



## CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 3, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0429

### Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 18. Employees Must Avoid Conflicts of Interest	Not Sustained (Unfounded)
# 3	16.130 – Providing Medical Aid 1. Recognizing the Urgency of Providing Medical Aid and the Importance of Preserving Human Life[...]	Not Sustained (Lawful and Proper)

***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:

Numerous Complainants alleged that SPD officers failed to take necessary action when an individual “drove his vehicle into a group of protesters” and shot one of them.

### SUMMARY OF INVESTIGATION:

#### **A. Background of the Incident**

This case arises out of the demonstrations that occurred within Seattle and across the nation in the wake of the killing of George Floyd by a Minneapolis Police Officer. These protests were unprecedented in scope and were directed at law enforcement.

This incident occurred on June 7, 2020, near the corner of 11th Avenue and Pine Street, a major site of demonstrations throughout the preceding week. On that day, a crowd of approximately 1,000 demonstrators occupied the intersection. The demonstrators were grouped against a metal fence line erected by SPD officers, with an open space behind the first fence and a police line approximately 75 feet away. Unlike some prior days, at this point the demonstrators remained behind the first metal fence and heeded directives being broadcast over a PA system not to advance up to the police line. SPD did not have a presence on 11th Avenue, which had been fully occupied by demonstrators.

At approximately 8:20 PM, an individual, who is referred to herein as the “Subject,” drove his car southbound on Pine Street toward the intersection, which was filled with protesters. Based on third-party video examined by OPA, it



appeared that the Subject attempted to drive into the crowd. According to charging documents, after he was arrested, the Subject stated that he initially drove to the demonstration site on his way to work to see “how bad” the demonstrations were and, while doing so, he inadvertently encountered the crowd. However, statements from witnesses attested to the fact that the Subject recklessly attempted to drive through the crowd. While OPA cannot conclusively determine the Subject’s motive and defers to the ultimate conclusions of his criminal trial, OPA’s analysis suggests that the crowd perceived the Subject’s actions as dangerous and as intending to harm demonstrators, and several people attempted to stop the car.

An individual among the demonstrators, referred to herein as the “Victim,” approached the driver’s side window, which was open, and grabbed at the steering wheel. He punched the Subject to induce him to stop. At that point, the Subject retrieved a firearm from the passenger seat and fired once, hitting the Victim in the shoulder. After he shot the Victim, the Subject exited his vehicle. Video footage taken by members of the crowd showed that, by this time, the Subject’s vehicle came to rest at the crosswalk. According to witness statements and a third-party video of the incident, the Subject then got out of his vehicle and pointed his firearm at members of the crowd who were nearby. He walked into the crowd and moved to the front of the protest line, where the video showed him crossing the metal barrier erected by SPD. The entire time from when the Subject shot the Victim to when he crossed the metal barrier was approximately 50 seconds. The entire video, which depicts the vehicle driving south on 11th Avenue and first being noticed by demonstrators, is 1:27 in length. After the Subject crossed the first metal barrier, he was taken into custody and then arrested by SPD officers on the police line.

The same and additional videos from the scene show individuals in the crowd assisting the Victim. Several civilians with medical markings are seen crouched around the Victim. Those individuals helped the Victim to his feet and walked with him in the direction of 11th and Pike, where he was medically assisted by representatives from the Seattle Fire Department (SFD). According to dispatch records, SFD took custody of the Victim approximately 10 minutes after the initial report of an incident at 11th and Pine.

## **B. OPA Complaints**

OPA received numerous complaints about this incident. The allegations varied but centered on three general concerns. First, Complainants alleged that SPD employees failed to act when the Victim was shot and instead allowed the Subject to peacefully approach the SPD line, thus inferring that SPD officers may have approved of the conduct. OPA broadly interpreted these complaints to allege that unnamed officers acted in a manner that undermined public trust in the Department.

Second, some Complainants alleged that SPD’s response was driven by a familial relationship between the Subject and an SPD officer. These complaints appeared to stem from news reports that the Subject was the brother of an officer. OPA interpreted these complaints as alleging a conflict of interest with one or more SPD officers who responded to this incident.

Third, some Complainants alleged that SPD failed to render aid to the Victim promptly.

This OPA investigation ensued.

## **C. SPD’s Response to the Incident**



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## **1. Arrest**

At the time of this incident, the SPD line was set approximately 120 feet back from the corner of 11th and Pine to create space between the metal fence demarcating the front rank of protesters and the police themselves. OPA's analysis of the officers' positioning indicated that, from the police line, it was not possible to see around the northwest corner of the building. Thus, officers on the line would not have seen the car approaching on 11th Avenue. Consequently, SPD became aware of the incident based on reactions by demonstrators in the crowd.

At 8:21 PM, SPD dispatch records indicated that the SPD Communications Center received a call from an individual reporting that the driver of a vehicle shot someone. At 8:22 PM, the call was updated to reflect reports of a "machine gun" and a victim at 11th and Pine. The call was updated to reflect that a shooting was believed to have taken place. SPD communications broadcast the report of a shooting citywide. Also, at 8:22, the dispatch log was updated to reflect that one individual, the Subject, was in custody.

Body-Worn Video (BWV) of the incident showed that the SPD officers present on the line would have been able to hear an audible popping sound or bang consistent with a gunshot at 8:22 PM. BWV did not record officers on the line reacting to this sound, and there was significant shouting and chanting from the crowd. Less than a minute later (approximately 50 seconds), the Subject crossed the metal barrier. BWV from the officer directly facing him – Witness Officer #1 (WO#1) – did not show the Subject crossing the barrier because it was obscured by WO#1's riot shield, however the sound of metal fencing was audible and officers, including WO#1, could be heard shouting for the Subject to get back. The Subject could be heard stating: "I had to shoot somebody; they were trying to attack my car." At that point, a large number of officers shouted for the Subject to put his hands up. This interaction took approximately 10 seconds.

WO#1 set his riot shield aside. As he did so, the Subject was visible with his hands raised. Another officer – Witness Officer #2 (WO#2) – moved in and took control of the Subject's hands. As they were doing so, three officers with riot shields moved forward and moved between the crowd and the Subject. WO#2 and WO#1 led the Subject behind the police line where they brought him into an adjacent alleyway. WO#2 placed him against a wall and WO#1 took control of one arm. At that time, the Subject advised that he had a gun. WO#1 frisked the front pocket of his sweatshirt and removed a firearm. WO#1 and WO#2 then placed the Subject in handcuffs.

Another officer – Witness Officer #3 (WO#3), was present and assisted in the handcuffing. As this was happening, the Subject stated that his "brother works for the police precinct." None of the officers appeared to acknowledge this information. WO#1 and WO#2 completed the handcuffing. As they did so, WO#3 appeared to make a thumbs-up gesture in the Subject's field of view and said: "we'll get this sorted out, okay?" The Subject said "yeah." WO#2 brought the Subject inside of the East Precinct. WO#1 and WO#3 returned to the line.

## **2. Radio Traffic and Medical Response**

At approximately the same time, examinations of the radio log showed that SPD incident commanders were attempting to understand what had occurred. Analysis of SPD radio showed that at approximately 8:22 PM, reports of a "skirmish" in the crowd were broadcast. 11 seconds later, it was reported that a car drove into the crowd. 24 seconds after the report about the car, a "man with a gun in his hand, 11/Pine" was reported. 14 seconds after the report of the armed Subject, it was advised that a man wearing "[b]lack shirt blue jeans, approaching the line." OPA notes that, while the radio traffic did not identify this individual as the Subject, the description matches what he was



wearing at the time as well as his conduct. The time between the “skirmish” report and the report of the man crossing the metal barrier was 48 seconds, roughly equivalent to the 50 seconds shown on the third-party video between when the Subject shot the Victim and when he turned himself over to police.

15 seconds after reporting the individual matching the Subject’s description, an SPD supervisor who OPA believes to have been the incident commander ordered SWAT to “bring bearcat up with a long gun.” At this point, it did not appear clear to the officers on the scene that only one shooter had been involved or that the shooter was in custody. Another supervisor on the line then requested to “get someone up on the roof” of the precinct or an adjacent building for situational awareness.

The bearcat approached the incident scene and units began moving to the roof. Two minutes and 35 seconds after the initial report of a “skirmish,” SPD radio first advised of “reports that someone driving a vehicle has shot someone in the crowd.” 7 seconds later, tones indicating a shooting were broadcast over the radio. 16 seconds after that, and two minutes and 58 seconds after the initial reports of an incident, WO#2 broadcast that he had taken an individual into custody.

At this point it was still not clear to SPD that there was only one shooter, or that the individual in custody was the Subject. Units arrived on the roof three minutes and six seconds after the initial reports of an incident, and 10 seconds after WO#2 advised that one was in custody. It took SPD one minute and 35 seconds to locate the Victim at 11th and Pine, at which point the South Precinct Anti-Crime Team dispatched two EMTs to that location. Rooftop units updated that the Victim was moving to 11th and Pike with the assistance of demonstration medics.

Five minutes and 51 seconds after the initial report of a disturbance at 11th and Pine, it was reported that SFD medics were staging at 11th and Union, two blocks south of the incident location. The Victim was at 11th and Pike, between Pine and Union. 20 seconds later, the Incident Commander ordered units to 11th and Union to accompany the medics. Approximately two minutes after Fire reported that it was staging, bicycle officers led by a lieutenant entered the crowd to locate the Victim. Eight minutes and 24 seconds after the initial incident, and two minutes and 33 seconds after Fire staged at 11th and Union, the Incident Commander ordered them to 11th and Pike. Exactly one minute later, it was reported over radio that they made contact with the Victim. The bicycle unit remained with the Victim and the medical unit.

During this time, SPD received numerous inaccurate reports of additional gunshots and shooting victims. Over the next six minutes, the Incident Commander coordinated with rooftop units, bicycle officers, and SWAT to ascertain that there were no additional victims before the scene was declared under control. In all, the time between the initial gunshot and the Victim receiving medical assistance was approximately nine minutes and 24 seconds.

### **3. Subject’s Arrest Screening**

During the time that SPD was attempting to provide medical assistance, WO#2 and other officers were occupied with screening the Subject’s arrest and determining how to book him into jail. Immediately after handcuffing the Subject, WO#2 brought him inside the precinct and placed him in a holding cell. The Subject was read his Miranda warnings and questioned about the incident. WO#2 questioned the Subject and a supervisor – Sergeant #1 – observed. The Subject stated that he was attempting to drive to his job downtown, where he worked night security at a store. He said that he became disoriented due to the demonstrations and began driving north on 11th when he encountered the crowd. The Subject explained that the crowd surrounded his vehicle on three sides and began



hitting and kicking his car. He stated that an individual – the Victim, reached into his window and began to grab and punch him. He said that he retrieved a gun from his passenger seat and fired into the Victim’s chest.

WO#2 asked: “okay, so why did you shoot him in the chest?” The Subject replied: “I just shot because I was getting barricaded by everybody and, you know, I was fearing for my life.” He stated that he got out of his car because it would not start. OPA’s analysis of the questioning, which was recorded in its totality, indicated that WO#2 did not prompt or lead the Subject into stating a self-defense claim. The Subject explained that the Victim fell to the ground and that individuals began helping him.

The Subject told the officers that he “booked it” away from his vehicle and crossed the fence. He then stated: “my brother works here.” WO#2 asked him to clarify what he meant by “here” and the Subject said that he meant the East Precinct and that his brother was a police officer. When asked, he gave his brother’s name and said: “I do not want to ruin his name though.” He clarified the spelling of his brother’s name for WO#2. WO#2 resumed questioning the Subject about the incident, particularly concerning whether the Subject pointed his firearm at any other individuals. The questioning concluded. Shortly before WO#2 and Sergeant #1 left the screening area, they compared notes and Sergeant #1 appeared to ask WO#2 a question about the Subject’s brother. WO#2 replied: “Yeah, doesn’t sound familiar though.” WO#2 left the area and deactivated his BWV.

Sometime later, Sergeant #1 spoke to the Subject while he left the holding cell to get water. The Subject remained in handcuffs. Sergeant #1 stated that the Subject’s brother had been notified about the arrest, and that he had been relieved of duty. Sergeant #1 further stated that the Subject would be interviewed by detectives from the Homicide Unit and from there, either released or booked into jail. The Sergeant explained that, because the precinct was surrounded, it could be some time before he was transported to jail. The Subject was ultimately transported to the King County Jail later that day in a prisoner van.

#### **4. Subject’s Brother Relieved of Duty**

The Subject’s brother, an officer, was identified based on the Subject’s statement. That officer – Witness Officer #4 (WO#4), was stationed on the far side of the police line from where the Subject turned himself in. OPA examined WO#4’s BWV during the arrest. It did not show the arrest although some commands given by the arresting officers were audible. WO#4 did not make any comments or take any actions that suggested to OPA that he realized the Subject’s identity during the arrest.

After the Subject provided WO#4’s name to WO#2 and Sergeant #1, WO#4’s direct supervisor was notified by the Incident Commander. That supervisor – Sergeant #2, removed WO#4 from the line. Sergeant #2 stated that, after removing WO#4, she stayed with him until his shift ended the next morning and she confirmed that he had no contact with the Subject at any point during that time.

#### **D. OPA Interviews**

OPA interviewed three of the Witness Officers. WO#2, who conducted the arrest, was asked about the arrest procedure. He stated that he brought the Subject into an alley rather than arresting him in front of the crowd because he did not want the crowd to interfere, and did not know at the time what the Subject had done apart from cross the police line. He stated that the crowd had been angry that day and that he was concerned about objects being thrown. He said that, when the Subject first approached, his firearm was not visible. WO#2 characterized the



Subject as very compliant during the arrest process. He stated that, after he brought the Subject inside and interviewed him, he became aware of the Subject being related WO#4. WO#2 did not see or recall WO#4 having any contact with the Subject.

WO#3 was interviewed as well. WO#3 was involved only in the initial handcuffing and had no further contact with the Subject. He stated that the procedure of bringing the Subject behind the police line to be arrested was standard practice and consistent with other arrests. He also stated that the Subject was compliant. With respect to his comments that “we will get this sorted out,” WO#3 stated that he was trying to establish a rapport with the Subject in case he had to question him later. WO#3 stated that he tries to be nice to those he arrests and that the thumbs-up was something he did out of habit. WO#3 stated, and OPA’s examination of documentation and BWV confirmed, that WO#3 was not involved in any other aspect of the investigation.

WO#4 was interviewed. He stated that Sergeant #2 made him aware of the Subject’s identity approximately 30 minutes after the arrest occurred. He stated that, because of his relationship with the Subject, he was removed from the line and sat inside the precinct until the end of his shift where he had no contact with the Subject. He stated that he could not physically leave the precinct at the time of the arrest because it was surrounded by protesters.

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

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

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

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (SPD Policy 5.001-POL-10.) 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.” (*Id.*) 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.*)

OPA was unable to identify any employee whose conduct toward the Subject, the Victim, or the crowd would undermine public trust in the Department or SPD officers. Similarly, the officers’ collective conduct did not appear to escalate any confrontation with the crowd and, indeed, no confrontation occurred. Similarly, OPA’s analysis did not identify any derogatory or disrespectful language or any profanity used by any of the officers.

At the time the incident occurred, it was not visible to the officers on Pine because the incident location was blocked by a building, and the significant crowd noise meant that the sound of a gunshot was not easily distinguishable. OPA determined that SPD became aware that a violent incident had occurred 50 seconds after the Subject shot the Victim when he turned himself in. Over approximately the next nine minutes, SPD actively coordinated with SFD, protest leaders, and SPD communications to provide medical aid to the Victim and to ascertain whether the threat to public safety had ended. In examining these events, OPA cannot find any evidence that SPD, or any individual officer, failed to take an action that would have kept people safe and, fortunately, nobody else was injured.

In addition, OPA does not believe that the officers initial handling of the Subject was unprofessional. Again, at the time the Subject approached the line, the officers did not know the extent of his actions. They treated him like any



other potential arrestee, first yelling at him to get back and then telling him to put up his hands before pulling him behind the lines and taking him into custody. Moreover, the video indicated that the Subject was compliant at the time so there would have been no reason for any of the officers to have used any force other than that necessary to control him and to handcuff him.

Lastly, some of the Complainants alleged that SPD officers or the Subject flashed a “thumbs up” sign while in view of the protesters, inferring that this was a sign of coordination with the Subject or at least approval of his actions. The only “thumbs up” sign OPA observed on BWV occurred after the Subject was arrested, and OPA interpreted this to be a form of rapport-building and de-escalation as WO#3 explained. These types of de-escalation tactics are consistent with SPD’s policies and training and are largely what the public has come to expect and demand in other contexts. As such and without other evidence indicated that favorable action towards the Subject was taken – of which there is was none, OPA does not find this “thumbs up” to have constituted unprofessionalism.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

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

***5.001 - Standards and Duties 18. Employees Must Avoid Conflicts of Interest***

SPD Policy 5.001-POL-18 requires that Department employees avoid conflicts of interest. In this regard, the policy specifically provides the following: “Employees will not engage in enforcement, investigative, or administrative functions that create or give the appearance of conflicts of interest”; and “Employees will not investigate events where they are involved. This also applies where any person with whom the employee has a personal relationship is involved in the event.” (SPD Policy 5.001-POL-18.)

OPA was unable to find evidence supporting an allegation that any officer’s conduct created a conflict of interest here. Indeed, WO#2 and Sergeant #1 did not appear to recognize WO#4’s name at the time it was given to them and did not appear to take any action based on hearing that the Subject was related to a police officer except notifying Sergeant #2 that one of her officers might be related to an arrestee. Further, WO#4 had no contact with the Subject and, ultimately, had no further role in demonstration management after the arrest. Ultimately, while WO#4 had a personal relationship with the Subject, OPA could not identify any instance in which the Subject was treated differently or better as a result.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

**Named Employee #1 - Allegation #3**

***16.130 – Providing Medical Aid 1. Recognizing the Urgency of Providing Medical Aid and the Importance of Preserving Human Life, Officers Will Request Medical Aid, if Needed, and Render Appropriate Medical Aid Within Their Training as Soon as Reasonably Possible***

SPD Policy 16.130-POL-2(1) states that employees assisting a sick or injured person will seek to determine the nature and cause of a person’s injury or illness and provide first aid or call for Emergency Medical Services as needed, with



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an exception for injuries that can be treated with basic first-aid. SPD Policy 16.130-POL-2(1). The policy goes on to state that “[a]fter requesting a medical aid response, officers will render aid within the scope of their training unless aid is declined.” *Id.* Officers are required to provide medical assistance consistent with their training, with priority being given to officers certified as EMTs. *Id.* The consent of unconscious subjects is presumed under the policy. *Id.* Employees are expected to follow SPD standing orders from the SPD/SFD Medical Director, as well as their training and the SPD Manual, with respect to applying certain forms of first aid. *Id.*

OPA finds no evidence that any SPD employee in a position to provide aid to the Victim failed to do so, or unreasonably delayed requesting emergency medical aid. It took SPD a total of five minutes and one second from the first reports of a disturbance to dispatch medics. However, from the time SPD became aware a shooting had occurred to the time medics were dispatched, only two minutes and 26 seconds elapsed. OPA finds neither period of time excessive in the circumstances, which involved significant uncertainty about what had just occurred as well as a complex crowd-management situation that largely blocked SPD’s access to the incident scene itself.

The totality of the evidence examined by OPA shows that SPD deployed officers to render aid and facilitate the medical team’s access to the Victim shortly after locating him. A bike squad entered the crowd and provided an escort for the EMT units. Ultimately, it was not necessary for the bike squad officers to provide aid because demonstration medics were doing so, and the Victim was able to move with assistance to the EMTs whereupon he was transported to Harborview. No medical assistance was sought or required by anyone else in the crowd.

OPA could not identify any officers who unreasonably failed or delayed a request for medical assistance. What minor delay did occur was largely due to SPD having to identify the Victim in the crowd and the time required for medical personnel to arrive. For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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