



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 16, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0759

Allegations of Misconduct & Director’s Findings

Named Employee #1

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

Named Employee #2

Allegation(s):		Director’s Findings
# 1	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)
# 2	5.001 – Standards and Duties 6. Employees May Use Discretion	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 Complainants alleged that Complainant #2 was improperly arrested based on a decision made by Named Employee #2. The Complainants also alleged that Named Employee #1 used prohibited and excessive force on Complainant #2 during her arrest.

ADMINISTRATIVE NOTE:

In addition to her claims of false arrest and excessive force, Complainant #2 also alleged that she was treated unprofessionally while at the precinct and was not provided with timely medical attention. After evaluating these allegations during the intake investigation, OPA determined that they were better handled by the chain of command and they were classified as Supervisor Actions.

SUMMARY OF INVESTIGATION:

OPA received complaints from two Complainants concerning SPD officers’ actions in arresting and using force on demonstrators inside of Cal Anderson Park on December 18, 2020. It was alleged that officers “rallied and charged” into the demonstrators and effectuated “indiscriminate arrests.” It was further alleged that an officer – later identified as Named Employee #1 (NE#1) – used excessive force and prohibited force when he applied a chokehold on and/or placed his knee on the neck of an arrestee – Complainant #2. During its intake investigation, OPA



identified that Named Employee #2 (NE#2), a Sergeant, provided the authorization for the arrests to occur. As such, he was also added as an involved party to his case.

As part of its investigation, OPA interviewed both Complainants. Complainant #1 said that the incident occurred during the same day that City employees were “sweeping” Cal Anderson Park. He stated that the police created boundaries using caution tape and that demonstrators did not cross those boundaries. However, the police crossed their own tape and began arresting demonstrators. He said that the officers gave clear directions that demonstrators were not permitted into the park and the demonstrators complied with those orders. Despite this, arrests were still made of individuals who were not in a restricted area.

Complainant #1 also observed the arrest of Complainant #2. He said that he saw around 20 bicycles crash through the tape and approach Complainant #2. She turned to move away and ran into a tree, causing her to fall to the ground. She was then surrounded by officers and placed into handcuffs. He stated that one of these officers appeared to place his knee on Complainant #2’s neck, in the vicinity of her carotid artery.

Complainant #2 told OPA that she was walking her dog and realized that she did not have a dog waste bag. She went home, dropped her dog off, got a bag and went back to where she was. She said that, at this time, there was a large police presence in the area (significantly more than had been there earlier) and she could not get through to where she previously had been with the dog. She said that she stayed to observe what was happening. She began speaking with other individuals who were there. She said that she saw several people get arrested in the vicinity of Olive Way and saw them get loaded into vehicles and driven away.

Complainant #2 observed a group of individuals who were standing at the edge of Cal Anderson Park. Those individuals were interacting with officers. The officers told them that they had to leave and were trespassing; however, Complainant #2 felt that the individuals were lawfully standing on the sidewalk. She remembered hearing announcements that the park was closed.

The officers stepped back into the park and the group of individuals remained on the sidewalk. She said that, without any warning, officers then began to ride their bicycles towards the individuals and made physical contact with people. The officers then said that everyone was under arrest. She felt a bicycle hit her. The bicycle was by her feet while officers were grabbing onto her. This caused her to lose her balance and fall to the ground. When OPA noted that this did not appear on Body Worn Video (BWV), Complainant #2 affirmed that this is what she remembered.

She said that she was then on the ground with officers around her and her face towards the ground. She felt pressure on her legs and a knee on her neck. She described feeling pressure at the base of her head and the middle of her neck. She was told to put her arms behind her back, but they were folded under her sides. She heard the officers discussing that they were going to “do something.” An officer then began choking her. She described the officer as grabbing her head, chin, and the front of the neck, and then pulling her head to the left and up. She stated she had trouble breathing and it was difficult to talk. When asked to further describe what occurred, Complainant #2 stated that the officer’s hand was on the front of her neck, under her chin and around her jaw. She described it as how you would wrap your hand around chin and jaw when trying to get a child to look at you. She then felt sideways and upward pressure and had a feeling like her cheeks were being squeezed. This occurred for several minutes. Complainant #2 heard people yelling to the officer to stop choking her and he eventually did so.



OPA reviewed the BWV that captured the incident, as well as the arrest of Complainant #2 and the force used against her. The BWV showed that NE#2 informed a group of demonstrators who were standing at the edge of the park that, if they crossed back into the park, they would be arrested. Notably, contrary to Complainant #1's assertion, NE#2 did not reference caution tape or state that the demonstrators would be arrested if they crossed the tape. Another officer also made a similar statement to the crowd. NE#2 then backed away and observed the group. The BWV indicated that the group, including Complainant #2, subsequently began to enter the park. They came approximately 10 to 20 feet into the park. At that time, NE#2 told the officers that they should start making arrests and to "grab" who they could.

NE#2 and other bicycle officers began riding towards the group that was inside of the park. Members of the group, including Complainant #2, began to flee. An officer – referred to here as Witness Officer #1 (WO#1) – tried to take hold of Complainant #2 and told her that she was under arrest. She turned towards him and grabbed an item off of WO#1's vest. NE#1 and a third officer also went hands-on with Complainant #2. She eventually went down to the ground, landing on her posterior. The BWV contradicted Complainant #1's contention that Complainant #2 ran into a tree and Complainant #2's assertion that she was struck by a bicycle and/or tackled to the ground. The officers rolled Complainant #2 over onto her stomach. The BWV showed that she then put her hands under her torso. Based on a review of video, it appeared that NE#1 then applied a force tactic referred to as a cross-face (where an officer uses the bone of the arm to press against the side of a subject's face as a form of pain compliance). This caused Complainant #2 to release her arms and she was handcuffed.

The BWV showed the placement of NE#1's knee at this time. It indicated that his knee was positioned on a part of Complainant #2's shirt that had a color change. When he ultimately lifted his knee up, it was clear that this part of the shirt was in the vicinity of the middle of Complainant #2's back.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 – Using Force 2. Use of Force: When Prohibited

SPD Policy 8.200-POL-2 governs when force is prohibited. If, as the Complainants alleged, NE#1 used a chokehold on Complainant #2 and then pressed his knee into her neck, this would have constituted prohibited force under the circumstances.

However, the BWV indicates that NE#1 engaged in neither of these actions. As discussed more fully below, NE#1 used a cross-face on Complainant #2, not a chokehold. This is supported both by the video and by Complainant #2's description of the force. When using a cross-face, the officer applies pressure to the cheekbone, not the neck. It does not impair breathing.

In addition, the BWV also disproved that NE#2 positioned his knee on Complainant #2's neck. By viewing the color pattern on her shirt, OPA was able to identify where the knee was actually placed. NE#1 put his knee on Complainant #2's middle back, not on her neck.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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



Named Employee #1 - Allegation #2

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.*)

From a review of BWV, OPA determined that NE#1 used the following force: a cross-face to cause pain compliance; and body weight through his knee to hold Complainant #2 down to the ground. OPA finds that both uses of force were consistent with policy.

First, the BWV clearly indicated that Complainant #2 made the deliberate decision to put her hands under her body to prevent being handcuffed. This is referred to in SPD training as “turtling.” SPD training further states that, when dealing with a turtled subject, one of an officer’s primary force options is the cross-face. This tactic, which can appear to be chokehold but is not, is purposed to cause transitory pain and discomfort without lasting injuries. In doing so, the goal is to have the subject release their hands and allow handcuffing to occur. The cross-face was permissible under these circumstances. OPA agrees with NE#1 that he had a lawful basis to arrest Complainant #2, as well as a legitimate interest in doing so quickly given all that was going on around him.

Second, NE#1 pressing his knee in the middle of Complainant #2’s back to keep her secured was also consistent with policy. As indicated above, the BWV disproved both Complainants’ contentions that NE#1 placed his knee on Complainant #2’s neck.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #1

6.010 – 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.

In explaining his probable cause to arrest, NE#2 stated that the park was closed to the public at that time and individuals in the vicinity, and specifically the group including Complainant #2, had been told that they would be arrested if they re-entered the park. When they crossed the park boundaries and proceeded into the park, they were engaging in criminal trespass. NE#2 said that arresting the individuals for this offense was consistent with the



directions he had received at roll call prior to his shift. He was directed to engage in law enforcement activities when needed, as opposed to community caretaking, and this involved making arrests. NE#1 noted that the “commander’s intent” for this demonstration included making arrests specifically for criminal trespass. NE#1 was asked about Complainant #1’s assertion that the boundary was the caution tape set up by officers, not the park grounds. NE#1 said that this was not the case and that he specifically told the group that they were not to cross into the park. He explained that soft boundaries, including using tape, were generally ineffective and the tape was often torn down. When considering whether there was probable cause to arrest, the BWV is again dispositive. The BWV indicated that the individuals, including Complainant #2, were told multiple times that, if they crossed into the park, they would be arrested. There was no mention of caution tape setting the boundary. Moreover, even if there was, BWV confirmed that the tape was down prior to any of the arrests occurring. However, Complainant #2 and others made the choice to cross into the park anyway. At that time, it was consistent with the commander’s intent and the law to arrest Complainant #2 for criminal trespass. The BWV did not support Complainant #1’s contention that officers swooped in to make arrests on their bicycles for no reason and without warning.

While it is certainly possible that Complainant #2 was simply there to pick up her dog’s feces as she contended, this is irrelevant as to whether probable cause existed. She was arrested for her acts after the fact and her intentional entry into the park after being directed not to do so. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #1

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

As indicated in SPD Policy 5.001-POL-6, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-6.)

As OPA finds that NE#2 had probable cause to effectuate the arrests of the individuals in the park and as OPA identified that doing so was consistent with the commander’s intent for that operation, OPA determines that NE#2 did not abuse his discretion during this incident.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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