



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 19, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0436

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	Allegation Removed
# 2	8.200 – Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)
# 3	5.001 – Standards and Duties 6. Employees May Use Discretion	Sustained
# 4	9.020 – Uniform 4. All Outward Facing Uniform Items Include Proper Identifying Markings	Not Sustained (Lawful and Proper)
Imposed Discipline		
Oral Reprimand		

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 subjected her to improper and excessive force when he ran into her with his bicycle, causing her to suffer injuries. She further asserted that this constituted an abuse of the Named Employee’s discretion. Lastly, the Complainant alleged that the Named Employee may have covered up his identifying information with a mourning band.

ADMINISTRATIVE NOTE:

At the disciplinary meeting in this matter, the allegations herein were discussed with the Named Employee’s chain of command. During this discussion, participants in the conversation articulated a desire for additional investigation to further explore the Named Employee’s explanation for these events and address questions raised from the video review. Accordingly, OPA conducted a supplemental interview of the Named Employee. This DCM is amended to reflect the Named Employee’s statements at that supplemental interview.

SUMMARY OF INVESTIGATION:

The Complainant reported to OPA that, while at a demonstration, she was subjected to excessive force. She stated that she was with a group of approximately 40 individuals, including her boyfriend, who were being pushed down 11th Avenue by SPD bicycle officers. She said that, at the same time, another group of officers came the other way on 11th Avenue, “sandwiching” her and the other demonstrators. She recounted that she and the other demonstrators had nowhere to go and were subjected to less-lethal tools from officers while the bicycle officers formed a line facing



them. She described the bicycle officers as using a tactic where they would stop and open a spot in the line to allow “a bunch of cops to flow through.”

The Complainant recounted that, at around this time, Named Employee #1 (NE#1) rode his bicycle into her. The Complainant believed that he did so intentionally. She said that she hit her head on the handlebars of NE#1’s bicycle and then fell to the ground, hitting her arm “super hard.” Her boyfriend helped her up and they both left. As a result of this incident, she suffered an injury to her arm that required the use of a sling. She had not yet seen a doctor because she did not have medical insurance and could not afford to do so.

The Complainant later informed OPA that she did end up visiting a doctor and was diagnosed with a wrist sprain and was told that the impact caused her to chip a piece of bone from her elbow. She said that she still felt discomfort from her injuries. She told OPA that she would provide medical records concerning her injuries and the treatment she received but she had not done so as of the writing of this DCM.

As part of its investigation, OPA also interviewed the Complainant’s boyfriend. He recalled being present with the Complainant at the demonstration and described similar events occurring. He stated that they were stuck between groups of officers. He said that they were separated from their friends and that the Complainant asked to be allowed to rejoin them. She was told no by officers. The boyfriend described the bicycle officers creating a line and stated that bicycle officers would repeatedly open the line and other bicycle officers would ride through. At one point, an officer rode towards him and he pushed the officer back because he knew that he had not done anything wrong. He then noticed that another officer had run into the Complainant with his bicycle, and he saw the Complainant fall down. He asked her if she was okay, but she started crying. She was cradling her arm and appeared to be in pain. He led her away from the area and they left.

OPA reviewed Body Worn Video (BWV) from a number of officers and was able to identify the instant when NE#1 made physical contact with the Complainant. The BWV showed that NE#1 used his bicycle to make contact with the Complainant. Based on the mechanism of contact, it appeared that NE#1 rode the front of the bicycle into her. This caused the Complainant to fall backwards and down onto the ground. She got up and walked away from the officers.

OPA also reviewed video provided by the Complainant. The video showed another angle of the incident. The video similarly indicated that NE#1 rode his bicycle into the Complainant, causing her to fall to the ground. She got up and walked away. The video showed that, as she did so, she began to cradle her arm, as if in pain from the impact.

OPA read the use of force report generated by NE#1. In that report, he wrote that he and other bicycle officers were “conducting a crossbow mobile fence line to move a hostile crowd.” He noted that, during the demonstrations, he and other officers had been subjected to threats and physical violence. That day, demonstrators had been throwing objects at the officers and had not moved even after blast balls had been deployed. The crowd remained in the vicinity, refusing to disperse. NE#1 wrote that he and other officers were directed to move the crowd back using the mobile fence line. He described that he rode “as the number 2 man, directly behind the point, on the right-hand side of the column.” He further documented the following: “Officers were yelling the command ‘move back’ multiple times. A demonstrator refused to move and I collided with her, knocking her to the ground.” NE#1 wrote that he did not intentionally target the Complainant; however, he explained that he could not stop because, if he did, “it would cause the officers behind [him] to crash and the mobile line would have been defeated.” He noted that this could result in assaults and injuries towards officers. He described that, in anticipation of contact with the Complainant, he got “in a



ready, or power position” and tucked in his chin “to protect [his] face and neck.” He asserted that his force was consistent with policy.

Lastly, OPA interviewed NE#1. He again described the use of a mobile fence line to move demonstrators back and said that the demonstrators had failed to disperse despite multiple lawful orders for them to do so. He stated that, when he rode up to the demonstrators, the Complainant did not move. He then collided with her. He said that he could not stop because, if he did, it would cause confusion and disruption to the line of officers behind him, which could result in injuries. He also asserted that he could not veer right or left because there were other officers to both sides of him.

NE#1 said that, as he approached the Complainant, he believed that he was going to collide with her. He did not specifically warn her that this could occur but did repeatedly instruct her and others to move back. NE#1 did not characterize his contact with the Complainant as unintentional and, instead, described it as: “circumstantial of her decision to remain unlawfully where she was.”

When asked about the propriety of the force he used, NE#1 asserted his belief that it was reasonable, necessary, and proportional. He opined that the force used was reasonable as there was “no other alternative to safely and feasibly disperse the crowd.” With regard to necessity, he stated that the Complainant was attempting to disrupt officers’ crowd dispersal attempts by physically standing in the way and asserted that, had he not maintained his position in the crossbow formation, it would have allowed demonstrations to gather behind officers, presenting a safety issue. NE#1 further stated that the force he used was proportional as he “did not do anything out of the ordinary” or utilize “direct force” at the Complainant. He again pointed out that the Complainant choose to remain in his path and disobey lawful orders to disperse. NE#1 denied that he used force to punish or retaliate against the Complainant or that his decision to use force constituted an abuse of his discretion.

SUPPLEMENTAL INVESTIGATION

Following his first disciplinary meeting, OPA reinterviewed NE#1 concerning bicycle crowd control techniques and his use of force during this incident. NE#1’s statements were broadly consistent during both of his interviews.

NE#1 stated that the purpose of a police “crossbow” bicycle line is to deny access or block movement in an area. According to NE#1, officers stand dismounted, side by side with their bicycles oriented with their tires touching each other in order to set up a line perpendicular to the street. NE#1 stated that any gaps in the line create “weaknesses” in the line where people could “get behind the line.”

NE#1 described a bicycle tactic called a “double column” in which two parallel lines of bicycle officers ride about an armlength apart. NE#1 stated that this tactic is used when a squad of bicycle officers moves from one location to another. NE#1 stated that, when a double column forms a line, the bicycle sergeant rides at the front of the double column alongside two “point” officers. NE#1 stated that the sergeant then sets the location of the line and the officers following behind “peel off kind of like a banana perpendicular to the road”—that is, the officers in the left column would “peel” off the column and line up to the left of the point set by the sergeant, and the officers in the right column do the same to the right. According to NE#1, this movement happens dynamically within “seconds.” NE#1 also stated that, due to noise and distance, often only the sergeant and point officers know where a line is going to be set, so officers further back in the column need to watch the officer in front of them to take their cues.



NE#1 recalled that, during this incident, he was assigned as either the second or third officers in line behind the point officer. NE#1 also recalled that he only knew where to stop based on where the point officer stopped. NE#1 did not think he was informed ahead of time where the line was going to be formed.

NE#1's BWV was played for him during his second interview. NE#1 denied knowing at the outset that he would collide with someone while setting the crossbow line. NE#1 stated that he only had one or two seconds of warning that he was going to collide with the Complainant. NE#1 stated he observed the Complainant with a group of "demonstrators forming their version of a bike line with a bicycle directly where our line was going to be set." NE#1 also stated that the Complainant and the other protester with a bicycle were close enough so that they were both in his way. NE#1 denied seeing any reasonable alternative to colliding with the Complainant during the couple seconds between seeing the Complainant and colliding with her. NE#1 also denied expecting the collision to cause any injury because he did not feel he was "going fast enough to cause significant injury—or any injury at all other than maybe some transient pain." NE#1 stated: "I didn't go out of my way to use any, like, extra strength it—I just rode in a straight line." NE#1 did not think stopping short or doing anything other than colliding with the Complainant was possible. NE#1 stated that, had he stopped short, it would have caused other officers to have "piled up into me ... and they could have gotten hurt." NE#1 stated that, alternatively, the best-case scenario had he stopped short would have been that the line would have been misplaced causing "points exposed outside of the line." NE#1 stated his belief that the line could not have been set if he had done something else and, after he collided with the Complainant, most of the crowd dispersed.

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. 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 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where "no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose." (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

OPA originally recommended that this allegation be sustained and that Allegation #3 ("5.001 – Standards and Duties 6. Employees May Use Discretion") be removed as duplicative. However, in full consideration of the discussion at the first disciplinary meeting and explanation provided by NE#1 during the supplemental investigation, OPA now recommends that this allegation be removed. OPA finds that NE#1's conduct in this case is more appropriately addressed as an improper use of discretion and, therefore, this allegation is duplicative.

OPA finds this resolution to be more appropriate because NE#1 did not purposely collide with the Complainant or desire that she fall to the ground.¹ Instead, as discussed more fully below, the NE#1 was ordered to participate in a crossbow line and, in his efforts to maintain the integrity of that maneuver, knowingly collided with the Complainant,

¹ A person acts purposely where it is their "conscious object to engage in conduct of that nature or to cause such a result." Model Penal Code § 2.02(2)(a)(i).



who was in his path of travel.² This distinction does not make that collision appropriate under the circumstances but, instead, properly categorizes the behavior. In OPA’s opinion, NE#1’s conduct is more squarely addressed as an improper use of discretion than a coercive application of “force.”³ Moreover, as recounted by NE#1 in his second interview and confirmed on BWV, NE#1 only had a couple seconds to react after he first observed the Complainant in his line of travel. In that brief time, NE#1 decided to prioritize the execution of a bike maneuver ahead of the Complainant’s safety. As discussed at length below, that decision constituted an abuse of discretion.

Accordingly, and for the reasons set forth above, OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #2

8.200 – Using Force 2. Use of Force: When Prohibited

SPD Policy 8.200-POL-2 outlines when force is prohibited. Included amongst the prohibitions is force used to punish or retaliate.

OPA’s investigation yielded insufficient evidence to establish NE#1 used prohibited force during this incident. While OPA finds that the force was contrary to policy and the product of questionable decision-making, there is no basis to conclude that the force was used to retaliate against the Complainant specifically or to punish her because of her status as a protestor. NE#1 denied that this was the case and there is insufficient information in the record – video or otherwise – that can serve to refute this.

As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #3

5.001 – Standards and Duties 6. Employees May Use Discretion

As indicated in SPD Policy 5.001-POL-6, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-6.) The SPD Manual further guides the use of discretion stating that SPD Policy 5.001 “provides the philosophy for employee conduct and professionalism...The Department expects all employees to...remember that community care-taking is at times the focus, not always command and control.”

OPA originally recommended that this allegation be removed and that Allegation #1 (“8.200 – Using Force 1. Use of Force: When Authorized”) be sustained. However, in full consideration of the discussion at the first disciplinary

² A person acts knowingly where they “are aware it is practically certain that [their] conduct will cause such a result.” Model Penal Code § 2.02(2)(b)(ii).

³ Under SPD Policy, force is “[a]ny physical *coercion* by an officer in performance of official duties.” SPD Manual 8.050 (emphasis added).



meeting and explanation provided by NE#1 during the supplemental investigation, OPA now recommends that this allegation be sustained.

At the outset, OPA finds that NE#1 did not collide with the Complainant accidentally. NE#1 did not characterize the collision with the Complainant as accidental in his Use of Force Report or either of his interviews. To the contrary, in his second interview NE#1 maintained his concern that avoiding the collision with the Complainant would have risked an officer pile up or caused points to be exposed in the line. Ultimately, NE#1 made a conscious decision – albeit a decision made over a couple of seconds – that it was more important to maintain the integrity of the crossbow line than avoid hitting the Complainant or slow down prior to impact.

In assessing NE#1's decision, OPA agrees with him that he had a lawful basis to move the crowd, including the Complainant, back. The video confirms that multiple orders were provided to the demonstrators to disperse and that they did not do so and remained in the street. OPA also finds that NE#1 was lawfully ordered to participate in the crossbow line as part of his duties as a bike officer to effectuate this purpose. The fundamental question here is whether it was reasonable for NE#1 to ride his bicycle into the Complainant at a speed sufficient to knock her down to the ground. For the reasons stated below, OPA finds that it was not and concludes that NE#1 violated policy.

In OPA's perspective, the foremost concern during this incident should have been the safety of all persons. A bike officer – like officers operating police vehicles – is not free to disregard human beings in their path because the officer's primary objective is otherwise lawful or part of a team movement. *Compare with* "Emergency Vehicle Operations" SPD Manual 13.030-POL-2 ("The preservation of life is the highest priority. Criminal apprehension and the preservation of property are secondary.") and SPD Manual 13.030-POL-5 ("Officers are not relieved of the obligation to drive with due regard for the safety of all persons."). The integrity of a bike maneuver and any speculative risks associated with its improper execution must come second to avoiding a potentially significant known harm.

The course of action NE#1 chose carried with it a relatively high risk of potential injury. This was not a push with the side of a bicycle, as trained to move crowds. Instead, NE#1 rode directly into the Complainant without slowing down. While perhaps not at full speed, he did so quickly enough that the impact caused the Complainant to fall forcefully onto the pavement. Indeed, the collision did, in fact, cause the Complainant to suffer a fairly significant injury to her elbow and a wrist sprain. This was simply not warranted under the circumstances.

Relatedly, OPA finds that NE#1 had alternatives to riding into the Complainant. Though NE#1 asserted that he had individuals to his left and right, this is not completely borne out by the video, which shows that NE#1 could plausibly have veered to either side to avoid the Complainant.⁴ In addition, while OPA recognizes the interest in maintaining

⁴ In addition to the factual situation observed in NE#1's and witness BWV, NE#1's concerns over an officer "pile up" are arguably not borne out based on NE#1's own description of how a double column crossbow line is executed. In a double column, officers ride in two parallel lines. The officers at the front of each line are the point officers and a sergeant is "usually at the front of the column, but to the side." The point officers then "set" the line by stopping in a "power slide" at a point instructed by the sergeant. However, because of noise and speed, the officers in the back of the line only know where to end up by "watching the officer in front of them." After the line officers set the line, the officers behind the line officers begin to "peel off" such that the officers in the left column line up to the left of the left-column point officer and the officers in the right column line up to the right of the right-column point officer.

During this incident, NE#1 was riding in the right column immediately behind the right-column point officer. As viewed through NE#1's BWV, the right-column point officer passed by the Complainant to the left, stopping several feet beyond the Complainant.



the integrity of the line behind him, OPA believes that the interest in avoiding a serious injury to the Complainant outweighed this. OPA finds that this was particularly the case given that the Complainant was not engaged in violence or posing a physical threat of harm to the officers at the time.

Finally, OPA finds it important to note that NE#1's decision not only harmed a community member, but also failed in NE#1's stated objective: maintaining the continuous integrity of the crossbow line. As observed in a witness officer's BWV, after colliding with the Complainant, NE#1 still had to dismount from his bicycle and advance one or two steps to stand next to his line officer.

OPA recognizes that NE#1 was faced with challenging circumstances, both general and specific. Generally, OPA has repeatedly recognized the difficulty faced by officers in responding to last summer's demonstrations. This was especially so in the early days of the protests where officers were overwhelmed, exhausted, and encountering a level of vitriol that they had never experienced before. Specifically, OPA is sympathetic to the fact that it appears in NE#1's BWV that the point officer he was following bypassed the Complainant, setting the line just past the Complainant. This decision – by either the bike squad sergeant or the point officer – forced NE#1 to choose, in a couple seconds, between perfectly executing a crossbow line maneuver or colliding with a human being. However, neither of these circumstances excuses the decision to knowingly collide with the Complainant, which OPA concludes constituted an abuse of discretion.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #4

9.020 – Uniform 4. All Outward Facing Uniform Items Include Proper Identifying Markings

SPD Policy 9.020-POL-4 requires officers to clearly display their names and serial numbers and to not cover up that information. This allegation was classified for investigation based on the Complainant's assertion that NE#1's identifying information may have been covered up during this incident. The Complainant specifically contended that, after she was knocked to the ground, she tried to read NE#1's serial number but it was covered with a mourning band. She also contended that she could not read his name tag.

When asked about this allegation at his OPA interview, NE#1 stated that, while not positive, he believed that he was not wearing a mourning band at the time of this incident and that his identifying information would have been visible and unobstructed.

At this point, NE#1 had already begun "peeling" to the right toward the Complainant and several other individuals. If the crossbow line was otherwise being executed as intended, NE#1 had at least three options other than riding into the Complainant at a continuous rate of speed. NE#1 could have: (1) veered left so as to continue following the right column point officer, then stopping behind the point officer; (2) stopped short of the Complainant, then, with the officers who would have stopped in line with NE#1, moved the Complainant and those with her back; or (3) slowed down before colliding with the Complainant.

BWV from a witness officer shows that the two officers riding immediately behind NE#1 both appear to have chosen the second option above. That is, they stopped short of the individuals who were standing next to the Complainant, dismounted, and then pushed those individuals back without riding directly into them.



OPA's review of BWV confirmed that NE#1 was not wearing a mourning band and that his identifying information was clearly displayed on his uniform. Accordingly, while the Complainant may not have been able to read it, this was not due to misconduct on NE#1's part. For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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