



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 28, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0428

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.300-POL-10 Use of Force – Blast Balls 3. Officers May Use Blast Balls Only When Such Force is Objectively Reasonable, Necessary, and Proportional	Not Sustained (Inconclusive)
# 2	8.300-POL-10 Use of Force – Blast Balls 4. When Feasible, Officers Will Not Deploy Blast Balls Until a Dispersal Order Has Been Issued to the Crowd [...]	Not Sustained (Inconclusive)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Inconclusive)
# 2	8.300-POL-4 Use of Force – Impact Weapon 2. Officers Will Not Use Impact Weapons on Subjects Who Are Restrained and Under Control, or Complying With Police Direction	Not Sustained (Inconclusive)
# 3	8.300-POL-4 Use of Force – Impact Weapon 4. Officers Will Not Target the Head, Throat, Neck, Spine, Genitals, or Kidneys with Any Impact Weapon, Except in Exigent Circumstances	Not Sustained (Inconclusive)

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 officers used blast balls and batons on him and others in a manner that violated policy.

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. While most demonstrators protested peacefully, some demonstrations, especially during the early days of the protests and during nighttime hours, devolved into violence, property destruction, and looting.

This investigation stems from a complaint submitted by the Complainant. He asserted that, on June 6, 2020, at approximately 7:40 p.m., he and his friends were standing peacefully at the corner of 11th Avenue and East Pine



Street. The Complainant asserted that officers prevented him from “walking down the street” and directed that he and the other individuals with him instead retreat. The Complainant stated that this was impossible “due to the number of friends [he] had with [him]” and because he was not doing anything illegal. He said that, when he and others did not obey police orders, the officers deployed blast balls and OC spray and used batons. He specifically alleged that one or more officers struck a female friend in the ribs with a baton, and that another female friend was injured when a blast ball exploded behind her knee. He stated that the number of officers who participated in the conduct were “too many to name.”

OPA’s investigation ensued. OPA determined that on the evening and time in question, a large crowd had gathered on 11th Avenue and Pine Street. According to SPD’s log of messages and directives (the “Protest Log”), at 7:22 p.m., protesters began to advance on the police line near the precinct causing the line to be driven back approximately 15 feet. The Protest Log indicated that warnings were given to the crowd. The crowd continued to move forward another 20 feet and, at 7:24 p.m., protesters began setting up an umbrella line at the front of the crowd. SWAT deployed to the front line and SPD incident commanders began formulating a plan to move the crowd back.

At 7:31 p.m., officers broadcasted another warning ordering the crowd to move back. At 7:35 p.m., officers were given the order to push the crowd back to its original location. The crowd resisted being moved and the Protest Log indicated that some members of the crowd were throwing items and trying to take bicycles (referred to in the log as the “fencing”) from the officers who formed the front of the mobile fence line. OC and blast balls were deployed at 7:36 p.m. At 7:37 p.m., officers re-established the line and called for additional bike officers as backup to help clear the crowd. At 7:39 p.m., officers deployed additional blast balls to create space, while the crowd continued to throw items. At 7:40 p.m., the time the Complainant alleged that his specific complaint occurred, officers shifted the line to the northwest and deployed additional blast balls. The Protest Log noted that, at 7:41 p.m., members of the crowd were throwing explosives and glass bottles at the police line. The officers made their “last push” at 7:43 p.m., after which the Protest Log reported a crowd of 300 to the north of the intersection, 100 to the south, and 400 to the west. Officers continued to hold their position.

OPA also examined third-party video of the incident recorded by KOMO 4 and KING 5 news. The video by KOMO concerned the events of that night and was shot a few hours after the officers made their push beginning at 7:31 p.m. In the video, a KOMO reporter stated that the disturbance began when individuals in the crowd attempted to move the fence separating officers and protesters. According to the news report, which included contemporaneous video, initial warnings given by police at 7:29 were audible and delivered “at least six times.” Officers made their push west down Pine Street towards Broadway. A protester interviewed by KOMO stated that the protest got “rowdy” and that warnings were broadcast. After the officers made their push, the crowd gradually re-gathered but remained largely peaceful. The video by KING interviewed protesters present as well. Protesters stated that they heard audible warnings to move back but that the protest was packed too closely to do so. A protester interviewed stated that they were “densely packed” at the front of the protest and that there was “no room” to obey police orders to move back.

OPA attempted to contact the Complainant regarding his complaint without success. Consequently, OPA was not able to determine where in the crowd he was standing, or which officers may have deployed the blast balls that were alleged to have affected him and his companions. Given OPA’s inability to contact the Complainant, OPA was also not able to ascertain the identity of the woman he alleged was struck in the ribs by a baton. As such, OPA was unable to identify when that occurred, which officer, if any, was responsible, or what the circumstances surrounding the strike were.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.300-POL-10 Use of Force – Blast Balls 3. Officers May Use Blast Balls Only When Such Force is Objectively Reasonable, Necessary, and Proportional

SPD Policy 8.300-POL-10(3) permits officers to use blast balls only when reasonable, necessary, and proportional under the totality of the circumstances. SPD Policy 8.300-POL-10(3). The policy goes on to state that “[w]hen feasible, officers shall avoid deploying blast balls in the proximity of people who are not posing a risk to public safety or property.” (*Id.*)

Given the generality of the underlying complaint, OPA was unable to assess whether deployment of the specific blast balls that affected the Complainant were reasonable, necessary, and proportional given the circumstances. Without knowing where he was in the crowd, and what he and his companions were doing in response to orders to disperse—information OPA could only have received from the Complainant or from video once OPA was aware of the Complainant’s description—OPA cannot state whether the force was appropriate with regard to him.

To the extent the Complainant’s complaint raises the allegation of systemic conduct of SPD officers against all demonstrators on this date, this is outside of the scope of this investigation. The overall tactics and force used by SPD officers on this date will be assessed more fully during the Sentinel Event Review that will be conducted by the Office of Inspector General for Public Safety.

With regard to the specific blast ball deployment towards Complainant #2, OPA recommends that this allegation be Not Sustained – Inconclusive.

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

Named Employee #2 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

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

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

Named Employee #2 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” (SPD Policy 8.050.) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative to



the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

OPA cannot identify the woman allegedly struck by the baton, nor can it identify that this act occurred at all, let alone identify the officer involved. Consequently, lacking more, OPA cannot evaluate the force used and recommends that this allegation be Not Sustained – Inconclusive.

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

Named Employee #2 - Allegation #2

8.300-POL-4 Use of Force – Impact Weapon 2. Officers Will Not Use Impact Weapons on Subjects Who Are Restrained and Under Control, or Complying With Police Direction

SPD Policy 8.300-POL-4(2) prohibits the use of impact weapons including batons against subjects who are restrained and under control or complying with police directions. SPD Policy 8.300-POL-4(2).

For the same reasons as stated above (*see* Named Employee #2 – Allegation #1), OPA recommends that this allegation be Not Sustained – Inconclusive.

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

Named Employee #2 - Allegation #3

8.300-POL-4 Use of Force – Impact Weapon 4. Officers Will Not Target the Head, Throat, Neck, Spine, Genitals, or Kidneys with Any Impact Weapon, Except in Exigent Circumstances

SPD Policy 8.300-POL-4(4) prohibits strikes to the listed vulnerable areas of the body except in exigent circumstances. SPD Policy 8.300-POL-4(2). The policy goes on to state that all such strikes must be reported to the Force Investigation Team, regardless of whether they were intentional. (*Id.*)

For the same reasons as above (*see* Named Employee #2 – Allegation #1), OPA recommends that this allegation be Not Sustained – Inconclusive.

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