



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 28, 2021

FROM: DIRECTOR ANDREW MYERBERG
 OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0660

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 6. Employees May Use Discretion	Allegation Removed
# 2	SPD Policy 5.100 – Operations Bureau Individual Responsibilities 1. Patrol officers A. Responsibilities 2. Monitor and take appropriate action regarding criminal activity in assigned area.	Not Sustained (Training Referral)
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

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 failed to take police action when required and that he drove his police vehicle aggressively towards a bicyclist.

SUMMARY OF INVESTIGATION:

An anonymous Complainant filed a complaint with OPA concerning the alleged failure of an SPD employee to take police action when required. The complaint stemmed from a twitter post that stated that a man had punched a demonstrator and the officer “didn’t react and let him walk away untouched.” The Complainant further alleged that the officer drove aggressively towards a bicyclist several minutes later.

OPA interviewed a witness to the incident. He said that he and his wife exited their residence and saw a person yelling at an officer who was in a police vehicle. The witness could not describe that officer. Another person – referred to here as the Suspect – walked up and punched the person who was yelling. The Suspect walked across the street and the witness and his wife followed. They then flagged down two officers and told them what occurred.

OPA reviewed the Body Worn Video (BWV) recorded by the two officers. It showed them being notified of the assault and performing a search for the Suspect.

OPA also reviewed radio transmissions concerning the incident. The transmissions indicated that the officers were flagged down and that they performed an area check for the Suspect, who they were unable to locate. The transmissions also indicated that they could not locate the victim of the assault.



OPA identified that Named Employee #1 (NE#1), a Lieutenant, was parked in an unmarked police vehicle in the vicinity described by the witness. His vehicle matched the picture posted on Twitter.

OPA interviewed NE#1. He confirmed that he was at the location in question at the time of the incident. He described that it was nighttime and was raining, which significantly affected his visibility. He explained that his role was to monitor ongoing demonstrations and to supervise the SPD response. He said that, at the time, he was focused on a group of around 30 to 40 demonstrators and other demonstrators walking up and down the streets in the vicinity. He heard “a lot of yelling and screaming” around his car and perceived that there was a small group of individuals nearby. He scanned around but did not see anything out of the ordinary. However, he did not pay close attention to what was happening as he was fixated on the other demonstrators. He stated that, at one point, an individual approached his vehicle and said that someone punched another person. NE#1 did not see any assault or any type of confrontation. All he heard was the yelling around his vehicle. Moreover, when he scanned around at the time of the yelling, he did not see anyone waving him down, a victim, or the Suspect.

NE#1 told OPA that, had he seen the assault, he would have gotten out of his vehicle to address it and would have called other backing officers to assist him. He stated that he later heard officers over the radio say that they had been flagged down and were searching for the Suspect. He recalled hearing that neither the Suspect nor a victim could be located. As he was aware that the incident was being handled by other officers, NE#1 took no action.

NE#1 said that he did not, himself, go over the radio and report the assault. He said that this was because he knew the incident was being handled by other officers and he did not have anything specific to report at that time. He said that, prior to hearing the other radio transmissions, his intent was to potentially take action once his observations of the demonstration had been completed.

NE#1 did not believe that he violated any of the allegations set forth in this case. He did not believe that he abused his discretion by not getting out of his vehicle and investigating. He stated that his role was to supervise and observe the demonstrations. He further said that getting out of his vehicle while alone would not have been safe and might have resulted in a larger confrontation. He stated that his intent was to investigate the incident, but this was obviated when other units handled it. For similar reasons, he felt that he appropriately conducted his patrol responsibilities. Lastly, NE#1 denied engaging in any actions that were unprofessional.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 6. Employees May Use Discretion

OPA believes that SPD Policy 5.100(1)(A)(2), which is set forth in Allegation #2, is the allegation that best captures NE#1's conduct in this case. OPA finds this allegation, which governs discretion and covers the same inactions and actions that are discussed below, to be duplicative. Accordingly, OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #1



SPD Policy 5.100 – Operations Bureau Individual Responsibilities 1. Patrol officers A. Responsibilities 2. Monitor and take appropriate action regarding criminal activity in assigned area.

SPD Policy 5.100(1)(A)(2) sets forth the requirement for SPD employees assigned to the Patrol Operations Bureau to monitor and take appropriate action regarding criminal activity in an assigned area.

Here, NE#1 acknowledged that he was informed that an assault had occurred. He did not, however, see the assault or observe the Suspect or victim. He provided several reasons for why he did not immediately exit his police vehicle to investigate the incident, including that: he was alone at the time and it was potentially unsafe; he was focused on other responsibilities; he did not see any criminal activity; and he learned shortly thereafter that other officers had responded.

OPA does not believe that it was unreasonable for NE#1 to remain in his police vehicle at the time and to not actively investigate the assault. As he indicated, he was alone at the time. Moreover, he was a Lieutenant, not a patrol officer, and was tasked with monitoring the ongoing demonstration and directing the SPD response thereto.

That being said, OPA concludes that NE#1 should have gone over the radio, even if briefly, to make other officers aware of the assault and to have them respond to his location. This would have taken just seconds, it would not have compromised his safety, and would have permitted him to continue to carry out his supervisory functions.

While OPA does not find his failure to do so to have been so egregious to constitute a violation of policy – particularly since other officers did ultimately respond – OPA believes that retraining and counseling is warranted.

Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1 should be counseled concerning this incident and, specifically concerning his failure to provide a radio update concerning the reported assault. This counseling and any retraining provided should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #3

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

It was alleged that NE#1 was unprofessional when he drove aggressively towards a bicyclist. SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

While the Complainant alleged that NE#1 drove aggressively, no video was provided of this purported conduct. Moreover, the Complainant was anonymous and, thus, could not be interviewed. NE#1 denied engaging in unprofessional behavior and OPA was unable to locate any evidence contradicting this.

Accordingly, when assessing this allegation under the requisite burden of proof, OPA recommends that it be Not Sustained – Unfounded.



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