



To: Andrew Myerberg, OPADirector
CC: MarkGrba, Assistant Director; GrainnePerkins, Assistant Director
From: Danielle Fifis, Public Safety Auditor/Investigator
Date: 2/10/2021
Re: Partial Certification for 2020OPA-0583
Encl: OIG/OPA Correspondence

PARTIAL CERTIFICATION:

This case was initially routed to the OIG on 1/28/2021, and on 2/9/2021, OIG requested clarifying information in order to assess two elements of the pending certification: thoroughness and objectivity. OPA promptly routed the case back to OIG and provided additional information responsive to OIG's request.

After reviewing the information provided by OPA, OIG cannot certify the investigation as thorough or objective, but OIG does certify the investigation as timely. Per 3.29.260 F, no further investigation is being directed at this time because OIG finds that the deficiencies of the investigation with respect to thoroughness and objectivity cannot be remedied.

Due to the complexity of the objectivity analysis, this element will be discussed first.

Objectivity

When assessing objectivity, OIG considers whether:

- OPA language and analysis exhibit potential bias;
- conflicting testimony has been addressed;
- interviews use leading or suggestive questions; and
- the intake and investigative process complied with the policies set forth in the OPA Manual.

OIG's concerns related to the objectivity of this investigation center primarily on the language and analysis in the 63-page Case Summary or Report of Investigation (ROI). In this case, numerous complaints allege the Seattle Police Department (SPD) officers "attacked" peaceful protesters and/or used unlawful and excessive force against them.¹ The counterargument prevalent throughout this investigation is, "officers did not "attack" the crowd, but rather attempted a targeted arrest of a suspect carrying an incendiary device."²

¹ ROI pages 1 and 32

² OPA Investigator to OIG on February 9, 2021



It is important to note, several complainants questioned the legitimacy of this allegation. In this case, it appears the ROI is crafted to support the legitimacy of the “targeted arrest of a suspect carrying an incendiary device,” with little opposing evidence being presented.

Description of Suspect Targeted for Arrest

According to the OPA Investigator, the targeted arrest of the suspect carrying an incendiary device is based on “credible reports from an undercover officer in the crowd relaying real-time information captured on radio audio recordings.”³ However, the investigator omits evidence showing the suspect may have been holding a trash bag, not an incendiary device, prior to and during the arrest attempt. In both the referenced CAD Report and TAC9 audio report, it is first mentioned a male is sighted **with a Molotov cocktail**,⁴ but within minutes, as the intel evolves, it is reported this male is carrying a trash bag. On the TAC9 audio, between 52:20 and 54:30, there are three mentions of the suspect carrying a trash bag:

- 52:20 - “Gray backpack, male, directly in front of the flag, at SPOG, carrying a **trash bag**,”
- 52:25 - “Copy, gray backpack carrying a **trash bag**...smells of gas, smells of gas;” and
- 54:30 - “Gray backpack, tan clothing, carrying **trash bag**, smells of gas.”

In the CAD Call, at 1819 Hours, it is reported: GRY BACKPACK, CARRYING TRASHBAG, WALKING SB TOWARDS THE CHINESE RESTAURANT, SMELLS OF GAS. However, in the ROI, all mentions of this trash bag are removed.⁵ The TAC9 summary in the ROI reads:

- 52:30 - “Description of a male who smells of gas, wearing a backpack, walking south;” and
- 54:30 - “Tan clothing, backpack, smells of gas.”

The CAD call summary in the ROI reads, 1819 Hours: Suspect description and “smells of gas.” There is no explanation given to why reports the suspect is carrying a trash bag

³ OPA Investigator to OIG on February 9, 2021

⁴ TAC9 audio at 45:40: “In the crowd, there’s a male with a Molotov cocktail.” CAD Call at 1809 Hours: “In the crowd there is a male with Molotov.”

⁵ The only mention of a trash bag anywhere in the ROI is in reference to a Black trash bag thrown over the SPOG fence.



are omitted, but the original report that the suspect is carrying an incendiary device is stated numerous times. This uneven conveyance of the evidence portrays a potential bias.

Video of Suspect Targeted for Arrest

The attempted arrest of the suspect carrying the incendiary device/trash bag is captured on BWV of both the Sergeant who initiated the arrest and Named Employee #3.⁶ Before attempting to arrest this suspect, it is relayed via TAC9 the suspect is directly next to a “friendly” waving his hat. As the Sergeant’s BWV begins, he is riding in the front of the pack of officers, toward the line of protestors. Immediately after breaching the line of protestors, the undercover officer or “friendly” is clearly visible holding a hat and pointing toward a man wearing all black and holding a trash bag and umbrella. His left arm is linked with fellow protestors. The undercover officer then moves closer to this man and puts one hand near his shoulder and extends his other hand, with a finger pointing toward the trash bag the man is holding. The Sergeant then engages with the suspect, grabs on to him with one hand, and grabs on to the trash bag with the other. There is a struggle with both the suspect and the trash bag, during which time the trash bag rips open and various trash items are visible and later seen discarded on the ground.⁷ There is no incendiary device in view, but the suspect is clearly captured on video.⁸ The struggle with the suspect is captured on more than one officer’s BWV. However, in the ROI, the Investigator gives a much different account of this BWV:

[OMITTED] rides into the crowd on the north side of the alley and attempts to work his way into the crowd. The crowd appears to lock arms and/or interfere with his attempts to enter. [OMITTED] tells the crowd the suspect is under arrest. The crowd obstructs [OMMITTED]’s attempts and it appears the man escapes.

There is no explanation as to why the Investigator omits relevant evidence concerning

⁶ The OPA Investigator denies this and states, “The guy who [OMITTED] and his crew attempted to arrest is *not* captured on video.

⁷ In numerous other officer’s BWV after the initial confrontation.

⁸ Due to the Investigators denial of this evidence, I have tagged several images of this confrontation in Evidence.com under the Sgt’s BWV.



the Sergeant's encounter with the suspect. Further, there is no explanation given as to why this Sergeant was not interviewed as part of this investigation.⁹ The inaccuracies of the TAC9 report, the CAD call, and the BWV analysis, combined with the investigators denial the suspect is ever captured on video, calls into question the overall objectivity and thoroughness of the investigation.

Media Reports

In the ROI, the Investigator drafts summaries of several local news reports relating to the events which unfolded on the day in question. It is unclear how these news reports and graphics were chosen, but the summation does not provide equal weight to the evidence. For instance, the Investigator provides a 174-word summary of the Seattle Times article, *As Seattle Passes 100 days of protest, 22 arrested at anti-police union march (9/7/20)*. The summation removes portions of the article less complimentary of SPD and leaves in portions which paint the protestors in a poor light. For instance, the ROI summarizes:

“Protesters were described as mostly wearing black and “some carried shields, umbrellas and gas masks.”

The article says officers rode their bicycles into the crowd, grabbed umbrellas, a protester deployed a fire extinguisher, police responded by pushing the crowd, deploying blast balls and pepper spray.” SPD reported the crowd threw rocks, bottles, and explosives at officers.”

The actual article states:

“Most wore black and some carried shields, umbrellas and gas masks.

When the group arrived, the 2004 Big & Rich song “Save a Horse [Ride a Cowboy]” blared from speakers on the building and dozens of officers rode out from behind the building on bikes and confronted the crowd.

Officers ordered people to back up, rode into the crowd and grabbed umbrellas from protesters. A protester deployed a fire extinguisher; police pushed their bikes into the crowd and used pepper spray and blast balls or flash-bang grenades. After officers began pushing the crowd out of the area, some in the group threw fireworks at police. As officers tried to make arrests, scuffles broke out.

From the front of the crowd of protesters, it was not immediately clear what

⁹ This also lends to a deficiency in thoroughness.



prompted the police response. The Seattle Police Department later said that as police made arrests, members of the crowd threw rocks, bottles and explosives.”

The OPA manual outlines that investigators must take extra care to show the public that despite being peers of those against whom complaints are filed, all aspects of OPA’s work is conducted fairly and scrupulously. However, these articles and the information included and omitted, portrays a troubling inequality in the weight given to all evidence.

Thoroughness:

When assessing thoroughness, OIG considers whether all allegations were identified and whether each allegation was sufficiently addressed, to include:

- Whether interviews were comprehensive;
- whether investigation steps were clearly documented;
- whether evidence is accurately reflected in the OPA report; and
- whether relevant evidence is preserved.

A major facet in assessing both objectivity and thoroughness is examining interviews for completeness, adherence to OPA policy, and avoidance of leading questions. Several interviews conducted in relation to this investigation fall short of these standards but for brevity I will point out two examples.

Interview Deficiencies

In the OPA interview of NE #8¹⁰, the interviewer failed to address relevant discrepancies and utilized leading/suggestive questions in regard to use of force tactics and assumptions concerning protestors. In this case, NE #8 “punched the suspect with a closed fist to his face as he lie face down, with officers attempting to arrest him.”¹¹ In his interview with OPA the NE states, “His hands were hidden under them, under him, and it was likely he was armed.” However, through NE #8’s BWV, you can clearly see the suspects left hand up near his face, and in the ROI the investigator states the suspect was “lying prone, face down, with one of his hands underneath his body.” NE #8 was never questioned about this discrepancy, which is an important factor, as the NE is using the suspects position as justification for the strike to the face.

¹⁰ This named employee is referenced as both NE #7 and NE #8 in the ROI.

¹¹ ROI, page 52



NE #8 was prompted with leading questions to discuss training, which deals with a suspect who is “lying on their stomach with their hands and arms tucked underneath their torso.”¹² The interviewer asks, “Have you received training from the department in regards to what’s commonly referred to as a turtled suspect, somebody laying face down with their hands under their body?” The investigator uploads the training guide and inserts a four-paragraph summary on dealing with turtled suspects. However, this training condones strikes when a suspect “**makes attempts to get to their feet or to face the officer**”, and there is no mention or depiction of a suspect with only one hand under their body. These discrepancies are not examined in detail in the ROI or interview. Later in the interview, the investigator leads NE #8 to reinforce the belief that most protestors are armed:

Interviewer: Did you have any reason to believe the suspect was armed with a weapon?

NE #8: I would say yes, because many of these --the rioters that come to these events are armed, based on my experience.

Interviewer: Okay. And you referenced that you've been working most of these, or if not all of these, since --

NE #8: Right.

Interviewer: -- the last several months?

NE #8: May 30th, I believe, was the first one.

Interviewer: And generally when you arrest somebody, you said they're -- they're armed with weapons. What kind of weapons have you recovered from people?

NE #8: Guns, knives, batons, Tasers, sticks, hammers, screwdrivers, hatchets.

In the OPA interview of NE #11, the investigator allows NE #11’s SPOG representative to testify about bicycle tactics and the NE’s adherence to these tactics. According to the OPA manual, “The primary role of a union representative during an OPA interview is to protect the contract rights of the employee. Otherwise, the union representative must not be allowed to interrupt or otherwise disrupt an OPA interview.” In this instance the SPOG representative provides testimonial evidence:

Interviewer: Yeah, and just for the reviewer, [REDACTED], who is

¹² Prisoner Control and Turtled Suspect Attachment



representing SPOG and [REDACTED]

SPOG Rep: Response.

Interviewer: --Response Group, um, and is a trained bicycle officer. And how long have you been a bicycle officer?

SPOG Rep: Uh, for about four years now.

Interviewer: Okay, and you can shed some light onto this tactic?

SPOG Rep: I can. So—a—the—during this whole conflict, from May 29th ‘til basically the present, right now, the— the tactics that we were trained, we have used the same tactics for a long time. The protester’s reactions have evolved, and—for us to move them, one of the things that we found was effective that we used on the fly, we tried to stay within the core principles of the use of force. The bicycle is a soft rubber tire that’s filled with air. To prompt people to move, the only other option is for officers to use their hands in de minimis. We look at that as a de minimis tactic to use a bicycle tire...

This testimonial evidence is then used in the ROI to make an allegation analysis, stating “the tactic presents a minimal injury risk to the protester because the front tire is rubber and filled with air” and is consistent with a push using hands. This testimony violates OPA policy concerning the role of SPOG representatives in Named Employee interviews. Any information concerning approved bicycle tactics should have been obtained from a Witness Employee or approved materials.

As previously mentioned, OIG considers whether all allegations were identified and whether each allegation was sufficiently addressed. In this case, there were numerous allegations SPD forcefully confronted peaceful protestors without warning or proper cause. This investigation justifies these actions by claiming “the officers did not ‘attack’ the crowd, but rather attempted a targeted arrest of a suspect carrying an incendiary device, based on credible reports from an undercover officer in the crowd relaying real-time information captured on radio audio recordings.”



Relying on this, there was no probable cause analysis done in relation to the targeted arrest of this suspect carrying a bag of trash.¹³ The investigation further falls short by failing to interview the Sergeant who effected the attempted arrest on this suspect and is mentioned in the ROI twenty-two times. There is not explanation given as to why he was not interviewed as a Witness Employee. Additionally, the Intelligence Officer who oversaw the intelligence relayed concerning this suspect with an incendiary device, and who was mentioned by name in OPA interview, also was inexplicably not interviewed. Taking all the above concerns in aggregate, OIG cannot certify for thoroughness or objectivity. OIG is not directing additional investigation.

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¹³ It is important to note, in the TAC9 timeline published in the ROI, timestamp 54:30 states: "...Confirmed possession of incendiary device." The actual audio is, "'Confirm what is the offense? (Response): Incendiary device possession.'" There is no confirmed possession of incendiary device at that time.

FROM OIG TO OPA (2/9/21)

Add'l Info Requested: Sgt [REDACTED] BWV reveals the suspect SPD ordered to be arrested due to possession of incendiary device is not the individual SPD later publishes as carrying the Corona box of Molotov cocktails. It appears the individual SPD attempted to arrest may in fact be a peaceful protestor carrying a bag of trash.

Despite this discrepancy and complaints protestors were peacefully exercising their first amendment rights when they were "attacked", there was no probable cause allegation added to this investigation. *Several complainants alluded to SPD's lacking cause in forcefully confronting the protestor line.

Why was a PC allegation (in regard to the attempted arrest of the individual SPD claimed had an incendiary device) not included in this investigation?

Thank you for your patience as I narrowed my request down to information necessary for certification,
Danielle

RESPONSE TO OIG (2/9/21) FROM OPA INVESTIGATOR

The guy who [REDACTED] and his crew attempted to arrest is not captured on video. Officers saw him in a crowd holding an incendiary device. The undercover officer in the crowd signaled the suspect and Lt. [REDACTED] ordered the officers to move in and arrest that suspect. Sgt. [REDACTED] moved in and had a hold of the suspect, but people assaulted [REDACTED] by punching him in the face (he sustained injuries). The incendiary device suspect got away and was not arrested.

The man seen with the Corona beer box and the man throwing the bag of trash have no bearing on the officers initial entry into the crowd to arrest the incendiary device suspect. The box of Molotov cocktails was located later and the suspect was identified later, based on SPOG video. I don't know how she's correlating the bag of trash to the arrest attempts.

I cannot speak to the PC allegation. I thought we addressed that by showing that the officers did not "attack" the crowd, but rather attempted a targeted arrest of a suspect carrying an incendiary device, based on credible reports from an undercover officer in the crowd relaying real-time information captured on radio audio recordings.