



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 22, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0557

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	14.090 - Crowd Management 14.090–TSK–3 Issuing the Order to Disperse	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.160 - Observation of Officers 2. People Have the Right to Record Police Officer Enforcement Activities	Sustained
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Allegation Removed

Imposed Discipline

Written Reprimand

Named Employee #3

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

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:

Multiple complainants alleged that Named Employee #1 failed to properly issue dispersal orders, that Named Employee #2 improperly grabbed, threw, and damaged a journalist’s cell phone, and that Named Employee #3 subjected the journalist to excessive force and made unprofessional statements to her.

SUMMARY OF INVESTIGATION:

On August 26, 2020, demonstrators gathered in the vicinity of East Roanoke Street and Harvard Avenue East to take part in a vigil for a demonstrator who had been killed on July 5, 2020. The demonstrators along with attendant vehicles (the “car brigade”) blocked lanes of travel on East Roanoke Street. The demonstrators also blocked ingress and egress for Seattle Fire Department (SFD) and Washington State Patrol (WSP) vehicles as both entities had facilities in that location, as well as the offramp of the highway. Notably, at that location, the highway offramp



proceeds along a blind curve prior to vehicles coming up to a stop light at the intersection of Harvard Avenue East and East Roanoke Street.

SPD personnel, including the Named Employees, arrived on scene to monitor the demonstration activities. SPD commanders ultimately made the decision to begin moving vehicles from in front of the offramp and SFD and WSP buildings. Based on a review of Body Worn Video (BWV), which captured the discussions underlying the decision, the SPD commanders reached the conclusion that such action needed to be taken based on conversations with SFD and WSP personnel and concerns with the risk to safety for both motorists and demonstrators.

A Lieutenant provided directions to the overall group of demonstrators that they needed to move their vehicles and persons to stop blocking the buildings and the offramp. As a general matter, the demonstrators argued that they did not have to do so and that they had a legal and constitutional right to demonstrate as they saw fit. The Lieutenant tried to engage with one of the apparent organizers of the demonstration to gain compliance; however, this was not productive.

The Lieutenant used a WSP public address (PA) system to instruct demonstrators that the car brigade needed to be moved or else vehicles would begin to be towed. The Lieutenant and an Acting Captain – Named Employee #1 (NE#1) – discussed this and agreed that, if possible, arrests would be avoided as long as the cars were moved. Approximately 10 minutes after the announcement, after no cars were moved, a tow truck arrived on scene and officers began proceeding towards the cars. As they contacted drivers, some cars began to pull away. The Lieutenant orally instructed the protestors – by yelling loudly – that officers were going to move the group forward. They started to do so.

Officers began to push forward with their batons extended in front of them and while instructing the crowd to move back. At one area on the line, officers were met by individuals standing their ground and holding shields and/or umbrellas. Officers pulled the shields and umbrellas away while pushing the crowd forward. Scuffles broke out in that vicinity between officers and demonstrators. Officers deployed OC spray at the individuals involved in those scuffles. Officers continued to move the crowd back and physical altercations continued to take place. Officers arrested some of the individuals involved in those altercations and used OC spray to move others back and away.

A formal dispersal order was issued, and the crowd was told that, if it did not disperse, less-lethal tools may be used. Officers further pushed the crowd down East Roanoke Street. Conflicts still occurred down the line, but officers were ultimately able to move demonstrators from the immediate vicinity.

OPA received three complaints stemming from this incident. One complaint came from a local journalist – referred to here as Journalist #1 – who alleged that she was subjected to excessive force, unprofessionalism, and that her phone was taken from her and thrown, causing it to be damaged. A second complaint alleged that an additional well-known local journalist was targeted with pepper spray and was hit with batons. The second complaint asserted that this was due to his status as a journalist. The first complaint is addressed in this DCM. As the officers involved in the second complaint remain unknown, that case will be analyzed in a separate DCM and is governed by a different contractual timeline. The third complaint concerns the purported lack of dispersal orders prior to the use of force. That allegation was brought against NE#1 and is discussed herein.

OPA identified that Journalist #1 was on the left side of the line (when facing the officers) and was being pushed back by a group of SPD officers, including Named Employee #2 (NE#2) and Named Employee #3 (NE#3). At that time,



Journalist #1 was holding her phone up and was live streaming what was happening. Journalist #1 had a “press badge” hanging around her neck; however, it is unclear from who or what entity the press credentials were issued and what the standard was for that issuance. Journalist #1 also verbally identified herself as “press” on multiple occasions.

Journalist #1 was standing in front of officers. The crowd was directed to move back, and she and others did not do so. A forward move order was given by officers and they began to proceed towards Journalist #1 and others in the crowd. Journalist #1 still did not move back. The officers moved directly in front of her and her camera view became blurry. The video showed that NE#2 extended his baton and pushed Journalist #1 back. The push did not appear forceful from the video. Moreover, Journalist #1 did not fall over, exclaim in pain, or make any statements suggesting that the push caused her pain.

She began yelling that she was “press.” Officers told her to move and she proceeded further left and towards the sidewalk. She stated, referring to an officer: “He fucking pushed me.” NE#3 responded: “Well get out of the way then.” She also alleged that officers “assaulted press.” Journalist #1 again moved towards the middle of the line and then proceeded back to the sidewalk. The officers continued to move forward, and, at one point, Journalist #1 was on the sidewalk behind the line. Journalist #1 told the officers that she was “moving through” back towards the demonstrators’ side of the line. NE#1 responded: “Ma’am you’re staying on that side now, you’re not coming back through.” Journalist #1 told people around her not to run but remained behind the officer line.

After a short period of time, a dispersal order was given. The officers again began moving forward. Some protestors raised shields and umbrellas towards them. Officers began directing demonstrators to move back. NE#2 and NE#3 approached her, and she remained standing still. NE#2 stated, while pointing down the sidewalk: “time to go, time to go.” Journalist #1 again held up her press badge and NE#3 responded: “I don’t care, move.” Journalist #1 responded: “I literally just showed him my press badge and he doesn’t care.” NE#2 and NE#3 continued to move forward, telling demonstrators to move back and saying to Journalist #1 to go faster. NE#3 said: “Please move that way, please move faster.” Journalist #1 replied: “I’m not doing anything. I’m with the legal observer.” NE#3 and the officers let a bicycle go through and continued to move forward.

At one point, NE#2 appeared to recognize a commotion occurring to his left. He began to move towards that location and yelled: “move, move.” Journalist #1 was standing in front of him and had her phone camera pointing towards him. The camera illuminated NE#2 and other officers. NE#2 reached out towards Journalist #1 and the phone view became blurry and then went white. Lastly, near the end of the interaction, Journalist #1 reached out towards NE#3’s BWV on his chest and the camera then de-activated, yielding the possibility that Journalist #1 engaged in physical contact with NE#3.

OPA interviewed both NE#2 and NE#3. NE#3 acknowledged pushing Journalist #1 back. He described the force as de minimis and said that it was not purposed to cause pain and that there was no indication that it did so. He said that he was not aware that Journalist #1 represented to be a member of the press until after he pushed her back and she announced that. However, he did not believe that her status as a member of the press, even if true, yielded the force inappropriate. Moreover, he said that, in his perspective, her conduct was much more akin to a demonstrator than that of press he had interacted with previously at protests. He believed that the push was reasonable as the officers needed to move the crowd back, had given the demonstrators orders to move, and demonstrators, including Journalist #1, were not doing so. He further felt that his force was necessary as pushing Journalist #1 back with his baton was low-level force consistent with his training that was narrowly tailored to achieve his lawful



objectives. He lastly asserted that the force was proportional as he used no more force than needed to move Journalist #1 back and that the force he used did not cause her to suffer pain or injury.

NE#3 denied that he targeted Journalist #1 because she was a member of the press and saw no visible marking that suggested this when he pushed her. He said that, prior to her announcing that she was press, he did not know that this was the case. He did not believe that he was unprofessional when, after the Complainant announced she was press and said that she pushed him, he remarked: "Well get out of the way then." He similarly did not believe he violated policy when, after the Complainant stopped and held up her press badge during the officer movement, he stated: "I don't care, move."

NE#2 acknowledged that he took Journalist #1's phone out of her hand and threw it. He felt that the light from the camera was "blinding" officers and that this was intentional. He stated that the light also distracted officers and prevented them from seeing what was going on to their left and deeper into the crowd. He said that he grabbed and threw the camera to prevent Journalist #1 from continuing to blind them. He thought this would cause less harm than arresting Journalist #1, which could necessitate a use of force. He stated that he did not do this solely to prevent her from recording the police. He noted that she had other areas that she could have positioned herself so as to continue to record that were not directly in front of officers. He further denied that his conduct was unprofessional.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

14.090 - Crowd Management 14.090-TSK-3 Issuing the Order to Disperse

SPD Policy 14.090-TSK-3 provides guidance concerning the order to disperse. The policy requires that officers ensure that the order can be heard, provide reasonable time for compliance, repeats the order if needed, and balances the time provided for dispersal with the need to disperse the crowd.

Here, NE#1 provided a dispersal order. The order was issued over a PA system. It was repeated three additional times.

OPA finds that the provision of the dispersal orders here complied with policy. It was audible, and the order was repeated multiple times and over multiple minutes to allow compliance.

The Complainants raised the concern that officers began to push the crowd prior to issuing a dispersal order; however, at that point, no order was required. Neither SPD policy nor that law requires that a dispersal order be issued before officers can move demonstrators who are blocking a highway offramp and ingress/egress for SFD and WSP emergency vehicles. Moreover, NE#1 actually complied with policy by trying to move the crowd first rather than disperse it altogether as this could have let the crowd continue to demonstrate, just in a different location. Moreover, large scale less-lethal tools were not used to disperse the crowd either before or after the dispersal order. To the contrary, from OPA's review of the BWV, it appeared that officers used less-lethal tools to target and respond to specific and identifiable threats and actions.

The one issue identified by OPA – and this is consistent with numerous other dispersals throughout the early months of the protests – is that the volume of the dispersal over the PA may not have been high enough for all



demonstrators in the crowd to be aware of it. However, since that time, and based on recommendations made by both OPA and the OIG, the Department purchased new technology that allows for louder and clearer dispersal orders.

Ultimately, OPA finds that the dispersal orders here substantially complied with policy and, accordingly, recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #1

5.160 - Observation of Officers 2. People Have the Right to Record Police Officer Enforcement Activities

SPD Policy 5.160-POL-2 states that: “People have the right to record police officer enforcement activities.” The policy further provides an exception from this general rule where person recording is shown to: (1) “hinder, delay, or compromise legitimate police actions or rescue efforts”; (2) “threaten the safety of the officers or members of the public”; or (3) “attempt to incite others to violence.”

Here, NE#2 asserted that his seizing of the camera and throwing it from the scene did not violate policy as it was purposed to prevent Journalist #1 from hindering officers’ ability to see what was happening around them and also presented a threat to the officers’ safety due to the brightness of the camera light.

Based on OPA’s review of the evidence, OPA does not believe that NE#2 met either element. First, while Journalist #1’s phone was directly pointed at officers to record them, it was not deliberately placed into NE#2’s face or otherwise positioned to prevent him from seeing what was occurring. Second, while there was a bright light emanating from the rear of Journalist #1’s phone, this was consistent with an ongoing recording. It did not appear that she deliberately had the flashlight feature on and facing officers in an attempt to blind NE#2 or others.

Moreover, even had NE#2 met one of these two elements, him grabbing and throwing the phone, thus preventing further recording in its entirety, potentially damaging the phone, and seizing Journalist #1’s personal property, were inconsistent with policy. There were multiple other methods in which NE#2 could have handled this situation, all of which would have been less invasive than what he chose to do.

For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #2

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

The conduct discussed in the context of Allegation #1, also forms the basis for the professionalism allegation. As this is duplicative and given that OPA already issues a Sustained finding above, OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**



Named Employee #3 - Allegation #1

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

In evaluating this allegation, OPA finds that NE#3's force was within policy. With regard to reasonableness, NE#3 had a lawful basis to move the crowd back. As he advanced, Journalist #1 did not move along with other demonstrators. Given this, NE#3 was permitted to use force, in the form of his outstretched baton, to push Journalist #1 back. At the time of the push, he was unaware that Journalist #1 was a member of the press. Moreover, even if he was aware of this, it would not have precluded the low-level force he used given Journalist #1's positioning in the crowd and refusal to move.

With regard to necessity, OPA agrees with NE#3 that the force he used – a trained push forward – was the lowest level of force appropriate for this incident. NE#3 did not strike Journalist #1 or engage in any other actions that appeared to cause her pain or which would have reasonably resulted in a complaint of pain.

Lastly, the force was proportional under the circumstances. Again, it was low-level force purposed to move Journalist #1, not to harm her.

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

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

Named Employee #3 - Allegation #2

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

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

In reviewing NE#3's comments to the Complainant, OPA recognizes that they were made in the heat of the moment and in the immediacy of ongoing police action towards largely non-compliant and, at times, violent demonstrators. However, NE#3's comments were unnecessary and should have been avoided. Of the two statements, OPA finds the second, where NE#3 said that he did not care that Journalist #1 was a member of the press, the most concerning.

This being said, OPA does not believe that the statements were so improper so as to warrant a Sustained finding and discipline. OPA notes that NE#3 did not use profanity towards Journalist #1 and did not insult her. OPA further recognizes that NE#3 has never been retrained or disciplined for unprofessional comments and actions in the past. Accordingly, OPA recommends that NE#1 receive the below Training Referral.

- **Training Referral:** NE#3 should be counseled concerning his statements to Journalist #1. NE#3 should be mentored by his chain of command to avoid making such comments in the future, even when dealing with



high stress situations. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**