



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 28, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0357

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 2	8.200 – Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)
# 3	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 (Inconclusive)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	8.200 – Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)

Named Employee #4

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)

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 he and other demonstrators were subjected to excessive force and unprofessionalism by SPD officers.

SUMMARY OF INVESTIGATION:

The Complainant filed an OPA complaint in which he alleged that he was subjected to excessive force during a demonstration that took place on May 30, 2020. He further contended that officers made unprofessional comments to him and other demonstrators and “shook their asses” at them. The Complainant also alleged that an officer used excessive force on a woman by punching her in the back of the head and pepper spraying her.



After receiving the complaint, OPA commenced an investigation. OPA interviewed the Complainant concerning this incident. The Complainant told OPA that he observed a specific SPD officer (who he identified by name) ride up to a homeless woman who was walking by the police line and punch her in the back of the head. He said that this officer also shot the woman with a CS gas canister. The Complainant stated that he saw the officer's nametag.

The Complainant also said that officers made threatening and unprofessional comments towards demonstrators. This included officers telling demonstrators: "What the fuck are you guys doing?" or "you guys need to turn the fuck around." The Complainant told OPA that the officers spoke in a condescending fashion to a demonstrator who appeared to be in crisis, as well as pointed weapons at that demonstrator and others in the crowd. The Complainant additionally asserted that officers spat in the direction of the demonstrators from around 40 to 50 feet away.

Lastly, the Complainant alleged that SPD officers improperly deployed CS gas canisters at him and other demonstrators. He recalled kicking one CS gas canister away after it was shot at him and being hit in the back with a projectile.

OPA reviewed Body Worn Video (BWV) from a number of officers to identify the SPD employees outlined in the Complainant's complaint. OPA also watched the video recorded by the Complainant.

As a starting point, the BWV showed that the officer identified by the Complainant did not strike a homeless woman or anyone else. There was also no evidence on the BWV that the officer deployed CS gas or pepper spray at the woman. OPA determined that another officer – Named Employee #1 (NE#1) – had interactions with two women at around that same time. NE#1 first spoke to a woman who was walking towards officers on the bicycle line. NE#1 approached the woman and told her to "go around" and to "get out of here." NE#1 did not make physical contact with the woman and there was no evidence that any other officer did so. NE#1 and other officers then rode their bicycles to another location. There they began to set up a bicycle line in the vicinity of a store that had been damaged and looted. From a review of the BWV, their objective was to enter the store, determine whether anyone was still inside, and to secure the premises. A woman – who may have been unsheltered – was sitting on the street in the store's entryway. NE#1 told her: "You need to leave, now." She responded "okay," but it was unclear from the BWV whether she began moving. NE#1 then stated: "You have about five-seconds before I move you from here." As he began to count to five, the woman started collecting water bottles from the ground. NE#1 quickly reached five and grabbed the woman's arm. He pulled her out of the entryway and to the sidewalk on the other side of the bicycle line. He then collected her two bags and tossed them towards her and over the bicycle line. NE#1 and other officers then entered the store. The officers began coughing and commented that the store's security guards may have deployed chemical agents. None of the officers were shown deploying any chemical agents on BWV.

From reviewing the totality of the BWV, OPA found no instance where SPD officers deployed pepper spray or CS gas at either woman. In addition, OPA could find no evidence of the purported unprofessional conduct identified by the Complainant.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 – Allegation #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional



SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

OPA assessed whether NE#1 was unprofessional when he moved the apparently unsheltered woman from in front of the store by pulling her on the sidewalk and then again when he tossed her belongings to her over the bicycle line.

In evaluating this allegation, OPA believes that NE#1’s actions must be reviewed in context. This incident occurred on May 30, 2020, which was one of the more chaotic and violent days of the protests from the summer of 2020. The officers were responding to a store that had been looted and were preparing to enter. The woman was sitting in the entryway in the officers’ path. Given this, NE#1 was entitled to move her from in front of the store.

This being said, OPA finds the way that NE#1 did so was less than optimal. While he said that she had five seconds to move, he counted extremely quickly and did not give the woman much of an opportunity to leave on her own power. The tossing of her bags was also unsatisfactory. OPA believes that NE#1 could have taken several more seconds to allow the woman to comply and then to walk her bags over to her and place them by her side.

However, OPA again notes that, at the moment in question, NE#1 and other officers were responding to an exigent situation. They believed that people were still inside of the store and committing crimes. They also needed to enter the store together for safety reasons, which significantly decreased the amount of time NE#1 had to deal with the woman.

Given this, even though OPA feels that NE#1 could have better handled this aspect of the incident, OPA does not believe that he acted contrary to policy. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 – Allegation #2

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

From OPA’s review of the BWV, there was no indication that NE#1 used force solely to punish or retaliate against the woman. OPA also found no evidence suggesting that the force was used for any other improper purpose.

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

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

Named Employee #1 – Allegation #3

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



As discussed in the context of Allegation #1, OPA finds that NE#1 had the legal right to move the woman from in front of the store. Again, the officers were attempting to enter the store because it had been broken into and it was possible that crimes were ongoing therein. They needed to do so expeditiously, and the woman was in their way. As such, it did not violate policy for NE#1 to forcibly move the woman from the vicinity.

While OPA believes that, in a perfect world, NE#1 would have given the woman more time to comply prior to using force, OPA understands why he did not do so here given the circumstances. Moreover, this would not, in and of itself, yield the force outside of policy.

Ultimately, OPA finds that the force NE#1 used was permissible and in line with policy. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 – Allegation #1

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

During its investigation, OPA found no evidence supporting the Complainant’s allegation that an SPD officer shot him with a CS gas canister. After reviewing the video recorded by the Complainant, OPA identified that the officers in his near vicinity were likely employed by the King County Sheriff’s Office, not SPD. OPA also identified from that video that a CS gas canister was deployed at around that time; however, it did not appear that an SPD officer was the one who engaged in the deployment.

However, given that OPA cannot definitively prove or disprove this allegation, OPA recommends that it be Not Sustained – Inconclusive.

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

Named Employee #3 – Allegation #1

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

OPA also found no evidence indicating that any SPD officer and specifically the officer identified by the Complainant struck a woman and/or deployed a chemical agent at the woman. The BWV showed that NE#1 was the only officer who engaged with the woman and that he did not make physical contact with her.

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

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

Named Employee #4 – Allegation #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

OPA reviewed video from a number of officers in an attempt to substantiate the Complainant’s allegation surrounding unprofessional conduct. OPA found no evidence showing officers using the profanity identified by the Complainant or



showing the officers “shaking their asses” at demonstrators. OPA further did not identify officers indiscriminately pointing weapons – less-lethal or otherwise – at demonstrators and/or a man in crisis.

However, OPA did not watch all of the possible BWV (and could not do so due to resource limitations) and, thus, cannot conclusively say that the conduct alleged did not occur. Accordingly, OPA recommends that this allegation be Not Sustained – Inconclusive.

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