



CLOSED CASE SUMMARY

ISSUED DATE: JULY 19, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0045

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)
# 2	8.400 - Use of Force Reporting and Investigation 3. a. Officers, Including Witness Officers, Will Verbally Notify a Supervisor...	Not Sustained (Unfounded)
# 3	6.010 - Arrests 1. Officers Must Have Probable Cause	Not Sustained (Lawful and Proper)
# 4	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #2

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:

A Complainant alleged that the Named Employees may have subjected an arrestee to excessive force and that Named Employee #1 may have arrested the arrestee without probable cause. Named Employee #1 also self-reported that it was alleged that he made contact with his knee to the arrestee's neck. Lastly, OPA alleged that, if Named Employee #1 made contact with his knee, he failed to report that force contemporaneously.

SUMMARY OF INVESTIGATION:

OPA received two complaints concerning the arrest of an individual during a demonstration and the force used to effectuate that arrest. The first Complainant said that they viewed officers "drive their bikes through a crowd of peaceful Black Lives Matter protesters." The Complainant further alleged that the officers "started to corner the group, and then singled out one individual - throwing them to the ground with 4 or 5 officers piling on top of them on the street." The second complaint came from Named Employee #1 (NE#1). He notified OPA that he became aware of a video that purported to show his knee coming into contact with the neck of the arrestee. He asked OPA to commence an investigation to determine whether his acts violated policy. OPA reviewed the video in question, which had been posted on Twitter. The poster opined that NE#1's knee was on the arrestee's neck for a minute. Based on both of the complaints, OPA initiated this investigation.

After watching Body Worn Video (BWV), OPA determined that officers were monitoring a protest and observed an individual – referred to here as the arrestee – causing damage to the windows of a Starbucks store. NE#1, who was



made aware over radio of the arrestee's description and criminal acts, observed the arrestee running in his direction. The arrestee was fleeing from other officers at the time who were telling the arrestee to stop. The arrestee turned quickly as he approached NE#1. Named Employee #2 (NE#2), who was also chasing the arrestee, grabbed onto him. The arrestee was then taken down to the ground by NE#2. NE#1, who was right behind the arrestee, made physical contact with the arrestee along with two other officers. All three officers used body weight to hold the arrestee down on the ground while directing him to roll onto his stomach and to put his hands behind his back. The arrestee did not initially comply and struggled against the officers while yelling "help me." NE#1 warned the arrestee that, if he did not stop resisting, he would be tased.

During this time, both NE#1 and another officer placed their knees on the arrestee's back. The arrestee was wearing plastic body armor that covered his back and his neck. NE#1's knee was situated on the top of the arrestee's back but appeared to slide on the plastic body armor. Ultimately, NE#1 secured his knee in the center of the arrestee's back. From a review of the BWV, including using a frame-by-frame analysis, OPA identified that the knee was on the arrestee's back for approximately 27 seconds, not the minute cited by the Twitter poster. Moreover, when reviewing the totality of the video, OPA could find no conclusive evidence showing that NE#1's knee ever made contact with the arrestee's neck. Once the arrestee was handcuffed and secured, no further force was used on him.

In the aftermath of his arrest, the arrestee admitted on camera causing damage to the windows of the Starbucks. The arrestee told the officers that he was a military veteran and was causing property damage to gain the "trust" of the demonstrators to then allow him to control the more "wild outliers." He noted that he was trying to work "anti-insurgency operations."

NE#1 discussed the force he used with other officers and screened it with a Sergeant. He told the Sergeant that the arrestee said "ow" and accused the officers of trying to kill him. NE#1 did not tell the Sergeant that his knee made contact with the arrestee's neck.

As part of its investigation, OPA attempted to interview the initial Complainant, as well as the arrestee. Neither participated in an interview. Lastly, OPA interviewed NE#1.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 - Using Force 2. Use of Force: When Prohibited

SPD Policy 8.200-POL-2 identifies force that it prohibited. Under the circumstances of this case, an officer pressing a knee against an arrestee's neck would constitute prohibited force.

As discussed above, the video did not conclusively show NE#1's knee make contact with the arrestee's neck. NE#1 placed his knee on the arrestee's plastic body armor and his knee slid while there. NE#1's knee appeared to move to the top of the arrestee's back, but it did not clearly make contact with the arrestee's neck. OPA notes that the body armor covered the entirety of the arrestee's upper back and his neck. As such, even had NE#1's knee slid from the top of the arrestee's back onto his neck, the knee would have been blocked by the body armor. OPA further notes that at no point either during or after his arrest did the arrestee claim or complain of contact to his neck by NE#1's knee.

The totality of the evidence convinces OPA that no neck contact occurred and, even if it did, that it was transient,



unintentional, and blocked by the body armor. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

8.400 - Use of Force Reporting and Investigation 3. a. Officers, Including Witness Officers, Will Verbally Notify a Supervisor...

SPD policy 8.400-POL-1(3)(a) requires that officers notify a supervisor when they use reportable force. The policy further instructs that: “Known inadvertent contact with a subject’s neck during the application of a head control tactic, or other control technique which results in momentary contact with the neck of a subject without the risk or intention of restricting the flow of blood or oxygen is not a neck or carotid restraint, but must be screened with a supervisor.”

Here, NE#1 did not initially report that his knee may have inadvertently made contact with the arrestee’s neck. However, as he explained during this OPA interview, he did not know at the time of the force that this was a possibility. He explained that he was not aware that this was the case until he was notified of Twitter video purporting to show his knee contacting the arrestee’s neck.

In assessing this allegation, OPA first notes that the BWV does not actually support the conclusion that NE#1’s knee made contact with the arrestee’s neck. From OPA’s review, it appears likely that this did not occur and, at most, that NE#1’s knee slid up the body armor, which protected the arrestee’s neck. However, even if knee contact did occur, OPA concludes that NE#1 was not aware of it at the time. As such, NE#1 would not have violated policy by failing to screen the inadvertent contact with a supervisor.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #3

6.010 - Arrests 1. Officers Must Have Probable Cause

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.

Based on a review of the video, there was clear probable cause supporting taking the arrestee in custody. First, the arrestee was observed damaging windows at a Starbucks and was identified by officers. Second, the arrestee matched the description provided. Third, the arrestee fled from officers when told to stop. Fourth, the arrestee later admitted to damaging the windows.

Given the above, the arrest was justified. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.



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

Named Employee #1 - Allegation #4

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.*)

NE#1 and NE#2 both used force to take the arrestee into custody and to then control his person in order to handcuff him. NE#2 pulled the arrestee down to the ground and NE#1 used control holds and body weight to hold him there and to prevent him from resisting. Both uses of force were appropriate under the circumstances.

With regard to NE#2’s force, it was reasonable and necessary as the arrestee had been identified as committing property crime and was fleeing officers. NE#2 was permitted to use force to prevent the arrestee from escaping and to bring him down to the ground where he could be safely controlled. The force used to do so was proportional under the circumstances given the nature of the crime committed by the arrestee and his clear refusal to go into custody willingly.

With regard to NE#1’s force, he was permitted to control the arrestee’s body and to prevent him from resisting. Control holds and the use of his body weight to effectuate the arrest were reasonable, necessary, and proportional under the circumstances. Notably, NE#1 used no strikes and did not appear to cause any injuries to the arrestee. Moreover, once the arrestee was handcuffed and had stopped resisting, NE#1 modulated his force and then stopped using force altogether.

Based on the above, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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

Named Employee #2 - Allegation #1

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

For the same reasons as stated above (*see* Named Employee #1 – Allegation #4), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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