



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 28, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0423

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)

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 he was 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 the killing of George Floyd by a Minneapolis Police Officer. This incident occurred on the evening on June 6, 2020. The Complainant, who initiated this investigation with OPA, alleged that Named Employee #1 (NE#1) used excessive force when NE#1 pushed him back from the line. In his initial complaint, the Complainant said that, at the time of the force, he was “attempting to keep protesters in line and maintain order while still pressuring police to move back to their barricade.” He further wrote that NE#1 also pushed him with a bicycle.

OPA interviewed the Complainant. He asserted that, at around 8:45 p.m., officers began directing demonstrators to move backwards. He said that he and other demonstrators tried to do so. He told OPA that, at one point, he became blocked in by the crowd and could not move back anymore. He indicated that NE#1 then pushed him backwards, causing him to fall back over a bush. He said that he fell over the bush and into a one to two-foot drop-off. He stated, however, that he was not injured because he was caught by other demonstrators. The Complainant felt that this force was unnecessary and improper.

OPA also reviewed the Body Worn Video (BWV), which fully captured what occurred. The BWV indicated that, at approximately 8:42 p.m. on June 6, NE#1 – a bicycle officer – joined a line of police officers in the vicinity of the East Precinct. At that time, he was facing demonstrators, including the Complainant. The Complainant and other demonstrators yelled insults at and used profanity towards the officers. The Complainant specifically targeted NE#1 with verbal abuse and made a number of pejorative statements about NE#1’s family.

At around 8:46 p.m., NE#1 motioned towards his bicycle and told demonstrators not to touch it. NE#1 looked down and saw the Complainant’s right foot near the bicycle’s front wheel. The BWV captured a hiss coming from the bicycle, consistent with the tire being deflated. NE#1 used an outstretched hand to push the Complainant away from the



bicycle. The Complainant moved backwards several steps, bumping into a bush. He did not fall over at any time. The Complainant then moved back to the line and again began interacting with NE#1, at one point commenting that they had the same bicycle gloves, though the Complainant said that he used his for “mountain biking” rather than NE#1 who used gloves for “beating people.” From a review of the BWV, NE#1 did not push the Complainant with a bicycle, as the Complainant indicated in his initial complaint. The BWV also established that the officers were not pushing the crowd back in the immediate moments before the force.

Lastly, OPA interviewed NE#1. He recalled observing the Complainant using a foot to deflate his front bicycle tire. He pushed the Complainant back to prevent him from doing so, as this would yield his bicycle non-functional. Based on this, he believed that the force he used to push the Complainant back was appropriate and consistent with policy. NE#1 noted that the Complainant’s later comment concerning having the same bicycle gloves indicated that the Complainant had knowledge of bicycles and intended to deflate the tire.

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.*)

The BWV indicated that virtually every aspect of the Complainant’s account was inconsistent with the video except for the fact that he was pushed. First, there was no evidence that, prior to the force, the Complainant was trying to “keep demonstrators in line.” To the contrary, he was at the front of the line actively yelling at and insulting officers. Second, the officers were not pushing the crowd back before the force occurred and there was no indication that the Complainant was blocked by the crowd. Third, NE#1 did not push the Complainant with his bicycle. Fourth, NE#1 did not push the Complainant for no reason and in an escalating fashion. Notably, the Complainant neglected to indicate in his complaint that he placed his foot on the front tire of NE#1’s bicycle in order to let the air out. Fifth, the Complainant did not fall over a bush or fall to the ground at all. Ultimately, the significant number of inconsistencies between the Complainant’s recounting of this incident and the video causes OPA to strongly doubt his veracity and the motive behind this complaint.

What the video showed was the Complainant verbally abusing officers and then placing his foot in a manner to deflate NE#1’s front bicycle tire. When the Complainant did so, NE#1 was permitted to push him back to prevent this from continuing. NE#1 had a law enforcement interest in ensuring that his bicycle was functioning and as indicated above, a flat tire would have undermined this. The force NE#1 used – a push – was appropriate under the circumstances and was proportional given the Complainant’s conduct.

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



Seattle
Office of Police
Accountability

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