 – Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded as against NE#3.

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

Named Employee #3 - Allegation #3

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained – Unfounded as against NE#3.

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

Named Employee #4 - Allegation #1

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

NE#4 participated in the arrest of both of the individuals who laid down on the ground and obstructed the officers in their attempts to separate the groups of protesters. As discussed in the context of NE#1, NE#2, and NE#3, there is no evidence that these arrests were based on any bias or improper motives. To the contrary, the video evidence conclusively established that the arrests were supported by probable cause.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#4.

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



Named Employee #4 - Allegation #2

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

For the same reasons as stated above (see Named Employee #4 – Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded as against NE#4.

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

Named Employee #4 - Allegation #3

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained – Unfounded as against NE#4.

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

Named Employee #5 – Allegation #1

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

NE#5 assisted NE#1 with the arrest of the male individual who tried to prevent the arrest of the first two protesters.

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#5.

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

Named Employee #5 – Allegation #2

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded as against NE#5.

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

Named Employee #5 – Allegation #3

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained – Unfounded as against NE#5.

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



Named Employee #6 – Allegation #1

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

NE#6, NE#7, NE#8, NE#9, NE#10, and NE#11 all deployed OC Spray after observing individuals in the crowd who were fighting.

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.*)

OPA’s review determined that these officers’ decision to deploy OC Spray was consistent with policy. The video indicated that officers deployed OC spray in the middle of a group of protesters who were engaged in assaults, and that the deployment caused those protestors to disperse. Given the movement of the crowd and numerous clashes between protesters, the decision to use OC spray as a dispersal tool rather than individually breaking up fights was reasonable. It was also necessary in order to achieve SPD’s primary objective of ensuring the safety of protesters. Finally, it was proportional to the size of the demonstration and the risks posed by protesters (some of whom were armed with improvised weapons and, in one instance, a firearm). For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#6, NE#7, NE#8, NE#9, NE#10, and NE#11.

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

Named Employee #6 – Allegation #2

8.300 - Use of Force Tools 8.300-POL-5 Use of Force - OLEORESIN CAPSICUM (OC) SPRAY

SPD Policy 8.200-POL-5(3) states that “[o]fficers will use OC spray, including for crowd dispersal or protection, only when such force is objectively reasonable, necessary, and proportional.” (SPD Policy 8.200-POL-5(3)).

As this allegation is completely subsumed within Allegation #1, OPA recommends that it be removed as against NE#6, NE#7, NE#8, NE#9, NE#10, and NE#11.

Recommended Finding: **Allegation Removed**

Named Employee #6 – Allegation #3

14.090 - Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 - Use-of-Force a & b

SPD Policy 14.090-POL-10 directs that deployment of OC spray or blast balls shall have the primary objective of defending the officer, defending another, or preventing significant destruction of property. (SPD Policy 14.090-POL-10). The policy further states that individual officers may deploy OC spray or blast balls “at the specific suspect(s) who are posing a threat” and that, if feasible, officers must provide a verbal warning prior to deployment. *Id.* Finally, the policy states that, again when feasible, officers will provide aid to subjects exposed to OC spray and/or blast balls and will request medical assistance when subjects complain of continued effects from these force tools. Officers will request medical assistance when a subject appears to have been injured. *Id.* An officer’s decision to deploy OC spray or blast balls must be consistent with the general requirements of SPD’s use of force policy. *Id.*



OPA's investigation determined that the officers followed policy when they made the decision to deploy OC spray. OPA reaches this conclusion because the video of the incident shows multiple individuals in the crowd assaulting each other at the time OC spray was deployed. It further indicates that the officers made the decision to deploy OC spray to disperse the crowd and in order to prevent further assaults from occurring. Furthermore, OPA determined that the other officers' use of OC spray complied with SPD's force policy (see Named Employee #6 – Allegation #1). For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#6, NE#7, NE#8, NE#9, NE#10, and NE#11.

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

Named Employee #6 - Allegations #4

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

OPA determined that there was insufficient evidence to show that any of the officers deployed OC spray or used other force to target protesters on the basis of their political beliefs or due to other identifiable characteristics. To the contrary, the evidence establishes that the officers deployed OC spray in response to altercations between members of the opposing groups, rather than targeting one group in particular. The Complainants have not introduced any additional evidence tending to show that SPD officers targeted only the "Neighbors" group. For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded as against NE#6, NE#7, NE#8, NE#9, NE#10, and NE#11.

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

Named Employee #6 - Allegation #5

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

For the same reasons as above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained – Unfounded as against NE#6.

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

Named Employee #7 – Allegation #1

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

For the same reasons as above (see Named Employee #6 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#7.

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

Named Employee #7 – Allegation #2

8.300 - Use of Force Tools 8.300-POL-5 Use of Force - OLEORESIN CAPSICUM (OC) SPRAY

For the same reasons as stated above (see Named Employee #6 – Allegation #2), OPA recommends that this be removed.

Recommended Finding: **Allegation Removed**



Named Employee #7 – Allegation #3

14.090 - Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 - Use-of-Force a & b

For the same reason as above (see Named Employee #6 – Allegation #3), OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#7.

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

Named Employee #7 - Allegations #4

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

For the same reasons as stated above (see Named Employee #6 – Allegation #4), OPA recommends that this allegation be Not Sustained – Unfounded as against NE#7.

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

Named Employee #7 - Allegation #5

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained – Unfounded as against NE#7.

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

Named Employee #8– Allegation #1

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

For the same reasons as stated above (see Named Employee #6 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#8.

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

Named Employee #8 – Allegation #2

8.300 - Use of Force Tools 8.300-POL-5 Use of Force - OLEORESIN CAPSICUM (OC) SPRAY

For the same reasons as stated above (see Named Employee #6 – Allegation #2), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**



Named Employee #8 – Allegation #3

14.090 - Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 - Use-of-Force a & b

For the same reason as stated above (see Named Employee #6 – Allegation #3), OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#8.

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

Named Employee #8 - Allegations #4

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

For the same reasons as stated above (see Named Employee #6 – Allegation #4), OPA recommends that this allegation be Not Sustained – Unfounded as against NE#8.

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

Named Employee #8 - Allegation #5

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained – Unfounded as against NE#8.

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

Named Employee #9 – Allegation #1

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

For the same reasons as stated above (see Named Employee #6 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#9.

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

Named Employee #9 – Allegation #2

8.300 - Use of Force Tools 8.300-POL-5 Use of Force - OLEORESIN CAPSICUM (OC) SPRAY

For the same reasons as stated above (see Named Employee #6 – Allegation #2), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**



Named Employee #9 – Allegation #3

14.090 - Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 - Use-of-Force a & b

For the same reason as stated above (see Named Employee #6 – Allegation #3), OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#9.

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

Named Employee #9 - Allegations #4

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

For the same reasons as stated above (see Named Employee #6 – Allegation #4), OPA recommends that this allegation be Not Sustained – Unfounded as against NE#9.

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

Named Employee #9 - Allegation #5

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained – Unfounded as against NE#9.

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

Named Employee #10 – Allegation #1

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

For the same reasons as stated above (see Named Employee #6 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#10.

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

Named Employee #10 – Allegation #2

8.300 - Use of Force Tools 8.300-POL-5 Use of Force - OLEORESIN CAPSICUM (OC) SPRAY

For the same reasons as stated above (see Named Employee #6– Allegation #2), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**



Named Employee #10 – Allegation #3

14.090 - Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 - Use-of-Force a & b

For the same reason as above (see Named Employee #6 – Allegation #3), OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#10.

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

Named Employee #10 - Allegations #4

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

For the same reasons as above (see Named Employee #6 – Allegation #4), OPA recommends that this allegation be Not Sustained – Unfounded as against NE#10.

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

Named Employee #10 - Allegation #5

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

For the same reasons as stated above (see Named Employee #6 – Allegation #5), OPA recommends that this allegation be Not Sustained – Unfounded as against NE#10.

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

Named Employee #11 – Allegation #1

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

NE#11 supervised the bike squad. He was also one of the officers who deployed OC Spray after observing individuals in the crowd who were fighting.

For the same reasons as stated above (see Named Employee #6 – Allegation #1) OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#11.

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

Named Employee #11 – Allegation #2

8.300 - Use of Force Tools 8.300-POL-5 Use of Force - OLEORESIN CAPSICUM (OC) SPRAY

For the same reasons as stated above (see Named Employee #6 – Allegation #2), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**



Named Employee #11 – Allegation #3

14.090 - Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 - Use-of-Force a & b

For the same reason as stated above (see Named Employee #6 – Allegation #3), OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#11.

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

Named Employee #11 - Allegations #4

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

For the same reasons as stated above (see Named Employee #6 – Allegation #4), OPA recommends that this allegation be Not Sustained – Unfounded as against NE#11.

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

Named Employee #11 - Allegation #5

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

For the same reasons as stated above (see Named Employee #6 – Allegation #5), OPA recommends that this allegation be Not Sustained – Unfounded as against NE#11.

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

Named Employee #12 – Allegation #1

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

It was alleged that one additional officer was involved in this incident and, as with the other officers, that this unidentified individual also engaged in biased policing. OPA's investigation did not reveal the identity of this individual. However, this is largely irrelevant as the evidence of this incident yielded the conclusion that no officer, not just the Named Employees, engaged in biased policing.

As such, and for the same reasons as explained throughout this DCM, OPA recommends that this allegation be Not Sustained – Unfounded as against Named Employee #12.

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

Named Employee #12 – Allegation #2

14.090 - Crowd Management 9. Crowd Dispersal a. Upon Determining That There are Acts or Conduct Within a Group of Four or More Persons That Create a Substantial Risk [...]

As discussed above, OPA could not determine the identity of an unknown SPD officer who used force. Moreover, based on OPA's investigation, there was no officer, other than the Named Employees, who dispersed OC spray. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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



Named Employee #12 – Allegation #3

14.090 - Crowd Management 9. Crowd Dispersal b. The Incident Commander Shall Have Authority to Direct the Use of Blast Balls and OC Spray to [...]

For the same reason as stated above (see Named Employee #12 – Allegation #2), OPA recommends that this allegation be Not Sustained – Unfounded.

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