



## CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 14, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0601

### **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	14.090 - Crowd Management 9. a & b Crowd Dispersal	Not Sustained (Inconclusive)
# 2	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:**

The Complainant alleged that, during a protest, the Named Employee used unauthorized force against her, and that unknown and unidentified SPD Employees violated SPD’s crowd management policies.

### **ADMINISTRATIVE NOTE:**

The Complainant originally left two voicemails at OPA—the first on June 13, 2020, the second on June 17, 2020—concerning this incident. However, due to the unprecedented number of complaints OPA received during the summer of 2020, OPA did not identify that this complaint was made and open an intake until September 22, 2020. At that point, the Complainant stated that she did not want to participate with OPA’s investigation.

The OIG ultimately declined to certify this investigation as thorough due to OPA’s failure to attempt to interview the Complainant closer in time to when she initially submitted the complaint. The investigation was certified as objective and timely.

Lastly, while the portion of the case concerning the unidentified SPD employees is not governed by the 180-day timeline, the timeline did apply to the allegation against Named Employee #1. Unfortunately, OPA was unable to complete that portion of the investigation by the timeline due to heavy workloads and staffing shortages. As such, this DCM is untimely submitted.



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**SUMMARY OF INVESTIGATION:**

On June 13 and June 17, 2020, the Complainant called OPA and left two voice messages alleging police misconduct. The Complainant alleged, alternatively, that Named Employee #1 (NE#1) pushed her down with his baton and/or that NE#1 “beat” the Complainant with his baton, while the Complainant had her hands up. The Complainant also alleged that she was shot by a rubber bullet and had her umbrella “ripped away” from her by unidentified SPD employees. Lastly, the Complainant alleged that other unidentified SPD employees deployed gas, flash bangs, pepper spray and mace on peaceful community members. The Complainant did not provide a date, time, or location of the alleged incident, nor was it clear from the Complainant’s messages whether NE#1 was alleged to have used any force towards her other than his baton.

On September 22, 2020, OPA opened an investigation and emailed the Complainant. As discussed above, the delay in reaching out to the Complainant was due to a huge influx of complaints concerning the demonstrations that were all received at or during the same time that the Complainant contacted OPA. In its email, OPA both apologized for the delay in processing the complaint and provided the Complainant with her case number and information about the investigation process. Two days later, the assigned OPA investigator emailed the Complainant to schedule an interview. The Complainant did not respond. On October 6, 2020, the investigator emailed, and text messaged the Complainant to schedule an interview. The Complainant responded and a date and time for an interview was confirmed for the following week. Two days before her interview, the Complainant emailed the investigator to cancel the interview. The Complainant stated that she was uncomfortable having a conversation with the investigator, who was a sworn SPD sergeant working for OPA. Three days later, OPA’s civilian investigations supervisor emailed the Complainant, informed her that OPA required additional information from her to investigate her complaint, and offered to speak with the Complainant either in person or over the phone. The Complainant never responded to the email from the civilian investigation supervisor. As such, she was not interviewed.

In addition to contacting the Complainant, OPA attempted to learn additional details about the conduct alleged in her complaints. SPD’s Mark 43 system showed no reports involving the Complainant related to a use of force. Similarly, the only Blue Team Use of Force report for NE#1 from the demonstrations involved a community member who was not the Complainant. In addition, SPD records showed that NE#1—a detective in the Robbery Unit—had not been assigned to work at a demonstration prior to June 17, 2020, and had not been issued a Body Worn Video (BWV) camera. OPA notes that, as a general matter, detectives are not assigned BWV.

Without any specific information from the Complainant regarding the date, time, and place of the allegedly excessive force used, OPA could not identify other relevant BWV that might have shown what occurred.

**ANALYSIS AND CONCLUSIONS:**

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

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

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve



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a law-enforcement objective.” Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” (SPD Policy 8.050.) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

The Complainant alleged that NE#1 used unauthorized force against her. However, the Complainant’s description of the alleged force alternated between allegations that NE#1 “pushed down” on her with his baton versus “beat” her with his baton. It further unclear whether the Complainant’s allegations of the other excessive force that was used against her was attributable against NE#1 or were the actions of another officer.

Moreover, the Complainant did not provide a date, time, or location of the alleged misconduct. Unfortunately, the Complainant cancelled the one interview that was ever scheduled with OPA and did not respond to OPA’s civilian investigations supervisor. The absence of these details made it impossible for OPA to determine whether force was used as alleged and to evaluate whether the force was reasonable, necessary and proportional.

For these reasons, OPA cannot reach a determinative finding on the Complainant’s allegation against NE#1 and, as such, OPA recommends that this allegation be Not Sustained – Inconclusive.

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

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

#### ***14.090 - Crowd Management 9. a & b Crowd Dispersal***

SPD Policy 14.090-POL-9(a) & (b) state that upon determining that there are acts or conduct within a group of four or more persons posing a “substantial risk” of injury to any person or “substantial harm” to property, an incident commander may order that the crowd be dispersed. The policy goes on to state that the incident commander (IC) “shall consider whether less restrictive means” such as “area denial and/or seeking voluntary compliance” are available. (*Id.*) It further requires the IC to determine a safe path of egress for the crowd and, where possible, broadcast a dispersal order prior to dispersing the crowd. (*Id.*) When ordering dispersal, the IC has the authority to direct the use of less-lethal tools including blast balls and OC spray. (SPD Policy 14.090-POL-9(b)). A lieutenant who is not the IC may direct the use of less lethal when a “life safety emergency” exists. (*Id.*) The policy defines a “life safety emergency” as “an unplanned, dynamic situation where immediate police action is necessary to protect the officers’ and/or the public’s safety.” (*Id.*) It goes on to state that when feasible, a dispersal order should be given sufficiently prior to the use of less lethal to allow the crowd to disperse peacefully, and that OC and blast balls should not be deployed in the vicinity of people who do not pose a threat. (*Id.*)

The Complainant alleged that unidentified SPD employees used force against both herself and other community members in violation of SPD’s crowd management policies. Specifically, the Complainant claimed she was shot by a rubber bullet and had her umbrella “ripped away” from her, as well as that tear gas, flash bangs, pepper spray were deployed against peaceful community members.



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As explained more fully above, the Complainant did not provide OPA with details that were needed to investigate her allegations. Most notably, the Complainant did not provide a time, date, or location of her allegation, nor did she provide any names or physical descriptions of the unidentified SPD employees she alleged committed these violations. This was complicated by the Complainant's decision to not participate in an OPA interview.

Ultimately, the absence of these details made it impossible for OPA to determine whether the excessive force alleged by the Complainant occurred. Accordingly, OPA recommends that this allegation and Allegation #2 both be Not Sustained – Inconclusive.

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

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

***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***

For the same reasons as stated above (see Named Employee #2 – Allegation #1), OPA recommends that this allegation be Not Sustained - Inconclusive.

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