



CLOSED CASE SUMMARY

ISSUED DATE: MAY 12, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0536

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	14.090 - Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 – Use-of-Force a & b	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:

The Complainant alleged that she was subjected to excessive force, including when she was targeted with blast balls by the Named Employee.

ADMINISTRATIVE NOTE:

On February 20, 2021, OPA issued findings on the Complainant’s allegations against three officers – referred to here as Witness Officers #1 through #3. Named Employee #1 was on leave at the time, so the portion of the case against him was governed by a different 180-day timeline. The allegation against Named Employee #1 is addressed herein.

In addition, the Complainant alleged that an officer did not properly secure a detainee in a prisoner van. That allegation was addressed via a Supervisor Action and was returned to the chain of command for retraining and counseling.

SUMMARY OF INVESTIGATION:

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.

The Complainant initiated this complaint with OPA. She contended that she attended a Youth March on July 25, 2020. The Complainant alleged that, at that time, she was illegally arrested by Witness Officer #1 (WO#1).

The Complainant also asserted that she was subjected to excessive force when she was pushed by Witness Officer #2 (WO#2) and Witness Officer #3 (WO#3), pepper sprayed by WO#1 and WO#2, and hit with blast balls used by



unknown SPD employees. The Complainant further alleged that WO#1 made unprofessional statements towards her, including saying after her arrest: "Oh you got pepper sprayed? We all did!" This OPA investigation ensued.

During its investigation, OPA identified that Named Employee #1 (NE#1) deployed two blast balls that detonated in the vicinity of the Complainant. As such, OPA believed that he was the unknown SPD officer referred to by the Complainant.

OPA reviewed Body Worn Video (BWV) recorded by the Named Employee, the Witness Officers, and other SPD officers working at the demonstration. The BWV showed that there were two distinct interactions between the Complainant and officers. Prior to the first interaction, OPA observed numerous projectiles and what appeared to be explosives thrown at officers (these also could have been blast balls that were kicked back towards officers by demonstrators). Multiple orders to disperse were provided to the crowd, including to the Complainant. However, neither she nor the group she was with dispersed. BWV showed officers ride towards the crowd and tell them to back up. WO#1 came up to a man walking in the street and told him to back up twice, pushing him back towards the sidewalk. The Complainant stepped between them, holding the man back. She stood in front of a group of individuals who were standing near a retaining wall and by a bus stop. A number of the individuals had umbrellas pointed towards the officers and at least one person had a wooden shield. The group was huddled together and was not moving away as the officers had directed. Ultimately force, including OC spray, was used towards the Complainant and other demonstrators in her immediate vicinity. This force was addressed in the first DCM issued in this case.

Just minutes later, officers advanced down the street towards a line of demonstrators that stretched nearly from side to side. Again, the demonstrators had umbrellas and shields facing the officers. At that time, dispersal orders could be heard, and officers continued to tell the demonstrators to move back. The Complainant was with what appeared to be the same group of individuals as before at the left side of the line of demonstrators. Officers were actively engaging with that group and trying to move them back. Projectiles continued to be intermittently thrown at officers from various parts of the crowd. In addition, supervisors advised officers to deploy blast balls.

NE#1 deployed two blast balls in quick succession. The first was thrown underhand towards the feet of the group that the Complainant was with. The blast ball was specifically targeted at an individual holding a black umbrella. The Complainant stepped out in front of the group and kicked the blast ball back towards officers. It detonated at the officer line. NE#1 then deployed the second blast ball, also underhand and also toward the same group. He aimed for an open area at the feet of members in the group. This blast ball detonated in the vicinity of the group.

At his OPA interview, NE#1 described the protest as one of the most violent he had ever experienced. He said that multiple officers were injured, and some quit as a result of what they experienced. NE#1 said that he, personally, experienced projectiles being thrown at him and officers in his near vicinity. He and other officers were instructed to keep moving the crowd back. This was purposed to lessen the threat posed to officers and to disperse the crowd from the area. A Lieutenant directed him and other officers to deploy blast balls to do so.

For his first deployment, he noted that all of the demonstrators had been ordered to disperse. He said that the group he specifically focused on had already been the subject of officer attempts to move them back. This included the use of OC spray. However, the group remained static with linked arms. NE#1 said that he deployed the blast ball to get the group to move and to prevent them from acting as a barrier that would allow projectiles to be thrown into the crowd. He specifically targeted a person holding a black umbrella in front of the group. He felt that a blast ball



was appropriate as other attempts to gain compliance and other force was not effective. When shown the video of the deployment at his OPA interview, he said that he was not aware that the blast ball was kicked back towards the officers by the Complainant.

For his second deployment, he said that, at the time, bicycle officers were moving forward to push the group back. He explained that the bicycle officers held their bicycles with both hands, leaving them unable to defend themselves if needed. NE#1 used the blast ball to create space between the two groups and to make it less likely that the officers would be required to engage physically with the demonstrators. He said that this deployment was effective and caused the group to move back. He was unaware of anyone, including the Complainant, being injured by this blast ball.

He felt that both of his deployments were consistent with policy and were reasonable, necessary, and proportional under the circumstances.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

14.090 - Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 – Use-of-Force a & b

SPD Policy 14.090-POL-10 governs when officers may make the individual decision to use OC spray and/or blast balls. The policy provides that such use is appropriate to: “defend oneself; defend someone else”; and/or “prevent significant destruction of property.” The force must also be consistent with the general requirements of reasonableness, necessity, and proportionality.

Under the circumstances of this incident and given the policy and training in place at the time, OPA finds that neither of NE#1’s blast ball deployments constituted excessive force.

The BWV confirmed that, at the time of the deployments, officers were dealing with a hostile crowd and that projectiles were actively being thrown at officers from behind the front line of demonstrators. It was reasonable for supervisors to direct officers to continue to move the crowd back because of the continued projectiles, as well as because the demonstration had been declared a riot and the crowd had been ordered to disperse. The crowd was non-compliant, including the Complainant and the group she was with. The Complainant and her companions grouped together and repeatedly refused orders to move back and physical attempts to push them back. Instead, they remained static and, one at least one occasion, kicked a blast ball back towards officers.

It was acceptable to use a blast ball deployed in an underhand fashion towards the feet of the crowd to move the demonstrators back. This was the case even though there was a risk of harm to individuals in the crowd who remained in that location.

Since this incident, SPD has greatly reduced its reliance on blast balls, a move that OPA believes is necessary given the danger these tools can pose. SPD has also introduced other means to move crowds and create space that do not necessitate the use of blast balls. Lastly, since July 25, U.S. District Judge Jones issued increased parameters around the use of blast balls and, specifically, concerning the deployment of blast balls to create space.



However, under the rules and regulations in place on the date in question, OPA finds that NE#1's deployment was consistent with policy and recommends that this allegation be Not Sustained – Lawful and Proper.

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