



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 18, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0209

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 (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 Force Review Board alleged that the Named Employee may have used out of policy force.

ADMINISTRATIVE NOTE:

OPA originally recommended that this allegation be sustained. However, at the Loudermill meeting for this case, NE#1's chain of command set forth reasons that it is more appropriate that this allegation be amended to NS_TR. For the reasons set forth below, OPA agrees.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 – Allegation #1

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

a. Original Recommendation

Officers observed a car traveling at a high rate of speed. The officers activated their patrol vehicle's emergency equipment and attempted to effectuate a traffic stop. The car did not stop and, instead, fled the area. The officers observed this and ultimately did not pursue the car. The officers went over the radio to provide a description of the car and its direction of travel.

Less than a minute later, two other officers – Named Employee #1 (NE#1) and Witness Officer #1 (WO#1) – observed the same car. NE#1 was driving a marked patrol vehicle. The officers drove up to the car. The car began to pull away and NE#1 drove into the car with his patrol vehicle at a fairly low rate of speed. The impact occurred at the front passenger's area and caused damage to both the car and the patrol vehicle. The officers determined that there were four individuals in the car. The officers ordered them to turn off the car and to remove the keys. The officers then ordered all of the occupants out, effectuating a high-risk felony stop.



The driver was later determined to be DUI based on marijuana usage and was placed under arrest. The vehicle was also later connected to a strong-arm robbery and the two rear passengers were arrested after being identified by the victim of the robbery. The fourth occupant was a juvenile who was not arrested.

In the aftermath of the incident, NE#1 described his action with his patrol vehicle as an “intentional block” rather than an “intentional ram,” but confirmed that he made contact with the car. NE#1 told his supervisor that he felt the collision but said that he did not think that he was going fast enough for that to have been the case. When the supervisor asked what they had, NE#1 noted that the stop was effectuated for “eluding.” After discussing the incident, the supervisor asserted that the collision constituted a Type II use of force but noted that he did not believe that it was a ramming. Two of the car’s occupants – the driver and a passenger – said that they had pain from the collision. The driver, who was pregnant, complained of pain to her stomach. The passenger complained of shoulder pain.

The use of force was later reviewed by NE#1’s chain of command. The chain of command ultimately approved the force, finding it within policy. In their analysis, the chain of command evaluated whether it was a roadblock given NE#1’s statement that he engaged in an “intentional block.” They determined that it was not based on the definition set forth in policy. However, the tactic was described as a pin at a low rate of speed.

The incident was subsequently reviewed by the Force Review Unit (FRU) and the Force Review Board (FRB). The FRB disagreed with the chain of command and deemed the use of force to be contrary to policy. The FRB discussed tactical and paperwork issues that appeared to be contrary to Department training and policy. With regard to the force, the FRB noted that, at the time the vehicle force tactic was used, the driver was only suspected of misdemeanors and traffic violations. While more serious violations were later discovered, these were not known to the officers at the time. As such, the FRB did not feel that the vehicle force tactic was appropriate under the circumstances. The FRB also addressed the potential need to use a vehicle force tactic to prevent the driver from endangering others. The FRB opined that the reckless operation of the car at that time was based predominantly on the driver responding to the officers, rather than suggesting an intent to continue to drive recklessly absent officer intervention.

The FRU and FRB referred this matter to OPA, and an investigation was commenced. As part of its investigation, OPA reviewed the documentation generated by NE#1 and other officers, the CAD report, use of force reports and review, and In-Car Video (ICV) and Body Worn Video (BWV). OPA also interviewed NE#1 and WO#1.

NE#1 told OPA that, prior to contact being made with the car, the crimes at issue were eluding and reckless driving. They stopped their patrol vehicle by the car and WO#1 got out and told the driver to stop. The driver backed up and NE#1 told WO#1 to get back into the patrol vehicle. The car then accelerated ahead, appearing to try to turn around the patrol vehicle. NE#1 made contact at that time. NE#1 stated that he drove forward slowly enough that he did not feel any harm would be caused to any of the occupants of the car. He further did not want to strike them hard enough to disable the car or to push the car into traffic. He estimated his speed at around three to five miles per hour and the speed of the car at five miles per hour. NE#1 believed that, if he did not stop the car, the driver would continue to drive recklessly and subject others to a risk of serious injury or death. He noted that he did not have stop sticks, as these were no longer used by SPD, and that he needed the approval of a lieutenant to effectuate a roadblock. He said that he did not have an alternative force option and his only other choice was to allow the car to flee. He felt that this was not an acceptable choice.



WO#1 also stated that the speed of the collision was low; however, he said that he could feel the impact when it occurred even if it was not significant. WO#1 also felt that the force was appropriate under the circumstances. WO#1, like NE#1, asserted the belief that, if they let the car go, it would continue to drive recklessly, placing others at danger.

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 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.*)

In assessing the use of force in question – the purposeful collision of NE#1’s patrol vehicle into the car – OPA finds the FRB’s analysis to be persuasive. OPA agrees that the crimes at issue were misdemeanors. Given this, OPA concludes that the “exigent circumstances” called out in SPD training for the use of a vehicle force tactic were not met. OPA, like the FRB, sees no compelling evidence in the record establishing that there was a risk of harm presented by the driver that was significant enough to warrant the vehicle force tactic. In reaching this finding, OPA notes that this was not a case in which the officers would have been permitted to pursue under SPD policy. As such, it logically follows that the NE#1 would not have been able to use a vehicle force tactic to prevent a potential pursuit.

Given the above and again relying on the FRB’s determinations, OPA recommends that this allegation be Sustained.

b. Amended Recommendation

Feb 15th, 2022: A discussion with respect to the lack of training in PIT maneuvers was had at the Loudermill. The NE explained his reasoning for engaging in the pursuit relative to doing something versus doing nothing and used an example of a close friend being critically injured after being hit by a suspect vehicle. It was also recognized that discussions are currently ongoing with respect to new regulations governing vehicle pursuits. As this case was under Director Myerbergs review, it was discussed with him, and Director Myerberg stated that he believed the NE may have been over zealous in his approach to stopping the vehicle and that a training referral in this instance may be more appropriate. A MAR is also being considered with respect to practicums for training in this regard.

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