



## **CLOSED CASE SUMMARY**

ISSUED DATE: MARCH 1, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0510

### **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	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	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 (Lawful and Proper)
# 2	8.300 – POL – 5 Use of Force – Oleoresin Capsicum (OC) Spray	Not Sustained (Lawful and Proper)

**Named Employee #3**

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	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)

***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 Named Employee #1 grabbed an umbrella from a demonstrator for no reason and that this unduly escalated the crowd. The Complainant further alleged that Named Employee #2 pepper sprayed a demonstrator who was not posing a threat of harm. Lastly, the Complainant alleged that Named Employee #3 unlawfully arrested a demonstrator.

**SUMMARY OF INVESTIGATION:**

This case arises out of the demonstrations that occurred within Seattle and across the nation in the wake of the killing of George Floyd by a Minneapolis Police Officer. These protests were unprecedented in scope and were directed at law enforcement.



This incident occurred on July 25, 2020. The demonstrations that took place on that day were the largest since the protests began in late May/early June. As a general matter, a large crowd marched from South Seattle to the East Precinct. Along the way, individuals within the crowd caused property damage, including shattering the windows of businesses and setting trailers and other buildings on fire in a cordoned off area in the vicinity of the Youth Service Center. SPD additionally reported that demonstrators threw at least one explosive device at the East Precinct, which caused damage to the precinct wall.

As demonstrators passed the East Precinct and walked towards Cal Anderson Park, officers emerged from the precinct and proceeded towards the crowd. SPD issued a number of dispersal orders, which were not complied with. Ultimately, both groups clashed repeatedly, resulting in numerous uses of force over a prolonged period of time. As a result, OPA received and/or initiated multiple investigation, including this case.

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were assigned as bicycle officers. Both were tasked with moving the crowd back and assisting in the dispersal of demonstrators. Prior to them doing so, multiple audible dispersal orders had been given by an SPD commander.

As NE#1 and NE#2 worked with other officers to push the crowd back, NE#1 focused on a group of individuals with umbrellas and shields facing them. NE#1 gave the crowd several orders to move back but the individuals did not do so. NE#1 moved forward and grabbed an umbrella from an individual in the crowd and pulled it away. At this point, a second demonstrator who had a shield held up advanced towards NE#1 and appeared to make contact with NE#1. In response, NE#1 grabbed the shield and began to struggle with that individual. Named Employee #3 (NE#3), a sergeant, moved towards them in order to assist NE#1. At that time, he observed another demonstrator – referred to here as “Subject #1” – also appear to strike NE#1. NE#3 grabbed at Subject #1, who pushed back towards NE#3. NE#3 tried to pull Subject #1 down to the ground and, in response, Subject #1 struck at NE#3 with his fists. NE#3 then pulled Subject #1 down to the ground with the help of other officers. The officers continued to struggle with Subject #1. During this time, NE#3 brought his knee down on top of Subject #1’s legs to stop him from fighting. NE#1 did not strike Subject #1 and used control holds and body weight to try to stop him from further resisting and to arrest him.

As this was going on, NE#2 observed the altercation and ran over. He repeatedly yelled: “Back up!” He appeared to deploy pepper spray four times, the first three in quick succession. The first time was towards a male holding a bike who had taken several steps forward towards the altercation and arrest (“Subject #2”). The second time was towards a demonstrator wearing all black and holding an open umbrella who was in the immediate vicinity of the arrest and was moving forward (“Subject #3”). The third deployment was at a man holding a phone towards the officers and who was not backing up (“Subject #4”). The fourth deployment occurred approximately 10 seconds later and was towards another male who, while yelling profanity, stepped towards officer (“Subject #5”). After the fourth deployment, NE#2 moved over to assist officers in taking Subject #1 into custody. NE#2, like NE#1, did not strike Subject #1 and used control holds and body weight to try to stop him from further resisting and to arrest him.

OPA later received a complaint from an individual who was present at the demonstration and recorded portions of the incident on video (the “Complainant”). The Complainant primarily contended that NE#1 tearing the umbrella away and NE#2 pepper spraying Subject #4 were improper. This investigation ensued. During its intake, OPA identified additional allegations against NE#1, NE#2, and NE#3.

**ANALYSIS AND CONCLUSIONS:**



**Named Employee #1 - Allegation #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. 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.*)

NE#1 used force to pull the umbrella away from a demonstrator, to prevent the individual with a shield from striking him, and then to assist another officer in taking a third individual into custody. At no point did NE#1 use strikes or anything other than low-level force.

NE#1 had the legal right to seize the umbrella. The officers had been trying to move the crowd of demonstrators back without success. In addition, demonstrators used the umbrellas and shields to strike officers (as was seen during this incident), to shield demonstrators throwing objects, and to create blockades to prevent officers from moving crowds back. Accordingly, taking the umbrella was permissible to effectuate the moving of the crowd and the force used to do so was both necessary and proportional.

Moreover, the force used during the struggle with the individual with the shield was permissible given that – as indicated by the video – that individual assaulted NE#1. Indeed, NE#1 could likely have used a higher level of force than he did under the circumstances.

Lastly, the force used to assist other officers with taking Subject #1 into custody was also permissible. NE#1 was permitted to rely upon the probable cause established by the other officers and, given that there was the legal authority to arrest Subject #1, he was entitled to use force to effectuate taking Subject #1 into custody. The force NE#1 used was comprised of body weight and control holds. This was within policy under these circumstances.

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

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

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

***8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall 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.*)

(*Id.*) De-escalation is inarguably a crucial component of the Department’s obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department’s policy and expectations.

At the time that NE#1 seized the umbrella, the demonstrators in the vicinity, including the individual holding the umbrella, had been given lawful orders to disperse and numerous directions to move back. They did not do so. NE#1 articulated that he had been instructed to move the crowd back and, based on the continued lack of movement from the demonstrators, he did not believe that they were going to comply. As such, he and other officers proceeded to push the crowd. As discussed above, NE#1 articulated the threat posed by the umbrella and why he felt it was necessary to remove it. OPA finds this to have been reasonable.

OPA also concludes that the repeated orders given by NE#1 and other officers, as well as the time they gave demonstrators to comply, constituted sufficient de-escalation. At the time NE#1 began to move the crowd back, further de-escalation was not required. In addition, NE#1 expressed that additional de-escalation prior to grabbing the umbrellas would have compromised legitimate law enforcement priorities. OPA finds that this is supported by the BWV. Lastly, OPA does not believe that NE#1’s conduct unduly escalated the crowd. Notably, the crowd was already escalated and had been engaged in altercations with officers throughout the day.

For these reasons, 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***

OPA evaluates NE#2’s force used to effectuate the arrest of Subject #1 here and addresses his OC spray deployments in the context of Allegation #2, below.

After deploying OC spray towards Subject #5, NE#2 moved towards the officers who were holding Subject #1 down. Subject #1 was continuing to physically resist officers. NE#2 grabbed his hand and pulled it behind his back. NE#2 further pushed down on Subject #1’s head to control his body. NE#2 used no other force.

Under the circumstances and given that Subject #1 was actively resisting officers, the force NE#2 used was consistent with policy. Notably, he used no strikes and only applied that force needed to control Subject #1’s body, to prevent him from further resisting, and to handcuff him. Once this was accomplished, NE#2 ceased using force altogether.



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

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

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

***8.300 – POL – 5 Use of Force – Oleoresin Capsicum (OC) Spray***

SPD Policy 8.300-POL-5 governs the use of OC spray. SPD Policy 8.300-POL-5(3) specifically requires that: “Officers will use OC spray, including for crowd dispersal or protection, only when such force is objectively reasonable, necessary, and proportional.”

Of the four OC spray deployments by NE#2, OPA finds that the first, second, and fourth were clearly within policy. In all three situations, the individuals sprayed were all moving towards officers who were actively engaged with demonstrators. Even if those individuals did not intend to harm officers or interfere in the arrests, NE#2’s perception that they were engaging in actions that created a threat to officers was reasonable under the circumstances and he, thus, satisfied the elements of this policy.

The third deployment, which is the one identified by the Complainant, was the most questionable. There, NE#1 briefly deployed OC spray at Subject #4, who was in the immediate vicinity of Subject #2, but was not actively advancing towards the officers and was holding a phone in the air.

At his OPA interview, NE#2 stated that the deployment was appropriate as Subject #4 was standing near the altercations and arrests, was not moving away, and could have advanced towards officers, thus placing them in danger. NE#2 believed that the deployment was appropriate to move demonstrators, including Subject #4, back and to create a buffer to ensure officer safety.

While a close call, OPA ultimately finds that this use of force did not violate policy. Fundamental to this determination is the recognition that it was a chaotic situation with multiple ongoing altercations and arrests, as well as that officers had been subjected to violence earlier and several individuals had advanced towards the officers at that time. OPA also notes that NE#2 was required to make a split-second decision based on the immediacy of what he was facing. While, in hindsight, better judgement – including not deploying at Subject #4 – would have been optimal, this does not cause NE#2’s force to be inconsistent with policy.

Accordingly, when applying a preponderance of the evidence standard, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #3 - Allegation #1**

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

NE#3 used force to grab Subject #1, to pull him down to the ground, and then to subdue him. At that time, NE#3 observed Subject #1 engage in assaultive conduct, which was supported by the BWV. Moreover, Subject #1 tried to punch NE#3. Given this, NE#3 was entitled to use force to stop Subject #1 from continuing to engage in that conduct



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and to take him into custody. Moreover, when Subject #1 continued to struggle against officers while on the ground, NE#3 was permitted by policy to use intermediate force – here bringing his knee down on Subject #1’s legs, to stop him from doing so. This force was further consistent with NE#3’s training.

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

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

**Named Employee #3 - Allegation #2**

***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.

Here, NE#3 had probable cause to believe that Subject #1 engaged in an assault. He reported viewing Subject #1 make physical contact with NE#1 and this was corroborated by the video. Moreover, the video established that Subject #1 struck at NE#3 and fought other officers. All of this conduct provided NE#3 with legal authority to arrest Subject #1.

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

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