



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 8, 2020

FROM: DIRECTOR ANDREW MYERBERG
 OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0417

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 Force - Use	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 an officer used OC spray against her son without provocation. She further expressed concern over a patch that Named Employee #1 was wearing on his uniform next to his name badge.

ADMINISTRATIVE NOTE:

During its intake investigation, OPA determined that Named Employee #1 (NE#1) was wearing a patch that was not authorized by the Department. OPA sent this matter back to the supervisor for policy review and counseling. NE#1 informed his supervisor that once he became aware that the patch was not permitted, he removed it from his uniform.

ANALYSIS AND CONCLUSIONS:

OPA received an anonymous complaint in which the Complainant asserted that officers had used excessive force when they subjected her son to OC spray. She said that her son was peacefully protesting at the time and that the use of OC spray was unwarranted under the circumstances. The Complainant provided the general location – Westlake Center – and approximate time of the incident – May 30, 2020, at approximately 3:00 p.m. However, the Complainant did not leave any contact information for either herself or her son, or a description of how the son appeared on the date in question so that he could be identified by OPA. The Complainant identified NE#1 by name as the officer who used the OC spray.

OPA determined that a demonstration occurred in the vicinity of Westlake Park on May 30, 2020, at around 3:00 p.m. NE#1 was assigned to that general location. At approximately 3:44 p.m., an order was given by an SPD supervisor to move the crowd of demonstrators southbound on 5th Avenue. This was due to ongoing property damage in the area and the decision to shift the crowd from that location. The officers began to push the line forward using their bicycles. The crowd eventually began moving, but a male interfered with the officers’ attempts to carry out this order by physically blocking the officers’ path. NE#1 was positioned behind the bicycle officers



effectuating the mobile fence line. The male was standing in front of the bicycle officers, refusing to move, and pushing back against officers. After observing the male's non-compliance, his blocking of the officers from achieving their goal of moving the line, and his pushing back against them, NE#1 made the decision to use OC spray to move the male back. At the time OC spray was deployed, an individual – who may have been the male – pushed into officers. This caused a bicycle officer and NE#1 to fall to the ground. The male ultimately moved into the crowd and the officers were able to push the demonstrators back. At a later point, the male was located and taken into custody. At that time, one of the arresting officers provided the male with medical attention by pouring water on his eyes and face. As indicated above, OPA was not able to conclusively establish that the male is the Complainant's son.

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.*)

As discussed above, OPA was not provided with contact information for the Complainant or her son or, for that matter, a description of what the son was wearing on the date in question. Accordingly, OPA cannot conclusively determine that the male referenced above is the son. While this is certainly possible, it is also possible that the son was another individual in the crowd.

With regard to the force used on the male, OPA finds that it was consistent with policy. At the time, the officers were allowed to move the crowd away from that area. This was a permissible time, place, and manner restriction that was not based on the nature of the articulated speech, but because of property damage that was ongoing and the responsive decision by SPD to shift the crowd from that location. While many members of the crowd did move back, a number did not, including the male. Indeed, BWV captured a male (who OPA could not identify) exhorting other demonstrators to link arms. The BWV also indicated that the male who is the subject of the force directly obstructed the officers attempts to move the crowd back, including physically pushing back against the officers. Given this and the totality of the circumstances, force was reasonable to ensure that the crowd could be moved.

With regard to the specific force used – a deployment of OC spray – OPA finds that it was necessary. Once the decision was made to use force, the only other option available to NE#1 would have been to go hands-on with the male. This could have subjected both NE#1 and the male to an even higher risk of harm and could have resulted in sparking physical altercations between other demonstrators and officers. As such, this was not a reasonable alternative in OPA's perspective. The use of OC spray was targeted solely towards the male to prevent his continued non-compliance, and other people in the crowd did not appear to be affected. In this respect, the force was of a reasonable degree.

Lastly, NE#1's single two-to-three second burst of OC spray to move the male away from the police line was proportional under the circumstances. This was due both to the male's active non-compliance and pushing back at



the officers, and the legitimate need to move the crowd back. Moreover, once the brief burst of OC spray was deployed and had the desired outcome of moving the male back, NE#1 ceased using force.

For all of the above reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper

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