



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 21, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0383

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 6. Employees May Use Discretion	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)

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 Complainants alleged that Named Employee #1 abused his discretion by directing a Department vehicle to drive behind protesters, including one who was kneeling. Complainant #2 further alleged that Named Employee #2 used excessive force when Named Employee #2 pushed Complainant #2 to the ground.

SUMMARY OF INVESTIGATION:

Complainant #1 stated that he saw a man and a woman protesting in front of a gate. He saw patrol vehicles coming around the corner. He noted that, prior to this, patrol vehicles had been exiting the barricade with cooperation of the protesters. He said that he saw a smirking male officer – who OPA identified as Named Employee #1 (NE#1) – wave a patrol vehicle behind the two protesters. He said that the patrol vehicle drove up and, while it was driving slowly, it struck the two protesters. Complainant #1 asserted that the officer acted as if it was funny. He said that he later ran into the female protester who confirmed to him that she had been hit by the patrol vehicle. He told her that she should file a complaint.

Complainant #2 recalled that other patrol vehicles had driven by that location but had gone through another part of the street (the eastbound lane). Complainant #2 said that the patrol vehicle in question was the first vehicle to go through the westbound lane. She felt that the officers were trying to provoke a conflict and that they should have gone in the direction of the other vehicles. She recalled that the officers got out of their vehicle and were yelling. She said that they started yelling at the demonstrators to get out of the way and then immediately physically moved them.

Complainant #2 said that a female officer approached her from the back and pushed her, causing her to fall to the ground. She explained that an officer grabbed her from behind and turned her around and that the female officer



then shoved her with both hands. She described it as an intentional push. She detailed that the kneeling male was picked up under his arms and knees and moved. She said that he was moved “violently” and that the officers then ran over the kneeling male’s possessions (water bottle, food, jacket, and bandanna). She watched the patrol vehicle drive away and, while it came close to other demonstrators, it did not strike anyone. She was not injured but did not know whether the kneeling male was injured. Complainant #2 recalled that, after the incident, officers were laughing and joking and provided their badge numbers in a sarcastic fashion.

OPA’s review of the Body Worn Video (BWV) and In-Car Video (ICV) for this incident showed a vehicle driving up to gates situated across the street. As the patrol vehicle approached, it began to slow down. Named Employee #2 (NE#2) and another officer – referred to here as Witness #1 (WO#1) – walked up to the gate while motioning the Complainant and the kneeling male to move out of the way. As the officers did so, NE#1 began to open a portion of the gate. Another officer, standing to NE#1’s right, opened another section of the gate. Protesters were also situated in front of that portion.

WO#1’s BWV recorded the kneeling male and Complainant #2 situated in the middle of the street. They were on the same side of the barricade as the approaching vehicle and on the opposite side from NE#1. The male was kneeling with his fist up in the air. WO#1 motioned him to move but he did not do so. Officers took hold of his arms and he eased slowly down to the ground on his own power. He laid with his back on the ground, still in front of the barricade. The officers moved him by carrying him by his arms and leg and they set him on the ground (see WO#1’s BWV, at 00:31-00:37). Contrary to Complainant #2’s assertions, BWV conclusively established that this was not done violently. The patrol vehicle then drove through the barricade and NE#1 closed the barricade behind it. From OPA’s review of the video it was inconclusive as to whether the patrol vehicle drove over a black object that could have been the male’s coat but the patrol vehicle did not appear to drive over any other property.

NE#2’s BWV showed her approaching the kneeling male and Complainant #2. NE#2 took hold of Complainant #2’s right arm and her backpack. Complainant #2 began to turn around and then fell to the ground. NE#2’s BWV did not clearly show the mechanism that caused Complainant #2 to fall to the ground. NE#2 then helped carry the kneeling male away from the barricade. She got back into the patrol vehicle and drove it through. NE#2’s BWV captured her remarking to the other officers: “I touched the girl and she fell to the ground.”

The ICV of a fourth officer, referred to here as Witness Officer #2 (WO#2), showed the patrol vehicle drive up to the barricade. The officers in the patrol vehicle could be heard remarking that the demonstrators in front of the barricade needed to move. Based on a review of the ICV, there was no indication that NE#1 waved the car to enter the barricade where Complainant #2 and the kneeling male were standing. Indeed, the patrol vehicle turned the corner and pulled forward to where they were situated. The patrol vehicle put on its lights and sirens. The majority of the demonstrators moved to the side, but the kneeling male remained where he was. Complainant #2 also stepped between the male and the patrol vehicle. The officers got out and began motioning for them to move and verbally directed them to do so. Two officers approached the kneeling male and took hold of his arms. NE#2 took hold of Complainant #2’s arm and backpack and began to pull her backwards while Complainant #2 turned towards NE#2. The ICV clearly indicated that Complainant #2 lost her balance and fell to the ground when she tripped over the outstretched foot of the kneeling male (see WO#2’s ICV, at 19:25:02 – 19:25:05). NE#2 then walked towards the kneeling male and she, WO#1, and another officer carried him away from the barricade. The patrol vehicle then drove through. A review of the ICV confirmed that, contrary to Complainant #1’s assertions, the patrol vehicle never hit any demonstrators.



NE#1's BWV began after the incident occurred. It showed that he was stationed on the other side of the barricade from the demonstrators. The demonstrators were in the street, lining the barricade. The BWV showed a patrol vehicle drive up and be let through the middle of the barricade by officers. The demonstrators moved out of the way and the barricade was opened and the patrol vehicle drove through. Approximately 17 minutes later, a fire engine and an ambulance arrived at the barricade with lights and sirens on. The officers again moved to open multiple barricades. At that time, all of the demonstrators moved out of the way except for the kneeling male, who again kneeled in the middle of the street with his fist up. Complainant #1, Complainant #2, and another individual tried to convince the kneeling male to move. He did not do so. NE#1 and Complainant #1 tried to physically move the kneeling male, but they were unable to do so. The emergency vehicles ultimately went around him. Shortly thereafter, another patrol vehicle drove through. The kneeling male remained in the street with his fist up.

OPA's review of NE#1's BWV indicated that he did engage in a prolonged back and forth with some of the demonstrators. This included sarcastic comments and other statements that did not seem to serve any law enforcement purpose. Given that OPA did not identify any profanity used as an insult or any derogatory language directed by NE#1 towards demonstrators, OPA referred the potential issues concerning his professionalism to his supervisor to be addressed through counseling and retraining. Similarly, OPA identified that WO#1 said, while in the patrol vehicle and driving away from the barricade, "he's lucky he's not going to fucking jail." Given that this comment was made outside of the presence of community members and the fact the profanity was not directed as an insult towards the kneeling male, this was also returned to the chain of command for counseling and retraining. As such, neither incidence of potential unprofessionalism is discussed herein.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 6. Employees May Use Discretion

Both Complainants asserted that it was an abuse of discretion for NE#1 to motion the patrol vehicle through the portion of the barricade near where the kneeling male was situated.

As indicated in SPD Policy 5.001-POL-6, "[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment." This policy further states that "[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed." (SPD Policy 5.001-POL-6.)

Both the BWV and the ICV established that NE#1 did not affirmatively wave the patrol vehicle through that specific location. Instead, the patrol vehicle turned the corner and pulled directly behind the kneeling male. The patrol vehicle put on its emergency lights and siren and officers exited and directed the kneeling male and Complainant #2 – who had stepped in front of him – to move out of the way so that the vehicle could drive through. As this was a public street, the officers had the legal right to remove the demonstrators out of their way so that they could drive through.

Complainant #2 and the kneeling male had the option of moving or remaining where they were. With that decision came the possibility that they could be forcibly removed from that location and/or arrested for obstruction because of non-compliance with lawful orders from police. Complainant #2 opined that, had she and the kneeling male been given sufficient time to move, they would have done so. OPA deems this unlikely given its review of the video.



Specifically, NE#1's BWV indicated that the kneeling male refused to move for other emergency vehicles – a fire engine and an ambulance – even after being asked to do so by officers and other demonstrators.

Ultimately, with regard to the allegation against NE#1, OPA finds that the evidence contradicts the assertion that he motioned the patrol vehicle to drive directly behind Complainant #2 and the kneeling male and OPA finds that the patrol vehicle was already situated in that location based on how it turned. Moreover, the demonstrators did not have a legal right to remain in the middle of the street blocking potential traffic and the officers were permitted to physically move them when they did not comply with lawful directions. 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

Complainant #1 asserted that officers engaged in excessive force when they struck demonstrators with a patrol vehicle. Complainant #2 alleged that NE#2 used excessive force by pushing Complainant #2 to the ground.

With regard to Complainant #1's claim, the evidence clearly disputes that any demonstrator was struck by a vehicle and no other witness made that claim at the scene – including Complainant #2.

With regard to Complainant #2's allegation, ICV from WO#2's patrol vehicle indicated that NE#2 took hold of Complainant #2's arm and backpack and began to pull her back. As discussed above, the officers had the legal right to physically move Complainant #2 from out of the middle of a public street as they had a law enforcement need to get through the barricade. The ICV conclusively established that, at this point and while moving backwards, Complainant #2 tripped over the kneeling male's outstretched foot. This is evident because the kneeling male was wearing white sneakers, which are very distinctive and identifiable on the video. NE#2 did not push Complainant #2 and, as such, there is no evidence supporting a finding that Complainant #2 was subjected to excessive force by her.

While it is unfortunate that Complainant #2 fell to the ground, the video establishes that this was inadvertent and not the result of excessive force. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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