



Seattle
Office of Police
Accountability

CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 28, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0561

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	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 #2

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	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)

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:

It was alleged that the Named Employees may have subjected the Complainant to excessive force and falsely arrested him.

SUMMARY OF INVESTIGATION:

Officers, including the Named Employees, were staffing demonstrations occurring in the vicinity of the East Precinct and Cal Anderson Park. The officers were specifically enforcing the terms of an exclusionary order that had been issued by Mayor Durkan. That order closed an area around the East Precinct and Cal Anderson Park. The order further indicated that anyone who failed to comply with its terms was subject to arrest. At the time of this incident, the order was in effect.

The Named Employees documented, and Body Worn Video (BWV) reflected, that demonstrators lined up at the edge of one of the borders of the exclusionary zone. Some demonstrators cut down police tape and proceeded over the boundary and into the zone. Demonstrators, including the Complainant in this case, were given multiple orders to leave the area. A number of demonstrators, again including the Complainant, did not do so.



BWV from the Named Employees showed the Complainant standing within the zone engaging in a back and forth with officers. He was in front of most of the other demonstrators and was not moving back. The officers then advanced and the Named Employees took the Complainant into custody.

The Named Employees took hold of the Complainant's arms and brought him down to the ground where he was handcuffed. The Complainant asserted that he was subjected to excessive force due to scrapes he suffered to his knee, and that his arrest was invalid. 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. 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 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where "no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose." (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

As part of assessing the officers' force – specifically, when determining whether it was reasonable – OPA evaluates whether there was sufficient probable cause to take the Complainant into custody. If there was not, the force would likely be unreasonable; however, here, OPA finds that the arrest was legally justified. It is undisputed that there was a validly issued exclusionary order in place and that the Complainant was in violation of the order. It is further undisputed that the Complainant was directed to disperse, along with other demonstrators, but that he willfully chose not to do so. Accordingly, there was a lawful basis to arrest him for failure to disperse and the Named Employees were permitted to use force if required to effectuate that arrest.

The force they used – taking hold of the Complainant's arms and bringing him down to the ground to be handcuffed – was reasonable under the circumstances to take him into custody. With regard to the decision to perform the takedown, OPA finds that it was both reasonable and necessary. Notably, prior to the incident, the Complainant repeatedly antagonized the officers, including telling the officers that they were scared. It was not unreasonable for the officers to believe that the Complainant could physically resist them were he taken into custody. Accordingly, it was appropriate to handcuff him in the prone position where he could be better controlled and the officers' safety more assured.

Lastly, the force used was proportional under the circumstances. The officers used only that force needed to safely take the Complainant into custody. They did not use any strikes or any other physical compulsion aside from the low-level force described above. While it is unfortunate that the Complainant was injured, this does not compel a finding that the force was out of policy.

Ultimately, for the reasons stated above, OPA finds that the Complainant's arrest was proper and that the Named Employees did not use excessive force. As such, OPA recommends that both Allegation #1 and Allegation #2 be Not Sustained – Lawful and Proper as against both officers.



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

Named Employee #1 - Allegation #2

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

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 #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

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

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)**