



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 8, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0466

Allegations of Misconduct & Director’s Findings

Named Employee #1		Director’s Findings
Allegation(s):		
# 1	5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Lawful and Proper)
# 2	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Lawful and Proper)
# 3	8.200 – Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 4	8.200 – Using Force 2. Use of Force: When Prohibited	Not Sustained (Lawful and Proper)
# 5	5.160 - Observation of Officers... a person not involved in an incident may remain in the vicinity of any stop, detention, arrest, or other incident occurring in a public place, and observe	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—an organization of lawyers, law students, and legal workers who volunteer as legal observers at protests—alleged that unknown SPD members engaged in “indiscriminate use of crowd control munitions against largely peaceful protesters” in violation of a federal court order and that unknown SPD members “specifically targeted” members of the Complainant organization. Specifically, it is alleged that unknown SPD members violated the law or policy, were unprofessional, used unauthorized and/or prohibited force, and violated SPD policy concerning the observation of officers.

SUMMARY OF INVESTIGATION:

This case arises out of the demonstrations that occurred within Seattle and across the nation in the wake of the killing of George Floyd by a Minneapolis Police Officer. These protests were unprecedented in scope and were directed at law enforcement. While most demonstrators protested peacefully, some demonstrations, especially during the early days of the protests and during nighttime hours, devolved into violence, property destruction, and looting.

The specific incident at issue here involves allegations that unknown SPD members responded inappropriately to the presence of legal observers at the protests. These legal observers were all members of the same organization, a group of lawyers, law students, and legal workers (the organization is referred to hereinafter as the “Complainant”). On July 26, 2020, the Complainant issued a press release alleging that on July 25, 2020 their legal observers saw SPD



members use “indiscriminate use of crowd control munitions against largely peaceful protesters” in violation of a federal court order and that their legal observers were “specifically targeted” by SPD members. Among other allegations, the Complainant alleged that video evidence showed an SPD member “deliberately spraying pepper spray into a legal observer’s face at close range.”

OPA commenced this investigation. As part of its investigation, OPA reviewed the Complainant’s press release as well as a series of emails and correspondence between the Complainant and representatives of SPD. The press release was included with a series of emails. OPA also reviewed a video posted to the Complainant’s Twitter account allegedly depicting a legal observer being pepper sprayed in the face. OPA also reviewed a temporary restraining order issued in *Black Lives Matter Seattle-King County, et al. v. City of Seattle*, 2:20-CV-00887-RAJ (W.D. Wash. June 12, 2020) and related filings, as well as City of Seattle Ordinance 126102/Council Bill 119805 and an Order entered in *United States of America v. City of Seattle*, 2:12-cv-01282-JLR (W.D. Wash. July 24, 2020). Finally, OPA reviewed SPD documents, emails, Body Worn Video (BWV), and interviewed two witness officers.

a. Events prior to July 25, 2020

The City of Seattle has operated its police department, the Seattle Police Department (SPD), under a consent decree since 2012. See *United States of America v. City of Seattle*, 2:12-cv-01282-JLR, at Doc. No. 3 (W.D. Wash. July 27, 2012). The United States District Court for the Western District of Washington has jurisdiction to enforce the terms of the consent decree. *Id.*

During the Summer of 2020, large-scale protests occurred in Seattle and throughout the country after the killing of George Floyd by a Minneapolis Police Officer. In Seattle, these demonstrations devolved into violent clashes between demonstrators and SPD members on numerous occasions. These clashes resulted in numerous injuries to both demonstrators and SPD members, and SPD deployed a significant number of less-lethal tools, including chemical agents, to disperse crowds of demonstrators. These clashes—and SPD’s use of less-lethal tools—were met with an uproar from community and elected officials, with at least two councilmembers supporting the potential impeachment of the Mayor.¹

On June 12, 2020, a temporary restraining order (TRO) was issued in *Black Lives Matter Seattle-King County, et al. v. City of Seattle*, 2:20-CV-00887-RAJ (W.D. Wash. June 12, 2020) enjoining SPD from using “chemical irritants or projectiles of any kind against persons peacefully engaging in protests or demonstrations.” The order also stated that officers were not precluded “from taking necessary, reasonable, proportional, and targeted action to protect against a specific imminent threat of physical harm to themselves or identifiable other or to respond to specific acts of violence or destruction of property.” Although the order was set to expire fourteen days after entry unless extended by the Court for good cause, a stipulated order entering a preliminary injunction was entered on June 17, 2020 and extended the terms of the June 12 TRO through September 30, 2020.

Separately, the Seattle City Council passed an ordinance on June 15, 2020 forbidding any City department from using crowd control weapons. Under the ordinance, the use of OC Spray was prohibited if “used in a demonstration, rally, or other First Amendment protected event” or “[w]hen used to subdue an individual in the process of committing a criminal act or presenting an imminent danger to others, it lands on anyone other than that individual.” City of Seattle

¹ <https://www.thestranger.com/slog/2020/06/08/43868843/teresa-mosqueda-calls-for-mayor-durkan-to-resign>.



Ordinance 126102, Council Bill 119805. The ordinance was set to take effect on July 26, 2020—30 days after the date it was filed with the City Clerk. In response, SPD’s Audit, Policy and Research Section sent a department-wide email informing SPD members that OC spray would not be authorized after 3:00 A.M. on July 25, 2020 and that certain other less lethal tools would not be authorized after midnight on July 26, 2020.

On July 7, 2020, the Complainant emailed the Chief of Police a letter requesting that SPD members not “harass[,] intimidate, injure or arrest” its legal observers present at the protests. The Complainant included pictures of the legal observers’ distinctive hats and safety vests in the email—the hats are neon green and the vests are a dark color with a neon green patch. Both the vests and hats identify the wearer as a “legal observer.” A representative of SPD Legal responded to this email, indicating that SPD “recognizes the rights of legal observers and media to peacefully observe and record the activities of law enforcement officers during protests and following any orders to disperse.”

However, on July 24, 2020, District Judge James L. Robart—the federal judge overseeing the consent decree—issued a temporary restraining order precluding implementation of the June 15 City ordinance and the resulting SPD directive. The Order specifically noted that “nothing in this order is contrary to the preliminary injunction that the Honorable Richard A. Jones issued in *Black Lives Matter Seattle-King County, et al., v. City of Seattle*, No. C20-0887RAJ (W.D. Wash.), Dkt. # 42. Judge Jones’ preliminary injunction is the current *status quo* and remains in effect.” Judge Robart’s Order was set to expire 14 days after entry. SPD members were informed by multiple emails that the prior restriction on OC spray and other less lethal tools had been rescinded.

b. July 25, 2020 Allegations

The Complainant’s press release broadly alleged that SPD members engaged in “indiscriminate use of crowd control munitions against largely peaceful protesters” in violation of a federal court order and that their legal observers were “specifically targeted” by SPD members. However, the press release only provided specific information concerning one allegation: that an unidentified SPD member sprayed “pepper spray into a legal observer’s face at close range.” The press release noted that video of this incident was “available by request” and the Complainant organization also posted this video to their Twitter account. OPA emailed the Complainant requesting additional information concerning their complaint. The Complainant responded that they did not submit a complaint to OPA. OPA also contacted another individual who submitted a complaint that included the Complainant’s press release. This individual did not respond. After reviewing BWV, the only alleged use of force OPA observed against a legal observer with the Complainant organization was the legal observer who was allegedly pepper sprayed (“Legal Observer”) and was depicted in the Complainant’s Twitter video (“Twitter Video”).

The Twitter video is twenty-two seconds long. It appears to be filmed by an individual standing perpendicular to a police line, such that a line of uniformed police officers appear on the right side of the frame and a group of demonstrators appear on the left side of the frame. Approximately two seconds into the video, an unidentified officer appears to spray OC spray in the direction of the demonstrators, with a single burst lasting an indeterminate length of time. An unidentified individual in dark clothing towards the left side of the frame appears to be hit by the OC spray and moves to the ground. In the center of the frame is the Legal Observer, who is wearing a black backpack, grey sweater/jacket, and a neon green hat with a ponytail. At the time the OC is deployed, the Legal Observer appeared to have a phone in front of their face, as if filming the police officers. Although the OC appears to be sprayed in the direction—and at the level—of the Legal Observer’s face, it is unclear from the angle of the video whether the Legal Observer was actually struck by, or the target of, the OC spray. First, another individual to the left of the Legal Observer appeared to be hit by the OC spray and this individual moves down to the ground afterwards, possibly as a result of



being hit by the OC spray. Second, the OC spray can be visualized to the left of the Legal Observer—that is, the spray continued moving beyond the Legal Observer. Finally, Although the Legal Observer appears to flinch away from the OC spray stream, the Legal Observer did not fall or otherwise react to the OC spray. The remainder of the video is very unclear as the person filming rapidly switched their focus from the ground, to the sky, or close to people in the crowd. At the eight second mark a building is observed that is recognizable as one located at the southwest corner of 11th Avenue and Pine Street. At about the 21 second mark, multiple individuals wearing neon green hats can be observed standing near the person filming and a person asks, “are you OK?” to which another person responds “Yeah.”

OPA searched for relevant BWV from July 25, 2020, in the vicinity of the southwest corner of 11th Avenue and Pine Street. Three videos were identified. Although the three videos captured different angles and details of the event, all three depicted a consistent series of events. A police line at 11th Avenue and Pine Street was facing a group of demonstrators. Standing among the group of demonstrators were several identifiable members of the Complainant organization, including the Legal Observer. During this time, multiple demonstrators approach the police line to question or taunt the police officers. One protester—an individual with a shaved head wearing a facemask and dark clothing (“Bald Protester”)—was standing about four or five feet from the line of officers, holding his cellphone up directly in front of him. The Bald Protester held his cell phone in between two officers’ shoulders, but at times pointed his cell phone towards one officer’s face from about a foot away. An unidentified officer then walked forward towards the police line and pushed the Bald Protester’s phone down. This appeared to agitate the group of demonstrators. The Bald Protester then started pushing towards the line of officers—while being held back by at least one other protester—while thrusting his face towards the line of officers and repeatedly saying “Don’t fucking touch me like that!” The Bald Protester then came within about a foot of an officer, who used his baton to push the Bald Protester straight back, as other protesters tried to pull the Bald Protester away from the police. As the Bald Protester appeared to be attempting to push past the other protesters who were holding him back, an unidentified officer sprayed OC spray towards the Bald Protester in one burst lasting approximately two seconds. At the time the OC spray is deployed, the Legal Observer can be observed. The stream of OC spray was directed towards the Bald Protester, not the Legal Observer, and missed the Legal Observer’s face by about one or two feet. The Legal Observer flinched away from the OC spray, but their left arm appears to have briefly contacted the OC spray as they ducked away.

OPA was unable to determine the identity of the officer that sprayed OC at the Bald Protester from BWV or SPD records. OPA interviewed two witness officers who, based on their BWV footage, may have observed which officer sprayed. Neither of these officers were able to identify the officer who sprayed OC at the Bald Protester.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

The Complainant alleged that an unknown SPD member’s use of OC spray violated laws or policy.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy.

Prior to July 25, 2020, a series of diverging ordinances, department directives, and federal court orders governed the used of OC spray during demonstrations. However, on July 25, 2020, federal court orders and department policy harmonized in such a way that SPD officers were able to take “necessary, reasonable, proportional, and targeted action to protect against a specific imminent threat of physical harm to themselves or identifiable others or to respond



to specific acts of violence or destruction of property” consistent with Judge Jones’ June 12, 2020 Order in *Black Lives Matter Seattle-King County, et al. v. City of Seattle*, 2:20-CV-00887-RAJ.

Here, the use of OC spray was not directed at the Legal Observer or any identifiable member of the Complainant’s organization. Nor did any officer spray “pepper spray into a legal observer’s face at close range” as alleged by the Complainant. Although the Legal Observer’s arm may have been hit by the OC spray briefly and incidentally, the target of the OC spray was the Bald Protester, who was stepping within about a foot of officers while yelling at them, despite being told to step back. After being pushed back by an officer, the Bald Protester repeatedly tried to push past other protesters who were holding him back and was trying to advance to the line of officers. At this moment, the Bald Protester posed a specific, imminent threat of physical harm to the officers, and it was necessary, reasonably, and proportional to target the Bald Protester with OC spray. This complied with Judge Jones’ June 12, 2020 Order as well as City and Department policy in effect on July 25, 2020.

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

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

Named Employee #1 - Allegation #2

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

The Complainant alleged that an unknown SPD member was unprofessional.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (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.*)

OPA did not observe—nor did the Complainant direct OPA’s attention to—any SPD member using profanity or any other derogatory, contemptuous, or disrespectful language during this incident. Moreover, the actions of SPD officers appeared specifically directed to de-escalating the aggressive and confrontational behavior of the Bald Protester, both in moving his cell phone away from their faces, physically moving him away from an officer, and spraying him with OC when he appeared to be trying to physically confront the line of officers. This was not unprofessional.

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

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

Named Employee #1 - Allegation #3

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

The Complainant alleged that an unknown SPD member used unauthorized force against demonstrators.



SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” 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.*)

As stated above, force was not used on the Legal Observer or any other identifiable member of the Complainant’s organization. Instead, unidentified officers arguably use force against the Bald Protester in three ways: pushing his cell phone down, pushing him back with a baton, and spraying him with OC spray.

The first two uses of force—pushing the Bald Protester’s cell phone down and pushing him back with a baton—were *de minimis* uses of force done in a manner that would not reasonably cause any pain to the Bald Protester. Moreover, these uses of force were proportional to the threat of the situation: an agitated person intentionally distracting police officers and stepping within the officers personal space during a contentious demonstration. Finally, these *de minimis* uses of force were necessary to achieve the law enforcement objective: making the Bald Protester lower his phone from the officer’s face and back away from the line of officers who were trying to do their job.

Spraying the Bald Protester with OC spray was a Type II use of force, that was “reasonably expected to cause physical injury greater than transitory pain but less than great or substantial bodily harm.” *See* SPD Policy 8.050. However, as discussed above at Named Employee #1, Allegation #1, at the time the OC spray was deployed, the Bald Protester was trying to push past other protesters who were holding him back and was trying to advance towards the line of officers. At this moment, the Bald Protester posed a specific, imminent threat of physical harm to the officers, and it was necessary, reasonably, and proportional to target the Bald Protester with OC spray.

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

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

Named Employee #1 - Allegation #4

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

The Complainant alleged that the unknown SPD member used force when it was prohibited.

SPD Policy 8.200-POL-2 prohibits the use of force in specific circumstances such as using force to “punish or retaliate” or on individuals who “only verbally confront” officers unless “the vocalization impedes a legitimate law enforcement function.”

As discussed above at Allegations #1 and #3, the use of force in this instance was legal and authorize within policy. However, the preponderance of the evidence in this case also establishes that the unknown SPD members did not use force to retaliate or in reaction to words alone. Instead, the unknown officers used force against the Bald Protester because he was interfering with their work by holding his phone close to an officer’s face, standing within their



personal space and zone of work, and, finally, by attempting to push passed other protesters—who appeared to be holding the Bald Protester back—in order to physically confront the officers.

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

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

Named Employee #1 - Allegation #5

5.160 - Observation of Officers... a person not involved in an incident may remain in the vicinity of any stop, detention, arrest, or other incident occurring in a public place, and observe

The Complainant alleged that an unknown SPD member improperly interfered with legal observers' rights to observe the protest.

SPD Policy 5.160 states that:

[A] person not involved in an incident may remain in the vicinity of any stop, detention, arrest, or other incident occurring in a public place, and observe or record activity and express themselves, including making comments critical of an officer's actions, so long as the person's conduct and presence are otherwise lawful.

The policy provides several factors that may be relevant to determining whether it was permissible to remove an individual from the vicinity of law enforcement activity, which include: "officer safety, the protection of the suspect or person being detained, including his or her right to privacy, and the safety of onlookers." (SPD Policy 5.160-POL-1.)

Here, there is no evidence to suggest that any SPD member interfered with members of the Complainants' organization as they observed and recorded the protests. That the Legal Observer was in close proximity to a proper deployment of OC spray does not amount to the Legal Observer being intentionally removed from the scene.

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

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