



CLOSED CASE SUMMARY

ISSUED DATE: JULY 27, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0588

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	8.200 – Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)
# 3	15.180 - Primary Investigations 5. Officers Shall Document All Primary Investigations on a Report	Not Sustained (Lawful and Proper)
# 4	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	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 Employee used improper force, completed an inaccurate report, and engaged in dishonesty.

ADMINISTRATIVE NOTE:

During its intake investigation, OPA identified that another officer may have failed to timely report a complaint of pain made by the Subject concerning force used by another officer. OPA determined that this allegation was better handled at the chain of command level with counseling and retraining. As such, it was classified as a Supervisor Action.

SUMMARY OF INVESTIGATION:

The Complainant alleged that Named Employee #1 (NE#1) used unnecessary and excessive force when he ran up from behind an individual – referred to here as the “Subject” – and placed the Subject “in a headlock and threw him to the ground.” The Complainant believed that the force used by NE#1 was unnecessary because all the Subject did was knock over a wooden barricade. The Complainant stated that he later learned that the Subject had been booked for felony assault and harassment. The Complainant alleged that the Subject never touched anyone or threw a barricade at anyone and any claim by NE#1 to the contrary was false.

OPA’s investigation included reviewing the documentation generated by NE#1 and other officers, watching Body Worn Video (BWV), and interviewing NE#1, Witness Officer #1 (WO#1), and the Complainant.



In the incident report that he completed, NE#1 documented that, while working a demonstration, officers effectuated an arrest. At that time, a group of individuals – he numbered 20 – began rushing towards the officers. He positioned himself in front of the officers. Demonstrators tried to push their way through him, but he prevented them from doing so. NE#1 wrote that the Subject began yelling at him from a distance. NE#1 noted that the Subject’s statements included: “I’ll shoot your ass bitch” and “you can suck a dick.” NE#1 described that the Subject “then began walking briskly towards” him while saying: “move your ass out of my mother fucking way.” NE#1 wrote that he told the Subject to go around and that the Subject entered a parking lot to the north. NE#1 indicated that, as the Subject did so, he “pushed a ‘sawhorse’ style barricade and continued yelling profanities.” While approximately 20 feet away from NE#1, the Subject said to him: “I got a gun to shoot you bitch” and “do you want me to pull my gun out and shoot your ass?” NE#1 documented that the Subject approached him, “picked up the sawhorse barricade,” and “threw it” at NE#1. NE#1 described that “the barricade was made of 2x4 lumber.” NE#1 reported that the barricade “struck the left side of [his] body after being thrown by” the Subject. The Subject then began to walk away. NE#1 stated that he ran after the Subject and told the Subject that he was under arrest and began pulling him down. The Subject sat on his rear end and said that he was “sorry.” NE#1 wrote that he told the Subject to get on the ground and handcuffed him.

NE#1 also generated a use of force report. In that report, NE#1 described the following force: “I ran after [the Subject] and grabbed onto his backpack and arm. I told [the Subject] to get on the ground while assisting him in a downwards motion.”

OPA watched video from approximately 30 different officers to assess whether and how the barricade struck NE#1. The BWV taken by NE#1 and another officer to his right provided the best perspectives. The BWV recorded by NE#1 showed the Subject walk by the barricade, look towards NE#1, lift the barricade up, and then throw it towards NE#1 while walking away. The barricade was not blocking the Subject’s path and it appeared clear that the Subject intentionally threw the barricade at NE#1, not that he pushed it over as he later contended. The BWV showed the barricade move towards NE#1 and NE#1’s body shifted in response. The barricade then made a loud noise at it hit the ground. From this vantage point, it appeared that the barricade did, in fact, strike NE#1 on his left side. Another officer recorded BWV from NE#1’s right and from a distance away. The BWV showed the Subject walk up to the barricade and throw it towards NE#1. Immediately prior to this occurring, NE#1 was looking towards the officer, he then turned to face the Subject as the barricade was thrown. The video appeared to show the barricade make contact with NE#1’s left side, specifically his arm. The extent of the impact was unclear from the video given the distance of the other officer from NE#1 and the fact that the officer’s view of the left side was from across NE#1’s body. It also appeared that the contact may have been a result of NE#1 reflexively moving his arm up and out.

With regard to the conduct of the Subject prior to the incident, the BWV corroborated that the Subject used profanity towards NE#1 and that he threatened to get a firearm and to shoot NE#1. The BWV also indicated, as reported by NE#1, that the Subject pushed the barricade on one earlier occasion prior to approaching NE#1 again.

The BWV showed the force used to take the Subject into custody. NE#1 and WO#1 ran towards the Subject. NE#1 grabbed onto the Subject’s right shoulder area. This caused the Subject to move forward. NE#1 then spun the Subject around by placing his right hand and forearm across the Subject’s face. NE#1 moved the Subject down as the Subject also sat on the ground. All in all, the takedown took approximately four seconds. There was no evidence from the BWV that NE#1 ever placed the Subject into a “headlock” as described by the Complainant. Officers then tried to control the Subject’s body and take him into custody. He was not initially compliant and asked what he had done. He denied throwing the barricade at NE#1. He was ultimately handcuffed and taken to a transport van.



Lastly, the BWV showed NE#1 screening the arrest with a Sergeant. NE#1 told the Sergeant that the Subject made threats to harm him and then threw the barricade at him, missing him by six inches. The Subject was ultimately charged with assault and harassment.

At his OPA interview, NE#1 stated that he believed that the Subject struck him with the barricade. He said that he was not sure that this was the case when he initially screened the incident with the Sergeant. He said that he thought that he had brushed it off with his hand instead of it striking him. He stated that he later spoke to WO#1 and WO#1 said that he was sure that the barricade hit NE#1. He then reviewed his BWV, and it did appear that the barricade struck him. Accordingly, he put that information in his report. In explaining his statement to the Sergeant that the barricade missed him by six inches, NE#1 said that his statement was based on his recollection after a stressful incident and the lack of perfect information available to him. He stated that he may have meant that the barricade was six inches from him when he struck it.

NE#1 said that he grabbed the Subject's upper shoulder across the face and pulled the Subject down consistent with his training, which he described as: "controlling someone from their—the highest point in order to put them in a disadvantage and bring them down." OPA asked NE#1 about the lack of mention in his force report of reaching around the Subject's facial area. NE#1 said that he based his force report off of his video, which had a limited view and showed him reaching for the Subject's backpack strap. He explained that he was not authorized to review WO#1's BWV at the time and, as such, he did not see the better angle capturing his force. NE#1 denied ever putting the Subject into a headlock or otherwise impairing the Subject's breathing.

NE#1 affirmed that there was probable cause to arrest the Subject for both harassment and assault. He noted that the BWV captured the Subject's threats to shoot him and then his violent actions towards NE#1.

WO#1 told OPA that he believed that the barricade struck NE#1. He felt that it may have hit NE#1's legs or feet. WO#1 also heard the threats made by the Subject and viewed his demeanor as hostile. WO#1 did not recall whether he spoke to NE#1 after the fact and relayed to NE#1 his belief that the barricade had made physical contact. He said that it was possible but that he could not remember given the time that had lapsed since the incident.

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.*)

NE#1 used force to pull the Subject to the ground and then again to control the Subject's body in order to place him into handcuffs. With regard to the first force used, it was not, as explained below, a headlock. The video showed that NE#1 grabbed the Subject across his facial area and pulled him down to the ground. NE#1 explained that he was taught to control the top of the body. He also explained that, because the Subject was moving and twisting, he was unable



to grab the Subject exactly where he wanted and intended. However, NE#1 asserted that he used low-level force to take the Subject into custody.

From a review of the video, OPA agrees. While NE#1 reached across the Subject's face to turn him and pull him down, he did not appear to make contact with the Subject's neck that did or could have impaired the Subject's ability to breathe. Moreover, NE#1's hand and forearm were in the vicinity of the Subject's facial area for just seconds until NE#1 was able to pull the Subject down to the ground. The takedown was controlled, and the Subject did not appear to suffer any injury at that time. Given the fact that the Subject had just made threats to shoot NE#1 and then had thrown a barricade at NE#1 which appeared to make contact with NE#1's body, NE#1 had probable cause to arrest the Subject and, to do so, to take the subject down to the ground. The force NE#1 used to effectuate this was reasonable, necessary, and proportional and, thus, was consistent with policy.

OPA reaches the same conclusion with regard to the force used to control the Subject when the Subject was on the ground. This force, which consisted of control holds and body weight, was entirely appropriate under the circumstances.

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

8.200 – Using Force 2. Use of Force: When Prohibited

SPD Policy 8.200-POL-2 governs when force is prohibited. If, as the Complainants alleged, NE#1 used a chokehold on Complainant #2 and then pressed his knee into her neck, this would have constituted prohibited force under the circumstances.

Again, the BWV provides no evidence to support the conclusion that NE#1 used a headlock on the Subject or any sort of neck or carotid hold. As discussed above, the force was consistent with policy and did not fall within the category of prohibited conduct.

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

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

Named Employee #1 - Allegation #3

15.180 - Primary Investigations 5. Officers Shall Document All Primary Investigations on a Report

SPD Policy 15.180-POL-5 governs reports written by officers. Such reports must be thorough, complete, and accurate. Here, the Complainant alleged that NE#1's report – specifically, his claim that he was struck with the barricade – was inaccurate and, thus, inconsistent with policy.

This case presents two issues from OPA's perspective. First, was NE#1's report inaccurate when he noted that he was struck by the barricade? Second, did NE#1 incompletely detail what occurred during this incident, including with regard to the force he used?



With regard to the first issue, OPA's review of the video yields the conclusion that the barricade thrown by the Subject did, in fact, strike NE#1. While it is certainly possible that the physical contact occurred when NE#1 reacted to the thrown barricade and held his arm up and out, that still constitutes contact with his person. Moreover, the reality remains that the Subject purposefully threw the barricade at NE#1 either intending on causing NE#1 harm or, at the very least, with a significant disregard for NE#1's safety. As such, OPA does not believe that NE#1's report was inaccurate. This is the case even though his screening statement to the Sergeant indicated his belief, immediately after the incident, that the barricade missed him by six inches. As NE#1 later indicated, his initial reporting was mistaken and was based on his perception of a fast-moving incident and without perfect information. Further, his perception at the time does not overcome the clear video evidence.

With regard to the second issue, NE#1's report was incomplete in discussing the force he used to take the Subject down to the ground. While NE#1 noted grabbing the Subject's backpack strap, he did not mention that he reached across the Subject's face to pull him around and down. NE#1 explained that he did not have the vantage point of WO#1's BWV at the time and that his report was his best recollection of what occurred coupled with a review of the incomplete view provided by his BWV. Given OPA's review of NE#1's video, OPA finds this explanation to be credible. OPA further notes that, as this force was in policy regardless, NE#1 had no motive to withhold the description of what he did, which provides further evidence supporting his explanation.

OPA finds that NE#1's report was otherwise accurate, complete, and congruent with the video. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #4

5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication

SPD Policy 5.001-POL-11 requires officers to be truthful and complete in all communication. The Complainant alleged that NE#1's assertion that the barricade was thrown at him and struck him was dishonest.

As discussed more fully herein, OPA finds that the Subject clearly intentionally threw the barricade at NE#1. OPA further finds that the barricade appeared to strike NE#1's arm. As such, NE#1 did not make any false statements and this allegation is unsupported by the evidence.

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

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