



## CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 7, 2020

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0402

### **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 (Inconclusive)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	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 an officer improperly pointed a firearm at her during a demonstration and that another officer interacted with her in an unprofessional manner.

### **SUMMARY OF INVESTIGATION:**

The Complainant alleged that an SPD officer pointed a firearm at her during a demonstration. She contended that this was unnecessary as she did not pose any physical threat to the officer, let alone a deadly threat. She also stated that she attempted to ask officers about excessive force that had been used by police during the demonstrations but that they would not respond to her. She felt that this was unprofessional. This OPA investigation ensued.

OPA interviewed the Complainant. She stated that she was part of a peaceful protest. She told OPA that “some kid walked past and threw a water bottle” at officers and, as a result, the officers started using CS gas on all of the demonstrators. She noted that, even prior to this occurring and anything “bad” happening, the officers had riot gear and gas masks on. The Complainant recounted that she approached the officers to obtain an explanation of “why are we being tear gassed.” She stated that one of the officers she approached scoffed at her, did not answer her question, and told her to go away. She indicated that another officer pointed what appeared to be a rifle at her. While he did not shoot her with anything, she still felt that this was inappropriate. She said that she was not affected by CS gas during the demonstration even though others were.

OPA also interviewed a witness identified by the Complainant. He said that he observed officers using less lethal tools, including tear gas and rubber bullets. He was not shot with rubber bullets but was affected by CS gas when he tried to prevent a fire spreading from a sparking canister. He did not provide any information concerning the identity of the officer who may have pointed a rifle at the Complainant.

As part of its investigation, OPA identified Body Worn Video (BWV) capturing the Complainant’s interaction with officers. At the time of the interaction, officers had given multiple orders to the crowd to disperse. Objects had been



thrown at officers and SPD supervisors authorized the use of less lethal tools to clear the crowd from the vicinity. The Complainant approached officers and was told, among other individuals, to move back. An officer said to the Complainant: "Ma'am...please leave...ma'am stop...leave...please leave for your safety." She then asked the officers: "Can I please thank you?" After being told to move back another time, she said: "Can I please thank you" and "I just want to thank you for doing your jobs." At that time an officer – referred to here as Witness Officer #1 (WO#1) replied: "Now leave...you said it, thank you...now go." In response, the Complainant stated: "Why am I hurting your safety by being here?" Another officer told the Complainant: "Ma'am, there is a dispersal order, you need to leave...it is against the law to remain here...you need to exit." She told the officer that she could not hear him, and he repeated that she needed to leave the area. She asked why, and the officer again told the Complainant: "It is against the law to be in this area. Please leave." She asked why it was against the law, and she was told that a dispersal order had been issued. The Complainant then queried, "So we can't peacefully protest anymore." WO#1 said no and informed her that the demonstration was now considered a "riot." The Complainant then walked away.

OPA's review of BWV did not provide any indication that an SPD officer pointed a rifle or any other firearm in the direction of the Complainant. OPA did determine, however, that an officer employed by the Washington State Patrol (WSP) was pointing a rifle used to shoot rubber bullets in the direction of the crowd in the general vicinity of where the Complainant was situated. Based on this, OPA believed it to be possible that this was the officer identified by the Complainant. However, OPA could not conclusively foreclose the possibility that another officer, employed by SPD, was also holding a rifle and pointed it in the direction of the Complainant at some point during the demonstration.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegation #1**

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

The Complainant reported that an officer pointed a firearm at her during the demonstration. As indicated above, OPA was able to identify that a WSP officer pointed a rifle in the Complainant's general direction. However, OPA was not able to find any video indicating that an SPD officer also did so. Moreover, given the absence of video, OPA cannot conclusively establish whether, had this occurred, it was appropriate under the circumstances to do so. As such, OPA recommends that this allegation be Not Sustained – Inconclusive.

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

##### **Named Employee #1 - Allegation #2**

##### ***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 at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (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.*)



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The Complainant asserted that she attempted to engage officers in a discussion on excessive force used during the demonstrations but that the officers treated her rudely and dismissively. She contended that this was unprofessional.

OPA's review of the BWV yields a different conclusion. The video indicates that, after a dispersal order had been given and after the Complainant and other demonstrators had been told to move back multiple times, the Complainant approached the officers and tried to speak with them. When she did so, she sarcastically stated that she wanted to thank them for doing their job. She then questioned the legality of the dispersal order and limitations on what she perceived to be her right to peacefully protest. At no point did she reference force that had been used previously at demonstrations or attempt to engage on this issue with the officers. Notably, officers referred to her as "ma'am" and respectfully asked her to move back. It was only after she continually refused to comply that WO#1 directed her to do so with a raised voice.

It was not unreasonable or, for that matter, unprofessional for officers to decline to engage with the Complainant in the midst of a chaotic situation and while trying to move demonstrators back. Even had the Complainant legitimately wanted to have a conversation about force and tactics with the officers, which seems unlikely given her tone and the manner in which she approached the officers, it was simply not appropriate to do so at that time given the ongoing circumstances.

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

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