



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 10, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0526

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

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) |
| # 3 | 15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report: All reports must be complete, thorough and accurate | Not Sustained (Lawful and Proper) |

Named Employee #3

| Allegation(s): | | Director’s Findings |
|----------------|--------------------------------------------------------------------------------------------------------------------|---------------------------|
| # 1 | 8.200 - Using Force 1. Use of Force: When Authorized | Allegation Removed |
| # 2 | 6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest | Allegation Removed |
| # 3 | 5.001 - Standards and Duties 14. Retaliation is prohibited | 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 the Named Employees used excessive force towards demonstrators and did so in retaliation for the demonstrators’ push to defund SPD. The Complainant further alleged that the Named Employees used a feigned injury of another officer as a basis to make an otherwise unlawful arrest.

SUMMARY OF INVESTIGATION:

Officers, including Named Employee #1 (NE#1) and Named Employee #2 (NE#2), were assigned to staff ongoing demonstrations in Capitol Hill. As captured on Body Worn Video (BWV), an individual within the group of



demonstrators was shining a strobe light at officers. NE#1 discussed with other officers extracting the individual who possessed the strobe light from the crowd. A third officer, Witness Officer #1 (WO#1), moved towards the individual and grabbed onto them. The BWV indicated that, at this same time, a female demonstrator took hold of WO#1 and began trying to pull WO#1 away from the individual with the strobe light. NE#1, who observed this, grabbed the female demonstrator and tried to pull her away from WO#1. The female demonstrator continued to hold onto WO#1 and they both fell to the ground. After they fell, NE#1 tried to locate the individual with the strobe light, but the individual had disappeared into the crowd.

NE#2, who was standing several feet away, rushed over as he saw what occurred. His BWV showed the female demonstrator standing over WO#1 and reaching her hand towards WO#1's head/neck area. NE#2 pushed her away from WO#1 and down to the ground. She was then placed in handcuffs. It was later determined that WO#1 suffered a dislocated knee, and that he also had a torn ligament and a possible tibia fracture.

NE#2 documented this incident in a report. He recounted observing the Complainant pull WO#1 down to the ground causing him to suffer an apparent injury to his knee. NE#2 also noted that the Complainant reached her hand towards and grabbed WO#1's face "while he was defenseless on his side, clutching his right knee." NE#2 wrote that he took the Complainant down to the ground to prevent her from harming WO#1. He stated that he arrested her for assault.

OPA later received a complaint regarding this incident. The gravamen of the complaint was that WO#1 feigned an injury to his leg in order to justify other officers using force against and arresting the female demonstrator. The Complainant alleged that this was in retaliation for the demonstrators collectively seeking to defund SPD. The Complainant lastly alleged that the report completed by NE#2 was deficient. Specifically, the Complainant asserted that NE#2 inaccurately wrote that the female demonstrator "attacked" WO#1 and that this did not occur.

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. 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.*)

Both NE#1 and NE#2 used force on the female demonstrator at various times. NE#1 initially used force to try to pull her away from WO#1. NE#2 subsequently used force to push the Complainant away from WO#1, to take her down to the ground, and to place her in handcuffs. The force both officers used was reasonable, necessary, and proportional, and, thus, consistent with policy.



With regard to NE#1, he observed the female protestor interfering in an arrest and, while doing so, grabbing and pulling on WO#1. Regardless of the female demonstrator's perception of the validity of the law enforcement action being taken by WO#1, she was prohibited by law from engaging in such actions and, by doing so, committed obstruction and assault. NE#1 had a lawful basis to prevent her from engaging in these acts and, where appropriate, to use force to do so. Moreover, the force he used, grabbing and pulling the female demonstrator, were both necessary and proportional under the circumstances. Notably, NE#1 did not strike the female demonstrator or use anything other than low-level force.

OPA reaches the same conclusion for NE#2's force. At the time he physically engaged with the female demonstrator, he observed her contribute to WO#1 falling to the ground and then saw her grab at WO#1's face while he was prone and clutching his knee. This was all corroborated by video. NE#2 was permitted to use force to take the female demonstrator into custody and to prevent her from harming WO#1. While it may not have been her intent to harm WO#1, her objective actions constituted an assault. NE#2 used the only force realistically available to him at the time when he pushed the female demonstrator to the ground. Moreover, this force, and the force he used to hold the female demonstrator down to the ground and to handcuff her, was proportional. Like NE#1, NE#2 used no strikes or anything other than low-level force. He further modulated his force once the female demonstrator was in custody and under control.

Ultimately, there is absolutely no evidence supporting the Complainant's assertion that the officers used excessive force. Indeed, the BWV shows the contrary – that the officers acted consistent with policy. For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#1 and NE#2.

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

NE#2, not NE#1, made the decision to arrest the female demonstrator. As such, OPA recommends that this allegation be removed as against NE#1.

Recommended Finding: **Allegation Removed**

Named Employee #2 - Allegation #1

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

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 #2 - 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.

As discussed above, the BWV conclusively established that there was probable cause to arrest the female demonstrator for both obstruction and the assault of WO#1.

With regard to obstruction, the female demonstrator interfered in the attempted arrest of the individual with the strobe light by grabbing onto WO#1 and pulling him away. She had no legal right to engage in these actions and, when she did so, she committed a crime.

With regard to assault, when she grabbed onto and pulled WO#1, the female demonstrator contributed to him falling to the ground. While perhaps not her intent, this caused WO#1 to suffer a documented serious injury to his knee. The female demonstrator's established conduct constituted an unconsented and intentional touching that was harmful, thus meeting the elements of an assault.

For these reasons, the female demonstrator's arrest was justified as a matter of law. In reaching this finding, OPA notes that there is not a scintilla of evidence supporting the Complainant's contention that the arrest was fabricated, and that WO#1 faked an injury to provide a justification. This is mere speculation and fantasy on the part of the Complainant and, frankly, is a frivolous allegation that is clearly and conclusively disproved by the record.

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

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

Named Employee #2 - Allegation #3

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report: All reports must be complete, thorough and accurate

SPD Policy 15.180-POL-5 requires that officers document all primary investigations on a General Offense Report. Such reports must be thorough, complete, and accurate.

When comparing the content of NE#2's report against the BWV, OPA concludes that it was sufficiently accurate. Notably, contrary to the Complainant's assertion, NE#2 did not write that the female demonstrator "attacked" WO#1. He did, however, accurately describe her actions and correctly note that the totality of her behavior constituted an assault.

Ultimately, OPA deems the Complainant's allegation to lack merit and 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



OPA found no evidence of other unknown SPD employees who subjected the female demonstrator to excessive force or who caused her to be falsely arrested. As such, OPA recommends that this allegation and Allegation #2, below, be removed.

Recommended Finding: **Allegation Removed**

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

For the same reasons as stated above (see Named Employee #3 – Allegation #1), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #3 - Allegation #3

5.001 - Standards and Duties 14. Retaliation is prohibited

The Complainant alleged that unknown SPD employees may have taken law enforcement action towards the female demonstrator as retaliation for the protestors' collective push to defund SPD.

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, "oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy" or "who otherwise engages in lawful behavior." (Id.) Retaliatory acts are defined broadly under SPD's policy and include "discouragement, intimidation, coercion, or adverse action against any person. (Id.)

OPA's investigation revealed no indication of retaliation on the part of SPD officers. Instead, OPA's review of the BWV and other evidence indicated that the law enforcement action taken during this incident was based on the female demonstrator's conduct, not on her or other's advocating for defunding SPD.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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