



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 5, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0585

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics	Not Sustained (Inconclusive)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Inconclusive)
# 3	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	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 Complainants alleged that Named Employee #1 failed to de-escalate and used excessive force when he pushed a demonstrator. OPA further alleged that Named Employee #1 may have been dishonest when he denied making any physical contact with the demonstrator.

SUMMARY OF INVESTIGATION:

This case arises out of the protests that occurred in Seattle in the aftermath of George Floyd’s killing by a Minneapolis police officer. The incident in question took place on September 7, 2020, which was several months after the protests began, but on the same date as a significant demonstration that took place at the headquarters of the Seattle Police Officers’ Guild. This demonstration involved significant violence against officers and multiple incidences of force used by officers against demonstrators. There were a number of crowd dispersals from various areas of the vicinity, as well as numerous pushes of the crowd back by officers.

OPA received two anonymous complaints alleging that Named Employee #1 (NE#1) subjected a female demonstrator to excessive force. The first complainant asserted that NE#1 “violently shoved a woman to the ground who hit her head.” The second complainant contended that NE#1 “aggressively” pushed a woman who was “merely standing on the sidewalk” onto the ground for no reason. This investigation ensued.

OPA tried to identify the woman – referred to here as the “Subject” – who was reported to have been pushed; however, OPA was unable to do so and, as such, did not interview her to obtain her account of what occurred.



From reviewing other evidence, OPA determined that, on that evening, demonstrators were gathered in the vicinity of the 1200 block of South Jackson Street. Several demonstrators, including the Subject, were standing in the street while cars passed by them. Officers, including NE#1, gave multiple orders to the demonstrators to move out of the street and onto the sidewalk. The officers expressed that cars were driving through the street, the street was “open,” and that, if the demonstrators did not move, they ran the risk of getting hit by cars. NE#1’s Body Worn Video (BWV) showed that, at one point, the Subject was standing in the path of a car but moved back closer to the sidewalk as the car passed by her. After this, the Subject and others moved back into the street. At that time, cars and a metro bus were approximately a block and a half away and were moving in the direction of the officers and the demonstrators.

An officer – referred to here as Witness Officer #1 (WO#1) – again gave the demonstrators explicit orders to get out of the street. At that point, NE#1, followed by additional officers, began walking towards the Subject and other demonstrators. The Subject, who was still standing in the street, had her feet spread and her arms were extended out to either side of her. As NE#1 neared her and extended his arm, the Subject began to turn, pivoting on her right foot and bring her left foot around quickly. However, this is where the accounts of the complainants, on one hand, and NE#1 and the witness officers, on the other, diverged.

As discussed above, both complainants asserted that NE#1 made physical contact with the Complainant, pushing her to the ground and causing her to strike her head. They cited a Twitter video that appeared to show the push and the Subject falling to the ground. The video depicted NE#1 approaching the Subject. There was a demonstrator to her left who moved behind the Subject. As NE#1 walked closer, another demonstrator quickly ran behind the Subject. The Subject spread her arms wide, moving to the side in front of the demonstrator behind her as if to block him. The video cut away for a second. When the camera moved back towards NE#1 and the Subject, it showed NE#1 extending his arms and the Subject turning. NE#1 further extended his arms as the Subject fell down and forward on her side, hitting the ground. The Subject was helped up and was walked away by demonstrators. Another demonstrator could be heard yelling: “What the fuck, they pushed her down.” It appeared from this video that NE#1 may have pushed the Subject.

For his part, NE#1 denied ever making physical contact with the Subject. He stated that, while his intent was to push the Subject back and out of the street, he never touched her, and she fell when she turned from him and tried to quickly move away. He recalled that she was wearing platform shoes and opined that this could have contributed to her falling. He explained that, had he made contact with her, he would have used his body weight to guide her and he would not have shoved her. He would have kept his hands on her while he escorted her to the sidewalk in order to ensure that she did not fall. He told OPA that he was cognizant of the size differential between himself and the Subject, as well as between him and most other individuals that he interacted with.

WO#1 was present at the time of the push but did not witness it. However, after watching his BWV, he did not believe that it appeared that NE#1 pushed the Subject. He noted that, given that the Subject was turning at the time, had NE#1 pushed her, she would have continued to spin, not fallen straight down as she did.

Witness Officer #2 (WO#2), who was assigned as an Acting Sergeant, was also present during the incident but did not view what occurred. He stated that, shortly after the incident, NE#1 reported to him that when he was going to push the Subject out of the road, she turned to flee and fell to the ground. He denied that he made contact with her, even though he said that his intent was to do so. When WO#2 returned to the precinct, he watched BWV and the Twitter video. At that point, he made the decision to have NE#1 write a Type 1 use of force report to be safe and ordered him to do so. However, after consulting with other more experienced sergeants, WO#2 rescinded the order because of the fact that NE#1 did not actually say that he used force and WO#2 felt that writing the report was an “inappropriate



mechanism to prepare for potential OPA complaints.” From his review of the various video, WO#2 did not believe that NE#1 pushed the Subject. He opined that, had NE#1 done so, the Subject would have fallen differently given her movement and NE#1’s strength and size difference. WO#2 said that he felt that NE#1 was honest when he said that he did not push the Subject. He asserted that NE#1 would have had no motive to lie about force and would have reported it had he used force. WO#2 contended that, in some respects, NE#1 took the “harder road” by denying that he used force, given how the Twitter video appeared.

OPA reviewed BWV from NE#1 and several other officers. NE#1’s BWV showed him approach the Subject with his hands raised. As he neared her, the video indicated that the Subject began to turn away from him to her right. As she did so, she swung her leg around and her left foot appeared to swipe or hit her right ankle. The Subject then fell down to the street on her side. The video did not clearly show whether or not NE#1’s hands actually made contact with the Subject.

WO#1’s BWV showed NE#1 push towards the Subject while she turned from him. As the Subject went down to the ground, NE#1’s hands were extended and were situated right by her left shoulder. It appeared possible from this vantage point that, while the Subject may have stumbled while turning, NE#1 pushed her adding to her momentum.

Another officer’s BWV also showed what occurred. While more obstructed than WO#1’s view, it also appeared to show the Subject stumbling while turning but, like WO#1’s video, seemed to depict NE#1 pushing her and adding to her momentum.

Given the very significant possibility from OPA’s review of the video that NE#1 did, in fact, make physical contact with the Subject, OPA added an allegation that he was potentially dishonest to the existing allegations of failure to de-escalate and excessive force. Moreover, given NE#1’s continued adamant denial that he used force, OPA also retained an expert witness to assess all of the video and to analyze whether the push could be confirmed. However, after doing so, the expert deemed the question to be inconclusive. Specifically, even when assessing the video, examining the placement of NE#1 and the Subject, and analyzing the trajectory and speed of her fall, the expert could not definitively say that it was caused by a push from NE#1, rather than the Subject tripping and her momentum causing her to fall forward.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics

All three of the allegations in this case – the failure to de-escalate, the use of excessive force, and dishonesty – rest on the same question – did NE#1 push the Subject? If the answer to his question is yes, OPA believes that NE#1 would have violated all three policies. If the answer to this question is no, and the Subject tripped and fell at the moment NE#1 approached her, the opposite findings would result.

This is among the hardest demonstration cases that OPA has needed to evaluate. From OPA’s review of the video, it seems that NE#1 made physical contact with the Subject. While it appears that she tripped simultaneously, OPA’s lay analysis is that NE#1 pushed her at the same time, increasing her momentum as she fell. However, NE#1 repeatedly and consistently denied making contact with the Subject. This was the case even though he knew that



the incident was recorded on video and that the video appeared to show a push. Moreover, he denied using force even though he knew that, had he admitted doing so, a disciplinary finding against him would, at most, have resulted in a suspension, while lying about the force would necessitate the termination of his employment. This is a significant risk to take.

Ultimately, OPA finds the expert analysis to be persuasive. The expert, despite using sophisticated technology to analyze, refine, and slow down the video, could not conclusively identify whether or not NE#1 pushed the Subject. This report serves to prevent OPA from meeting its burden of proof to establish misconduct on NE#1's part. Accordingly, and while OPA retains significant concerns about this case, OPA cannot definitively prove that NE#1 pushed the Subject. As such, OPA recommends that this allegation, as well as Allegations #2 and #3 be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**
Named Employee #1 - Allegation #2
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 - Inconclusive.

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

Named Employee #1 - Allegation #3
5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication

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

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