



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 23, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0618

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 (Management Action)
# 2	14.090 - Crowd Management 10. a& b Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 – Use-of-Force	Sustained

Imposed Discipline

Written Reprimand

Named Employee #2

Allegation(s):		Director’s Findings
# 1	14.090 - Crowd Management 10. a& b Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 – Use-of-Force	Not Sustained (Inconclusive)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	5.001 Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Management Action)
# 2	14.090 - Crowd Management 10. a& b Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 – Use-of-Force	Sustained

Imposed Discipline

Written Reprimand

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:

It was alleged that the Named Employees may have used out of policy force during a crowd dispersal.

SUMMARY OF INVESTIGATION:



This case arises out of the protests that occurred in Seattle after the killing of George Floyd by a Minneapolis police officer. This incident occurred on September 26, 2020. On that date, there was a demonstration that occurred in the Capitol Hill area. During this demonstration, individuals within the group of protestors engaged in property damage. In addition, at least one fire was set in the street. Based on this conduct, SPD commanders issued a dispersal order to the group.

The Complainant asserted that he witnessed portions of the demonstration and the tactics and force used to disperse the crowd by SPD officers. The Complainant believed that SPD handled the dispersal inappropriately. The Complainant specifically cited to officers using their bicycles to push protestors who were walking away, as well as officers who pepper sprayed protestors who were walking away.

As a result, OPA initiated this investigation. OPA identified that Named Employee #1 (NE#1) and Named Employee #3 (NE#3) used pepper spray on demonstrators who were walking away from them at the time. Both officers also used their bicycles to push into demonstrators who were walking away. Lastly, OPA identified that Named Employee #2 (NE#2) deployed a blast ball in a manner that OPA believed may have potentially been inconsistent with policy. OPA's investigation focused on this conduct.

As part of its investigation, OPA reviewed Body Worn Video (BWV) recorded by the Named Employees and other officers. OPA further reviewed documentation generated by officers and supervisors. Lastly, OPA interviewed all of the Named Employees.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

Both NE#1 and NE#3 used their bicycles to push into the backs of demonstrators that were walking away from them (see, e.g., NE#1's BWV at 16:13-16:15; NE#3's BWV at 8:52-8:56). While doing so, the officers directed the demonstrators to move forward. As, in many cases, these pushes with the bicycles did not rise to the level of reportable force, OPA evaluated them under the Department's professionalism policy given the Complainant's assertion that the pushes were improper and unnecessary.

These tactics were similar to those first observed by OPA during the September 7, 2020, demonstration (see 2020OPA-0583). They appeared purposed to keep the crowd moving to prevent projectiles being thrown at officers. Based on OPA's prior investigation, they were also used to limit reliance on less-lethal tools to move crowds.

As noted in 2020OPA-0583, OPA does not find that the vast majority of these pushes violated policy. To the contrary, OPA concludes that the officers had an interest in keeping the crowd moving. However, OPA remains concerned with what appeared to be the ad hoc nature of these tactics, and that officers continued to push demonstrators who were walking and, at times, walking quickly. Again, as referenced in 2020OPA-0583, OPA imagines that, from the perspective of many demonstrators, they could not walk faster given people in front of them and the pushes felt arbitrary, capricious, and punitive.

OPA renews its conclusion that it is important to ensure that these new bicycle tactics are uniform, are used appropriately, and serve larger Department goals. Moreover, the use of these tactics should reduce not increase



potential harm to demonstrators and should be used in a manner that is perceived as legitimate. Lastly, such tactics should be fully reviewed and approved by the chain of command, the Training Unit, the Monitoring Team, DOJ, and City partners (including OPA) prior to becoming a signed off on crowd control tactic. This will serve to ensure that these tactics, and the attendant force used, are fully fleshed out, are constitutional, and are in line with the requirements set forth under the Consent Decree.

As such, OPA herein renews its Management Action Recommendation from 2020OPA-0583.

- **Management Action:** SPD should select a group of officers and supervisors with particular expertise in bicycle tactics and crowd control to critically evaluate the tactics described above, with the goal of determining the proper applicability of these tactics to different crowd control situations and any limits that should be placed on their use. In doing so, SPD should attempt to determine what, if any, outside expertise would be relevant to evaluating these tactics. In addition, SPD should seek to engage community stakeholders, including but not limited to the Accountability Entities, in any needed policy development. Ultimately, SPD should include the results of this evaluation in future bicycle crowd control trainings and instruct officers in how to use these tactics appropriately.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #1 - Allegation #2

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

It was alleged that both NE#1 and NE#3 used OC spray on demonstrators who were walking away at the time. As their conduct was substantially similar, it is addressed together.

SPD Policy 14.090-POL-10 governs the use of OC spray in the demonstration management context. The policy states that such force may be used by officers to protect themselves, protect others, or to prevent significant destruction of property. Such force is also subject to the general requirements that it be reasonable, necessary, and proportional.

The use of OC spray was also subject to restrictions imposed by U.S. District Court Judge Jones as part of a temporary restraining order. These restrictions were more fully explicated in Judge Jones's order finding the City and SPD partially in contempt. In that order, Judge Jones found the use of OC spray was improper where an officer deployed OC spray on September 7, 2020, at demonstrators who were walking away. The court noted that there was no "specific threat of harm." The court pointed to the fact that the demonstrators were facing away at the time and that the officer was not subjected to violence or the threat of violence.

Both officers' OC spray deployments were captured on BWV. NE#1's BWV indicated that he deployed OC spray on three separate occasions. The first OC spray deployment (see NE#1's BWV at 15:43-15:45) was towards a group of individuals who had been pushed forward by officers several seconds prior. Immediately prior to the deployment, the individuals were facing towards officers. At the moment of the deployment, they had turned away from NE#1 and were approximately six to ten feet in front of him. The second deployment (see NE#1's BWV at 16:04-16:06) was towards a group of individuals bunched together. They were walking slowly forward at the time and were turned away from NE#1. In both the first and second deployments, the specific individuals sprayed were not actively



assaulting NE#1 and did not appear to be attempting to assault him or other officers. NE#1's third deployment (*see* NE#1's BWV at 16:53-16:54) was towards an individual who had just thrown a projectile at an officer and who was being placed under arrest. This deployment was not amongst those flagged as improper by the Complainant and, from OPA's perspective, was entirely consistent with policy. As such, OPA does not further evaluate the third deployment as part of this DCM.

NE#3 also appeared to deploy OC spray three times. The first deployment (*see* NE#3's BWV at 9:01-9:02) was towards a group of individuals who were walking down the street and away from officers. The individuals had their backs to NE#3 at the time and there was no indication that they were subjecting him to violence or actively posing a threat of violence. The second deployment took place seconds later (*see* NE#3's BWV at 9:12-9:14) and occurred under virtually identical circumstances to the first deployment. NE#3 used OC spray for a third time (*see* NE#3's BWV at 9:31-9:32) towards an individual who quickly turned to face an officer after his shield was ripped away from him. As with NE#1's third deployment, this did not fall under the category of improper deployments identified by the Complainant and was, in OPA's opinion, consistent with policy under the circumstances. It is not discussed further herein.

With regard to his first deployment, NE#1 said that he saw demonstrators squaring up towards officers and observed what he believed to be "pre-fight indicators." He said that these demonstrators had been directed to move back but were not doing so at the time. He further explained that officers were outnumbered by demonstrators. He felt that this deployment was consistent with policy. With regard to his second deployment, NE#1 said that he deployed OC spray at individuals dressed in all black who were not dispersing. NE#1 stated that these individuals could have been arrested at the time. As the individuals continued forward, NE#1 modulated and then ceased using force.

NE#3 similarly opined that his OC spray deployments were consistent with policy. NE#3 stated that, in both instances, he used OC spray to try to break up the crowd. He said that projectiles were being thrown at officers and by opening up the crowd, officers would be able to see who was throwing them, make arrests, and better defend themselves.

When evaluating the BWV, assessing the officers' justifications for the force, and considering the parameters of SPD policy and Judge Jones's orders, OPA finds that NE#1's second deployment and NE#3's first and second deployments were inconsistent with policy. In all three scenarios, the officers deployed OC spray at demonstrators who were walking away from them. Like with the deployment found improper by Judge Jones, these demonstrators had their backs facing the officers and were not actively threatening or causing harm to officers at the time. While certainly the officers had an interest in moving the demonstrators forward (NE#1) and in identifying criminality within the crowd and the source of projectiles (NE#3), this did not sufficiently justify the use of OC spray on demonstrators who were both moving and not, themselves, throwing items at officers. Lastly, OPA again notes that this finding is consistent with parameters negotiated by the City and ordered by Judge Jones. Moreover, the substance of these parameters and the orders were disseminated to officers by the Department and officers were required to comply with them.

Given the above, OPA recommends that this allegation be Sustained as against both NE#1 and NE#3.

Recommended Finding: **Sustained**



Named Employee #2 - Allegation #1

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

SPD Policy 14.090-POL-10 also governs the use of blast balls in the demonstration management context. The policy states that such force may be used by officers to protect themselves, protect others, or to prevent significant destruction of property. Like with OC spray, the use of blast balls is also subject to the general requirements that it be reasonable, necessary, and proportional.

The use of blast balls was also restricted as part of a temporary restraining order and in Judge Jones's contempt order. Judge Jones specifically identified as improper deployments that were not directed at or in the vicinity of a threat. Importantly, Judge Jones held that these deployments were, as such, clearly indiscriminate. Lastly, Judge Jones noted that, in both cases in which he deemed a blast ball deployment to be improper: "the officers stood a great distance from protestors, used overhand throws, and threw blast balls deep into a crowd."

Here, NE#2's BWV showed him deploy a blast ball to the right side of a group of demonstrators. Immediately prior to doing so, a clanging noise could be heard, and NE#2 yelled: "rock."

At his OPA interview, NE#2 explained that he deployed the blast ball towards the vicinity of where the rock came from. He said that multiple projectiles were thrown at officers and he used the blast ball to prevent the further threat of harm and potential injury. He believed that this deployment was consistent with policy.

From OPA's review of the BWV, it was unclear whether the rock came from the group targeted by NE#2. OPA could not see whether or not an individual in that group threw the rock or any other projectile at officers in the moments immediately before NE#2's deployment; however, OPA could not foreclose that this occurred. If someone in the group did so and, as NE#2 indicated, was then targeted with a blast ball, this deployment would be consistent with policy. On the other hand, if NE#2 simply threw a blast ball towards the general area of the demonstrators without having a basis to conclude that a member of that group was the thrower, the deployment would have been indiscriminate and improper.

Ultimately, OPA concludes that there is insufficient evidence to reach a finding here and, as such, recommends that this allegation be Not Sustained – Inconclusive.

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

Named Employee #3 - Allegation #1

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

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Management Action.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #3 - Allegation #2



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

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**