



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 4, 2022

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0142

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force...	Not Sustained (Lawful and Proper)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force...	Not Sustained (Lawful and Proper)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #3

Allegation(s):		Director's Findings
# 1	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force...	Not Sustained (Lawful and Proper)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)

Named Employee #4

Allegation(s):		Director's Findings
# 1	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force...	Not Sustained (Lawful and Proper)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #5

Allegation(s):		Director's Findings
# 1	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force...	Not Sustained (Lawful and Proper)
# 2	8.300 - Use of Force Tools POL-11 (3) ETS Trains and Certifies 40 mm LL Launcher Operators	Not Sustained (Unfounded)



Named Employee #6

Allegation(s):		Director's Findings
# 1	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force...	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 she was subjected to excessive force when she was pushed twice, falling to the ground on each occasion. It was further alleged that, prior to the pushes, the Named Employees may have failed to de-escalate.

SUMMARY OF INVESTIGATION:

The Complainant was participating in a demonstration on March 13, 2021. The Complainant said that they and other demonstrators were being moved back by officers. At one point, a demonstrator near the Complainant was pushed to the ground. The Complainant tried to help the demonstrator up and, at that time, they were also pushed to the ground. The Complainant recounted that they were pushed by an officer using a bicycle. Someone then helped the Complainant up. The Complainant described being pushed in her back when they were leaning over and facing away from the officer. The Complainant recalled the bicycle contacting their back and hip. They said that people and officers trampled over them when they were on the ground.

After they got up, the Complainant and other demonstrators continued to be moved back by officers. The Complainant said that, when they got up, they did not know what was going on. They were surrounded by officers. Another individual began leading the Complainant away from the officers; however, the Complainant was again pushed to the ground. The Complainant presumed that this was because, in the officers' perspective, they were not walking away fast enough. The Complainant was again pushed in the back and fell to the ground, causing them to suffer injuries that later manifested in bruising.

The incident was recorded on the Body Worn Video (BWV) of multiple officers. The video showed that the crowd was given orders to disperse over a PA system, which referenced ongoing property damage. Officers, including the Named Employees, began moving towards the crowd and issued additional dispersal orders. Named Employee #6 (NE#6), a Sergeant, directed the officers with him to push the demonstrators from the street onto the sidewalk. He told officers to use their bicycles to do so and said that anyone who did not move should be arrested. NE#6 and other officers told demonstrators to move and said that, if they did not do so, they would be arrested. This direction was repeated multiple times.

At this time, an individual stepped in front of NE#6. Named Employee #2 (NE#2) pushed the individual forward with his bicycle. That individual moved back and then appeared to run into another person prior to falling to the ground. The Complainant was shown on video stepping off of the sidewalk and into the roadway, proceeding towards the individual who fell to the ground. Other people did so as well. The Complainant bent over and then straightened up. NE#2 then made contact with the Complainant with his bicycle. He did so in the Complainant's right hip/lower back



area. The Complainant took a step to the side and then collided with another person prior to falling to the ground on their posterior. The video showed no indication that the Complainant was injured as a result of the push.

After this occurred, an arrest was effectuated in the vicinity of where the Complainant and another individual were situated. Both tried to get up, but an officer – referred to here as Witness Officer #1 (WO#1) – stopped them from doing so as officers moved around them. He stated: “We’re holding you, stand by.” Once the officers formed a new line, WO#1 told the Complainant and the other individual to move out of the area. The Complainant approached the line of officers and was pushed forward to move in front of the line. Named Employee #5 (NE#5) pushed the Complainant forward and towards Named Employee #4 (NE#4). NE#4, in turn, pushed the Complainant forward and past the line. While doing so, the Complainant bent their knees and appeared to push their body back against NE#4. He pushed the Complainant forward and the Complainant fell onto the ground, striking their knee. Named Employee #3 (NE#3), who was next to the Complainant, reached out for them. Named Employee #1 (NE#1), who was also in the vicinity, told officers to give the Complainant space so that they could walk away. The Complainant got up and left the area.

As part of its investigation, OPA interviewed the Complainant and all of the Named Employees.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force...

“De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.” (SPD Policy 8.100-POL) The policy further instructs that: “When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.” (SPD Policy 8.100-POL-1) Officers are also required, “when time and circumstances permit,” to “consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors” such as “mental impairment...drug interaction...[and/or] behavioral crisis.” (*Id.*) These mental and behavioral factors should be balanced by the officer against the facts of the incident “when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.” (*Id.*)

OPA finds that, at the time of both pushes, the officers had engaged in de-escalation by providing dispersal orders over the PA system and then multiple verbal directions to demonstrators to clear the roadway and to move onto the sidewalk. The demonstrators were given time to comply prior to the pushes beginning. Given this, OPA finds that officers appropriately de-escalated prior to the first push of the Complainant by NE#2.

At the time of the second push, the Complainant had been told to move forward and out of the vicinity and was being guided out by officers. The video showed that, prior to being pushed forward and ultimately onto the ground, the Complainant pushed their body back against NE#2. Given the Complainant’s apparent non-compliance at that time, NE#2 was not required to further de-escalate prior to pushing them past the line.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against all of the Named Employees.



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

Named Employee #1 - Allegation #2

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

The BWV showed that neither NE#1 nor NE#3 pushed the Complainant. As such, OPA recommends that this allegation be Not Sustained – Unfounded as against both officers.

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

Named Employee #2 - Allegation #1

8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force...

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

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

Named Employee #2 - Allegation #2

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.*)

As discussed above, prior to any of the pushes, the officers provided the Complainant and other demonstrators with multiple warnings to leave the street and to move onto the sidewalk. The video showed that, prior to the first push, the Complainant moved into the roadway, in contravention of those orders. At that point, the Complainant was contacted by NE#2. Under the circumstances, NE#2 was permitted to move the Complainant out of the area and to use his bicycle to do so. The video showed that the push likely did not cause the Complainant to fall to the ground and, instead, that the Complainant ran into another individual, causing the fall. OPA finds that this use of force did not violate policy.

At the time of the second use of force, the officers were moving the Complainant and another individual through the line. Several of the Named Employees explained that they needed to do so quickly to preserve the integrity of the line and to ensure that no one was behind their field of view. NE#5 initially pushed the Complainant towards NE#4 who again pushed the Complainant past the line. At that time, the Complainant appeared on video to push their body weight back against NE#4. He then pushed the Complainant forward, which resulted in the Complainant falling down. As with the first push, OPA also does not find that this second push violated policy.

While it was unfortunate that the Complainant fell to the ground and suffered injuries, this does not yield the force out of policy or inconsistent with the officers’ training. Again, under the circumstances of this case, OPA finds that



none of the Named Employees engaged in excessive force. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#2 and NE#4.

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

Named Employee #3 - Allegation #1

8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force...

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

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

Named Employee #3 - Allegation #2

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

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

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

Named Employee #4 - Allegation #1

8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force...

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

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

Named Employee #4 - Allegation #2

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

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

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

Named Employee #5 - Allegation #1

8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force...

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



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

Named Employee #5 - Allegation #2

8.300 - Use of Force Tools POL-11 (3) ETS Trains and Certifies 40 mm LL Launcher Operators

This allegation was classified based on the possibility that NE#5 used his less-lethal launcher to push the Complainant, which would have been contrary to policy and training. However, OPA's review of the video indicated that he did not do so. Moreover, with regard to his use of his hand to push the Complainant, OPA's finds that it was consistent with policy for the same reasons as discussed above (see Named Employee #2 – Allegation #2).

Ultimately, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #6 - Allegation #1

8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force...

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

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