



## ***CLOSED CASE SUMMARY***

ISSUED DATE: April 7, 2021

CASE NUMBER: 2020OIG-0004

### **Allegations of Misconduct and the Inspector General's Findings**

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

<b><u>Allegation(s):</u></b>		<b><u>Inspector General's Findings</u></b>
<b><u>#1</u></b>	<b><u>5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy</u></b>	<b><u>Not Sustained (Unfounded)</u></b>
<b><u>#2</u></b>	<b><u>5.001 - Standards and Duties 10. Employees Shall Strive to be Professional</u></b>	<b><u>Sustained</u></b>
<b><u>#3</u></b>	<b><u>13.030 Emergency Vehicle Operations 4. Officers Use Emergency Lights for Emergency Response</u></b>	<b><u>Not Sustained (Lawful and Proper)</u></b>
<b><u>#4</u></b>	<b><u>13.030 Emergency Vehicle Operations 5. Officers are Responsible for the Safe Operations of Their Police Vehicle</u></b>	<b><u>Sustained</u></b>

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

<b><u>Allegation(s):</u></b>		<b><u>Inspector General's Findings</u></b>
<b><u>#1</u></b>	<b><u>5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy</u></b>	<b><u>Allegation Removed</u></b>
<b><u>#2</u></b>	<b><u>5.001 - Standards and Duties 10. Employees Shall Strive to be Professional</u></b>	<b><u>Not Sustained (Training Referral)</u></b>
<b><u>#3</u></b>	<b><u>13.030 Emergency Vehicle Operations 4. Officers Use Emergency Lights for Emergency Response</u></b>	<b><u>Allegation Removed</u></b>
<b><u>#4</u></b>	<b><u>13.030 Emergency Vehicle Operations 5. Officers are Responsible for the Safe Operations of Their Police Vehicle</u></b>	<b><u>Allegation Removed</u></b>

#### **Named Employee #3**

<b><u>Allegation(s):</u></b>		<b><u>Inspector General's Findings</u></b>
<b><u>#1</u></b>	<b><u>5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy</u></b>	<b><u>Allegation Removed</u></b>
<b><u>#2</u></b>	<b><u>5.001 - Standards and Duties 10. Employees Shall Strive to be Professional</u></b>	<b><u>Not Sustained (Unfounded)</u></b>
<b><u>#3</u></b>	<b><u>13.030 Emergency Vehicle Operations 4. Officers Use Emergency Lights for Emergency Response</u></b>	<b><u>Allegation Removed</u></b>
<b><u>#4</u></b>	<b><u>13.030 Emergency Vehicle Operations 5. Officers are Responsible for the Safe Operations of Their Police Vehicle</u></b>	<b><u>Allegation Removed</u></b>

#### **Named Employee #4**

<b><u>Allegation(s):</u></b>		<b><u>Inspector General's Findings</u></b>
<b><u>#1</u></b>	<b><u>5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy</u></b>	<b><u>Allegation Removed</u></b>
<b><u>#2</u></b>	<b><u>5.001 - Standards and Duties 10. Employees Shall Strive to be</u></b>	<b><u>Allegation Removed</u></b>

	<u>Professional</u>	
<b>#3</b>	<b><u>13.030 Emergency Vehicle Operations 4. Officers Use Emergency Lights for Emergency Response</u></b>	<b><u>Allegation Removed</u></b>
<b>#4</b>	<b><u>13.030 Emergency Vehicle Operations 5. Officers are Responsible for the Safe Operations of Their Police Vehicle</u></b>	<b><u>Allegation Removed</u></b>

***This Closed Case Summary (CCS) represents the opinion of the Inspector General regarding the misconduct alleged and therefore sections are written in the first person.***

#### **EXECUTIVE SUMMARY:**

In a complaint submitted online to OPA, the Complainant alleged that on May 30, 2020, at approximately 4:10 p.m., an SPD vehicle traveling on Marion Street between 5<sup>th</sup> and 6<sup>th</sup> Avenue “turned on its lights (no sirens) and began accelerating fast straight at a dozen of people leaving the protest area. Specifically, the cop went straight at a group of young men and never used his brakes. They literally dove out of the way and were inches from being run over. This was extremely dangerous targeting and nearly killed a group of people. Completely unprofessional and terrifying.” The Complainant provided the license plate number and OPA identified the vehicle and related In-Car Video (ICV).

The incident was captured on ICV. The vehicle driver (NE#1) was identified, as were three other passengers. Based upon conduct and statements made by occupants in the vehicle during the incident, two of the occupants were also identified as Named Employees (NE#2 and NE#3). The fourth occupant of the vehicle was initially unknown but was identified by OIG and was determined to not have engaged in potential misconduct.

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

**Note:** To avoid duplication, given multiple named employees facing the same alleged violations, this analysis will be grouped by allegation, with each NE discussed therein.

#### **Allegation #1**

##### ***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

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

SPD Policy 5.0001-POL-2 requires all employees to adhere to federal, state, and local laws, as well as the rules, policies and labor agreements governing Seattle and SPD. Regarding potential violation of traffic laws, the video evidence shows the vehicle driven by NE#1 was already in the intersection when the light turned from yellow to red. Under RCW 46.61.055, a driver can legally enter an intersection while a light is green or yellow, and must clear the intersection when the light turns red. A violation occurs when a driver enters the intersection while the light is red. Evidence reviewed by OIG does not suggest NE#1 engaged in conduct that is violative of law, so this allegation should be removed. Discussion of specific alleged policy violations occurs below in Allegation #3.

Recommended Finding: **Removal of Allegation**

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

There is no evidence that NE#2 was operating the vehicle during this incident.

Recommended Finding: **Removal of Allegation**

#### **Named Employee #3**



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There is no evidence that NE#3 was operating the vehicle during this incident.

Recommended Finding: **Removal of Allegation**

**Allegation #2**

***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***

Named Employee #1

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.”

Based on a review of the ICV and interviews of the Complainant and the NEs, OIG finds NE#1’s actions related to driving in a manner that made members of the public scramble out of the way of his vehicle to avoid being struck, in violation of this policy.

The backdrop of this protest, and those immediately before and for a significant period afterward, was anger at and mistrust of the institution of policing, with SPD becoming the local focus of significant negative public sentiment. While professional conduct and respectful treatment of community members by SPD officers should always be the rightful expectation, this was an exceptionally critical time to demonstrate those values. Engaging in actions that undermined public trust served to put an exclamation point on the community sentiment being expressed during these protests. Here, operating a police vehicle in a manner that created a risk of injury, and frightened and angered community members, especially given the use of vehicles to harm protest crowds in the last few years nationally, only added to the erosion of public trust in and respect for SPD. Community members engaging in protected First Amendment activity, or any other activity as a pedestrian, should not have to leap out of the way of a police vehicle that is taking deliberate actions which create a perception of danger.

Public perception is a critical piece of the analysis in assessing a breach in professionalism. The Complainant estimated the vehicle speed at 50 miles per hour, which was not born out by vehicle GPS information showing the vehicle was traveling 15mph through the intersection. It does illustrate how fast the acceleration toward pedestrians appeared to community members. It created a sense of danger for the Complainant who stated he had to pull his girlfriend out of the way.

To regain and maintain public trust, community members must believe police care about public welfare and the well-being of members of the public. Actions like this, coupled with statements captured on the ICV during this incident indicate a lack of caring about members of the public,<sup>1</sup> and a carelessness and disregard for their welfare.<sup>2</sup> After the

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<sup>1</sup> At timestamp 4:57 an occupant of the vehicle can be heard whispering what sounds like, “God, I fucking hate these people.” It is unclear whether this statement is in reference to motorists stopped for protestors or the protest crowd.

<sup>2</sup> After noting the crowd is thinning, at timestamp 5:51-5:53 an occupant of the vehicle says, “Shoot the gap, yo.”



vehicle clears the group and screams can be heard from outside the vehicle, one occupant chuckles.<sup>3</sup> As a supervisor in this vehicle, at a minimum NE#1 has an obligation to foster a sense of respect for members of the community out at the protest, and nip unprofessionalism occurring around him in the bud. Although these statements cannot be unequivocally attributed to NE#1, he does not appear to have taken any action in his capacity as a supervisor to set a professional tone or address unprofessional comments. For all these reasons, NE#1's actions constitute a violation of the policy requiring professionalism.

Recommended Finding: **Sustained**

Named Employee #2

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional at all times." The policy instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." The policy further states the following: "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person." Lastly, the policy instructs Department employees to "avoid unnecessary escalation of events even if those events do not end in reportable uses of force."

An occupant of the vehicle can be heard laughing as pedestrians are seen scrambling away from the vehicle as it accelerates through the small group of people in the roadway. When asked about who this is attributable to, NE#1 indicates he would guess it may be NE#2 based upon his voice, but he is not sure and does not know what prompted the "chuckle."

When asked about the laughter during his interview, NE#2 acknowledges it may have been him, but is unsure and does not know why he would have chuckled at that moment. Given the equivocal nature of the evidence, this allegation is not sustained against NE#2. However, as he concedes he may have laughed as people leapt away from the vehicle, he should receive training and verbal counseling about professionalism and the impact of this kind of conduct on public trust and respect for SPD. Although there may have been some other unrelated reason for the laughter that NE#2 did not explain, the public perception of it must be considered. Here, when it appears to be in response to the fright of members of the public jumping out of the way of an oncoming police vehicle, it seems callous, implies animus, and could be viewed as retaliatory.

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

- **Training Referral:**

NE#2 should be provided with refresher training on professionalism. The NE should also receive counseling and training (perhaps via the newly implemented ABLE program) on how to actively intervene when fellow officers are engaging in misconduct, unprofessional behavior, or other conduct that undermines public trust and confidence. This counseling and training should be documented, the documentation should be maintained in an appropriate database, and should be made available to OIG for follow-up.

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<sup>3</sup> This occurs at timestamp 6:03.



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Named Employee #3

There is no evidence to support a finding that NE#3 engaged in making unprofessional comments or was the driver of the vehicle in this incident.

Recommended Finding: **Removal of Allegation**

**Allegation #3**

***13.030 Emergency Vehicle Operations 4. Officers Use Emergency Lights for Emergency Response***

Named Employee #1

SPD Policy 13.030-POL-4 requires officers to use audible signals when necessary to warn other of the emergency nature of the situation. (See also RCW 46.61.035.) NE#1 appears to drive using emergency equipment properly throughout the duration of ICV footage. When the named employee traverses the last intersection at Marion Street and 5<sup>th</sup> Avenue prior to the moments that are the basis of the underlying complaint, the traffic signal has just turned yellow as he enters, so emergency equipment was not necessary. Even so, COBAN information indicates NE#1 did turn on his emergency lights for a few seconds in the intersection. Based on this evidence, Allegation #3 is Unfounded as it was lawful and proper use of emergency equipment. NE#1 offers the following statement to support his belief that he drove in compliance with department requirements for use of emergency equipment. "I believe that if -- if someone were to watch that video in its entirety, they would see that I was in complete control of my car the entire time using my lights and sirens appropriately except for the very end there, which is the subject of our interview today. And I believe I did it for good reason, not to mention that I entered the intersection when it was legal to do so." The ICV supports NE#1's statement, and at the last intersection, he entered it lawfully, so no emergency lights would have been required by law or policy.

Recommended Finding: **Unfounded (Lawful and Proper)**

Named Employee #2

There is no evidence that NE#2 was driving the vehicle or otherwise responsible for operation of emergency equipment.

Recommended Finding: **Removal of Allegation**

Named Employee #3

There is no evidence that NE#2 was driving the vehicle or otherwise responsible for operation of emergency equipment.

Recommended Finding: **Removal of Allegation**

**Allegation #4**

***13.030 Emergency Vehicle Operations 5. Officers Are Responsible for the Safe Operation of Their Police Vehicle***



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Named Employee #1

SPD Policy 13.030-POL-5 provides that officers are responsible for the safe operation of their vehicles, including an obligation to drive with due regard for the safety of all persons, and to drive no faster than necessary to arrive at the scene safely.

While NE#1 provides rationales for not using emergency equipment while entering and clearing the intersection at 5<sup>th</sup> and Marion that are reasonable, the discussion here hinges on driving with due regard for safety. This policy violation hinges on NE#1's actions after clearing the intersection when he accelerated toward a small group of protesters that were in the roadway on Marion street, and the lack of due regard for the safety of those persons in the roadway.

NE#1 provided this synopsis: "I come up into the block. There is two or three people in the street. They see me, you know, coming at them. They get out of the way; we proceed through the intersection and --and that was the end of it." These statements seem to indicate NE#1 placed the onus of ensuring safety on the pedestrians in the street, rather than on his obligation to drive with due regard for the safety of others. The responsibility for safe vehicle operation does not rest on others perceiving and reacting to potentially dangerous driving, but rather on the driver's obligation to operate the vehicle in a safe manner. It was NE#1's burden while driving his police vehicle to ensure pedestrians were not placed in danger by his oncoming vehicle. He seems to view this situation from the perspective and assumption that so long as he believes pedestrians see and react to his vehicle, he is relieved of his obligation to ensure their safety. Due regard for the safety of others does not contemplate that others must provide for their own safety by making sure they are looking in the right direction to observe a potential danger or by leaping out of the way of an oncoming vehicle as it accelerates toward them, it is an affirmative obligation of the driver.

NE#1 provides several reasons for not using emergency equipment to navigate past the crowd during this event or providing any audible warning to people in the path of his vehicle, mostly related to concerns that if the crowd recognized their police vehicle, they might be overrun and surrounded. They were driving a vehicle with a variety of weaponry and were concerned that, if overtaken, those weapons might be taken and create public safety concerns, especially given the then-recent incident wherein a rifle was taken from a police vehicle by a member of a crowd and fired into the air. While valid, this concern is premised on assumptions that did not seem likely to occur. NE#1 stated that the vehicle was not immediately recognizable as a police vehicle, so remaining stationary without emergency equipment at the intersection while the crowd cleared would have allowed them to maintain a low profile until they could advance on Marion Street without potentially endangering pedestrians.

Also, there was no indication in the video evidence that anyone noticed them as they sat at the intersection. If there had been some indication the crowd was even aware of their presence, or reacted to the vehicle at all, that might have provided some rationale for needing to move through and get clear of a dangerous crowd quickly, but that was not the case. Instead, the rationale was theoretical and the haste to move into a group of pedestrians seemed unnecessary. Finally, someone in the vehicle acknowledged the crowd was thinning out, and someone even said, "Shoot the gap, yo," to indicate NE#1 should try to navigate through a gap in the dwindling crowd. If the crowd was diminishing, it could have been possible to wait a few moments longer to allow the straggling pedestrians to clear the street, then proceed through the intersection with emergency equipment, as they had done most of the way, without losing significant time responding to Headquarters.

There was no acknowledgement by NE#1 of any obligation to slow down as he approached the group, provide an



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audible warning as he approached, consider whether they would be able to react in time, or any other consideration that might be important while accelerating toward persons in the street. NE#1 said he chose not to provide an audible warning out of concern for alerting the crowd, although by the time he had entered the intersection and moved through it, his vehicle was travelling at enough speed to move past the crowd without much risk they would surround the car.

That risk was more credible when they were sitting still before moving to the intersection, as crowds on foot generally cannot surround a moving vehicle. He also stated that in his experience, using a horn “sometimes just agitates people more than anything.” It is also likely that people are agitated, as well as frightened and shocked, by an oncoming vehicle accelerating in their direction, so this rationale for not providing the group with some warning using a horn is not persuasive.

NE#1 also uses hindsight that no one was injured as a justification for driving through the group in the roadway. In a description of the event as it unfolded, NE#1 concluded by noting that “it worked out,” which suggests there was a certain amount of luck being relied upon when he chose to maneuver through the group. If one of the individuals had stumbled or fallen, it might not have “worked out” and someone might have been injured or worse. The obligation to drive a police vehicle with due care should not require luck as a requisite to public safety.

Recommended Finding: **Sustained**

Named Employee #2

There is no evidence NE#2 was driving the vehicle during this incident.

Recommended Finding: **Removal of Allegation**

Named Employee #3

There is no evidence NE#3 was driving the vehicle during this incident.

Recommended Finding: **Removal of Allegation**