



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 20, 2020

CASE NUMBER: 2019OPA-0829

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 alleges that the Named Employee engaged in excessive force in response to a disturbance call.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the review and approval of the Office of Inspector General for Public Safety, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employee. As such, the Named Employee was not interviewed as part of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

On October 26, 2019, at approximately 11:48 p.m., a physical altercation broke out in the 900 block of 12th Avenue, outside of a beer hall. This disturbance occurred between security staff for the beer hall and several patrons, including the Complainant. As the disturbance continued to grow, one of the security staffers flagged down Named Employee #1 (NE#1), who was driving his patrol vehicle along 12th Avenue and towards the beer hall. From this point forward, the event was captured by NE#1's In Car Camera video (ICV), which depicted a group of about fifteen individuals fighting in the street.

NE#1 stopped his vehicle in front of the beer hall, about 40 feet away from the disturbance. He exited the vehicle and moved towards the fighting individuals. While proceeding in the group's direction, NE#1 instructed them to "break it up" and "back up" at least three times. NE#1 also stated "break it up or you're going to get pepper sprayed," while he visibly reached for and shook up his cannister of pepper spray. After reaching the group, NE#1 ordered the individuals to "back up" at least three more times, before he discharged the pepper spray. NE#1 directed the spray to a concentrated area of the group, after which point the crowd dispersed. Based on 911 call transcriptions and NE#1's use of force reporting documentation, several individuals were then treated by the Seattle Fire Department for exposure to pepper spray.

Four individuals were arrested for their part in this incident, including the Complainant. The Complainant later made a complaint to OPA in which he alleged that NE#1 engaged in excessive force by using pepper spray. Specifically, the

Complainant indicated that security guards were pinning down one of his friends, at which point the Complainant was “maced for absolutely no reason” by NE#1.

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.*)

In this case, NE#1 applied pepper spray (OC spray), the use of which is governed by SPD Policy 8.300. This policy mirrors the requirements of the general use of force policy by directing that the use of pepper spray be reasonable, necessary, and proportional. In addition, the policy further states that: “officers shall [when feasible] issue a verbal warning to the subject, other officers, and other individuals present, that OC spray will be used and defer using OC spray for a reasonable amount of time to allow the subject to comply with the warning.” (SPD Policy 8.300-POL-5).

Based on OPA’s review of the totality of the evidence, OPA finds that the force used by NE#1 did not violate policy. First, when NE#1 discharged his pepper spray, NE#1 was permitted to use force. NE#1 was responding to a volatile situation, involving a large group of individuals engaged in a physical altercation on a public roadway. As he approached the group, NE#1 issued lawful orders at least six times for the participants to break up the fight, during which he also warned the group that he would use pepper spray if they did not comply. Despite these repeated warnings, and the time that NE#1 afforded the group to comply, the group continued to disobey NE#1’s orders to back up and disengage. At this point, NE#1 was permitted to use physical force to garner compliance with his lawful order and his application of pepper spray was reasonable.

The force was also necessary under the circumstances. Although NE#1 repeatedly attempted to use verbal commands to disperse the crowd, as well as pepper spray warnings and a visual display of the cannister, the crowd did not break up and, thus, there did not appear to be any reasonable alternative to NE#1’s use of force. Moreover, the force appeared to be of a reasonable degree and seemed no more expansive than necessary for effectuating crowd control.

Lastly, OPA finds that the force was proportional given the need to enforce NE#1’s lawful orders and break up the fight. As discussed above, at the time that NE#1 first observed the disturbance, there were multiple individuals involved in a physical altercation, including the Complainant. These individuals posed a threat to each other, as well as to bystanders. This threat increased when they did not comply with NE#1’s multiple orders that they cease fighting and disperse. While the Complainant asserted that he was helping his friend who was pinned down, from NE#1’s perspective, the Complainant was right in the midst of an ongoing dangerous altercation. Given the exigency of the situation and how quickly it unfolded, it was not unreasonable for NE#1 to believe that the Complainant also represented a threat. Notably, NE#1’s conclusion in this regard is supported by the fact that the Complainant was arrested for his involvement in this incident. Lastly, it is unfortunate that the force caused the Complainant to become exposed to pepper spray; however, this does not make the force improper.

Given the totality of the circumstances and the controlled application of NE#1’s use of force, OPA concludes that the Complainant’s allegation of excessive force is unsupported by the evidence. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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