



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 27, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0222

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 | 8.200 - Using Force 1. Use of Force: When Authorized | Not Sustained (Lawful and Proper) |

Named Employee #2

| Allegation(s): | | Director's Findings |
|----------------|--|---------------------------|
| # 1 | 8.300—POL—4 Use of Force – Oleoresin Capsicum (OC) Spray 3. Officers Will Use OC Spray, Including in Crowd Management Events, Only When... | Not Sustained (Unfounded) |
| # 2 | 8.200 - Using Force 2. Use of Force: When Prohibited | 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 they were falsely arrested and subjected to excessive force.

SUMMARY OF INVESTIGATION:

On May 1, 2021, demonstrators engaged in marches and other protest activities relating to May Day. In the early evening of that day, demonstrators, including the Complainant, were in Cal Anderson Park. The demonstrators had been given dispersal orders to leave the park; however, many, including the Complainant, had not done so. The Complainant and several other demonstrators were arrested. The Complainant was taken into custody by Named Employee #1 (NE#1).

Body Worn Video (BWV) showed officers trying to control another individual to arrest them. The BWV indicated that the Complainant reached towards that individual and began to pull them away from the officers (*see* NE#1's BWV at 04:30). NE#1 took hold of the Complainant, pulled them down to the ground, and held them in a prone position while the Complainant was handcuffed. The BWV did not capture any other force being used by NE#1. The BWV also did not reveal any evidence that the Complainant was subjected to OC spray. The BWV did show another demonstrator running past the Complainant and officers, with that individual's foot coming near to the Complainant's head. During the arrest, the Complainant asserted that they could not breathe. The Seattle Fire Department (SFD) was summoned



to the scene in response to the Complainant's statement that they could not breathe, as well as due to other OC spray deployments. An SPD Sergeant documented that the Complainant ultimately declined treatment from SFD.

The Complainant later claimed to the Sergeant that they were subjected to excessive force and violently arrested, including when their ribs were stomped on, they were kicked in head, and they were kned in the ribs. They also alleged that they were pepper sprayed without cause. The Complainant asserted that, at the time, they were walking through the park and were doing nothing wrong. As such, the Complainant contended that they should not have been arrested or subjected to any force.

The Sergeant referred the Complainant's claims to OPA, and this investigation ensued. OPA added allegations against NE#1 concerning the alleged false arrest and use of excessive force. As OPA could not identify any officer who kicked the Complainant in the head or subjected them to OC spray, those allegations were added against an unknown SPD employee.

OPA reviewed the BWV, which was the best evidence of what occurred during the incident. OPA also reviewed the documentation generated by NE#1, other officers, and the Sergeant. Included in the Sergeant's documentation were several photographs of the Complainant. The photographs showed no injuries other than a small scrape above the Complainant's eyebrow. Lastly, OPA reviewed SFD records and found no evidence that the Complainant either sought or received any treatment regarding their alleged injuries.

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

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.

As discussed above, NE#1's BWV conclusively established that the Complainant tried to pull an individual away from officers while the officers were trying to effectuate an arrest. This act constituted obstruction. This was the case even if the Complainant believed that this other individual should not have been arrested by officers. Given this, there was clear probable cause for the Complainant's arrest.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - 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. Officers shall only use "objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve



a law-enforcement objective.” 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 8.050.) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

The BWV showed that NE#1 pulled the Complainant down to the ground and then held them there in order to handcuff them. There was no evidence that NE#1 made improper contact with the Complainant’s neck or otherwise impaired their breathing. There was also no evidence indicating that NE#1 ever struck the Complainant or used any other force than that needed to control the Complainant and to handcuff them.

From OPA’s review of the BWV, this force appears to have been appropriate under the circumstances. Notably, NE#1 had probable cause to arrest the Complainant – who was interfering with an arrest at the time – and was permitted to use reasonable, necessary, and proportional force to do so. The force he used here met and did not exceed those standards.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #1

8.300–POL–4 Use of Force – Oleoresin Capsicum (OC) Spray 3. Officers Will Use OC Spray, Including in Crowd Management Events, Only When...

SPD Policy 8.300-POL-4(3) governs the use of OC spray and defines when it may permissibly be deployed in the crowd management context.

Here, the Complainant alleged that they were subjected to OC spray without cause. However, in reviewing the BWV, OPA found no evidence indicating that this was the case. Moreover, the photographs taken of the Complainant shortly after the incident did not support the conclusion that they were subjected to OC spray.

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

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

Named Employee #2 - Allegation #2

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

SPD Policy 8.200-POL-2 defines what force is prohibited. OPA added this allegation because, if the Complainant’s allegations were true, purposefully kicking a detainee in the head would almost certainly constitute prohibited force.

There is no evidence from the BWV that any officer kicked the Complainant in the head. Indeed, the only possible contact with the Complainant’s head that OPA could identify may have come from the foot of another demonstrator



who ran by the Complainant and officers; however, OPA could not definitively establish this. What OPA could conclude was that this contact was not caused by an officer.

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

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