



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 21, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0524

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	6.010-POL - 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 #2

Allegation(s):		Director’s Findings
# 1	14.090 Crowd Management 9. Crowd Dispersal a. Upon Determining That There are Acts or Conduct [...]	Not Sustained (Lawful and Proper)
# 2	14.090 Crowd Management 9. Crowd Dispersal b. The Incident Commander Shall Have Authority to Direct [...]	Not Sustained (Lawful and Proper)
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)
# 4	8.300-POL-11 Use of Force - 40 mm Less Lethal Launcher 7. Officers Will Only Use a 40 mm LL Launcher When [...]	Not Sustained (Inconclusive)
# 5	16.130 – Providing Medical Aid 1. Recognizing the Urgency of Providing Medical Aid [...]	Not Sustained (Inconclusive)
# 6	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)

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 she was arrested without cause by SPD at a protest. She also alleged that no dispersal warnings were given, that she was targeted with a “rubber bullet” as well as other less lethal tools, that officers failed to provide her or another injured protester with medical attention, that she observed an officer swinging “wild roundhouse punches” at members of the crowd, and that the officer who arrested her was unprofessional when he did so.

ADMINISTRATIVE NOTE:

In addition to other allegations, the Complainant alleged that she observed numerous officers failing to wear PPE or otherwise violating COVID-19 protocols. That allegation was combined with other similar allegations and will be processed as a Supervisor Action under case number 2020OPA-0384.



ANALYSIS AND CONCLUSIONS:

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 incidents at issue here occurred on July 25, 2020, at approximately 4:20 PM, in the general vicinity of 11th Avenue and Pine Street. On that day, approximately 3,000 to 5,000 demonstrators gathered in the general area of the SPD East Precinct as part of a "Solidarity with PDX" demonstration. During the gathering near the East Precinct, members of the crowd threw projectiles at officers, and some individuals detonated an explosive device at the precinct causing damage. Shortly afterward, SPD commanders on the scene made the decision to disperse the crowd.

The Complainant, who was a member of the demonstration crowd, later filed this complaint with OPA. In her complaint and subsequent interview, the Complainant stated that she attended the July 25 demonstration. She described herself as being 5'9" tall, dressed in a black "Black Lives Matter" t-shirt and blue jeans, with blonde hair, goggles, and a dark purple umbrella. She stated that, before SPD officers began dispersing the crowd, she did not recall hearing a dispersal order given. The Complainant stated that, while attending the demonstration, she initially stood in the front rank of demonstrators and that while there, she was sprayed with a chemical agent that left a "peppery" taste and burning sensation. She said that she was also struck with what she described as a "rubber bullet," which based on the Complainant's description was likely a 40mm "blue nose" foam-tipped round. She stated that she did not see which officer fired it.

She described the officers she saw and interacted with as "mostly bike cops." She also alleged seeing an officer, who she described as 6 feet tall, heavysset, and White, dressed in full riot gear, break through the line of officers and begin swinging "wild roundhouse punches" at the demonstrators. The Complainant stated that another officer pulled him back. The Complainant said that this occurrence caused her to begin video recording.

The Complainant described seeing officers begin to advance while shouting "move back." She stated that she did so and retreated from the intersection of 11th and Pine to closer to Nagle Place. The Complainant also described officers advancing and shouting "move back or you will be arrested." She said that she moved back and crossed the street, and that at that time she encountered an officer who told her "okay, now you will be arrested." He then arrested her. In her initial complaint, the Complainant described complying with orders at the time her arrest.

After her arrest, the Complainant alleged that she saw a male arrestee in his early 20s bleeding from a visible head wound, and that no officers provided medical assistance. She stated that she did not, herself, summon assistance. Later, at the West Precinct, the Complainant said that she observed officers not wearing masks despite COVID-19 directives requiring their use. She also stated that she observed a White male in casual clothes who appeared to work at the precinct flexing his pectoral muscles and "grinning" in the direction of female detainees.

The Complainant also provided two short video clips that she recorded from the day of the incident. In one, the Complainant appeared to be filming at 11th Avenue and Pine Street. The footage depicted a static protest and no uses of force. The second video showed the lead-up to the Complainant's arrest. It was slightly more than a minute in length and depicted an officer – Named Employee #1 (NE#1), walking toward the Complainant. NE#1 could be



heard to state "(inaudible) now, you're gonna get arrested." Shortly after making that statement, NE#1 appeared to grab the Complainant's arm. The video ended.

This OPA investigation ensued. As part of its investigation, OPA reviewed Body Worn Video (BWV) of the incident. NE#1's BWV, as well as that of other officers at the same location and the videos provided by the Complainant, provided OPA with a relatively complete picture of the incident.

At approximately 4:25 PM, NE#1 was assigned as a bicycle officer directed to move a crowd away from the East Precinct. As the recording began, NE#1 and other bicycle officers were just arriving at the scene. BWV showed them deploying blast balls and moving in to form a mobile fence line in front of the crowd at around the intersection of 11th and Pine. BWV recorded officers shouting: "leave the area" and "move back."

At approximately six minutes into the recording, NE#1's BWV recorded a dispersal order broadcast over a loudspeaker. Bicycle officers deployed in a crossbow maneuver, and NE#1 followed. BWV depicted objects being thrown at officers as well as blast balls being thrown or kicked back into the police line. Another dispersal order was broadcast. Approximately three minutes later, NE#1 and other officers pushed west across 11th Avenue. During this time, objects continued to be thrown and members of the crowd appeared to roll a large blue dumpster into a group of officers. Officers continued to deploy blast balls.

The police line, including NE#1, continued to move steadily west toward Nagle Place. During that push, NE#1 moved up and formed the far right of the police line, on the sidewalk adjacent to Cal Anderson Park. At 19:05 on his BWV, NE#1 was shown addressing an individual who was later identified as the Complainant. At the time, the Complainant was standing close to the police line and filming on her camera. NE#1 told her to "leave or you will be arrested." The Complainant made an obscene gesture at NE#1 and then left. NE#1 said: "have a nice day." When NE#1 advanced the line again several feet, his BWV showed that he again observed the Complainant with a group of other demonstrators. He repeated the directive to the group and the Complainant again moved back. BWV showed that she crossed Nagle Place and stood on or near the north-west corner of the intersection of Nagle Place and Pine Street.

The SPD line advanced again, and NE#1 moved with it. NE#1's BWV showed the moments leading up to the arrest. As the line advanced, the group of protesters on the north-west corner of the intersection fell back, but the Complainant did not. BWV showed that she stood still as NE#1 advanced to within inches of her, using his bicycle to form the northern edge of the SPD mobile fence line. As he stepped forward, NE#1 could be heard on BWV to say: "leave now or you're gonna get arrested." This time, the Complainant did not move despite clear avenues of egress to the west on Pine and north on Nagle. NE#1 reached out and took control of the Complainant's wrist, beginning the process of arresting her. The Complainant attempted to pull away, and in the ensuing struggle NE#1's body camera was knocked off.

Another bicycle officer's BWV provided a view of the arrest. The recording confirmed that of all the individuals on the northwest corner of the intersection, only the Complainant remained as the police line advanced. The officer's BWV captured the interaction between NE#1 and the Complainant on its extreme right side, meaning that NE#1 was to the north and slightly behind the recording officer when the arrest occurred. It depicted NE#1 advance within inches of the Complainant. The recording of the arrest showed that NE#1 then took the Complainant to ground while the recording officer screened off the arrest with his bicycle.



OPA also reviewed other footage that was potentially relevant to the Complainant's allegations. BWV of one officer showed the Complainant, recognizable by her purple umbrella, in the front rank of the crowd near 11th and Pine when officers made their initial advance. BWV of another officer showed the Complainant in the front rank, moving back and west with the other protesters. At one point as officers advanced, the Complainant and other protesters with umbrellas raised them to form a shield wall. Approximately 30 seconds later, a blast ball appeared to come near to the Complainant, and she attempted to kick it back toward the officers. It detonated before she could kick it. Another protester used a fan to blow the resulting smoke back toward officers, and the Complainant appeared to move back into the crowd. Other protesters pushed dumpsters in the direction of officers and the view became obscured. As officers continued to advance, the Complainant was not visible among the front rank of protesters. Several minutes later, an officer's BWV captured the Complainant walking toward Nagle Place where, subsequently, the arrest occurred.

Based on OPA's review of BWV, OPA was unable to isolate any instance in which an officer targeted the Complainant with a 40mm "blue nose" round. Similarly, OPA's review did not identify any officers whose appearance or conduct matched the officer that the Complainant alleged she saw throwing "wild roundhouse punches." The BWV clips OPA reviewed appeared to account for substantially all of the time in which the Complainant was in the front line of the protest. In addition, OPA was unable to locate any BWV or other evidence related to the Complainant's allegation regarding an injured male arrestee in his 20s.

Finally, OPA obtained security footage from the West Precinct. That footage showed the Complainant being processed for detention in a holding cell, as well as officers passing through the holding area. Based on review of the security footage, OPA did not note any officer whose behavior matched that described by the Complainant—namely "grinning" and posturing in the direction of female detainees.

Named Employee #1 - Allegation #1

6.010-POL - 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 finds that NE#1 had probable cause to arrest the Complainant. Arrest records indicated that NE#1 arrested the Complainant for failure to disperse. OPA's review of BWV confirmed that multiple dispersal orders were given over a public address system, and officers including NE#1, clearly and audibly directed protesters including the Complainant to leave the area. Moreover, the BWV established that, when NE#1 encountered the Complainant for the third time, she remained in position on the corner of Pine and Nagle despite the fact that NE#1 and the rest of the police line approached within inches of her, the presence of two open avenues of egress, and the fact that substantially all the other protesters moved back.

When a group of persons assembled in an area is committing acts of violence, the law permits officers to order those people to leave. *See* SMC 12A.12.020. Intentionally failing to heed this order is a crime, regardless of whether the individual is him or herself committing other crimes or violations. *Id.* Here, BWV showed that NE#1 gave multiple



directives and the Complainant heard them and, to a degree, responded. However, she failed to move when lawfully directed to do so and prevented NE#1 from advancing with the rest of the line, thus impeding the dispersal.

Taken together, these facts and observations of the Complainant's actions are sufficient to establish probable cause that she committed, at minimum, the crime of failure to disperse. For this reason, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #1

14.090 Crowd Management 9. Crowd Dispersal a. Upon Determining That There are Acts or Conduct Within a Group of Four or More Persons That Create a Substantial Risk of Causing Injury to Any Person or Substantial Harm to Property, the Incident Commander May Order That the Crowd Be Dispersed

SPD Policy 14.090-POL-9(a) states the conditions under which an Incident Commander (IC) may order a crowd to be dispersed. SPD Policy 14.090-POL-9(a). The policy goes on to state that prior to ordering a crowd to be dispersed, the IC "shall consider whether less restrictive means of crowd management are available. Such means may include strategies such as area denial and/or seeking voluntary compliance." *Id.* It goes on to state that the IC must ensure there is a viable avenue of egress to allow the crowd to disperse, and that where feasible, the IC or a designee should issue a dispersal order prior to ordering officers to disperse the crowd. *Id.*

OPA finds that the IC here had sufficient justification to order the crowd dispersal. Prior to this incident, an explosive was detonated at the precinct, causing damage. During this incident, BWV captured multiple instances of crowd members throwing rocks, bottles, and fireworks at the officers as well as pushing large metal dumpsters into the line. All these actions independently reached the "substantial harm" requirement in this policy and taken together they also cleared that threshold. The dispersal orders broadcast to the crowd and captured on BWV indicated that demonstrators had a safe route of egress west.

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

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

Named Employee #2 - Allegation #2

14.090 Crowd Management 9. Crowd Dispersal b. The Incident Commander Shall Have Authority to Direct the Use of Blast Balls and OC Spray to Disperse the Crowd

SPD Policy 14.090-POL-9(b) states that the IC has the authority to direct the use of blast balls and OC spray to disperse a crowd. SPD Policy 14.090-POL-9(b). A lieutenant may authorize the use of blast balls and OC spray where an immediate life safety emergency exists, and there is insufficient time to obtain approval from the IC. *Id.* The policy defines a "life safety emergency" as "an unplanned, dynamic situation where immediate police action is necessary to protect the officers' and/or the public's safety." *Id.* It goes on to state that when feasible, a dispersal order should be given and the crowd afforded sufficient time to disperse prior to the use of blast balls and OC. *Id.* Similarly, when feasible, blast balls and OC should not be deployed in the vicinity of people who do not pose a threat to safety or property. *Id.*



Because the IC had adequate justification to order the crowd dispersal (see above), it was not a violation of policy for him to direct the use of less lethal tools including OC spray, blast balls, and 40 mm “blue nose” rounds. OPA also finds that the amount of time—approximately three minutes between the broadcast of the dispersal order and the use of less lethal munitions—was reasonable to allow those gathered to begin moving back. Finally, while OPA cannot account for every blast ball, OC, and 40mm deployment, based on its assessment of crowd behavior and the level of resistance it was not unreasonable for officers to disperse the entire crowd. OPA reaches this conclusion given the level of resistance as well as the fact that many individuals who were not throwing objects at officers were actively shielding those who were using umbrellas, dumpsters directed into the officer line, and other strategies.

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

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

Named Employee #2 - Allegation #3

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.*)

In her interview, the Complainant alleged that she observed an officer throwing “wild roundhouse punches” at protesters. OPA interpreted this as an allegation that an unknown employee used excessive force. Had OPA identified an employee engaging in the conduct the Complainant alleged, that might well represent a violation of this policy. However, even after reviewing BWV of several officers covering the bulk of the time that the Complainant was in the front rank of the protest where she stated she observed this conduct, OPA could identify no evidence tending to suggest that it occurred. Rather, OPA did not see any officer engaging in that conduct.

For this reason, and when applying its preponderance burden, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #4

8.300-POL-11 Use of Force - 40 mm Less Lethal Launcher 7. Officers Will Only Use a 40 mm LL Launcher When Objectively Reasonable, Necessary, and Proportional.

SPD Policy 8.300-POL-11(4) states that officers may use a 40mm Less-Lethal Launcher “when a subject poses an immediate threat of harm to any person” or to take into custody a person whose level of resistance is “likely to cause injury to the officer” or “if hands-on control tactics or other force options would be likely to cause greater



injury to the subject than the use of the 40 mm Less Lethal Impact Munition (LLIM).” *Id.* The decision to use the launcher must be reasonable, necessary, and proportionate under the circumstances of the incident. *Id.*

OPA was unable to conclusively identify any officer who appeared to target the Complainant with a 40mm round. However, unlike the allegation of an officer throwing punches, OPA does not believe that the lack of video evidence suggests the incident did not occur. Unlike a punch, which would inherently require physical proximity, the 40mm launcher has a range of up to 100 feet. It is entirely possible that an officer fired a 40mm “blue nose” round which intentionally or unintentionally affected the Complainant. It is also possible that some other impact caused the Complainant’s injury and she was mistaken about the cause. For instance, BWV appeared to show a blast ball detonating in relatively close proximity to her.

For these reasons, OPA is simply unable to determine whether an officer intentionally targeted the Complainant with a 40mm round. Even assuming that one did, without identifying that officer it would be difficult for OPA to assess the reasons for his or her deployment of a less lethal tool and, consequently, cannot assess whether such a deployment would have complied with policy.

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

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

Named Employee #2 - Allegation #5

16.130 – Providing Medical Aid 1. Recognizing the Urgency of Providing Medical Aid and the Importance of Preserving Human Life, Officers Will Request Medical Aid, if Needed, and Render Appropriate Medical Aid Within Their Training as Soon as Reasonably Possible

SPD Policy 16.130-POL-2(1) states that employees assisting a sick or injured person will seek to determine the nature and cause of a person’s injury or illness and provide first aid or call for Emergency Medical Services as needed, with an exception for injuries that can be treated with basic first-aid. SPD Policy 16.130-POL-2(1). The policy goes on to state that “[a]fter requesting a medical aid response, officers will render aid within the scope of their training unless aid is declined.” *Id.* Officers are required to provide medical assistance consistent with their training, with priority being given to officers certified as EMTs. *Id.* The consent of unconscious subjects is presumed under the policy. *Id.* Employees are expected to follow SPD standing orders from the SPD/SFD Medical Director, as well as their training and the SPD Manual, with respect to applying certain forms of first aid. *Id.*

With respect to the allegation that an arrested individual suffered a head injury and was ignored, OPA was unable to identify any video or other evidence showing this incident. What records OPA did obtain regarding detainees at the West Precinct did not identify any injured males. However, lacking further evidence, OPA is simply unable to assess the truth or falsity of the Complainant’s allegation or evaluate whether what she saw in fact met the requirements of this policy.

For this reason, OPA recommends that this allegation be Not Sustained – Inconclusive.

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

Named Employee #2 - Allegation #6



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.*)

With respect to the allegation that a White male individual with apparent access throughout the West Precinct flexed his muscles and “grinned” at female detainees, if OPA were able to identify conduct fitting this description, it could violate the Department’s professionalism policy. However, its review of security footage did not appear to show any SPD employee engaged in this conduct.

In so finding, OPA notes that it is possible that the Complainant observed something in an area or at a time not captured by security footage. In addition, OPA notes the subjective nature of the allegation—it is possible that conduct which appeared innocent on camera was intimidating to those who experienced it; likewise it is possible that the Complainant interpreted conduct to be malicious when there was an alternative, benign explanation.

Ultimately, OPA lacks a basis to say either way. As a result, OPA recommends that this allegation be Not Sustained – Inconclusive.

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