



## ***CLOSED CASE SUMMARY***

ISSUED DATE: APRIL 6, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0678

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	5.002 – Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations	Not Sustained (Inconclusive)

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	8.400 POL-1 Use of Force Reporting and Investigation (4) The Sergeant Will Review the Incident and Do One of the Following:	Not Sustained (Inconclusive)
# 2	5.002 – Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations	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 the Named Employees may have failed to properly investigate a use of force and to make a referral to OPA.

### **SUMMARY OF INVESTIGATION:**

On June 7, 2020, during the early days of the protests stemming from the killing of George Floyd by a Minneapolis police officer, SPD officers were staffing a barricade in Capitol Hill. Demonstrators were on the other side. At one point, the decision was made to open the barricade to allow SPD vehicles to pass through. In order to permit egress, the officers asked demonstrators standing in front of the barricades to clear to the sides. However, a number of the demonstrators refused to do so. Officers began opening the barricades and continued to request that demonstrators move. The officers started walking towards the crowd. At that time, there were at least two demonstrators lying on the ground. Officers began to move those individuals and, while doing so, a woman quickly advanced towards an officer referred to here as Involved Officer #1. She came within inches of his face, yelling and gesticulating at him. Involved Officer #1 reached out and pushed her back and she fell to the ground. The force was witnessed, at least in part, by Named Employee #2 (NE#2), a Sergeant. NE#2 was not the direct supervisor for Involved Officer #1.



OPA later received a complaint concerning this incident from a community member. This incident was investigated under 2020OPA-0443. During the course of that investigation, OPA determined that, while SPD supervisors, including NE#2, may have been aware of the force and of a complaint by a community member that it was excessive, no OPA referral was made and no chain of command investigation was conducted.

As part of its investigation into 2020OPA-0443, OPA interviewed NE#2. He said that he witnessed the force used by Involved Officer #1 and that he believed that it may have been out of policy. He told OPA that he went to find the direct supervisor for Involved Officer #1 to provide notification of what he observed, but NE#2 could not locate that supervisor. NE#2 said that he then notified Named Employee #1, a Lieutenant, and told him about the force. NE#2 recalled that this conversation occurred inside of the East Precinct. He also remembered that another supervisor – Sergeant #1 – was present. NE#2 indicated that he told NE#1 what he saw, where it occurred, and the unit to which Involved Officer #1 was assigned (East Precinct Anti-Crime Team). NE#2 asserted that he provided NE#1 sufficient information to allow NE#1 to conduct a misconduct/force investigation. NE#2 further stated that, once he notified NE#1, he satisfied his supervisory requirements.

Given NE#2's statement concerning relaying the information to NE#1, OPA initiated this investigation against NE#1 for potentially failing to take appropriate action concerning a potential allegation of misconduct.

OPA interviewed NE#1. He recalled speaking with NE#2 but said that it occurred outside of the East Precinct, not inside of the building. NE#1 told OPA that NE#2 only told him that he witnessed a force incident, not that NE#2 felt that the force was potentially out of policy. He indicated that he directed NE#2 to identify the involved officers, contact the community member who was subjected to the force, and conduct a force investigation. NE#1 asserted that, to the extent these steps were not taken, it was NE#2's responsibility. NE#1 told OPA that, had NE#2 reported misconduct to him, he would have consulted with other Lieutenants and then made an OPA referral.

As NE#1 directly refuted NE#2's assertions and, instead, alleged that NE#2 may have engaged in misconduct, NE#2 was changed from a witness to a named employee. OPA interviewed NE#2 again. He denied that NE#1 told him to conduct the force investigation. He was asked by OPA whether he made a FIT notification given that he felt that Involved Officer #1 had engaged in potential misconduct. He said that he did not do so and again pointed to the fact that he purportedly reported this matter to NE#1, making it NE#1's responsibility.

OPA interviewed Sergeant #1 to determine if she could identify which individual's account was accurate. She said that NE#1 and NE#2 spoke outside of the precinct as NE#1 indicated, not inside as recounted by NE#2. Unfortunately, she did not recall the specifics of what NE#1 and NE#2 discussed and could not shed light on who was correct. All she remembered was NE#1 telling NE#2 that Involved Officer #1 did not work for him.

OPA searched for video that may have captured the interaction between NE#1 and NE#2, but none existed. In addition, OPA could not find any other witnesses to their conversation.

#### **ANALYSIS AND CONCLUSIONS:**

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

##### ***5.002 – Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations***



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.)

As discussed above, NE#2 contended that he reported a potential out of policy use of force to NE#1 but that NE#1 failed to cause the force to be investigated and did not refer the misconduct allegation to OPA. If true, this would have violated this policy.

NE#1, for his part, denied that NE#2 ever reported an out of policy use of force to him and said that he directed NE#2 to conduct a force investigation. He said that, had such a report been made to him, he would have referred the matter to OPA.

The only non-interested witness to this conversation, Sergeant #1, did not recall what was discussed and whether or not NE#2 reported potential misconduct to NE#1. She also did not remember whether NE#1 ordered NE#2 to conduct the force investigation, as NE#1 asserted doing. While she stated that NE#1 told NE#2 that Involved Officer #1 did not work for him, this statement, standing alone, does not give weight to either of the Named Employees' accounts. For example, NE#1 could have been telling NE#2 this as part of the direction to conduct a force investigation so that he knew which Lieutenant to route the completed investigation to.

Ultimately, given Sergeant #1's lack of a clear memory, the absence of any video of the conversation, and the irreconcilable disputes between the Named Employees' accounts, OPA cannot definitively determine what occurred here and who is at fault for the failure to conduct a force investigation and make an OPA referral. As such, OPA recommends that this allegation be Not Sustained – Inconclusive.

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

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

***8.400 POL-1 Use of Force Reporting and Investigation (4) The Sergeant Will Review the Incident and Do One of the Following:***

If NE#1's account is correct and NE#2 failed to report misconduct to NE#1 or OPA and did not complete a force investigation as ordered to do, he would have violated both SPD Policy 8.400-POL-1(4) and SPD Policy 5.002-POL-5. However, for the same reasons as discussed in the context of NE#1, there is insufficient evidence to determine which of the Named Employees failed to take the steps required by policy.

Accordingly, OPA recommends that both this allegation and Allegation #2, below, be Not Sustained – Inconclusive.

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

**Named Employee 2 - Allegation #2**

***5.002 – Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations***



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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)**