



## CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 15, 2020

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0543

### 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	14.090 – Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray and Blast Balls Consistent with Title 8 – Use of Force	Not Sustained (Lawful and Proper)
# 3	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	14.090 – Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray and Blast Balls Consistent with Title 8 – Use of Force	Not Sustained (Inconclusive)

***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 she was subjected to excessive force, improperly pepper sprayed, and arrested without sufficient probable cause.

### ANALYSIS AND CONCLUSIONS:

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

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

On May 31, 2020, SPD bicycle officers were riding northbound on 4<sup>th</sup> Avenue as a protest march escort, during which time a protestor began pushing several of the bicycle officers. This conduct, as well as the officers’ resulting actions, were all fully captured by Body Worn Video (BWV). The protestor appeared to elbow the officer directly in front of Named Employee #1 (NE#1). That officer dismounted his bicycle and tried to take the protestor into custody. NE#1 also dismounted and ran over to assist with the arrest. At that time, another demonstrator – who was later identified as the Complainant – approached the scene of the arrest. In response to this development, NE#1 instructed the Complainant to step away from them. NE#1 told her that she would be subjected to pepper spray if she moved any closer. The Complainant then grabbed onto the back of the arresting officer, prompting NE#1 to



attempt to pull the Complainant away. As NE#1 was unable to pull the Complainant away, he deployed one burst of OC spray at the back of the Complainant's head and neck area.

NE#1's use of pepper spray did not stop the Complainant from grabbing onto the arresting officer. He again attempted to pull the Complainant away and was successful. NE#1 held the Complainant in place by pushing down on her left arm and shoulder. He did not appear to use any other force on the Complainant. At that time, NE#1 was struck with pepper spray from an unknown source. In reaction to this spraying, NE#1 requested assistance from other officers. One of those responding officers was struck with a wooden sign. Others were struck by projectiles. The Complainant was ultimately placed under arrest.

Under SPD Policy, "An officer shall use only the force objectively reasonable, necessary, and proportional to effectively bring an incident or person under control, while protecting the life and safety of all persons." (SPD Policy 8.200 §1). 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.*)

The BWV established that, while officers were trying to take an individual into custody, the Complainant approached the scene and did not obey NE#1's directions that she stay back. The BWV further indicated that the Complainant began grabbing onto the arresting officer. At this time, NE#1 was permitted to use force to prevent her from doing so. The force he used at that time, was trying to physically pull her back. However, she continued to grab the officer. At that point, he was permitted to elevate his level of force for several reasons: first, the lower level force was not working; second, the Complainant continued to interfere in the arrest; and, third, the crowd was surrounding the officers and was growing increasingly agitated. He then used a single burst of OC spray at the back of the Complainant. Notably, his use of OC spray was targeted directly towards the Complainant and did not appear to affect anyone else in the vicinity. This force was successful in removing the Complainant from the arresting officer. Moreover, once the force was deemed effective, NE#1 did not again deploy OC spray. Afterwards, NE#1 held the Complainant down by her shoulder and arm until other officers could place her into handcuffs. After handcuffs were applied, no further force was used.

Given the above, OPA finds that the totality of NE#1's force was reasonable, necessary, and proportional and, thus, consistent with policy. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

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

**14.090 – Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray and Blast Balls Consistent with Title 8 – Use of Force**

SPD Policy 14.090-POL-10 states that deployment of OC spray or blast balls shall have the primary objective of defending the officer, defending another, or preventing significant destruction of property. (SPD Policy 14.090-POL-10). The policy further states that individual officers may deploy OC spray or blast balls "at the specific suspect(s) who are posing a threat" and that if feasible, officers must provide a verbal warning prior to deployment. (*Id.*)



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Finally, the policy states that, when feasible, officers will provide aid to subjects exposed to OC and/or blast balls and will request medical assistance when subjects complain of continued effects from OC or blast balls. Officers will also request medical assistance when a subject appears to have been injured. (*Id.*) An officer's decision to deploy OC or blast balls must be consistent with the general use of force policy. (*Id.*)

As discussed above, NE#1 acted consistent with policy when he used OC spray towards the Complainant. Specifically, he directed OC spray at the Complainant who was, at the time, interfering in an arrest and grabbing onto the arresting officer, subjecting him to risk of harm. Moreover, prior to the deployment, NE#1 instructed the Complainant to remain away from the scene of the arrest, cautioning her that she would be subjected to OC spray if she did not comply. This constituted a warning. Lastly, there was no evidence that the Complainant requested or needed medical assistance or that NE#1 violated policy by not providing it where required.

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 #3**

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

The Complainant was ultimately arrested for assault in the third degree. As discussed above, the Complainant contended that this arrest was improper.

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. With regard to assault in the third degree, this crime is established where an individual "[a]ssaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault." RCW 9A.36.031(1)(g).

Here, the BWV conclusively established that the Complainant tried to interfere in the arrest of a demonstrator and that, when she did so, she made physical contact with the arresting officer, pulling him back. This constituted touching that was purposed to prevent the arresting officer from performing his official duties. As such, it established assault in the third degree and the Complainant was permissibly placed under arrest.

Given that OPA finds that there was probable cause for the Complainant's arrest, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

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

***14.090 – Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray and Blast Balls Consistent with Title 8 – Use of Force***



This allegation was alleged as OPA believed it possible that an unknown SPD employee also used OC spray.

After conducting its investigation, OPA determined that someone dispersed OC spray and that this affected NE#1. However, even after watching BWV and reviewing the use of force documentation concerning this incident, OPA could not identify this individual, including whether it was a law enforcement officer or a demonstrator. Accordingly, OPA could not verify whether this use of OC spray was appropriate and consistent with policy.

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

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