



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 28, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0427

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	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 3	5.001 Standards and Duties 7. Employees Engaged in Department-Related Activities Identify Themselves When Requested	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 3	5.001 Standards and Duties 7. Employees Engaged in Department-Related Activities Identify Themselves When Requested	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 the named employees used excessive force when they attempted to confiscate umbrellas at a demonstration, used profanity, and failed to properly identify themselves.

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.

The specific incident at issue occurred on June 7, 2020, in the Capitol Hill neighborhood of Seattle. On that date, Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were assigned to a bicycle squad tasked with managing ongoing demonstrations. Both were equipped with Body-Worn Video (BWV). The video showed that NE#1 and NE#2 assembled near a group of demonstrators. The demonstrators occupied an intersection in front of a police



barricade. On command, the bike squad moved into the intersection while loudly directing demonstrators to move back to the crosswalk and sidewalk. The video showed a blast ball deployed by the officers behind the barricade. After the blast ball deployment, the demonstrators moved back.

NE#1 and NE#2's squad formed a bicycle fence facing the demonstrators and perpendicular to the barricade. They continued to yell "move back," and most of the crowd dispersed with some demonstrators remaining. Several demonstrators carried umbrellas, including one whose umbrella was inverted such that the tines pointed toward officers. This demonstrator appeared to shove it in the direction of NE#1. NE#1 grabbed the umbrella and while trying to pull it away from the demonstrator, tore it. The demonstrator retreated. Another demonstrator, who was filming on his phone, raised a leopard print umbrella. When that demonstrator moved close to the bicycle line, he pointed his umbrella at officers and NE#1 grabbed it, again causing it to tear. That demonstrator dropped his umbrella and moved back while continuing to film. Another blast ball deployed by officers behind the metal barricade detonated, affecting both demonstrators and the bicycle officers. The demonstrators moved back except for one, who was wearing a gas mask and using a bucket as a drum. That demonstrator remained at the police line.

NE#2 displayed a canister of OC spray and shouted for the demonstrator to get back. The demonstrator did so. NE#2 did not use his OC canister. The bicycle officers advanced their bicycle fence line in a coordinated movement while shouting "move back," and the masked demonstrator moved back toward the other demonstrators on the sidewalk. No physical force was used on demonstrators at that time and officers did not make physical contact. In response, several demonstrators began shouting profanity at the officers. Demonstrators began approaching the line again and attempting to engage officers in dialogue. NE#2 displayed his OC canister again and said: "move back or you will be sprayed." The demonstrators did so. One demonstrator appeared to be speaking with others to de-escalate them. Several other demonstrators deployed umbrellas but remained on the sidewalk or crosswalk as directed.

One of the demonstrators, who was holding a multicolored umbrella, appeared to ask NE#2 for his badge number and NE#2 provided it. Another demonstrator, who was filming and had previously been holding the leopard print umbrella, asked NE#2 to repeat the number, likely because of significant crowd noise. NE#2 did so. That demonstrator repeated NE#2's serial number back and said: "thank you." That demonstrator asked NE#1 for his serial number as well, which NE#1 provided. After a few more minutes, the bicycle officers moved behind the barricade and the crowd resumed its original position.

On July 15, 2020, the Complainant contacted OPA. In her complaint, the Complainant stated that she had observed the interaction on a social medial live stream and stated that the two officers who provided their badge numbers used "unnecessary force" and "foul language unwarranted towards a protester." She stated that she also observed the officers seizing umbrellas and that she was submitting the complaint on behalf of the individuals present. When contacted by OPA, the Complainant stated that she did not recall the foul language used but that it was shocking to her. She stated that the Named Employees "rattled off" their badge numbers in a manner that would make it difficult for listeners to recall. She also alleged that officers seemed to seek a confrontation and that demonstrators were just "standing there." This investigation ensued.

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. 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.*)

OPA finds that NE#1 used, at most, de minimis force during this interaction when he seized the umbrellas. De minimis force is a “[p]hysical interaction meant to separate, guide, and/or control without the use of control techniques that are intended to or are reasonably likely to cause any pain or injury.” See SPD Policy 8.050 Use of Force Definitions.

OPA finds that, under the circumstances, NE#1’s force was reasonable to prevent individuals from interfering with the officers’ line. In reaching this finding, OPA notes that NE#1 only confiscated the umbrellas of individuals who approached close to the bicycle line with umbrellas extended, in a position to poke or push at officers. While OPA is aware that demonstrators have used umbrellas to prevent exposure to OC spray, OPA has also observed instances of individuals using umbrellas as weapons. As such, NE#1 acted reasonably in anticipating this possibility and seizing only those umbrellas which, due to proximity, could have been used as weapons.

The seizure was also necessary in that NE#1 was tasked with maintaining a defensive bicycle line and preventing that line from being broken or disrupted by demonstrators.

The seizures were also proportional, in that NE#1 seized only those umbrellas which could have been used to poke or shove at officers. In addition, while the danger of being poked with an umbrella is arguably slight as compared to being assaulted with a knife or other weapon, so is the intrusion of having an umbrella taken as compared to being exposed to greater force.

Consequently, 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

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's review of BWV showed that neither NE#1 nor NE#2 appeared to use profanity, either in general or as directed at demonstrators. The recording did show some individuals in the crowd shouting profanity at the officers, and it is plausible that the live stream made it unclear who was speaking. However, after reviewing BWV from NE#1 and NE#2 several times, OPA did not find any indication that they or, for that matter, any SPD employee used unprofessional language at that time.

As a result, OPA recommends that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#2.

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

Named Employee #1 - Allegation #3

5.001 Standards and Duties 7. Employees Engaged in Department-Related Activities Identify Themselves When Requested

SPD Policy 5.001-POL-7 requires that SPD employees engaged in department related activities “provide their name and Department serial number verbally, or in writing if requested.” (SPD Policy 5.001-POL-7.)

OPA finds that both NE#1 and NE#2 complied with this policy. First, the BWV conclusively showed that the Named Employees provided their serial number and that demonstrators at the scene acknowledged receiving this information, even repeating the numbers back. Second, given that this complaint was filed referencing the Named Employees' serial numbers, it appears clear that the manner in which they provided this information was both audible and effective.

As such, 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

After reviewing BWV, OPA finds that NE#2 did not use any force. While NE#2 displayed his OC canister at various times during the incident, he did not use it and had no physical contact with any demonstrator. Displaying an OC canister is a form of warning that force might be used is not force. Moreover, OPA notes that NE#2's use of the OC canister in this manner was effective and did cause individuals to keep their distance.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #2

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



For the same reasons as above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #3

5.001 Standards and Duties 7. Employees Engaged in Department-Related Activities Identify Themselves When Requested

For the same reasons as above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained – Unfounded.

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