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TO: Conan Hickey, Badge #2997
CC: Office of Police Conduct Review
DATE: September 6, 2022
RE: Administrative Case #21-01705

CHIEF’S DECISION: Discharge
 Suspension Duration: **13.43** Suspension without pay
 Permanent Demotion
 Temporary Demotion, Duration: _____
 Written Reprimand
 No Merit

This memo summarizes my approach and reasoning for my decision as Chief of Police that the listed policy violations by Officer Hickey are sustained. The memo accompanies the enclosed Notice of Discipline and Suspension Form.

Allegations:

Allegation #1

It is alleged that Officer Conan Hickey used unreasonable force when he sprayed mace during a crowd control event. MPD P&P 5-301 (III)(A), (D) Use of Force.

Allegation #2

It is alleged that Officer Conan Hickey failed to document the use of force (mace) in his PIMS report and failed to notify his supervisor of the use of force. MPD P&P 5-301 (IV)(B)(5)(c) Use of Force Reporting.

Summary of the Basis for Decision:

The facts noted in the case investigation support the conclusion that Officer Hickey violated Minneapolis Police Department Policies listed above. I concur with the recommendation from the Police Conduct Review Panel that the allegations have Merit.

Allegation #1

- On 11/2/2020, Officer Hickey was assigned to Strike Team 3.
- At 19:57 hours, DC Fors announced, "In preparation for any arrest activities, rules of engagement, use of force directives, party can OC streamers authorized to stop assaultive and riotous behavior. 40mm use by CART Teams only. Marking rounds to stop assaultive behavior only."
- At 22:04 hours, Officer Hickey was told that officers were planning to move the crowd, and that he was to support BRRT officers. Sgt. Peltz was the supervisor of Officer Hickey and confirmed with Officer Hickey that he was to help move the crowd.
- At 22:05, a bottle was thrown from the crowd, and in response, Officer Lor sprayed a burst of mace.
- At 22:05, Officer Pearson used his bike to push a woman, at which point a male grabbed the bicycle tire.
- Officer Hickey is seen spraying the male who grabbed the bicycle tire, a woman holding a cell phone and another woman nearby. At the time they were maced, all three parties had their backs either partially or fully turned away from Officer Hickey.
- In his interview with Internal Affairs, Officer Hickey stated that he saw the bottle being thrown at officers. "Ah, some sort of projectile had been thrown from the protestors towards us. I heard multiple cops on scene yell that they, a projectile had just been thrown. Officer to my left, I believe, us, sprayed towards the area where I saw the projectile come from and as I was scanning for more projectiles to possibly come from that area, I brought my OC can out, and then go a one second spray in that direction to make sure that that person didn't pop their head back up."
- He stated that he saw the male he believed had thrown the bottle, who had ducked down behind some people. He stated that he scanned the crowd and then discharged mace in the area where the male had been to make sure that he didn't pop back up. "but, um, where that projectile came from, they were hiding behind that crowd of people, so when I sprayed in that direction, that's to make sure that person doesn't come back up behind that person to throw more stuff at us and to cause damage or harm to any of our cops, or anyone else in the crowd for that matter."
- Officer Hickey also described using the mace to reduce harm this way, "So this was to, again, fall under that premise of I'm trying to reduce harm to both officers and other protestors on scene. So, when that crowd starts...people in that crowd start throwing projectiles, that's gonna escalate. It's not...if that crowd hasn't moved, dispersed, as quickly as possible, it will quickly escalate. More projectiles are gonna get thrown. Those projectiles can increase to now it's gonna be big rocks or something more, us, even more deadly. Uh, so, using that spray to disperse the crowd and get them moving was to prevent harm to me, it was to prevent harm to them, because if they escalate the situation, it's also gonna have to cause us to escalate as far as what we can use."
- Officer Hickey stated that he was using the mace to protect himself and others from a threat of imminent harm.

- In his interview with Internal Affairs, Officer Hickey was asked about the male he maced, and he indicated that the area where the male was standing is where the bottle had been thrown from.
- Officer Hickey was asked about his making of the female using her cell phone to record the crowd, and Officer Hickey stated that at the time she was not posing a threat of objective imminent physical harm. He also stated that he did not purposefully aim his mace at this female.
- Officer Hickey explained, "We're trying to spray that area in that second...or where that guy or person threw that projectile, but the point is to move that whole crowd away from us and disperse them so they will not keep throwing these things.
- The Police Conduct Review Panel recommended Merit for this allegation.
- There is a preponderance of the evidence to support the allegation that Officer Hickey failed to use Objectively Reasonable Force when using mace on two or more people during this incident and this allegation is **Sustained**.

Allegation #2

- Officer Hickey used force listed in Allegation #1.
- At 22:14, Officer Owen and Hickey approach Sgt. Peltz. Officer Owen informed Sgt. Peltz that he needed to write a force report and explained the circumstances of the force. Officer Hickey did not inform Sgt. Peltz of his use of force.
- Officer Hickey did not complete a use of force report in PIMS for this incident.
- In his interview with Internal Affairs, Officer Hickey stated that he did not write a non-public narrative text for this incident and indicated that the use of force policy was new at that time and that it had slipped his mind.
- The use of force reporting policy in place prior to the most recent revision also required the completion of a use of force report for this use of force.
- The Police Conduct Review Panel recommended Merit for this allegation.
- There is a preponderance of the evidence to support the allegation that Officer Hickey failed to report his use of force to his supervisor and failed to complete a use of force report in PIMS. This allegation is **Sustained**.

As the interim Chief of Police, I am responsible for providing clear expectations for what is acceptable behavior in our workplaces as well as what will not be tolerated. The Police Conduct Review Panel recommended a finding of merit for the listed policy violations in this case, and I concur with their recommendation.

I hold officers of the Minneapolis Police Department to a high standard. I expect them to live up to our oath of office, our professional code of ethics and our department's core values of trust, accountability, and professional service. In this incident, Officer Hickey correctly perceived that officers may be at risk

of imminent harm due to the actions of members of the crowd including throwing bottles containing an unknown substance at the officer; however, he could not identify the individual creating the risk of harm. That person would have been an appropriate subject for this use of chemical irritant. The objectively imminent physical harm exception within the crowd control policy in effect at the time of this incident (5-303D) required that the chemical irritant “may only be used against specific persons who are posing a threat of objectively imminent physical harm to another person.” No other individual captured on BWC video appears to have been presenting an imminent risk of harm to officers at the time when Officer Hickey sprayed chemical irritant. With this conduct, Officer Hickey failed to meet our standards. The violations in this matter undermine accountability and public trust.

As interim Chief of Police with authority to discipline for violations of policy under Minn. Stat 626.89 Subd. 17, I am issuing this discipline to Officer Hickey for his failure to use objectively reasonable force and failure to report that force as required. With this conduct, Officer Hickey failed to meet our standards as articulated in training and policy: force should only be used when in proportion to the threat of harm to officers or others or to the extent of threatened property damage. The use of force must be legally justified, reasonably proportionate to the threat posed, and balanced with the societal interest at stake. The force used when Officer Hickey used chemical irritant against a person or persons who appeared to pose no threat of harm was not reasonable under the circumstances and undermines the public trust.

13.43 - Personnel Data

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Allegation #1 – MPD P/P 5-301 III(A): Force used that is objectively unreasonable or does not comply with training – **13.43** suspension without pay.

Allegation #2 – MPD P/P 5-301 (IV)(V)(5)(c): Failure to report use of force in PIMS according to policy – **Letter of Reprimand.**

Amelia Huffman
Interim Chief of Police

DocuSigned by:
Amelia Huffman
13.37

CC: OPCR Case File
Commander Case

Enclosure: Discipline Form