



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 7, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0644

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.200 – Using Force 1. Use of Force: When Authorized	Not Sustained (Management Action)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.200 – Using Force 1. Use of Force: When Authorized	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 he was subjected to excessive force when he was struck by a blast ball. The Complainant further alleged that a bicyclist was also subjected to excessive force when an officer shot the bicyclist in the head with a rubber bullet.

ANALYSIS AND CONCLUSIONS:

The incident at issue occurred on July 25, 2020, during the protests following the killing of George Floyd by a police officer in Minneapolis. There had been many protests in the Capitol Hill area over the previous months, including a large and violent protest that occurred that day. Tensions were high between the police and the protestors. On this particular day, the crowd of protestors had been moving around the Capital Hill area. Individuals in the group had set fires in the area of the YSC, as well as damaged businesses while walking towards the East Precinct. When protestors walked by the precinct, an explosive device was thrown, causing damage to the wall. The incident commander designated the protest as a riot and ordered it be dispersed. There were numerous clashes between officers and demonstrators as this dispersal was effectuated. Officers used less lethal tools to push the crowd back, including OC spray and blast balls. During this time, the crowd largely refused to leave the area and threw projectiles at officers.

The Complainant filed an OPA complaint concerning force that was used against him during the protest. He said that he was present at the demonstration and was in the vicinity of the East Precinct. He said that he was peacefully protesting. He described himself as playing a drum and filming during the protest. He said that he was exercising his First Amendment rights and that he was unlawfully and improperly subjected to excessive force. He told OPA that there was no imminent threat to officers requiring the use of less-lethal tools and “explosives” towards demonstrators. He said that he was “shot in the chest with an explosive device” that “exploded” at his feet causing



him to suffer “permanent damage” to his ankle. The Complainant did not seek medical treatment for his injury and declined to provide photographs of his ankle to OPA.

The Complainant further alleged that he observed a bicyclist get shot in the head with a rubber bullet as the bicyclist was walking away. He said that he recorded that force. The Complainant later provided OPA with a video of him getting “grenaded.” The video showed a large group of people clustered together and an explosion going off with a plume of white smoke. The Complainant said: “yeah, alright” and “I felt that fucking thing.” He later walked away from the middle of the crowd and onto the sidewalk, where he made sounds indicating that he was in pain. The Complainant also provided OPA with a short video showing a person standing with a bicycle. A noise could be heard (like a metallic thunk) and the bicyclist moved to the side and down out of the frame of the video.

As part of its investigation, OPA interviewed a friend of the Complainant who also attended the protest. The friend did not observe demonstrators engaged in violent acts prior to hearing that a flash bang had been used by the police. The Complainant told him that part of the flash bang had hit his ankle. The Complainant left the protest. The friend saw the injury three or four days later and the Complainant had an abrasion on his ankle. The Complainant was still feeling discomfort in his ankle several months later.

OPA determined, based on the time of the incident and the Complainant’s location, that the Complainant may have been struck by a blast ball deployed by Named Employee #1 (NE#1). OPA verified that, at the moment of the deployment, multiple dispersal orders had been given and officers had been steadily pushing the demonstrators down the street. Body Worn Video (BWV) showed individuals from within the crowd throwing projectiles at officers. Officers, in turn, used blast balls, OC spray, and 40mm launchers to move the crowd back. BWV of the specific blast ball deployment at issue showed officers moving towards demonstrators who were lining the street. The demonstrators were facing the officers and had shields and umbrellas, and some held makeshift weapons. Before the deployment, an officer in the immediate vicinity of NE#1 could be heard on BWV saying “bottle.” To NE#1’s left, officers were trying to push back a group that was bunched up on both sides of a white van. NE#1 advanced towards the group and threw a blast ball sidearm down to the ground in an open area by the van. The blast ball deployed in the vicinity of the crowd.

OPA interviewed NE#1. He did not recall the incident independently with any specificity. However, after reviewing his BWV, he stated his belief that his attention was drawn to the left side of the line. He saw what appeared to be a struggle between officers and demonstrators over a shield or a tarp that was being used as a shield. He also felt that the crowd was not moving back as directed by officers and had bunched up. He felt that both the struggle for the tarp/shield and the failure of the crowd to continue quickly moving back posed a danger to officers. Accordingly, he believed that his deployment was authorized. He said that he deployed in a low sidearm throw in an open area by the van and towards the portion of the crowd that was not moving back. He saw the blast ball deploy in front of the crowd. He said that it was successful as the crowd began to move. With regard to the Complainant’s claim that the blast ball struck him in the chest, NE#1 said that it was possible for blast balls to skip off the ground. He described one deployment earlier that day where a blast ball “went shooting in the air about ten feet high” and in a different direction than where it was deployed.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - 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. 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 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

In evaluating NE#1’s blast ball deployment, OPA finds the recent decision by U.S. District Judge Jones finding the City and SPD to be partially in contempt of a prior order to be instructive. In that order, Judge Jones evaluated blast ball deployments that he perceived to be improper. Judge Jones specifically identified deployments that were not directed at or in the vicinity of a threat. Judge Jones further designated as improper blast ball deployments used for “separation” where SPD could not demonstrate that “it was under a specific imminent threat of physical harm when it deployed the blast ball.”

From OPA’s review of the BWV, while several seconds prior to the deployment an officer appeared to try to pull the tarp away from demonstrators, there did not appear to have been an active physical conflict ongoing between officers and demonstrators when NE#1 threw the blast ball. In addition, at the time of the deployment, there were no projectiles immediately being thrown at the officers. Given this, the deployment appears to have been focused predominantly on creating space between officers and demonstrators.

In the incident where Judge Jones found that there was an insufficient threat to warrant using a blast ball to create space, officers were monitoring demonstrators who were moving slowly up a city street, were causing minor property damage at the time, and included individuals who were shining a strobe light. Judge Jones found that this was not enough to warrant the use of a blast ball. July 25, however, was a very different protest. From virtually the inception, members of the crowd set fires and caused significant property damage. They further repeatedly threw projectiles at officers, causing injuries. NE#1 stated that his belief that approximately 59 officers were injured as a result of the protest. The crowd was given a dispersal order specifically because of this conduct but refused to leave the vicinity. Instead, they slowly backed away while facing the officers with shields and umbrellas. Moreover, though no projectiles were thrown in the seconds before NE#1’s deployment, they were hurled at officers on multiple occasions both before and after.

Given this weighing of the evidence, OPA concludes that, while a close call, NE#1’s deployment did not clearly violate policing. However, as discussed more fully below, OPA believes that it is emblematic of additional revisions that should be made to SPD policies and training.

Of additional concern to OPA is the manner in which the blast ball deployed. First, OPA believes that SPD needs to reiterate that officers must roll a blast ball unless they can articulate why another deployment style was necessitated. Here, while NE#1 deployed the blast ball down towards the ground and in an open space, the sidearm deployment may have resulted in the blast ball skipping off the ground and detonating at a higher level than



planned. Second, even had NE#1 deployed perfectly, this case is emblematic of the unpredictability of blast balls. Not only can a blast ball, by its nature, deploy in a manner outside of the expectations of an officer (for example, the deployment described by NE#1 above), but its component pieces can fly in different directions causing shrapnel-like injuries. OPA remains concerned (as articulated in 2020OPA-0495) that the indiscriminate nature of blast balls, even where the officer may have best intentions, supports strong consideration by SPD of a temporary ban of the tools until such potential harms can be studied and mitigated.

Accordingly, OPA issues a Management Action Recommendation requesting that SPD memorialize in policy when blast balls can be used to create space, bar the use of blast balls to create space where no imminent physical harm to officers is present, and define “imminent physical harm” with concrete examples. OPA further reiterates its policy recommendation from 2020OPA-0495 that, unless SPD can show compelling evidence that blast balls can be used in a safe, non-indiscriminate manner that takes into account how blast balls functionally deploy and largely eliminates the risk of harm to non-violent parties, this tool be banned in its entirety.

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

Named Employee #2 - Allegation #1

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

While only a second’s long snapshot of the incident, the second video provided by the Complainant appeared to corroborate his allegation that a bicyclist was struck in the head by a projectile. Though entirely possible that this could have been a rubber bullet deployed from a 40mm launcher, OPA could not isolate this use of force and could not determine the involved officer.

If an officer did deploy a 40mm at the head of an individual who was not engaging in any violence, as appeared to be shown by the video, this would clearly violate policy. However, due to OPA’s inability to identify when the force was used and who used it, OPA cannot reach a definitive conclusion on this allegation.

Accordingly, OPA recommends that this allegation be Not Sustained – Inconclusive.

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