



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 27, 2022

FROM: ACTING DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0470

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	6.220 - POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion	Allegation Removed
# 2	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	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 Complainant alleged that Named Employee 1 (NE#1) stopped him without reasonable suspicion and directed that he be arrested without probable cause while the Complainant was riding his bicycle down a public street. The Complainant also alleged that Named Employee 2 (NE#2) used excessive force against him while effecting his arrest.

SUMMARY OF INVESTIGATION

This case arose in the context 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. While most demonstrators protested peacefully, some demonstrations devolved into violence, property destruction, and looting.

On August 8, 2020, OPA received an email from the Complainant alleging that he was abruptly tackled by police while riding his bike along a public street on July 25, 2020. The Complainant further alleged that he was arrested on an excessive charge of felony assault and held without bail until his charges were later changed to obstruction. Finally, the Complainant attached a video posted to Twitter (Twitter Video) depicting a portion of the incident. OPA commenced this investigation.

OPA interviewed the Complainant and NE#2. By the time of his interview, NE#1 had separated from SPD and, accordingly, OPA could not compel him to make a statement. NE#1 voluntarily responded to written questions regarding this incident. OPA reviewed the Incident/Offense Report, a follow-up case investigation Report, the Use of



Force Report submitted by NE#2, the Twitter Video, BWV from both named employees, and both named employees' statements to OPA. The evidence in this case is broadly consistent and recited below. Conflicts, where they exist, stem from differing interpretations of the same facts. Specifically, there was a perceptual difference between NE#1 and the Complainant as to whether the Complainant was aware, or should have been aware, that the road was closed.

STATEMENT OF FACTS

On Saturday, July 25, 2020, thousands of people gathered in Seattle in solidarity with ongoing Black Lives Matter protests. Although initial protests were peaceful, significant violence occurred in multiple areas of the city, particularly in the Capitol Hill neighborhood around the SPD East Precinct building. Notably, an explosive device was used to create an 8-inch hole in the side of the East Precinct building, dozens of individuals were arrested, and over twenty police officers were injured. At approximately 4:45 P.M., SPD declared the gathering to be a riot.

As a group of SPD officers began to clear the area around the East Precinct building, NE#1 was assigned to remain in the 1200 block of East Pine Street and prevent non-police personnel from moving West along East Pine Street. For approximately fifteen minutes, NE#1 and other uniformed officer turned multiple people away and explained that no one could continue Westbound on the road. During this time, a crowd formed in the street. NE#1 and other uniformed SPD officers continued to inform individuals in the crowd that they could not move West along the street. Although the road was closed, the street was not blocked off by police tape, barricades, or roadblocks.

After the road was closed, the Complainant – who lived in the area – rode his bicycle Westbound along East Pine Street from the intersection of 15th Avenue towards 13th Avenue. The Complainant intended to cut through Cal Anderson Park, then purchase some food along Broadway. As the Complainant approached the intersection of 13th Avenue and East Pine Street, he passed by a crowd of ten or more people standing in the street – some of whom were filming – as well as uniformed police officers and at least one police vehicle with its emergency lights activated and visible. The Complainant also rode his bicycle directly towards a second police vehicle with its emergency lights activated and visible before he was stopped within about two or three feet of this second police vehicle. The second police vehicle itself was parked in the road immediately behind a marked SPD suspect transport van, parked diagonally in the street. Other police vehicles – at least one of which had its emergency lights visible and activated – were parked in the middle of the street less than one block beyond the place the Complainant was stopped. The Complainant stated that, as he approached the intersection of 13th Avenue and East Pine Street, he observed police cars but did not perceive that a group of ten or more people were standing still in the street. The Complainant stated that he saw the street was “open.”

As the Complainant approached the intersection of 13th Avenue and East Pine Street, NE#1 was standing on the sidewalk along the North side of East Pine Street. As the Complainant passed by NE#1, NE#1 called out “Hey bud!” and gestured with his hand to the Complainant. The gesture NE#1 made was a waving motion back East along East Pine Street. The Complainant admitted that he was looking in NE#1’s direction and recalled NE#1’s statement to him as “get out of the [expletive] street!” The Complainant then yelled “[expletive] you!” at NE#1. NE#1 then said “Hey...” once more as the Complainant began noticeably accelerating Westbound on East Pine Street.

NE#1 then yelled “Grab this guy!” and “Arrest him!” multiple times while pointing out the Complainant to other uniformed officers further West on East Pine Street. NE#2, who was standing further West on East Pine Street, heard NE#1 yelling to arrest the Complainant and observed the Complainant on his bicycle. Although entirely unaware of



the basis for the stop, NE#2 relied on NE#1's instruction to arrest the Complainant. NE#2 also observed that the Complainant was riding in the direction of a police line that was actively engaging a hostile crowd.

Although the Complainant described NE#2 as "tackling" him, NE#2's BWV showed this was not the case. Instead, NE#2 sprinted to catch up to the Complainant, but NE#2 appears to slow down as he reaches the Complainant's left side. BWV shows that NE#2 then reached out with his left hand and grabbed around the Complainant's left bicep. At the same time, NE#2 used his right hand to grab the backpack that the Complainant was wearing. As the Complainant continued moving forward, he fell towards his right side, pulling NE#2 over on top of him.

The Complainant was placed in handcuffs and NE#1 approached and took custody of the Complainant. NE#1 walked the Complainant to the SPD suspect transport van where an SPD sergeant took custody of the Complainant. BWV clearly captures NE#1 informing this sergeant that the probable cause for arrest was for "obstruction." The Complainant suffered a scraped arm during the arrest and reported to OPA that falling from the bicycle hurt a lot.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.220 - POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion

SPD Policy 6.220-POL-2(1) governs Terry stops and stands for the proposition that Terry stops are seizures of an individual and, as such, must be based on reasonable suspicion in order to be lawful. SPD Policy defines a Terry stop as: "A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion in order to investigate possible criminal activity." (SPD Policy 6.220-POL-1.) SPD Policy further defines reasonable suspicion as: "Specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging or is about to engage in criminal conduct." (*Id.*) Whether a Terry stop is reasonable is determined by looking at "the totality of the circumstances, the officer's training and experience, and what the officer knew before the stop." (*Id.*) While "[i]nformation learned during the stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, it "cannot provide the justification for the original stop." (*Id.*)

The Complainant alleged that NE#1 stopped him without reasonable suspicion. However, NE#1 stated that the Complainant was not stopped based on reasonable suspicion but, instead, the Complainant was stopped on the even higher standard of probable cause. Accordingly, the Complainant's allegation that he was wrongfully seized is most appropriately evaluated under the probable cause context in Allegation #2 below.

Accordingly, this allegation is removed.

Recommended Finding: **Allegation Removed**

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

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.

As an initial matter, NE#1 directed that the Complainant be arrested for allegedly violating Seattle Municipal Code (SMC) section 12A.16.010 – Obstructing a public officer. A person is guilty of obstructing a public officer if “with knowledge that the person obstructed is a public officer, he or she . . . [i]ntentionally hinders or delays a public officer by disobeying an order to stop given by such officer; or . . . [i]ntentionally refuses to cease an activity or behavior that creates a risk of injury to any persons when ordered to do so by a public officer.” Although the Complainant was originally – and incorrectly – charged with assault on an officer, there is no evidence that this mistake originated with NE#1 or was an intentionally false upcharge. NE#1's BWV clearly shows NE#1 relaying to the prisoner transportation sergeant that the Complainant was being arrested for obstruction. Moreover, the facts conveyed on the offense report only supported a charge for obstruction, an issue that was noticed and promptly corrected by a supervisor who reviewed the report. Instead, this mistake appears to have resulted from an honest mistake in processing the Complainant's charges along with the forty-five other individuals who were arrested in connection with the July 25, 2020 riot.

NE#1 explained that he believed he had probable cause to arrest the Complainant because (1) he shouted to the Complainant and “waved” for the Complainant to move Eastbound, (2) the Complainant understood NE#1's order because the Complainant “paused,” then said “[expletive] you!” before disobeying by accelerating away, and (3) the Complainant's decision to accelerate away both created a safety risk that other officers may be distracted from their work when dealing with the Complainant and pulled NE#1 away from his assigned duties to handle the Complainant.

This situation presents a close call. On one hand, OPA is skeptical of the Complainant's claim that he did not understand that the road was closed. What seems more likely is that the Complainant observed the crowd of people he was bypassing, as well as multiple uniformed police officers and emergency vehicles in the road, and hoped that he could avoid any additional inconvenience by riding another block and a half just far enough to cut through Cal Anderson Park, as he originally intended. OPA is even more skeptical that the Complainant did not understand – at the very least – that NE#1 wanted him to stop riding his bicycle down the road. In fact, the Complainant tacitly admitted as much by recalling, albeit inaccurately, that NE#1 verbally told him to “get out of the [expletive] street!” More to the point, the Complainant understood NE#1's order at least well enough to disregard it by saying “[expletive] you!” then accelerating away from NE#1. The Complainant tacitly admitted this as well stating that, after NE#1 ordered him out of the street, he “saw the street was open, and people were in it.” That is, the Complainant understood the order, but made his own decision that the order was invalid and could be ignored.

On the other hand, there is enough ambiguity in this situation that OPA cannot say by a preponderance of the evidence that NE#1's belief that the Complainant committed a crime was reasonable. The street itself was not blocked by police tape or any kind of barricade, nor is there any evidence to suggest that any uniformed officer informed the Complainant that the road was closed. Notably, NE#1 never actually told the Complainant to stop or that the road was closed. Instead, NE#1 said “Hey bud!” then gestured with his hand. To the extent this exchange constituted an “order” – a necessary element for an obstruction charge – it was ambiguous. In light of this ambiguity, on the facts and circumstances known to NE#1, OPA cannot say by a preponderance of the evidence that NE#1's belief that the Complainant committed a crime was objectively reasonable.

OPA believes that NE#1 potentially committed a policy violation when he directed that the Complainant be arrested. However, given the facts and circumstances addressed above, OPA find that any such policy violation by NE#1 was



not willful and did not amount to misconduct. Accordingly, OPA recommends that this allegation be Not Sustained (Training Referral).

- **Training Referral:** NE#1 is no longer employed by SPD. Should NE#1 ever return to SPD service, this training referral would take effect. In that case, NE#1's chain of command should discuss OPA's findings and review SPD Policy 6.010 with NE#1. NE#1's chain of command should also review NE#1's BWV from this incident with him, discuss the importance of issuing clear orders to members of the public, and provide any further retraining and/or counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - 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. 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.*)

The Complainant alleged that NE#2 used excessive force against him by "tackling" him from his bicycle, an action that the Complainant characterized as an assault.

NE#2's use of force in this situation was reasonable, necessary and proportional. Under the facts known to NE#2, he saw a uniformed officer "urgently" yelling to stop the Complainant while pointing towards the Complainant. Although NE#2 did not know the basis for the stop, there was no time to make an independent determination on this point – or engage the Complainant in a conversation – because the Complainant was accelerating by him on his bicycle. NE#2 also observed that the Complainant was riding in the direction of the "rear of line officers that were engaging with the violent crowd." To stop the Complainant, NE#2 grabbed the Complainant's left arm and backpack, intending to stop him while keeping him on his bicycle. However, the momentum of NE#2 and the Complainant caused them both to fall to the ground.

NE#2's use of force was reasonable because the information known to him suggested that a fellow officer had legal justification for stopping the Complainant and that the Complainant was fleeing. Moreover, NE#2 attempted to stop the Complainant's bicycle as safely as he could under the circumstances, given that the Complainant was accelerating away from him and NE#2 had to make a split-second decision. The use of force was necessary in this situation because the Complainant was not stopping and would otherwise escape, and NE#2 was additionally concerned about allowing the Complainant to continue riding towards other officers that were handling a riot. Under these circumstances, it was reasonable for NE#2 to think that verbal instructions would be ineffective and no reasonably effective alternative to the use of force existed. Finally, NE#2's use of force was proportional given that the force he used – grabbing the



Complainant by the arm and backpack – reflected the threat posed of both allowing a suspect to escape and move in the direction of other officers responding to a violent situation.

Accordingly, OPA that this allegation be Not Sustained (Lawful and Proper).

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