



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 14, 2019

CASE NUMBER: 2018OPA-0822

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)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	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:

On August 18, 2018, officers were working the 2018 Liberty or Death Rally in downtown Seattle. The rally, a pro-gun rights demonstration, also attracted groups of counter protesters. At one point during this event, the officers were ordered by their Sergeant to form a line to move back a crowd that was interfering with an arrest. The Named Employee was part of that line and the Complainant was on the opposite side. As the Named Employee and other officers began advancing forward, an interaction occurred between the Named Employee and the Complainant. As a result of that interaction, the Complainant was taken to the ground and arrested. The Complainant alleged that the Named Employee singled him out because of his race and used excessive force against him during his arrest.

SUMMARY OF INVESTIGATION:

OPA made multiple attempts to interview the Complainant, but those efforts went unanswered; thus, the Complainant was not interviewed by OPA as part of this investigation. However, the Complainant provided an audio-recorded statement to SPD regarding this incident. During that statement, the Complainant told SPD that he was standing nearby an arrest that was taking place when officers on bikes came up and began pushing people out of the way. The Complainant stated that he believed he was moving back fast enough, so he stopped to tell one of the officers to stop pushing him. The Complainant stated that the next thing he recalled was being grabbed and thrown to the ground by that same officer, who he stated that he also heard yelling, “Bang, Bang, Bang, Bang.” The Complainant said that he recalled feeling scared about what was taking place because all he was doing was standing there protesting like the rest of the people. The Complainant stated that he suffers from PTSD and felt scared for his life during this encounter. The Complainant stated that even though the officer may have been doing his job, the Complainant believes that he officers’ actions were too aggressive. The Complainant stated that he sustained injuries to his back, ribs, wrist, and fingers and believed that the force used against him was excessive. The Complainant stated that he also believes that he was arrested because he is Black.

According to SPD reports, Named Employee #1 (NE#1) was working bicycle patrol and was assigned to work the Liberty and Death Rally in the area of 4th Ave and Cherry Street. At the direction of NE#1’s Sergeant, NE#1 and other bicycle officers were ordered to form a bike line to create space for other officers who had just made an arrest of an individual who assaulted another person. The space was deemed necessary by the Sergeant because there was a



converging line of demonstrators moving in the direction of that arrest. The squad created a bike fence line and then began to issue orders for the demonstrators to move back, while simultaneously moving forward using their bikes as a barrier between them and the crowd. The orders to move back were given to obtain voluntary compliance from the crowd and as a de-escalation tactic to minimize the likelihood of needing to use force. The Complainant was in front of NE#1, refusing orders given by NE#1 to move back. The Complainant was holding a sign that was mounted on a three to four-foot wooden stick. While the majority of the demonstrators complied with the orders to move back, the Complainant did not and was planting his feet into the ground in resistance to the advancing bike line of officers. After NE#1 used his bike to push the Complainant and as the officers' bike line continued to create space, the Complainant yelled, "Don't you fucking push me." The Complainant then turned quickly toward NE#1. The sign was in the Complainant's left hand and moved in the direction of NE#1. NE#1 was unsure whether the sign struck his left shoulder while he dodged to block it. NE#1 perceived that movement as intentional. NE#1 also reported that he was afraid the Complainant would assault him again with the sign. He also reported that he perceived that the Complainant had pulled back his right hand and, as such, he felt that another assault was imminent.

As a result, NE#1 made a decision to place the Complainant under arrest. In doing so, he called out loudly, "BLAM, BLAM, BLAM, BLAM," which is a trained technique that involves taking control of a suspect by forming a controlled grip behind their head, and pulling them toward you and over your bike. The acronym BLAM stands for Bike Line Arrest Movement and is supposed to be communicated by the arresting officer to the other officers so that they fill in the position left by that officer in the control line. After the Complainant was taken to the ground, NE#1 and other officers assisted in handcuffing and taking him into custody. NE#1 and other officers reported that the Complainant resisted by initially holding his hands underneath him and then by using his fingernails to claw at NE#1. The Complainant later eased his resistance and was finally handcuffed and placed under control. The Complainant was arrested for obstructing a public officer and assault. Following his arrest, the Complainant complained of pain to the right side of his face, lower back, ribs, and left wrist. The Complainant was treated for his injuries and had an x-ray of his wrist to determine if it was broken. Results from the x-ray determined that there were no broken bones. NE#1 reported that, as a result of the incident, he bruised his right knee and that it was sore, tight, and bleeding. NE#1 also reported bruising on the left side of his face.

OPA reviewed all the available Body Worn Video (BWV), as well as the third-party video that best captured this incident. In the BWV and third-party video, NE#1 and other officers are heard ordering the crowd in front of their bike line to move back. At one point and prior to the incident in question, the Complainant faces a news camera in a direction away from the officers and yells: "Move back for what?" Sometime shortly thereafter, the Complainant is seen making a forward motion in the direction of NE#1's with the protest sign he was holding in his left hand, and NE#1 is seen retreating backwards. The Complainant then appears to move the sign again in the direction of NE#1, when NE#1 is seen placing his right hand behind the Complainant's head. The Complainant is then pulled toward NE#1 and down to the ground. As NE#1 takes that action, NE#1 is heard saying, "BLAM, BLAM, BLAM, BLAM." Nearly everything that takes place after the Complainant is on the ground is recorded on BWV and third-party video. In those videos, NE#1 and other officers are seen taking steps to handcuff the Complainant. The Complainant appears to offer some level of resistance before the officers can handcuff him and take him away. After the Complainant is escorted to the transport van, he is heard repeatedly yelling to the crowd: "It is because I am Black."

OPA reviewed the photos of the injuries to the Complainant. These photos show a minor cut on the left side of his torso and one on his back. There are no other visible injuries.



OPA interviewed NE#1. NE#1's interview with OPA contained information consistent with what is reported above. NE#1 stated that he took actions against the Complainant in response to his obstruction and assault against NE#1. NE#1 denied that he used excessive force against the Complainant or that he engaged in biased policing.

The chain of command review of NE#1's use of force was also considered by OPA. NE#1's supervisors found his use of force necessary, reasonable, and proportional. Furthermore, they viewed it as consistent with his training and Department crowd control tactics. OPA concludes that the chain of command's assessment was thorough, objective, and accurate.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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 began this encounter by providing multiple verbal commands to the Complainant and the others in the crowd to move back. As evidenced in the BWV and third-party video recordings, the Complainant disregarded those commands and resisted NE#1 and the other officers' attempts to push him backwards. When, as reflected by the video, the Complainant then attempted to strike NE#1, force was appropriate to prevent him from doing so and to take him into custody.

With regard to the low level of force that was actually used, OPA finds that it was reasonable, necessary, and proportional, and, thus, consistent with policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

SPD Policy 5.140 prohibits biased policing, which it defines as "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual." This includes different treatment based on the race of the subject. (*See id.*)

Based on OPA's review of the record, including the documents generated by NE#1 and the video of the incident, there is no evidence that NE#1 engaged in biased policing. Ultimately, NE#1 took police action against the



Complainant because of his obstruction and assault against NE#1. There is no evidence to support that NE#1 engaged in this law enforcement action based on some other improper motive.

As such, I recommend that this allegation be Not Sustained – Unfounded.

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