



## CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 21, 2020

CASE NUMBER: 2020OPA-0324

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	5.001 Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 2	8.200 Using Force 1. Use of Force: When Authorized	Sustained
# 3	8.300 - Use of Force Tools 8.300 – POL- 9 Use of Force – Neck Holds and Carotid Restraints	Not Sustained (Unfounded)

**Imposed Discipline**

Disciplinary decision pending before the Chief. CCS will be updated when discipline is final.
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**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	5.001 Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

***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:**

Multiple Complainants alleged that Named Employee #1 placed his knee on the neck of an arrested demonstrator and that this constituted excessive force. OPA further identified that Named Employee #1 may have placed his knee on the neck of another arrested demonstrator. Lastly, during its intake investigation, OPA determined that both Named Employees may have made statements that were unprofessional in violation of SPD policy.

**SUMMARY OF INVESTIGATION:**

This case arises out of the demonstrations that occurred within Seattle and across the nation in the wake of George Floyd’s murder by a Minneapolis Police Officer. These protests were unprecedented in scope and were directed at law enforcement. While most demonstrators protested peacefully, some demonstrations, especially during the early days of the protests and during nighttime hours, devolved into violence, property destruction, and looting.

The specific case addressed here occurred on the evening of May 30, 2020, the second night of the protests. It concerns the allegation that Named Employee #1 (NE#1) placed his knee on the neck of two demonstrators. It further concerns potential unprofessionalism statements by both NE#1 and Named Employee #2 (NE#2) that OPA discerned after reviewing the Body Worn Video (BWV) for this incident.



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**ANALYSIS AND CONCLUSIONS:**

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

***5.001 Standards and Duties 10. Employees Shall Strive to be Professional***

During its analysis of the BWV for this incident, OPA identified several statements made by NE#1 that may have been unprofessional. These statements are detailed below.

- While NE#1 was riding his bicycle, he traveled by an individual who said: “Fuck, I hate the cops.” NE#1 responded: “Yeah, you’re a bitch.”
- At one point, WO#1 discussed a specific demonstrator with NE#1. WO#1 said: “If I see that kid popping a round...I’m going to [be] breaking off, I’m arresting him.” NE#1 replied: “Yeah...yeah...yeah...I’m with ya... we’ll fuck him up!”
- While standing around arrestees, one said: “I just want to go home to my kids.” NE#1 stated: “Can you shut the fuck up, Jesus Christ.”

With regard to the first and third statements, NE#1 said that he made them either under his breath or to other officers, not directly to community members. With regard to the second statement, NE#1 explained that he was referring to his willingness to use force if warranted under the circumstances. He told OPA that he uses profanity regularly but that it was not intended to be unprofessional.

As discussed in the context of NE#2, below, OPA recognizes how stressful this incident and entire day was for NE#1. However, his statements, particularly statements one and two, were simply unacceptable under Department policy. In statement one, he used a derogatory term towards a community member. While that individual insulted NE#1 first, he is expected to rise above responding as a function of his employment. In statement two, he threatened to “fuck” a demonstrator up. OPA has consistently found these types of statements surrounding the prospective use of force to be problematic and contrary to policy. OPA reaches the same conclusion here.

Based on a review of the totality of the record, OPA concludes that NE#1’s statements violated the Department’s professionalism policy. As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

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

***8.200 Using Force 1. Use of Force: When Authorized***

At approximately 11:30 p.m., a 911 call was placed from a T-Mobile store. It was reported that a group of individuals had broken into the store and were stealing property. Bicycle officers, including the Named Employees, responded to the T-Mobile. The officers were recording BWV at the time. It was a very chaotic scene. As the officers arrived, individuals could be seen running out of the store and away from police. NE#2 grabbed onto a male – referred to here as Subject #1 – and pulled him down to the ground. NE#1 rode up and assisted NE#2 with handcuffing Subject #1. NE#1 told the individual to put his hands behind his back. NE#1 put his hands on the back of the individual’s neck and pushed his face down towards the ground. NE#2 again told him to put his hands behind his back. NE#2’s BWV showed NE#1 place his knee on Subject #1’s head area (*see* NE#2’s BWV, at 01:21:17). As the handcuffing



proceeded, NE#1's knee could be viewed on Subject #1's lower head and, potentially, the neck area (see NE#2's BWV, at 01:21:24.)

At that moment, another male – referred to here as Subject #2 – ran out of the T-Mobile. NE#1 grabbed him and pulled him down to the ground while assisted by another officer – referred to here as Witness Officer #1 (WO#1). At that time, people observing yelled at the officers to get off of Subject #2. Multiple bystanders yelled that NE#1 had his knee on Subject #2's neck. BWV captured WO#1 say to NE#1: "Get your knee off his neck." NE#1 replied: "Yup." WO#1 then physically moved NE#1's knee down to Subject #2's shoulder blade area. Once Subject #2 was handcuffed, the officers discontinued using force on him.

A video of Subject #2's arrest and the positioning of NE#1's knee was recorded by a community member and went viral on social media. OPA subsequently initiated this investigation.

As part of its analysis of this case, OPA reviewed the BWV and the video recorded by community members. OPA was able to isolate the portions of those videos that captured the placement of NE#1's knee. OPA also interviewed NE#1, NE#2, and WO#1.

NE#1 described the day that preceded this incident. He said that it was chaotic and said that he and other officers were the subjects of continuous verbal and physical abuse. He said that he was exhausted. He explained that he was initially assigned to crowd control but, as the evening progressed, he was solely responding to ongoing looting and property damage. He said that there were crowds of people moving throughout the streets and breaking windows of stores throughout the downtown area. NE#1 was with the Seattle Fire Department at a North Face store that demonstrators had tried to set on fire when the officers were advised of looting at the T-Mobile. He responded with other officers, including NE#2. He saw approximately 100 people in the near vicinity of the store and around 25 people running out of the store holding phones and other items in their hands. NE#1 observed NE#2 arrest Subject #1 and assisted him in doing so. He then saw Subject #2 running out of the T-Mobile. He took Subject #2 down to the ground. He said that he used his knee on Subject #2's back to secure him and prevent him from moving.

NE#1 explained that it is important to control the head of a detained subject to prevent that individual from moving around. He said that the best way to do so was with the knee placed at the top of the shoulder blades or on the head. He acknowledged that he was not trained to place his knee on a subject's neck or to impair a subject's breathing in any respect. He denied placing his knee on the neck of either Subject #1 or Subject #2. He believed that the positioning of his knee during this incident was appropriate and consistent with training. NE#1 heard WO#1 tell him to move his knee off of Subject #2 and recalled that WO#1 moved his knee. He did not have a problem with this and felt that it was done more to quell the concerns being voiced by the crowd.

WO#1 told OPA that he could hear people yelling at NE#1 to get his knee off of Subject #2's neck. He recalled that, at the time, he was trying to remove Subject #2's backpack, which had risen up Subject #2's back towards his neck. WO#1 said that, given the positioning of the backpack, he could not tell where NE#1's knee was exactly. However, given the statements that were being made by the crowd, he moved NE#1's knee further down Subject #2's body towards his back. WO#1 felt that this would diffuse the crowd and would be better positioning for NE#1's knee.

OPA further interviewed Subject #2. He stated that, while he was in the vicinity of the looting, he was not involved in it and was backing away when he saw police arrive. He said that he was pulled down to the ground and, although he



was not resisting, NE#1 pushed his face into the concrete. He said that NE#1 had a knee on his neck. He disclosed to OPA that he suffered injuries and provided photographs documenting those injuries.

OPA closely scrutinized the video reflecting the placement of NE#1's knee. From OPA's analysis, it was inconclusive whether NE#1's knee was ever directly placed on Subject #1's neck. There were clear moments where his knee was on Subject #2's head and, at one point, NE#1 shifted his knee to place it horizontally across Subject #2's head towards his neck. However, OPA cannot say definitively that NE#1's knee impacted the neck for any sustained amount of time.

In OPA's perspective, the video is clear that NE#1 did place his knee on Subject #2's neck when Subject #2 was first taken down to the ground. He then readjusted his knee, again placing it on Subject #2's neck. While it does not appear that the placement of the knee caused Subject #2 to have trouble breathing; it was in an area it was prohibited from being.

OPA notes that SPD trains its officers on how to handcuff subjects on the ground. This technique, called prone handcuffing, may involve an officer placing a knee on the upper back of a subject. While some officers utilize a knee on the head, this tactic is not included in Department training and is largely discouraged. Though it can cause injuries, a knee on top of the head will not impair breathing or cause choking. Placing a knee on a subject's neck, however, is flatly prohibited. Even if not intended to impair breathing, it can functionally do so. As the nation saw in Minneapolis, that improper tactic can cause serious injury and even death.

In evaluating the video and based on OPA's interviews, OPA finds no evidence suggesting that NE#1 intended to restrict Subject #2's breathing in any respect or, for that matter, to make contact with his neck. Indeed, NE#1 did not believe that he did so here and said that his goal was to place his knee on Subject #2's upper shoulders at the base of his neck. Even if he did not intend to place his knee on the neck, OPA concludes that he did so. Given this, OPA consequently finds that NE#1's force on Subject #2 was inconsistent with policy. Specifically, OPA finds that the force was neither necessary nor proportional under the circumstances. The force was not necessary as there were reasonable alternatives available to NE#1 other than placing his knee on Subject #2's neck. Most notably, he could have properly placed his knee on the back or, if that was unavailable, on the head. The force was not proportional as the risk of injury from his improper placement of the knee outweighed the threat of harm and/or escape posed by Subject #2.

In reaching this finding, OPA wants to be clear that, as indicated below, it does not find that NE#1 used a neck or carotid restraint. In this respect, the case discussed herein is not comparable to what occurred in Minneapolis. There an officer knelt on George Floyd's neck for eight minutes and 46 seconds, with his hands in his pockets, without Mr. Floyd or others presenting any imminent threat, and while Mr. Floyd repeatedly called out for help and said that he could not breathe. Here, NE#1 placed his knee on Subject #2's neck for approximately 13 seconds, without appearing to compromise Subject #2's breathing, and while in a chaotic situation with ongoing looting, damage, and in the immediate vicinity of potentially hostile demonstrators.

This does not excuse what NE#1 did here. Indeed, even if NE#1 placed his knee on Subject #2's neck inadvertently and without impairing Subject #2's breathing, it was still inconsistent with policy and training. As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**



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**Named Employee #1 - Allegation #3**

***8.300 - Use of Force Tools 8.300 – POL- 9 Use of Force – Neck Holds and Carotid Restraints***

SPD Policy 8.300-POL-9, which was in effect at the time of this incident, strongly discouraged the use of neck or carotid restraints. The policy defined a neck hold as using the arm or another firm object to control or disable a subject by putting pressure on the neck or windpipe. A carotid restraint was defined as where an officer uses a technique to control or disable a subject by “applying pressure to the carotid artery, the jugular vein, or the sides of the neck with the purpose or intent or effect of controlling a subject’s movement or rendering a subject unconscious by constricting the flow of blood to and from the brain.” Since this case occurred, the use of neck or carotid restraints by SPD officers has been completely prohibited.

NE#1 did not use a neck restraint per its definition. OPA further finds that his act did not constitute a carotid restraint as contemplated by the policy because OPA cannot establish that he used his knee on the neck with the purpose or intent of impairing Subject #2’s breathing. From a review of the totality of the evidence, NE#1’s goal appeared to be to secure Subject #2’s body so that he could not move and to allow WO#1 to handcuff him. OPA concludes that, even if contrary to policy, to find that NE#1 used a carotid restraint requires intent that is simply not present here.

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

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

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

***5.001 Standards and Duties 10. Employees Shall Strive to be Professional***

As discussed more fully above, NE#2 arrested several individuals who were either within the T-Mobile or who were observed running out of the store. Subject #2, who was one of those individuals, explained to NE#2 after his arrest: “I was running away from the crowd.” NE#2 responded: “You were running away from the crowd, out of the store.” He further stated: “You’re under arrest...I don’t care to hear your story...you can tell your story to a judge.” After Subject #2 and other individuals who had been arrested in the vicinity of the T-Mobile continued to engage with NE#2, he stated: “I’m tired of you guys ruining my fucking city...I’m tired of it...I don’t want to hear...I don’t want to hear you guys fucking talk.”

After reviewing the BWV and hearing this statement, OPA classified an allegation of unprofessionalism against NE#2. As part of its investigation into this aspect of the case, OPA interviewed NE#2.

NE#2, like NE#1, described the chaotic nature of the day, the lack of any breaks, repeated damage to buildings and looting, and being subject to physical and verbal abuse by demonstrators. NE#2 acknowledged that what he said to Subject #2 contained profanity and that Subject #2 likely heard the comment that was made. However, he told OPA that he was not directing profanity towards Subject #2 as an insult but was letting him know how upset it made him to see the City damaged during the demonstrations and that he did not want to hear Subject #2 speak any more. NE#2 denied that what he said was unprofessional in violation of SPD policy.

As with NE#1, OPA recognizes how exhausted and demoralized NE#2 must have felt with all that was going on around him and based on what he had experienced that day. From OPA’s review of the video, it appears clear that



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NE#2's statement to Subject #2 was borne out of frustration, and was not, instead, made with the purpose of insulting Subject #2. Moreover, unlike NE#1's comments, NE#2 did not directly insult Subject #2 but made a general comment concerning the widespread property damage that was occurring. Would it have been optimal for NE#2 to stay quiet and not say anything? Of course. Is NE#2 a human that reacted in an understandable way under the circumstances? OPA believes the answer to be yes.

For these reasons and despite NE#2's use of profanity in his statements to Subject #2, OPA does not believe that a Sustained finding and discipline is merited. Instead, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2's chain of command should discuss his comments with him and remind him of the expectation that he remain professional and not use profanity towards community members, even under high-intensity and high-stress situations. This counseling and any associated retraining should be documented, and this documentation should be maintained in an appropriate database.

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