



## CLOSED CASE SUMMARY

ISSUED DATE: MARCH 23, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0544

### Allegations of Misconduct & Director’s Findings

Named Employee #1

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: a&b	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 that he was improperly pepper sprayed by the Named Employee. He further alleged that unknown SPD officers failed to recognize that he was suffering from a panic attack, did not provide him with adequate medical attention, and refused to release him for medical treatment unless he provided his name.

### ADMINISTRATIVE NOTE:

The Complainant made allegations against Named Employee #1 (NE#1) and unknown SPD officers. The allegations against NE#1 are addressed herein. The allegation against the unknown SPD employee are still being investigated and will be addressed in a later DCM.

### SUMMARY OF INCIDENT:

The incidents at issue occurred in the Cal Anderson Park area. During this time, there were many protests following the killing of George Floyd by a Minnesota police officer. As a result, there was tension between officers and members of the public, especially in the Capitol Hill neighborhood, including Cal Anderson Park.

This incident occurred on June 1, 2020, which was one of the first full days of the protests. Demonstrators who were gathered at 11<sup>th</sup> Avenue and East Pine Street were given a dispersal order by an SPD Lieutenant. Demonstrators were told to leave the area and informed that, if they did not do so, they may be arrested and subjected to chemical agents that would be used to clear the street. The Lieutenant specifically identified people that were standing in the middle of the street with their hands up. The Lieutenant informed them that they were violating the law by remaining in the street and that, if they did not leave, they would be “doused with chemical agents” and “subject to a chemical agent dispersal.” The order was repeated multiple times over the next several minutes.



NE#1, a Sergeant, was supervising a squad tasked with clearing the vicinity. After the dispersal order was provided, he began leading his squad up the street and towards where demonstrators were situated. The officers approached the individuals who were standing in the middle of the street. NE#1 deployed two bursts of pepper spray at one individual immediately next to him – the Complainant in this case. The Complainant did not move and was placed under arrest. At that time, Body Worn Video (BWV) showed makeshift barricades – including a dumpster – in the middle of the street behind where the Complainant was standing. There were other demonstrators behind and to the side of the Complainant. The BWV also depicted projectiles being thrown at officers and landing in the immediate vicinity of NE#1, as well as officers deploying blast balls and pepper spray. The area was cleared temporarily, and NE#1 set up a line of officers facing towards where the demonstrators were located.

The Complainant later alleged that NE#1's use of pepper spray towards him was improper. He stated that he was standing peacefully at the time and should not have been targeted. He also alleged that, after the pepper spray was used and he was taken into custody, he had a panic attack, but no officers assisted him.

OPA interviewed NE#1 concerning his use of force. NE#1 stated that demonstrators had been given multiple dispersal orders and were informed that, if they did not leave the area immediately. They would be subject to chemical agents and arrest. NE#1 said that he was instructed to clear the area consistent with these dispersal orders. When he advanced forward, he observed the Complainant and others standing in the middle of the street not moving. NE#1 determined that force would need to be used to remove the Complainant. When evaluating his force options, NE#1 felt that the use of pepper spray was less invasive than going hands on. He further noted that his primary role was that of a supervisor and, if he went hands on and became involved in a physical altercation, he could no longer fulfill that role. Lastly, he believed that the deployment of pepper spray was consistent with the specific terms of the dispersal orders provided by the Lieutenant and the direct commands he received prior to moving forward. He thus deployed pepper spray twice. When the Complainant still did not move, NE#1 pulled him back and to the side, into the custody of other officers.

NE#1 asserted that his force was reasonable, necessary, and proportional under the circumstances. He cited the need to clear the street, the projectiles that were thrown at officers before and after the dispersal, the provision of multiple directions to the Complainant and others to clear the street, and the Complainant's continued deliberate non-compliance.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - 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:a&b***

SPD Policy 14.090-POL-10(8) governs the use of pepper spray and provides that it is permitted to: “defend oneself” “defend someone else”; and/or “prevent significant destruction of property.” Such force must also be reasonable, necessary, and proportional as set forth under SPD Policy 8.200(1).

Here, NE#1 articulated that his use of pepper spray was purposed to protect himself and others. He explained that, at the time he advanced towards the Complainant, officers had been taking and continued to take projectiles from the crowd. He stated that it was important to clear the area and to remove all demonstrators. He further stated that



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doing so quickly was necessary. He also noted that, given the circumstances and ongoing violence, it was not safe to allow the Complainant and others to get behind the advancing officers' line.

This is a difficult deployment to evaluate. On one hand, the Complainant, himself, was not presenting an active threat of physical harm to NE#1 at the time. Notably, he was not moving and was standing still with his hands in the air and there was no indication that he was holding or possessed any weapons (makeshift or otherwise). On the other hand, the Complainant's mere presence in the area must be evaluated under the totality of the circumstances at play. Specifically, he was refusing to move out of the street despite being given a direct order to do so and while officers were being subjected to thrown projectiles. Moreover, his remaining in the street prevented the officers from clearing the area and making it safe for them, impeded their lawful objectives, and raise the possibility that he could be unsafely behind their lines

When balancing these competing factors against each other and while OPA deems this to be a close call, OPA finds that the force was consistent with policy. OPA concludes that NE#1 sufficiently established that, from his perspective at that time, the Complainant's actions and inactions presented a threat that he was entitled to use force to quell. Moreover, OPA agrees that the use of pepper spray under the circumstances was likely less invasive than using physical force towards the Complainant and was less likely to subject both NE#1 and the Complainant to injury. Lastly, and compellingly, OPA notes that, even if it found NE#1's use of pepper spray to be improper, he acted in virtual complete compliance with the dispersal orders that were provided and the direction he received from supervisors.

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

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