



## CLOSED CASE SUMMARY

ISSUED DATE:     SEPTEMBER 30, 2020

FROM:             DIRECTOR ANDREW MYERBERG  
                      OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER:     2020OPA-0363

**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	Sustained
# 2	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics	Not Sustained (Lawful and Proper)

**Imposed Discipline**

Written Reprimand
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**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	8.200 Using Force 1. Use of Force: When Authorized	Allegation Removed
# 2	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics	Allegation Removed

***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 they were subjected to excessive force by the Named Employee.

**SUMMARY OF INVESTIGATION:**

This case arises out of the demonstrations that occurred within Seattle and across the nation in the wake of George Floyd’s murder by a Minneapolis Police Officer. The specific case addressed here occurred on the evening of June 7, 2020.

On that date, bicycle officers were attempting to exit a barricade that was situated at 12<sup>th</sup> Avenue East and East Pike Street. Video recorded by community members and Body Worn Video (BWV) showed that some demonstrators positioned their bodies on the ground to prevent egress by the officers. Video indicated that the demonstrators did not move even though they received directions to do so from officers. The decision was made to take several of the demonstrators into custody for obstruction. One of the demonstrators who was arrested is the Complainant in this case.



Video recorded by a community member showed officers pull the Complainant behind the barricade and close the gate. At that point, the Complainant was lying on the ground. Two officers were situated around her and began taking her into custody. One officer – Named Employee #1 (NE#1) – was kneeling by the Complainant’s head area. The other officer – referred to here as Witness Officer #1 (WO#1) – was by the lower half of the Complainant’s body. The video showed that officers placed the Complainant into handcuffs. She was then stood up and walked from the scene.

In the aftermath of the incident, the Complainant complained of pain to their hand/arm, pain to their head/face, and the feeling that they were going to pass out. The Complainant asserted that their head was slammed into the ground several times by NE#1. At the time, the Complainant’s eyeglasses were crooked, and swelling was visible on the Complainant’s left cheek. Photographs later taken of the Complainant showed bruising to the left temple and cheek, and a bleeding abrasion on the Complainant’s chin.

NE#1 and WO#1 completed force reports concerning this incident. NE#1 wrote that he recalled holding the Complainant to the ground to prevent her from getting up. He said that he did so by applying pressure to the Complainant’s back with his hand and pushing the Complainant down. NE#1 said that he considered putting his knee on the Complainant’s upper back but decided not to do so given the context of the protests. He wrote that the Complainant’s head was only as far off the ground as the Complainant could pull it back. NE#1 did not specifically address whether he slammed the Complainant’s head to the ground in his use of force report.

WO#1 also documented the force she used and observed. WO#1 said that she held the Complainant’s legs down to prevent the Complainant from moving. WO#1 wrote that she saw NE#1 controlling the Complainant’s arms, placing the Complainant into handcuffs, and cutting the straps of the backpack. WO#1 indicated that she did not see NE#1 make any contact with the Complainant’s head, face, or upper torso.

As part of the on scene use of force investigation, a supervisor attempted to obtain a statement from the Complainant. However, the Complainant declined to provide a statement.

Based on the Complainant’s assertion that her head was slammed into the ground and due to the injuries suffered by the Complainant, this investigation was initiated by OPA.

During its investigation, OPA interviewed a witness to the incident. That witness stated that he observed and videotaped the arrest of the Complainant. The witness said that one officer – WO#1 – was holding the Complainant down, while another officer – NE#1 – was kneeling on her neck. This was later conclusively disproved by the video. The witness later provided video – which is the community member video referred to herein – to OPA. In addition, OPA attempted to make contact with the Complainant in multiple ways in order to interview her. However, the Complainant did not respond to OPA and was not interviewed.

OPA further interviewed NE#1 and WO#1. NE#1 stated that, at the time officers opened up the fence to remove individuals from the street, he did not think that de-escalation was safe or feasible. He noted that, prior to that point, multiple orders had been given to the demonstrators to get out of the street and they had not done so. As such, he believed that it was appropriate to physically remove them from the street. He recalled that the Complainant was lying on the ground and he moved the Complainant by lifting them up by their arm and/or backpack. He said that the Complainant was not actively resisting but was using their body as “dead weight.” Once he got the Complainant behind the line, NE#1 described rolling them over so that they were lying on their stomach.



NE#1 did not recall whether the Complainant's head was elevated at the time. He said that there was a significant size difference between him and the Complainant. He estimated that he weighed 240 pounds while the Complainant weighed 125 pounds.

NE#1 recounted that the Complainant was not actively resisting. He said that, at one point, he attempted to secure their hand, but it appeared to be stuck in the backpack strap. He remembered hearing the Complainant make a complaint of pain when their arm was extracted from the strap. He asserted, however, that he did not think he engaged in any conduct that would have caused the Complainant to strike their head on the ground. OPA asked NE#1 follow-up questions concerning his statement to an on-scene supervisor that he had to shove the Complainant down. He told OPA that he remembered making that statement. He opined that, when he pulled the Complainant's arm out from the strap, he may have used his other hand on the Complainant's shoulder blades to hold them down. NE#1 affirmed that the Complainant reported dizziness and head pain when they walked away from the barricade. OPA showed NE#1 photographs of the injuries suffered by the Complainant. He said that he did not know what those injuries could have been caused by.

WO#1 agreed with NE#1 that, at the time the demonstrators were removed from the street, further de-escalation was no longer safe or feasible. Similar to her use of force report, WO#1 recounted securing the Complainant's feet while the Complainant was lying face down on the ground. She said that NE#1 was by the Complainant's head. She observed NE#1 trying to gain access to the Complainant's arm but did not see any actions that would have caused the Complainant's head to hit the ground.

Lastly, OPA analyzed both the BWV and the community member video. The BWV did not shed light on the nature of the force used on the Complainant due to the proximity of the officers to the Complainant at the time. However, the community member video did show the force. Specifically, when slowed down by OPA using Amped 5 software, the first two seconds of the video indicated that NE#1 forcibly pushed the top half of the Complainant's body down twice. This caused her head and face to strike the ground.

### **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.*)

When evaluating the third-party video and, specifically, when reviewing a slowed down version of that video, it is evident that NE#1 pushed the Complainant down twice into the ground. It is further evident that this caused the Complainant's head, which was partially lifted up at that time, to strike the ground. OPA concludes based on the positioning of the Complainant's head and the mechanism of the force, that this resulted in the injuries that the Complainant suffered to their face.



Even assuming that the force used to secure the Complainant to the ground by pushing them down was reasonable and necessary, OPA finds that it was not proportional under the circumstances of this case. In reaching this conclusion, OPA finds it significant that both NE#1 and WO#1 attested that the Complainant was not resisting at the time and this is confirmed by the video. OPA also finds the acknowledged size difference between NE#1 and the Complainant to be significant. Notably, NE#1 was nearly twice the Complainant's size. Moreover, the video indicates that NE#1 did not just secure the Complainant to the ground, but forcibly pushed them down twice. While it may not have been NE#1's intent to cause the Complainant's head and face to strike the ground, it was a foreseeable consequence of pushing them down twice given the positioning of the Complainant's body and the relatively high level of force used for the pushes. Lastly, the nature of the injury suffered by the Complainant informs the decision that the force was not proportional. Indeed, even though the Complainant was not resistive, the Complainant was still subjected to force that caused significant bruising to their face. This was contrary to policy and unwarranted under the facts of this case.

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

Recommended Finding: **Sustained**

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

##### ***8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics***

"De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance." (SPD Policy 8.100-POL-1.)

The policy further instructs that: "When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution." (*Id.*) Officers are also required, "when time and circumstances permit," to "consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors" such as "mental impairment...drug interaction...[and/or] behavioral crisis." (*Id.*) These mental and behavioral factors should be balanced by the officer against the facts of the incident "when deciding which tactical options are the most appropriate to bring the situation to a safe resolution." (*Id.*)

De-escalation is inarguably a crucial component of the Department's obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department's policy and expectations.

When applying the de-escalation policy to this incident, OPA agrees that de-escalation was no longer safe or feasible at the time the Complainant was taken into custody. Notably, at the time, officers had given the demonstrators, including the Complainant, multiple orders to get out of the street and those orders were not complied with. In addition, the officers had a lawful purpose for doing so as they needed bicycle officers to gain egress through the barricade. When the Complainant and others did not abide by these orders, the officers were permitted to physically move them, including use force if needed to do so.



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As discussed above, OPA finds that the later force used by NE#1 violated Department policy; however, this does not necessitate a finding that he also violated the de-escalation policy during the inception of this incident.

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

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

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

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

OPA found that the force in question was used by NE#1. OPA found no evidence that any other officer used excessive force or, for that matter, failed to de-escalate. As such, OPA recommends that both of the allegations against the unknown SPD employee be removed.

Recommended Finding: **Allegation Removed**

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

***8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics***

For the same reasons as stated above (see Named Employee #2 – Allegation #1), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**