



## CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 28, 2020

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0373

### 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)

**Named Employee #2**

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 1. Use of Force: When Prohibited	Not Sustained (Unfounded)

**Named Employee #3**

Allegation(s):		Director’s Findings
# 1	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)

**Named Employee #4**

Allegation(s):		Director’s Findings
# 1	14.090 - Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 – Use-of-Force	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 Named Employee #1 and Named Employee #2 subjected him to excessive force and that Named Employee #2 used potential deadly force. The Complainant also alleged that he was improperly arrested by Named Employee #3. Lastly, the Complainant alleged that Named Employee #4 violated policy when she pepper sprayed him.

**ANALYSIS AND CONCLUSIONS:**

On June 4, 2020, the Named Employees were working demonstration response with other members of the Seattle Police Department. They were near the intersection of 11<sup>th</sup> Avenue and E Pine Street, where barriers had been erected around the East Precinct to prevent demonstrators from entering. There were posted no trespassing signs



along the barrier for the precinct boundary. Demonstrators lined up against the barricades. Officers stood facing the demonstrators a few feet away from the barricade. Announcements were made via loudspeaker ordering the crowd to stay behind the boundary. Around 4:30 p.m., demonstrators began climbing over the barricades. Several officers attempted to get the demonstrators to move back over the barricades by giving them orders and informing them that they could be arrested. Bicycle officers set a bike line just past the barricades between the larger crowd of demonstrators and the precinct, to discourage any further forward movement. Some demonstrators ignored the bicycle line and went around the bicycle line.

The Complainant contacted Named Employee #1 (NE#1) at the barrier. NE#1 told him to move back away from the barrier. The Complainant stated that he could not turn around because if he did, NE#1 would hit him. NE#1 assured him that he would not and tapped his shoulder, likely in an attempt to implore him to move back towards the barrier. The Complainant responded by telling NE#1 not to touch him and then began walking towards the bicycle line. The Complainant appeared to be attempting to avoid officers trying to direct his movement back towards the barriers. Another officer approached the Complainant, tapped him on the shoulder and told him that he needed to move in the opposite direction and towards the barrier. NE#1 grabbed the Complainant by the jacket and began moving him away from the bicycle line, while pointing him in the direction he should go. The Complainant pulled away from NE#1 again.

At this point, Named Employee #3 (NE#3) called for the Complainant to be arrested. The Complainant, who at that point was behind the bicycle line, slammed into Named Employee #4 (NE#4), who was on her bike and had her back to him. The collision caused NE#4 to stumble, but she managed to catch herself before falling. NE#1 grabbed the Complainant and took him to the ground with the assistance of multiple officers, including the other Named Employees. NE#1 placed his knee on the Complainant's back to hold him on the ground. The Complainant began to push upward off the ground using his arms, at which point NE#4 deployed a short burst of OC spray to the left side of his face. Named Employee #2 (NE#2) and another officer were eventually able to pull the Complainant's right arm out from under his body and NE#1 took control of his right arm. As the Complainant was combative and kicked multiple officers during the arrest, NE#2 and NE#3 worked to ensure his legs were secure. The Complainant was eventually handcuffed, lifted from the ground, and carried away from the scene.

The Complainant was taken to the East Precinct and was placed in a holding cell. The Complainant refused to answer any questions regarding whether he wanted or needed medical attention, even after officers pointed out that he had an abrasion on his forehead. NE#3 called the Seattle Fire Department (SFD) to treat the Complainant's injuries and evaluate him. The Complainant was uncooperative, and refused to stay seated, prompting NE#3 to call NE#1 for assistance, as he was concerned the Complainant would attempt to escape from the cell. Once the officers entered the holding cell, it became clear the SFD would not be able to evaluate the Complainant as his behavior was too unpredictable. The Complainant lunged at both officers, knocking NE#3's body-worn camera from his uniform. NE#1 and NE#3 grappled with the Complainant and eventually got him on the ground and in their control.

The officers kept the Complainant pinned on the floor of the holding cell until the prisoner transport van was ready. NE#3 adjusted his position throughout this time between having his hands on the Complainant's back and, briefly, holding a knee on the Complainant's back. Once the transport van was ready, the officers prepared to walk the Complainant out of the holding cell area. The Complainant had to be carried by four officers to the van and then pulled inside. Upon arrival at the King County Jail, it took eight to ten jail employees to remove the Complainant from the back of the van.



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All four of the Named Employees submitted use of force reports documenting their interactions with the Complainant and the force they used. Additionally, three other officers, who assisted with arresting or subduing the Complainant at various points during his arrest and time in custody, submitted use of force reports.

**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.*)

Based on OPA’s review of the evidence, OPA concludes that the force used by NE#1 and NE#2 both to initially subdue the Complainant and take him into custody, and again to prevent his resistive behavior in the holding cell, was consistent with policy. First, at the time both uses of force occurred, the officers had probable cause to place the Complainant under arrest and then to control him while he was in their custody. With that legal authority came the right to use force to do so, if needed. When the Complainant resisted the officers through virtually his entire time in custody, force was reasonable and appropriate to stop him from doing so.

For the same reasons, the force was necessary. Given the Complainant’s demonstrated refusal to be taken into custody and to stop resisting once handcuffed and placed in the holding cell, there did not appear to be any reasonable alternative available to NE#1 and NE#2 other than the use of force. In addition, the force used was of a reasonable degree and was only that needed to control the Complainant’s person and to stop his resistance.

Lastly, OPA finds that the force was proportional. The only force used were controlled takedowns, body weight to hold the Complainant onto the ground, control holds to prevent him from resisting, and the application of handcuffs. No strikes or anything other than low-level force was used by the Named Employees at any time. Moreover, at various occasions throughout the interaction, the officers modulated and then ceased using force. Indeed, force was only used by the officers when the Complainant presented an active threat of harm.

For the above reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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

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

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

For the same reasons as stated above (*see* Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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



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

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

SPD Policy 8.200-POL-2 states that force is prohibited: “On restrained subjects (e.g., handcuffed or contained in a police vehicle) except in exceptional circumstances when the subject’s actions must be immediately stopped to prevent injury, or escape, destruction of property. All such force shall be closely and critically reviewed.”

This allegation was classified for investigation based on the Complainant’s contention that NE#2 placed a knee on his neck, thereby using deadly force that would have been prohibited under the circumstances. OPA’s review of the BWV, both from the arrest and from the holding cell, yielded no evidence supporting a finding that NE#2’s knee was ever placed on the Complainant’s neck, whether purposefully or inadvertently. Indeed, the video showed that, while NE#2’s knee was positioned on the Complainant’s body, it was properly at the top the Complainant’s back, not on his neck.

Accordingly, as the purported deadly force did not occur, OPA recommends that this allegation be Not Sustained – Unfounded.

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

**Named Employee #3 - Allegation #1**

**6.010 – Arrests 1. *Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest***

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy. Probable cause exists when the facts and circumstances within an officer’s knowledge are sufficient in themselves to support a reasonable belief that an offense has been or is being committed.

OPA concludes that NE#3’s decision to arrest the Complainant was consistent with policy. Prior to the arrest, demonstrators were directed not to cross the barriers into the exclusionary zone established around the East Precinct. The Complainant knowingly and purposely crossed the barrier and then attempted to continue towards the precinct. He resisted repeated instructions from officers to turn back, as well as attempts to direct him away from the bicycle line. Given this, there was abundant probable cause to arrest him.

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

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

**Named Employee #4 - Allegation #1**

**14.090 – Crowd Management 10. *Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 – Use-of-Force***

SPD Policy 14.090-POL-10 states that deployment of OC spray or blast balls shall have the primary objective of defending the officer, defending another, or preventing significant destruction of property. (SPD Policy 14.090-POL-



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10). It further states that individual officers may deploy OC spray or blast balls “at the specific suspect(s) who are posing a threat.” (*Id.*) An officer’s decision to deploy OC or blast balls must be consistent the general use of force policy. (*Id.*)

Based on OPA’s review of the evidence, OPA finds NE#4’s decision to deploy her OC spray against the Complainant was consistent with policy. First, NE#4 deployed her OC spray in defense of herself and other officers. At the time of her deployment, the Complainant was attempting to fight off four officers as they struggled to effectuate his arrest. The officers were attempting different restraint holds that were failing and the Complainant was attempting to push his body from the ground while officers were on top of him and attempting to hold him down. Second, when NE#4 used OC spray, she targeted the Complainant directly and did not deploy the OC spray indiscriminately. Moreover, by choosing to use OC spray, she ensured that the officers would not have to move to higher levels of force, such as strikes or batons, which could have been appropriate if the Complainant continued to fight with the officers.

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

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