



CLOSED CASE SUMMARY

ISSUED DATE: MAY 1, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0636

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime	Not Sustained (Lawful and Proper)
# 2	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report: Reports must be accurate	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:

The Complainant alleged that the Named Employee caused the unlawful arrest of the Subject and put inaccurate information in a report.

SUMMARY OF INVESTIGATION:

Named Employee #1 (NE#1) drafted a report concerning a demonstration that occurred on September 26, 2020. This report was focused on the acts of demonstrators, the arrest of an individual, and drivers in the “car brigade.” As a general matter, a car brigade refers to vehicles that travel either in front and/or behind a group of demonstrators as they move throughout the city. Demonstrators generally assert that the car brigades protect them from bad actors driving into and injuring them. Officers view the car brigades as a means to facilitate violence by demonstrators and property destruction and to prevent demonstrators from being arrested and/or dispersed.

In an attached supplemental report, another Detective wrote specifically about the Subject, who was arrested on October 3, 2020. In her report, the Detective noted that the Subject was observed taking part in the car brigade on September 26. She further wrote that NE#1 saw the Subject distributing shields to demonstrations from his vehicle (which was described as a silver Chrysler Seabring). The Detective noted that the Subject was using his vehicle to block traffic and shield protestors on September 26 but was not arrested due to a lack of patrol resources. The Detective documented that the Subject and his vehicle were observed on October 3 again in the vicinity of a demonstration. The officers saw the Subject communicating over a hand-held radio and handing out water to demonstrators. At that time, officers stopped his vehicle and placed him under arrest for “rendering criminal assistance” on September 26.



An anonymous Complainant initiated an OPA complaint on October 6, 2020. The Complainant asserted that the Subject was arrested without cause. The Complainant also claimed that NE#1 inaccurately stated that the Subject was handing out shields on September 26 when the Subject did not do so.

On October 21, 2020, NE#1 completed a supplemental report. In that report he stated that he was asked by the Detective on October 3 whether he remembered the Subject's silver Seabring as being part of the car brigade. NE#1 said that it was. He wrote that he also told the Detective that he observed demonstrators taking shields from the vehicle because the top was down. He documented that, on October 7, 2020, he reviewed photographs that he took as part of his law enforcement activities and determined that he was incorrect when he identified the Subject as providing shields from his vehicle. He explained that another vehicle, a silver pickup truck of which he also took a photograph, was the involved vehicle. He informed the Detective of this. He noted, however, that this mistake did not vitiate the probable cause to arrest the Subject for participating in the car brigade.

As part of its investigation into this matter, OPA reviewed: Department video; photographs taken by NE#1; and the reports generated by NE#1, the Detective, and other officers. OPA also interviewed NE#1 and the Detective. The Subject did not respond to OPA's emailed request to interview him.

The two photographs were of the Subject's silver Seabring (the license plate matched) and the silver pickup truck. In the photograph involving the Subject, his car was documented driving in the car brigade with other vehicles. The top was down, and he was holding what appeared to be a large cardboard sign with one hand. The other photograph showed a silver pickup truck that was also part of the car brigade. A person was taking an object that looked like a shield out of the rear bay.

During his OPA interview, NE#1 told OPA that he observed the Subject driving his vehicle as part of a car brigade on September 26. NE#1 confirmed that he did not see the Subject distributing shields as was previously reported. He said that he was asked by the Detective on October 3, who had also seen the Subject as part of another car brigade, whether the Subject was involved in the September 26 incident. He told the Detective that the Subject was and, at that time, indicated his belief that the Subject was distributing shields. NE#1 said that, at the time, he remembered seeing some kind of yellow plastic sheeting that was situated within the Subject's car. He also said that he did not look at his photographs prior to providing this information to the Detective.

NE#1 affirmed that, regardless of whether the Subject was handing out shields, there was still probable cause to arrest him for his involvement in the September 26 car brigade and that the only reason the Subject was not arrested on that day was because of a lack of resources to do so. NE#1 further noted that his statement concerning the shields was not the catalyst for the Subject's arrest on October 3, as the Subject was already in custody at the time of his conversation with the Detective.

NE#1 said that, several days after this conversation, he saw a Twitter post by the Subject that accused him of lying. He said that he reviewed his photographs and determined that he made a mistake. He subsequently notified both the Detective and a Sergeant about his error and authored a supplemental report documenting it.

The Detective told OPA that the Subject was arrested for his being part of the car brigade on September 26, as well as due to his actions on October 3. After the Subject was taken into custody, the Detective returned to the precinct to write a report. At that point, she determined that NE#1 had observed the Subject on September 26. She called NE#1 to get information concerning what he witnessed. NE#1 told her that the Subject might have been handing out



shields on September 26. The Detective noted, however, that this was not the reason for the Subject's arrest and that possession of the shields would not have been a crime in and of itself.

Several days later, NE#1 later notified her that he was incorrect about the shields and he submitted a supplemental report. The Detective subsequently reviewed NE#1's photographs and verified that the Complainant participated in the car brigade on September 26.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 6. Employees May Use Discretion

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 evaluating the evidence, OPA finds the following facts to be conclusively established: (1) throughout September 26, demonstrators marched through the Capitol Hill area and caused felony-level damage to various property and engaged in other criminal activity; (2) during this time, the car brigade drove closely in front and behind the demonstrators preventing anyone, including officers from getting between the vehicles and the demonstrators; (3) the drivers in the car brigade were aware or should have been aware that the demonstrators were engaging in ongoing criminal activity; and (4) photographic evidence conclusively proved that the Subject and his vehicle were part of the car brigade.

To prove the crime of rendering criminal assistance, it must be shown that an individual engages in delineated activities "with intent to prevent, hinder, or delay the apprehension or prosecution of another person who he or she knows has committed a crime or juvenile offense or is being sought by law enforcement officials for the commission of a crime or juvenile offense." Among the activities sufficient to establish the crime are: "Harbors or conceals such person"; or "Prevents or obstructs, by use of force, deception, or threat, anyone from performing an act that might aid in the discovery or apprehension of such person."

Based on the application of the facts discussed above to the elements of the crime, OPA finds that probable cause existed to arrest the Subject and other drivers of the car brigade. Again, crimes were being committed in full view of the drivers within the car brigade and by driving slowly in front and behind the demonstrators and blocking law enforcement officers and vehicles from stopping the property destruction the Subject and other drivers prevented and delayed the arrests of those breaking the law. Moreover, by driving their vehicles behind and in front of the demonstrators, the Subject and other drivers could reasonably be construed as both harboring the demonstrators from arrest and as serving to conceal criminal acts by preventing officers from clearly seeing what was occurring.

Lastly, OPA finds that NE#1's mistaken statement that the Subject was distributing shields does not vitiate the probable cause for the Subject's arrest. As explained by NE#1 and corroborated by the Detective, the Subject's arrest was effectuated well before the Detective was aware of NE#1's erroneous assertion. As such, the Subject's participation in the car brigade on September 26, not his alleged distribution of shields, was the cause of his arrest.



Indeed, as the Detective noted, simply possessing shields would not have been sufficient, by itself, to warrant an arrest.

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

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

Named Employee #1 - Allegation #2

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report: Reports must be accurate

SPD Policy 15.180-POL-5 states that: “Officers shall document all primary investigations on a report.” The policy further states that such reports must be “complete, thorough and accurate.”

Here, the content of the Detective’s report provided by NE#1 was inaccurate. Specifically, it was not accurate when NE#1 informed her that the Subject had been viewed distributing shields from his Seabring.

NE#1 acknowledged that this statement was inaccurate but denied that it was intentionally so. He explained that he conveyed this information to the Detective during a phone call and without first viewing his photographs from September 26. He denied any motive to fabricate this information as the Subject had already been arrested at that time and, thus, probable cause had already been established without this information.

Moreover, NE#1 stated that, as soon as he realized that the information was inaccurate, he took steps to correct it. He informed the Detective and a Sergeant, and he wrote a supplemental report noting his error.

Ultimately, OPA concurs that the information provided by NE#1 to the Detective was inaccurate and, thus, caused the Detective’s report to be contrary to policy. However, OPA finds that retraining rather than discipline is appropriate for several reasons. First, NE#1 accepted responsibility and took quick steps to correct his mistake. Second, the information did not impact the decision to arrest the Subject and there is no evidence that it prejudiced him in any respect. Third, NE#1 has never acted contrary to this policy before. Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1 should receive counseling concerning this incident and, specifically, concerning his provision of inaccurate information to the Detective. He should additionally be provided with retraining on the elements of SPD Policy 15.180-POL-5 and the expectation that he more closely complies with this policy moving forward. This counseling and any retraining provided should be documented, and this documentation should be maintained in an appropriate database.

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