



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 10, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0395

Allegations of Misconduct and the 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	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)

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	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)

Named Employee #3

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

EXECUTIVE SUMMARY:

The Complainants alleged that they were unlawfully arrested and subjected to excessive force by the Named Employees. Complainant #2 also contended that an unknown SPD employee made unprofessional statements to him while he was being held at a precinct.

SUMMARY OF INVESTIGATION:

A. Arrest, Use of Force, and Detention

On July 1, 2020, Officers were assigned to clear out the area commonly referred to as either the Capitol Hill Occupied Protest zone or the Capitol Hill Autonomous Zone (CHOP/CHAZ). This closure was authorized by an executive order signed by the Mayor on June 30, 2018. The order set forth, among other requirements, the following: that anyone in the vicinity must vacate; the provision of dispersal orders; and, that if there was non-compliance with those orders, the arrests of any remaining individuals.

A woman and her partner – referred to here as Complainant #1 and Complainant #2, respectively – were within CHOP/CHAZ when it was cleared. Both were arrested for failure to disperse. Complainant #1 later alleged that she was struck in the mouth with a baton and that this caused her mouth to bleed and her to suffer a chipped tooth. She said that she was then “jumped on” by four officers and held to the ground. She asserted that this constituted excessive force. Complainant #2 stated that the CHOP/CHAZ occupants were told that they would be given five minutes to



disperse, but that the officers then moved in immediately and started making arrests. He felt that this was improper. He told a Sergeant that officers were “aggressively swinging their batons towards people” and told a Detective assigned to the Force Investigation Team (FIT) that officers were “thrusting and swinging” the batons. He said that he observed people being pushed to the ground by officers and he was also pushed to the ground, had his face slammed into the ground, and was stood on. He said that Complainant #1 was “slammed” to the ground and, while he did not personally observe this, he believed that she was in danger because firearms were pointed at her. Complainant #2 recounted that he was transported to the precinct and, while there, he was treated unprofessionally by officers. This investigation ensued.

OPA determined that Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were part of the group of officers who enforced the executive order. NE#1’s Body Worn Video (BWV) indicated that dispersal orders began to be given approximately two minutes after he arrived on scene. Officers began to move into and to clear CHOP/CHAZ just under ten minutes later. NE#1 began moving through the area with NE#2. They approached Complainant #1 and Complainant #2. At that time, Complainant #2 moved in front of Complainant #1 and towards NE#2. NE#2 pushed forward with his baton and contact was made between him, Complainant #1, and Complainant #2. The Complainants then pushed back towards NE#2 and other officers. Officers began to try to pull the Complainants apart while they held onto each other. NE#1 and other officers pulled the Complainants to the ground. While on the ground, the Complainants both physically struggled against the officers. NE#1 placed his hand on the Complainant #2’s head and held his head securely against the ground. Complainant #2 was then handcuffed and walked to a transport van. At that time, he asserted that officers were using excessive force against Complainant #1.

NE#2’s video also showed the dispersal orders and confirmed that, contrary to Complainant #2’s assertions, the CHOP/CHAZ occupants were given longer than five minutes to comply. Officers, including NE#2, subsequently began walking through the area. At this time, Complainant #1 began yelling at officers and walking towards them. NE#2 continued to give directions to individuals to leave the area and informed them of an egress location. NE#2 approached the Complainants. Complainant #1 was to his right and Complainant #2 was to his left. Another woman grabbed Complainant #1, who was still yelling at officers, and tried to pull her back. Complainant #2 moved in front of Complainant #1 and directly towards NE#2. NE#2 extended his baton, which he held horizontal to his body and in front of him – towards Complainant #2. NE#2 made contact with Complainant #2’s right shoulder (Complainant #2 was turned halfway towards Complainant #1) with the baton. At that time, the baton glanced off of Complainant #2, who moved his shoulder and elbow. Simultaneously, Complainant #1, who continued to yell at the officers, leaned forward. Either the baton or Complainant #2’s right elbow – in OPA’s opinion it is inconclusive from the video – appeared to make contact with the Complainant’s mouth/face area. She momentarily pulled back and then pushed Complainant #2 forward into the officers. At that point, the officers grabbed onto both Complainants in order to place them under arrest. The BWV showed officers ultimately pull them to the ground. Complainant #1 resisted while on the ground, but the officers were able to handcuff her. Contrary to Complainant #2’s assertions, Complainant #1 did not express a fear of being shot while on the ground or reference officers having their handguns out. Moreover, the BWV conclusively established that no officers drew their firearms.

OPA reviewed the BWV recorded by several other officers. One video, which was recorded by Witness Officer #1 (WO#1), provided a clear perspective of the incident. The video, which was consistent with that recorded by NE#2, showed that NE#2 did not aggressively swing or thrust his baton. From OPA’s review, this video was also inconclusive with regard to whether the baton or Complainant #2’s elbow struck Complainant #1’s mouth/face area.



OPA lastly watched video taken by officers assigned to prisoner processing, as well as from the precinct holding cells. There was no indication that any officer made unprofessional, demeaning, or disrespectful statements to Complainant #2, let alone that he was called a “dipshit” as he claimed. The video also did not show an individual who exited the holding cell limping. Complainant #2 alleged that this occurred, suggesting that officers used force against someone in the holding cell area. The holding cell video did show an individual who repeatedly kicked the metal holding cell door while within the cell. Officers entered the cell to tell him to stop doing so and the holding cell video confirmed that they did not touch the person or use force on him.

B. Interviews of and/or Reports Written by the Involved Parties and Witnesses

OPA contacted Complainant #1 and tried to interview her. She did not respond to OPA. OPA spoke with Complainant #2. He told the assigned investigator that, unless OPA was calling to “offer” him “money,” he was not willing to be interviewed.

NE#2 was interviewed by FIT on the day of the incident. He confirmed that he was assigned to clear out the CHOP/CHAZ area and that dispersal orders were given. He said that the officers did not begin to receive resistance until they were mid-block on Pine Street. At that time, there were individuals who were cursing at officers and refusing to leave. The officers continued to proceed down the block. He described the manner in which he and other officers did so as “methodical.” NE#2 observed two arrests occur to his right. He then walked up to the Complainants. He told them to move back but they did not do so. NE#2 said that they were within an “arm’s reach” of officers. He said that Complainant #2 moved towards the line of officers and in front of Complainant #1. He recalled that Complainant #2 turned his back to face Complainant #1. NE#2 told OPA that he pushed forward with his baton while telling Complainant #2 to move back away from the officers. At that point, the baton slipped off of Complainant #2’s shoulder while Complainant #1 was moving towards them. He believed that this caused the baton to strike Complainant #1’s face. The Complainants continued to push into officers and did not leave the area. At that point, the decision was made to take them into custody. He helped control Complainant #1’s person and to handcuff her.

NE#2 said that, at the time of the strike, he was holding the baton horizontally across his body with a spread overhand grip, knuckles forward. He told OPA that this was how he was trained by SPD to use the baton during demonstration/crowd management. He further stated that using the baton to push forward while telling someone to move back was also consistent with his training. NE#2 told OPA that the strike was inadvertent and that he did not notice it causing Complainant #1 to suffer any injuries. He was not aware that she was injured until a supervisor later told him that Complainant #1 had an injury to her lip.

FIT also interviewed WO#1. He recalled moving down Pine Street to clear the area and being confronted by individuals, including the Complainants. He said that Complainant #1 was wearing a helmet and was holding a baton. She was with Complainant #2. He stated that, prior to proceeding towards the individuals within the CHOP/CHAZ area, several dispersal orders were given. The individuals therein, including the Complainants, did not comply with those orders. He saw Complainant #1 and Complainant #2 approach officers. He observed NE#2 push forward with his baton and he saw the baton glance off of Complainant #2. From his vantage point, he believed that the baton then struck Complainant #1. He grabbed Complainant #1 and helped take her into custody. He recalled that Complainant #1 kicked officers when they were trying to control her.

OPA reviewed two additional reports. The first was written by an officer who also assisted in taking Complainant #1 into custody. He documented that she physically resisted, including kicking at officers. He wrote that officers were



ultimately required to carry her to the transport van. At that time, she kicked him in the head. The second was written by a Sergeant operating the transport van. He noted that van video captured Complainant #1 unbuckle her seatbelt and throw herself to the van floor. He tried to speak with her in order to calm her down while she was in the rear of the van. He ultimately called for the Seattle Fire Department and informed another supervisor of Complainant #1's assertions and injuries.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The force used by NE#1 consisted of him, with other officers, pulling Complainant #2 to the ground, and, once Complainant #2 was on the ground, using his hand to hold Complainant #2's head down.

With regard to the takedown, the video indicated that it was controlled and that officers pulled both of the Complainants down to the ground. Complainant #2 did not hit the ground with any significant force and did not appear to suffer any injuries or complain of pain. While Complainant #2 was on the ground, NE#1 put his hand on his head and held it down. This appeared to be purported to control Complainant #2's body and to prevent him from further moving around and resisting the officers' attempts to take him into custody. The video disproved the allegation that NE#1 slammed Complainant #2's head or any part of his body into the ground. NE#1 used no other force during this incident. Moreover, NE1 did not, at any time, strike or use anything other than control holds on Complainant #2.

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.*)

OPA finds that the force used by NE#1 during this incident was consistent with policy. First, at the time NE#1 first made physical contact with Complainant #2, NE#1 was aware of the following: (1) there was probable cause to arrest Complainant #2 for failing to disperse and obstruction, amongst other potential crimes; (2) Complainant #2 was repeatedly refusing to comply with lawful orders, including the direction to leave the area and to move back; (3) Complainant #2 pushed into officers and, thus, presented at least a moderate threat. Given this, it was reasonable to use force to take Complainant #2 into custody and, specifically, to use low level force to pull Complainant #2 down to the ground and then to hold his head down on the ground to prevent Complainant #2 from moving around and resisting. The force was further necessary as NE#1 had the right to arrest Complainant #2 and, in his judgement and based on Complainant #2's behavior, the safest place to do so was on the ground. This decision was consistent with his training concerning arresting resistive subjects. Moreover, the limited force used was of a reasonable degree to effect NE#1's lawful purpose. Lastly, the force was proportional under the circumstances. As discussed above, the force was minimal, did not involve any strikes, and did not cause any injuries to Complainant #2.

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



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

Named Employee #1 - 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.

In evaluating this allegation, OPA finds three facts to be substantially important: (1) there was a lawfully issued executive order that prohibited individuals from remaining in the CHOP/CHAZ area after dispersal orders were issued; (2) multiple dispersal orders were issued, which included identifying routes that individuals could take to safely leave the area; and (3) the Complainants did not comply with these orders and, instead, stood in front of and yelled at officers.

Together, these establish that there was abundant probable cause to arrest the Complainants. Complainant #2's primary argument against this finding is that the demonstrators were told that they would have five minutes to disperse, but that officers started moving towards them and arresting individuals immediately. This is disproved by the BWV, which shows multiple dispersal orders and sufficient time (and, indeed, well over five minutes) allowed for the Complainants to comply. Moreover, the Complainants' actions and demeanor, again fully captured by BWV, belie the contention that they had any intent to peacefully abide by officers' directions and leave the vicinity.

As OPA finds that the Complainants' arrests were supported by probable cause, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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

Named Employee #2 - Allegation #1

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

As a starting point, OPA cannot conclusively say that NE#2's baton actually hit the Complainant. Even after watching the video at lower frame rates, it appears possible that Complainant #2's elbow, not the baton, made contact with Complainant #1's mouth/face area. However, since both NE#2 and WO#1 believed that the baton did strike Complainant #1, OPA assumes that it occurred and evaluates the propriety of that force here.

From a review of the BWV, it is clear that NE#2 did not intend to strike Complainant #1 with the baton. Unlike how Complainant #2 characterized his conduct, the BWV established that NE#2 did not aggressively use his baton or swing it around. Instead, he used it in exactly the manner he was trained to do and in exactly the situation he was trained for. When NE#2 pushed the baton forward towards Complainant #2, which was appropriate under the circumstances to move Complainant #2 back, Complainant #2 shifted his body, causing the baton to slide off Complainant #2's shoulder and arm. Simultaneously, Complainant #1 approached them, jutting her face forward. It was at this instant that, to the extent it occurred as believed, the baton struck Complainant #1. It is evident from the BWV that this was inadvertent, not purposeful.



Ultimately, OPA finds that the push forward of the baton by NE#2 was consistent with both policy and training. It was purposed to move individuals back and NE#2 had the right to do so. As such, it was reasonable. Moreover, it was necessary as the Complainants were refusing to leave the vicinity even after multiple directions to do so, they were blocking the officers, and Complainant #2 moved towards the officers when he shifted in front of Complainant #1. Lastly, the force as contemplated was low level and was proportional to the situation.

Had NE#2 negligently swung his baton and struck Complainant #1 in the face, OPA would have found that force out of policy. However, where NE#2 acted consistent with the letter of his training but still struck Complainant #1 for reasons largely outside of his control, this does not violate policy. Moreover, while it is certainly unfortunate that Complainant #1 was injured as a result of this incident, this also, in and of itself, does not violate policy and was, in part, attributable to both her conduct and that of Complainant #2.

For the reasons set forth above, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #2

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #1

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

As discussed above, Complainant #2 asserted that unidentified SPD employees made rude statements to him when he was at the precinct, including referring to him as a “dipshit.” If this occurred, the statements and behavior described would be unprofessional; however, Complainant #2’s allegations are not supported by the video evidence. Specifically, there is no indication from any of the prisoner processing or holding cell video that any officers mistreated Complainant #2 (or others for that matter) at the precinct or that any unprofessional statements were made to him.

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

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