



## **CLOSED CASE SUMMARY**

ISSUED DATE: FEBRUARY 18, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0471

**Allegations of Misconduct & Director’s Findings**

Named Employee #1

Allegation(s):		Director’s Findings
# 1	SPD Policy 5.001 Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 2	14.090 - Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 – Use-of-Force	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 Employee violated policy when he pepper sprayed a nurse during a demonstration.

**SUMMARY OF INVESTIGATION:**

This case stems from the demonstrations that occurred on July 25, 2020, and SPD’s response thereto. The demonstrations that took place on that day were the largest since the protests began in late May/early June. As a general matter, a large crowd marched from the Central District/South Seattle to the East Precinct. Along the way, individuals within the crowd caused property damage, including shattering the windows of businesses and setting trailers and other buildings on fire in a cordoned off area in the vicinity of the Youth Service Center. SPD additionally reported that demonstrators threw at least one explosive device at the East Precinct, which caused damage to the precinct wall.

As demonstrators passed the East Precinct and walked towards Cal Anderson Park, officers emerged from the precinct and proceeded towards the crowd. SPD issued a number of dispersal orders, which were not complied with. Ultimately, both groups clashed repeatedly, resulting in numerous uses of force against demonstrators and violence towards officers over a prolonged period of time. As a result, OPA received and/or initiated multiple investigations, including this case.

The incident here occurred while SPD officers began to push the demonstrators back from the vicinity of the precinct. As officers advanced, they came across several individuals who were either sitting on or standing next to a concrete retaining wall. Behind the individuals was a bus stop with an awning. As the officers moved towards the individuals, they told them that they needed to move back. One of the individuals said that they had been pepper sprayed and it



appeared that they were receiving medical care. Named Employee #1 (NE#1), who was with the group of officers moving the crowd back, again told the individuals that they had to move and began to push them back with his hand.

Officers in front of NE#1 – referred to here as Witness Officer #1 (WO#1) and Witness Officer #2 (WO#2) – physically pushed two of the individuals. WO#1 pushed Individual #1, who was holding a sign, backwards, causing them to fall down against the bus stop. That use of force is being investigated under 2020OPA-0494. WO#2 pushed Individual #2 back towards concrete wall. The momentum caused both Individual #2 and WO#2 to fall forward onto the retaining wall. At that time, NE#1 was behind WO#1.

Simultaneous to WO#2 and Individual #2 falling towards the retaining wall, the Complainant – who was dressed in light blue nurse scrubs and was wearing a facemask – quickly advanced down a hill towards them. She reached out and grabbed Individual #2, pulling them away from officers. NE#1, who was situated to the back left of WO#2, deployed two quick bursts of OC spray at the Complainant. She pulled Individual #2 up to a standing position and ran with them up the hill. No further force was used on the Complainant at that time. The entirety of the force used by NE#1 towards the Complainant took place over approximately two seconds.

The Complainant was later interviewed by a local media outlet. When asked what she was trying to do at the time she was pepper sprayed, the Complainant stated: “Pull the guy away....I mean I’ve seen footage from Hong Kong...of like how...you have to get people away from the cops because once they get them...they arrest them...they brutalize them...beat them.” She added: “I saw the guy with the baton and the guy with the tear gas launcher, I guess...I saw the guy they were trying to drag down and I was like...nope, nope...shit no.” When asked what she did next, the Complainant described: “So... I started grabbing the guy and dragging him up...trying to pull him up the top...cause it’s hard to get up from down. And something hits me in the ass...yeah, I’m going to have a nasty bruise...it hurt.” She further explained: “That’s what I was pretty much thinking...I’ve got like 3 seconds...I either get this guy up or they drag him down and if he goes down, I’m probably going to go down too. And if I go down there too...they’re going to hit me.”

A video of the OC spraying of the Complainant was posted on social media, garnering numerous views. A complaint was later filed with OPA and this investigation ensued.

OPA interviewed the Complainant, as well as NE#1 and the other officers in the immediate vicinity at the time. The one officer not interviewed as a witness as part of this case was WO#1, as he was an involved officer in another investigation based on the same facts and circumstances. OPA further reviewed the Body Worn Video (BWV) recording by multiple officers and the third-party video posted to Twitter.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegation #1**

#### ***SPD Policy 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 at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.) This allegation was added based on the possibility that, if NE#1 improperly pepper sprayed a nurse, it could violate public trust and confidence, thus constituting unprofessional conduct.



Ultimately, as discussed more fully below, OPA finds that the pepper spraying did not violate policy. Given this, even if it was not an optimal occurrence, it cannot be deemed to be unprofessional. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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

**Named Employee #1 - Allegation #2**

***14.090 - Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 – Use-of-Force***

SPD Policy 14.090-POL-10 governs when officers may make the individual decision to use OC spray and/or blast balls. The policy provides that such use is appropriate to: “defend oneself; defend someone else”; and/or “prevent significant destruction of property.” The force must also be consistent with the general requirements of reasonableness, necessity, and proportionality.

Here, NE#1 used two short bursts of OC spray on the Complainant when she quickly moved down the hill and began pulling Individual #2 away from officers.

As indicated above, the Complainant confirmed that she was actively attempting to pull Individual #2 away from officers because of her belief that, if she did not do so, the officers would “brutalize” them. She stated that this was a tactic she observed that demonstrators used during protests in Hong Kong. She told OPA that she was a volunteer medic at the demonstration and that, as part of her training, she understood that medics would intervene when reasonable and safe to extract injured people from crowds. This was particularly the case if the injured people were at the edge of the crowd. She stated that medics would not generally go into crowds or directly interact with officers. She said that her training as a medic was informal and consisted of videos of medical treatments and medics intervening to protect demonstrators from further harm.

With regard to her actions here, the Complainant stated that she believed that Individual #2 was blocked by the retaining wall and could not see. As she perceived Individual #2 to be in danger from being pushed and struck by officers, she chose to intervene and pull them away. She was then pepper sprayed by an officer. She stated that she also felt a hard impact to her posterior but reasoned that this was likely from when she briefly fell to the ground. She felt that the pepper spraying was improper.

NE#1 told OPA that, at the time of this incident, dispersal orders had been provided to the crowd, but the demonstrators in the vicinity were non-compliant. He recalled that officers were subjected to a significant amount of violence from demonstrators, including being struck by projectiles and improvised explosive devices. As an example, he stated that, shortly after this incident occurred, he was hit in the head with what he believed was a 2x4 by a demonstrator.

NE#1 described that there was a group of demonstrators who had formed a wall using shields and umbrellas. He recalled that demonstrators behind them were throwing projectiles at officers and using the wall as cover. He explained that this was why it was important to keep the demonstrators moving and to break up the wall.



NE#1 remembered coming across the individuals and telling them that they needed to keep moving. While he was cognizant of the fact that they complained of being pepper sprayed, this did not exempt them from having to move. He explained that it was a safety issue to let demonstrators remain behind the line of officers. He observed an officer in front of him (WO#2) become involved in what he perceived to be a scuffle with a demonstrator. He saw them both fall downwards onto the retaining wall. He was scanning the crowd at that time, so he did not know exactly what was happening or what caused the scuffle. At that point, he caught a glimpse of the Complainant hurrying down the hill towards himself and WO#2. Given her quick movement, he was concerned that she was going to either obstruct and endanger WO#2, who was still actively engaged with Individual #2, and/or that she could try to harm other officers.

NE#1 told OPA that, given his perception of a threat posed by the Complainant and his lack of certainty concerning what her intentions were, he believed that his applications of OC spray were appropriate. He stated that he does not enjoy pepper spraying anyone, especially nurses given his respect for the job that they perform; however, he explained that he was required to make a split second decision based on the totality of the circumstances and everything he was experiencing and sensing in real-time.

In evaluating this allegation, OPA has concerns with the actions that set off the conflict, particularly the push by WO#1 of Individual #1. However, as indicated above, that force is being investigated in a separate case. With regard to NE#1's actions, he was not involved in the pushes of Individual #1 or Individual #2 and was positioned behind WO#1 and WO#2. In that capacity, he was in the role of a backing officer and, as depicted by the BWV, was actively scanning from side to side. The BWV supports his assertion that he observed a quick movement down the hill and towards officers by the Complainant. Given this and due to the level of chaos that was ongoing at the time, which included violence towards both demonstrators and officers, OPA finds that his perception that the Complainant's actions could present a threat to have been reasonable.

Indeed, the Complainant, herself, articulated that her intent was to pull Individual #2 away from officers. This inherently required her to quickly move directly towards them and to get close enough to effectuate her goal. OPA has no doubt that the Complainant acted with best intentions and with the purpose of assisting Individual #2, not harming officers. However, in the two seconds that NE#1 had to process what was happening and to react, it is unrealistic to expect him to define her intent. Moreover, this is simply not the legal and policy framework under which OPA is required to assess this allegation, as such 20/20 hindsight analysis is expressly barred. This conclusion does not change solely due to the fact that the Complainant was wearing scrubs.

Even presupposing that NE#1 recognized what she was wearing at the time (versus recognizing that she was a nurse based on video he viewed after the fact), he had no definitive information indicating that the Complainant was, in fact, a nurse or that she was a volunteer medic. NE#1 was entitled to base his force on her actions, rather than her clothing. Moreover, the Complainant admittedly accepted the risk when she advanced towards the officers. She chose to pull Individual #2 away from an active conflict in the direct presence of officers. Indeed, this appears to have been inconsistent with the medic training she described receiving. When she did so, she put herself in a situation that could likely result in the application of less-lethal tools, including pepper spray, or her own arrest for obstruction.

Ultimately, NE#1 articulated his belief that the use of OC spray was warranted as the Complainant was engaging in actions that, in his perception and given the totality of the circumstances at the time, posed a potential risk of harm to officers. OPA finds that this was supported by the collective video evidence. While this was not an outcome that



anyone involved in this incident wanted, it did not violate policy. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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