



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 15, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0762

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.200 – Using Force 1. Use of Force: When Authorized	Not Sustained (Inconclusive)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 – Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Training Referral)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	14.090 - Crowd Management 10 (A & B). Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 – Use-of-Force	Not Sustained (Inconclusive)

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 Named Employee #1 may have used excessive force when he “slammed” the Subject’s head into the ground. It was further alleged that Named Employee #2 may have failed to make an OPA referral when required. Lastly, it was alleged that unknown SPD employees may have improperly pepper sprayed the Subject.

SUMMARY OF INVESTIGATION:

During the review of a use of force stemming from a demonstration, a Lieutenant identified that a male – referred to here as the Subject – alleged that Named Employee #1 (NE#1) slammed his head into the ground and that he was pepper sprayed by unknown SPD employees. The Lieutenant interpreted the Subject’s claim of his head being slammed into the ground to be a possible complaint of excessive force and noted that no OPA referral had been made. OPA self-initiated and opened an investigation.

As part of its investigation, OPA reviewed Body Worn Video (BWV) from NE#1 and other officers, as well as reviewed force documentation. OPA also interviewed NE#1.



NE#1 stated that demonstrators in the vicinity had been given an order to disperse. He and other officers then began walking forward to move the crowd out of the area. He observed a group of individuals with makeshift shields who had refused to leave the vicinity. One of those individuals was the Subject. As NE#1 approached the Subject, he grabbed onto the Subject's shield. They struggled over the shield for a period of time. NE#1 then wrapped the Subject in a bear hug to try to control him. At that moment, NE#1 perceived pepper spray being deployed from his right side by another officer. He did not know who that officer was. While in the bear hug, NE#1 and the Subject fell down to the ground. NE#1 described that, as he fell, he extended his hand to catch himself. He said that his hand made contact with the back of the Subject's head. NE#1 opined that this may have caused the Subject's head to hit against the ground, which NE#1 characterized as "unfortunate." He later observed that the Subject had a scrape to his forehead. NE#1 denied purposefully slamming the Subject's head onto the ground or using excessive force.

OPA could not locate any BWV from NE#1 or any other officer clearly capturing the arrest of the Subject or showing the mechanism of how the Subject's head hit the ground. While NE#1 was recording BWV, his video was inconclusive.

OPA also could not determine which officer(s) deployed OC spray at or in the vicinity of the Subject. While it appeared that OC spray was deployed at the time that NE#1 was struggling with the Subject, it was not clear from the BWV that the Subject was actually targeted or that he was affected by it. OPA further did not see any sign from the BWV that the Subject was dealing with any ill effects from OC spray after the fact.

OPA's review of the BWV determined that the Subject told a supervisor, Named Employee #2 (NE#2), about NE#1 slamming his head into the ground and him being pepper sprayed. NE#2 caused the force used by NE#1 to be investigated as Type II. However, OPA confirmed that NE#2 did not make an OPA referral concerning the Subject's allegation. OPA further interviewed NE#2.

He told OPA that he did not construe the Subject's allegation as setting forth a claim of excessive force. He noted that the Subject did not use any of the ordinary terms suggesting excessive force, such as referring to the force as unnecessary," "excessive," "disproportionate," or "uncalled for." He believed that the Subject was simply describing what occurred to him. NE#2 further told OPA that he was not able to identify the officer who may have used OC spray towards the Subject.

Lastly, OPA tried to interview the Subject. However, OPA was not able to get in touch with him despite best efforts. Accordingly, OPA was unable to speak with him and to get his account of what occurred.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

As discussed above, the Subject claimed that NE#1 slammed his head into the concrete. OPA finds that, if true, this would constitute excessive force under the circumstances of this case. NE#1, for his part, denied doing so. He recalled that he and the Subject fell to the ground and, while doing so, NE#1 tried to catch himself with an outstretched hand and his hand made contact with the Subject's head. This subsequently caused the Subject's head to make contact with the ground. NE#1 said that this was inadvertent, and he asserted that this did not constitute excessive force.



Unfortunately, the BWV recorded by NE#1 is insufficiently clear to resolve these disputes of fact. Moreover, there is no other BWV that OPA could find showing the arrest and how the Subject's head made contact with the ground. This precludes OPA from reaching a definitive finding concerning what happened and regarding whether NE#1 used excessive force.

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

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

Named Employee #2 - Allegation #1

5.002 – Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

SPD Policy 5.002-POL-5 requires supervisors who become aware of a potential policy violation to investigate or refer the allegations depending on their severity. Minor allegations of misconduct may be investigated by a supervisor, while allegations of serious misconduct – such as the use of excessive force – must be referred to OPA. (SPD Policy 5.002-POL-5.)

When assessing whether a claim rises to the level of an allegation of excessive force, a supervisor must consider the language of what was said and the facts of the incident. The supervisor should evaluate whether, if true, the force alleged would be unreasonable or impermissible under the circumstances. Contrary to NE#2's assertion, a complainant is not required to say certain buzzwords for a supervisor to make an OPA referral.

Here, the Subject said that NE#1 slammed his head into the concrete. If true, there would have been no justification under the facts of this case for NE#1 to have used this level of force. Accordingly, it rose to a claim of excessive force and it was required to be reported or, at the very least, screened with OPA.

When NE#2 failed to make a referral or to conduct an OPA screening, he acted contrary to policy. However, OPA recognizes that this incident occurred during a high-stress demonstration. OPA further notes that NE#2 has not violated this policy previously. Accordingly, OPA believes that retraining rather than discipline is the appropriate result.

- **Training Referral:** NE#2 should be counseled concerning his failure to make an OPA referral here and retrained as to when he is required to do so. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #3 - Allegation #1

14.090 - Crowd Management 10 (A & B). 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 the use of OC spray by officers during demonstrations and sets forth when such use is appropriate.



OPA, like the reviewing Lieutenant and NE#2, could not identify which officer(s) used OC spray in the vicinity of the Subject. Accordingly, OPA was unable to assess whether the use of OC spray was consistent with policy or, as the Subject contended, improper.

For these reasons, OPA recommends that this allegation be Not Sustained – Inconclusive.

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