



## CLOSED CASE SUMMARY

ISSUED DATE: MAY 17, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0707

### Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.400 Use of Force Reporting and Investigation 1. Officers Shall Document in a Use-of-Force Report All Uses of Force Except De Minimis 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 an unknown SPD officer failed to document reportable force.

### ANALYSIS AND CONCLUSIONS:

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

#### ***8.400 Use of Force Reporting and Investigation 1. Officers Shall Document in a Use-of-Force Report All Uses of Force Except De Minimis Force.***

A supervisor was conducting a review of uses of force from a demonstration that occurred on May 31, 2020. During that review, the supervisor observed what appeared to be a baton wielded by an officer contacting the face of a demonstrator. The officer pushed the baton forward into the face/cheek area of a demonstrator. The demonstrator kicked the officer and was pulled back by another demonstrator. A second officer deployed pepper spray and both demonstrators ran away. The supervisor determined that this use of force, which was at least a Type I, was not reported. The subsequent application of pepper spray by the other officer was reported. The supervisor could not identify the officer who used the force; however, the supervisor made an OPA referral as the failure to report force constitutes a serious policy violation.

As part of its investigation, OPA reviewed the Body Worn Video (BWV) recorded by a number of officers in order to determine who used the force in question. However, given the vantage points of the BWV – looking outward, as well as due to the fact that the officer in question was wearing riot gear, a helmet, and a gas mask at the time, OPA was unable to figure out the identity of the officer using this means.

OPA also interviewed five officers who were believed to have been in the near vicinity of the officer who used the force. None of the interviewed officers knew who the unknown officer was. They explained that officers from multiple precincts and watches were assigned to this protest and many were unfamiliar with each other. One officer stated his



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belief that the unknown officer was a tall white male but could not provide any other descriptors. Several of the officers explained that they were instructed to move the crowd back with batons and opined that the contact here appeared to be consistent with that movement. One officer interviewed opined that it was possible that the force could have been considered de minimis and was, thus, not reportable.

From OPA's interpretation of SPD policy, OPA believes that an officer would be required to report contact to a demonstrator's face with a baton. This is the case even if it was a push, not a strike. OPA concludes that this would constitute Type I force. Moreover, at the very least, an officer would be expected to screen the force with a supervisor to ensure that it did not need to be reported. However, no use of force report was located for this incident and there is no indication that the force was screened.

The above being said, OPA was unable to locate the unknown officer despite best efforts. Given this, OPA cannot fully assess and evaluate the lack of reporting. This prevents OPA from reaching a determinative finding on this issue. Accordingly, OPA recommends that this allegation be Not Sustained – Inconclusive.

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