



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 6, 2020

CASE NUMBER: 2020OPA-0136

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.300 – POL –5 Use of Force – Oleoresin Capsicum (OC) Spray 3. Officers Will Use OC Spray, Including for Crowd Dispersal or Protection...	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy (First Amendment)	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 Complainant alleged that the Named Employee used excessive force when he used OC spray on demonstrators. The Complainant further alleged that the general conduct of the officers assigned to the protest violated the demonstrators’ First Amendment rights.

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 Employees. As such, the Named Employees were not interviewed as part of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

8.300 – POL –5 Use of Force – Oleoresin Capsicum (OC) Spray 3. Officers Will Use OC Spray, Including for Crowd Dispersal or Protection...

OPA received a complaint concerning SPD enforcement activities at a demonstration. The Complainant asserted that an officer – who was later identified as Named Employee #1 (NE#1) – improperly pepper sprayed several individuals and that this constituted excessive force. The Complainant also generally alleged that the officers’ collective actions violated the demonstrators First Amendment rights. This investigation ensued.

During its investigation, OPA determined that, on the date in question, a preplanned march took place in Seattle and proceeded through downtown. During the march, the demonstrators began to walk against traffic on Mercer Street. A Department supervisor directed officers to form a bicycle line in order to force the demonstrators to walk south

down Yale Avenue, rather than permitting them to continue the wrong way down Mercer. However, the demonstrators turned west on Republic Street, rather than continuing on Yale. Based on the belief that the demonstrators were attempting to re-access Mercer, the officers quickly moved to Fairview Avenue to prevent the demonstrators from doing so.

Officers later reported that, at this time, two demonstrators, who were shoulder to shoulder, rushed towards where the new bicycle line was assembling. The officers believed that these two demonstrators were attempting to breach the bicycle line. The officers documented that the demonstrators crashed into them at full speed. Several officers pulled the demonstrators to the ground and began trying to take them into custody. While they were doing so, other demonstrators advanced towards the bicycle line and to where the officers were attempting to control the two individuals on the ground.

Named Employee #1 (NE#1), who was one of the officers assigned to the demonstration, reported observing the other demonstrators trying to push through the bicycle line and towards the officers and two individual who were struggling on the ground. NE#1 perceived that the other demonstrators were attempting to “un-arrest” the two individuals. He further perceived that this presented an immediate threat to officers. Accordingly, he made the decision to use Oleoresin Capsicum (OC) spray to disperse the three demonstrators who were closest to the officers. This was successful and the crowd pulled back, allowing the officers to effectuate the arrests of the two individuals on the ground. The officers offered to provide medical assistance to the demonstrators affected by the OC spray, but this was refused. The officers subsequently called for the Seattle Fire Department to come to the scene.

This incident was captured by the officers’ Body Worn Video (BWV), as well as by video recorded by one of the demonstrators and later uploaded to Facebook. The collective video was largely consistent with the account provided by the officers. It showed the demonstrators turn sharply towards where the officers were setting up a bicycle line and move quickly into the line. Officers converged on the individuals who pushed through the line and other demonstrators began to crowd into the immediate vicinity. The officers were trying to move them back and to re-establish the bicycle line. To do so, the officers were required to actively push demonstrators away. At that point, NE#1 approached and dispersed one burst of OC spray at the individuals closest to the officers.

SPD Policy 8.300-POL-5(3) states that officers may use OC spray for crowd dispersal or protection only when such force is objectively reasonable, necessary, and proportional. The elements for whether force is reasonable, necessary, and proportional are set forth in SPD Policy 8.200-POL-2. Lastly, SPD Policy 8.300-POL-5(8) instructs that, when using OC spray, it should be directed at the specific subjects who are causing a threat and the officer should minimize exposure to other individuals.

As discussed above, the evidence clearly establishes that demonstrators attempted to breach the bicycle line and, when they did so, engaged in a violation of law. Given this, the officers were permitted to take the offending individuals into custody. While the officers were doing so, other demonstrators converged on the bicycle line and came increasingly close to the officers who were struggling with the arrestees on the ground. This placed the officers, as well as the arrestees, in danger. Moreover, the act of un-arresting the arrestees constituted, in and of itself, a further violation of law. As such, NE#1 was warranted in using OC spray to disperse the converging demonstrators and eliminate the risk of harm. While OPA does not know what the actual intent was of these demonstrators, this is largely irrelevant. What matters is what the officers perceived at the time and whether those perceptions were reasonable. All of the involved officers, including NE#1, described their belief that they were presented with a threat and that the converging demonstrators intended to un-arrest the arrestees. OPA finds that these perceptions were supported by the facts as set forth in the video of this incident. As such, OPA finds that the application of OC spray was consistent with policy.

Lastly, NE#1 used only one burst of OC spray, targeted the converging demonstrators, and did not appear to affect those in the larger group. As such, his usage of this force tool was consistent with SPD Policy 8.300-POL-5(8).

For the above reasons, OPA recommends that his allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegations #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy (First Amendment)

Community members have a First Amendment right to free speech, as well as the right to express that speech in the form of protest. Community members have the further right to do in public forums, including public streets. While, with very limited exceptions, the government cannot restrict the content of such speech, the government does have the right to enact reasonable and content-neutral time, place, and manner restrictions on demonstrations.

SPD's decision to prevent the demonstrators from walking the wrong way down Mercer was a permissible time, place, and manner restriction. This was done to stop the demonstrators from proceeding against traffic, which could present a significant danger, as well as to keep them away from Interstate 5. Notably, the demonstrators were not prevented from continuing to walk on other streets and were not prohibited from fully expressing themselves while doing so.

Moreover, as discussed above, the force used by NE#1 was consistent with policy and appropriate under the circumstances. Demonstrators do not have an unfettered right to push through officers and, moreover, such conduct is not protected by the First Amendment. As such, the application of OC spray to disperse the demonstrators does not constitute a chilling of the right to free speech. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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