



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 15, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0451

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.300 Use of Force – Blast Balls 4. When Feasible, Officers Will Not Deploy Blast Balls Until a Dispersal Order Has Been Issued to the Crowd, the Crowd Has Been Given a Reasonable Amount of Time to Comply, and a Supervisor Has Authorized the Deployment	Not Sustained (Lawful and Proper)
# 2	14.090 Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 Use of Force	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 an Unknown SPD Employee deployed crowd control weapons including a blast ball and OC spray without warning, causing injury.

ADMINISTRATIVE NOTE:

Because this case concerns an unknown SPD employee, the 180-day timeline normally applied by collective bargaining agreement to OPA investigations is inapplicable here. For administrative purposes, the expiration date of the 180-day timeline is set to the date of issuance of this DCM.

ANALYSIS AND CONCLUSIONS:

The incident at issue occurred in the early hours of June 8, 2020, in the same time frame as reported in 2020OPA-0344. There had been ongoing protests near the East Precinct. On the night in question, an SPD captain had issued two dispersal orders. At approximately 12:00 a.m., the protests devolved into violence. Demonstrators threw projectiles at officers and, in response, an SPD commander gave the officers on the line authorization to disperse the crowd using less-lethal tools. OPA’s analysis of the incident as a whole determined that the Incident Commander broadcast numerous orders to disperse to the crowd, beginning at approximately 10:30 p.m. the prior evening and continuing into the early hours of June 8, 2020 (See 2020OPA-0344).



The Complainant recorded video of the incident. The footage showed a small group of protestors standing a few yards away from a line of officers. The identities of the officers could not be determined from the video because it was dark outside, and SPD was using flood lights to illuminate the crowd. During the Complainant's video, a dispersal could be heard. The deployment of blast balls could also be heard and seen in the video. The video also showed a projectile thrown in the direction of the officers and fireworks being set off in the space between the officers and the protestors.

The Complainant gave a verbal description of what they were wearing that night: all black clothing with a black umbrella and pink respirator. OPA's review of the officers' Body Worn Video (BWV) could not identify the Complainant because many protestors were using umbrellas as shields, making it difficult to identify them. The Complainant said they were standing near the front of the barricade facing a line of SPD officers. Behind the officers were a few dozen members of the National Guard. Instructions were given to the protestors to not advance forward, utilize umbrellas, or put anything in officers' faces. The Complainant stated that around 11:30pm there was an announcement that the officers would be forced to declare an unlawful assembly if protestors did not follow the earlier orders.

Around 12:30 a.m., SPD declared the protest an unlawful assembly and began efforts to disperse the crowd by pushing them southbound on 11th Avenue towards Pike. SPD then deployed tear gas and flashbangs into the crowd. The Complainant was hit with a flash bang in the upper thigh, which then exploded at their feet. The Complainant did not seek medical attention for their physical injuries, but later received mental health treatment. Their psychiatrist diagnosed them with acute distress disorder following the incident.

OPA interviewed a witness who was with the Complainant. The witness described the standoff between the protestors and police line, stating that it held for a long time. The witness said that suddenly a "flashbang grenade" exploded near the center of the crowd. Dispersal orders were given, and the officers began pushing the crowd backwards. At that time, the Complainant was hit with the blast ball. The witness did not see who deployed the blast ball.

Named Employee #1 - Allegation #1

8.300 Use of Force – Blast Balls 4. When Feasible, Officers Will Not Deploy Blast Balls Until a Dispersal Order Has Been Issued to the Crowd, the Crowd Has Been Given a Reasonable Amount of Time to Comply, and a Supervisor Has Authorized the Deployment

SPD Policy 8.300-POL-10(4) states that when feasible, officers will not deploy blast balls until a dispersal order has been issued to the crowd, the crowd has been given a reasonable time to comply, and deployment is authorized by a supervisor. SPD Policy 8.300-POL-10(4). The policy contains an exception where harm to a person or serious property damage is imminent. *Id.* The policy finally recommends that officers use the low "bowling style" deployment rather than throwing the blast ball overhand. *Id.*

The officers deployed blast balls after at least two dispersal orders had been given. Members of the crowd did not disperse and continued to throw various projectiles at the officer line. Neither the Complainant nor the witness saw who threw the blast ball that hit the Complainant.

As discussed below, OPA is unable to determine which officer deployed the blast ball that injured the Complainant. However, from review of the BWV, the Complainant's statement, and the Complainant's video, OPA can conclude,



however, that the use of blast balls were pursuant to a lawful dispersal order, appeared to be in response to specific, unlawful behavior coming from members in the crowd, and that demonstrators had an opportunity to leave the vicinity prior to blast balls and other less-lethal tools being utilized.

As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper

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

Named Employee #1 - Allegation #2

14.090 Crowd Management 10. 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 governs the decision by individual officers to deploy less-lethal tools, including OC spray and blast balls. This force must be used to address a specific threat of harm or serious property damage. This force must further be reasonable, necessary, and proportional.

While OPA finds that officers were generally permitted by policy to deploy blast balls, this does not mean that all of the deployments were consistent with policy. Here, OPA could not isolate the blast ball deployment referenced by the Complainant. As discussed above, this was due to the significant number of individuals present at the time of the deployment, the dark conditions, and the placement of umbrellas that prevented individual demonstrators from being identified. Given this, OPA cannot determine whether this specific deployment was appropriate and consistent with policy.

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

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