



## **CLOSED CASE SUMMARY**

ISSUED DATE:      DECEMBER 3, 2020

FROM:             DIRECTOR ANDREW MYERBERG  
                      OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER:     2020OPA-0371

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

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 2	13.010 - Collisions Involving Department Vehicles 13.010-TSK-1 Department Employee Involved in a Collision	Not Sustained (Unfounded)
# 3	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)
# 4	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity b. When Employees Record Activity	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:**

Named Employee self-reported that it may be alleged he intentionally hit protesters with his patrol vehicle.

**ANALYSIS AND CONCLUSIONS:**

On May 29, 2020, Named Employee #1 (NE#1) was working as part of planned protest response. He was driving a patrol vehicle that was not equipped with In-Car Video (ICV). At approximately 11:30 p.m., NE#1 responded to a protest where bicycle officers were present, and during which protesters were throwing objects at the officers. He was partnered with an SPD Lieutenant, and the pair were present to serve in a monitoring capacity. As they got closer to the scene, the Lieutenant decided that the situation was becoming dangerous for the bicycle officers and that, in order to deescalate the situation, the officers needed to be removed to a safe location. As the bicycle units were pulling back, a patrol vehicle that had failed to pull back following the retreat order was surrounded by a dozen or so protesters. The vehicle was stopped approximately 30 feet in front of NE#1’s patrol vehicle. The protesters began jumping on the hood of the vehicle and started pounding on the window.

NE#1 began to slowly reverse. Once the protesters noticed him doing this, a number of protesters also jumped onto the hood of NE#1’s vehicle. NE#1 reversed slowly. He estimated that there were approximately four or five individuals on various parts of his vehicle. At this point, NE#1 could no longer see the other officer’s patrol vehicle and became fearful that, if he stopped his vehicle, the protesters would attempt to assault him. While still driving in reverse, NE#1 sped up the vehicle. Four protesters were still hanging on the hood of the vehicle, with one holding on



to its push bars. NE#1 made a turn and three of the protesters released their grip on the vehicle and stepped away from the vehicle, leaving only the individual who was holding onto the push bars. NE#1 put the patrol vehicle in drive and drove forward before coming to a stop, which caused the remaining protester to release his grip on the push bar and move away from the vehicle. None of the protesters who were previously on his vehicle were injured or fell to the ground at any point.

NE#1 drove about fifty yards away from the area before stopping at the request of the Lieutenant, who exited the patrol vehicle to provide directions to the bicycle officers. NE#1 stepped out of his patrol vehicle and stood within the open door. As NE#1 was scanning the area, four of five protesters began running towards him, with one holding a cellphone away from his body as if he were recording the interaction. The protesters were yelling at NE#1 that he had intentionally run people over. NE#1 shouted several times for the protesters to get back. Without any additional warnings, NE#1 stated that he deployed one blast of OC spray from his MK-4 cannister when the protesters were approximately three to five feet away. This deployment caused the protesters to back up, allowing NE#1 to get back into his patrol vehicle. NE#1 left the scene in his patrol vehicle and spotted the Lieutenant walking in the direction of the patrol vehicle. NE#1 shared with the Lieutenant the events that had just occurred. The Lieutenant indicated that he did not witness the incidents.

These incidents were self-reported to OPA by NE#1. No BWV, ICV, or independent footage of the incident were found. Moreover, while OPA received nearly 20,000 complaints stemming from the demonstrations, none of those concerned NE#1 or regarded any actions that could be linked to this incident. As such, OPA's investigation relied on interviews with NE#1, the Lieutenant, and NE#1's Use of Force Report from the date of the incident.

#### **Named Employee #1 – Allegation #1**

##### ***5.001 Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

SPD Policy 5.001-POL-2 requires that Department employees comply with the law, City policy, and Department policy. Had NE#1 intentionally struck demonstrators with his vehicle and, in doing so, failed to exercise due regard for their safety, this conduct would almost certainly have violated SPD Policy 5.001-POL-2.

Consistent with the analysis in Allegation #3, below, OPA accepts as true NE#1's recounting that: demonstrators circled and mounted a patrol vehicle and then did the same to NE#1's vehicle; NE#1 maneuvered his vehicle to cause the demonstrators to release without harming them or causing them to fall to the ground; and, NE#1 felt that he was in danger at the time and that his actions were necessary under the circumstances. Given these findings and the absence of any evidence suggesting that NE#1 operated his vehicle in an improper or unduly dangerous manner, OPA concludes that his conduct did not violate the law.

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

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

#### **Named Employee #1 – Allegation #2**

##### ***13.010 – Collisions Involving Department Vehicles 13.010-TSK-1 Department Employee Involved in a Collision***

SPD Policy 13.010-TSK-1 outlines the steps required of an employee when he or she is involved in a collision that includes a department vehicle. See SPD Policy 13.010-TSK-1. Under this policy, the involved employee checks other



involved persons for injuries and renders any needed first aid, notifies a supervisor immediately, and then remains on the scene until relieved. (*Id.*) The involved employee must complete necessary statements outlined in the policy and provide them to the investigating officer. (*Id.*)

NE#1 stated that the steps required by this policy were not applicable to him as he was not involved in a collision. He explained that he maneuvered his vehicle to get people to let go of it but, in doing so, he did not strike any person or vehicle, or cause injury to anyone. He further stated that, while the protesters who had been holding onto his vehicle tried to give the impression that they had been struck when they confronted him, this was false.

OPA finds it likely that, had demonstrators actually been struck by NE#1's vehicle, a complaint would have been filed. Indeed, OPA received several other complaints from the protests where similar allegations were made, all of which were accompanied by video evidence. The absence of a such a complaint here, coupled with NE#1's self-reporting and credible accounting of the incident and the lack of any evidence to the contrary, yields the conclusion that the incident occurred as NE#1 described. As such, OPA concurs that it was not a collision as contemplated by SPD Policy 13.010-TSK-1 and recommends that this allegation be Not Sustained – Unfounded.

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

**Named Employee #1 – Allegation #3**

**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 states that deployment of OC spray or blast balls shall have the primary objective of defending the officer, defending another, or preventing significant destruction of property. (SPD Policy 14.090-POL-10). The policy further states that individual officers may deploy OC spray or blast balls “at the specific suspect(s) who are posing a threat” and that if feasible, officers must provide a verbal warning prior to deployment. (*Id.*) Finally, the policy instructs that, when feasible, officers will provide aid to subjects exposed to OC and/or blast balls and will request medical assistance when subjects complain of continued effects from OC or blast balls. (*Id.*) Officers will request medical assistance when a subject appears to have been injured. *Id.* An officer's decision to deploy OC or blast balls must be consistent with Title 8 – Use of Force. (*Id.*)

In his Use of Force Report, NE#1 stated that he deployed his OC spray to defend himself from potential harm. To this end, NE#1 described multiple demonstrators advancing towards him in what he characterized as a threatening manner. Given this, and in conjunction with his observations of assaults on officers that day and throughout the demonstrations, he felt that he was at risk of serious bodily harm if he did not take action to defend himself.

NE#1 relayed that, prior to the deployment, he told protesters to back up as a form of de-escalation, but he did not provide an explicit verbal warning that OC spray would be deployed. NE#1 asserted that, under the circumstances, he did not have time to provide a formal OC spray warning.

Ultimately, NE#1 was not able to determine if any of his targets were affected by his OC spray deployment. As such, he did not render aid for injuries sustained during the deployment.

As discussed in the context of Allegation #1, NE#1's account of the incident is the only evidence that is before OPA. There is no video – Department or third party – and there was no complaint made concerning this incident by a



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community member and/or an affected party. As such, there is no information within OPA's knowledge that casts any aspersions concerning the accuracy of NE#1's recitation of the facts. Given this, OPA assumes as true that multiple demonstrators, who had earlier been encircling and holding onto NE#1's vehicle, approached him in a threatening manner. OPA also assumes as true that NE#1 reasonably felt afraid for his safety due to the demonstrators' conduct and demeanor and because he was alone at the time. For these reasons, OPA finds that the use of a quick burst of OC spray to move the demonstrators back and to prevent them from causing him physical harm was permissible under SPD policy.

In addition, and again crediting NE#1's account, OPA finds that, under these circumstances, it was not safe or feasible to provide a formal OC spray warning. In reaching this finding, OPA notes that NE#1 indicated that he did direct the demonstrators to move back prior to utilizing the OC spray, which, while not a formal warning, served much the same purpose.

Lastly, OPA determines that, as NE#1 made no indication that any individual was affected by his dispersal of OC spray and no one appeared to request his aid, he did not act contrary to policy by failing to provide medical assistance.

For all of the above reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #1 – Allegation 4**

***16.090 In-Car and Body-Worn Video 5. Employees Recording Police Activity b. When Employees Record Activity***

Due to NE#1's rank, he is not required to wear BWV as outlined in his union's Collective Bargaining Agreement. Additionally, the patrol vehicle that NE#1 was driving was not equipped with ICV, rendering it incapable of recording police activity.

For the above reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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