



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 17, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0419

Allegations of Misconduct and the Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	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 (Management Action)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	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 (Management Action)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	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 (Management Action)

EXECUTIVE SUMMARY:

The Complainant alleged that Named Employees purposely fired flash bangs at her feet, causing significant bruising. She asserted that this constituted an excessive use of force.

ADMINISTRATIVE NOTE:

After the discipline meeting in this matter, OPA further considered its findings that the allegation should be Sustained. For the reasons stated below, OPA now recommends that these allegations be Not Sustained – Management Action Recommendation.

ANALYSIS AND CONCLUSIONS:

On May 31, 2020, the Named Employees and other officers were working demonstration response around the 1100 block of Fourth Avenue. Initially, officers were escorting demonstrators on an unpermitted march. However, around 4:10 p.m., officers began broadcasting over radio that they were being assaulted by members of the crowd. This included demonstrators reportedly throwing projectiles at officers. As a result, the incident commander authorized the use of blast balls and OC spray to create space between the officers and demonstrators, as well as to facilitate crowd movement while also discouraging further assault on or use of projectiles against officers. All three of the Named Employees used blast balls at around this time.



The Complainant was with other demonstrators in this vicinity and was affected by the blast balls. She initiated this OPA complaint and was interviewed by OPA. She said that something happened in the crowd that led to officers forming a bicycle line in front of her. She and other demonstrators knelt in the street in front of the bicycle line with their hands raised. Officers began moving towards them while yelling at them to move back. A blast ball detonated near her, causing her to get up and run. As she ran, multiple blast balls were detonating near her, with one detonating directly next to her, causing a deep bruise and knot in her right calf. The Complainant believed that the officers' use of blast balls was excessive given the circumstances.

OPA also interviewed another demonstrator who was with the Complainant at the time the blast balls were used. He said that there were no dispersal orders given and that the officers deployed blast balls without warning. He further stated that the demonstration was a peaceful one and that no arrests were being made at the time that officers began deploying blast balls against demonstrators.

OPA reviewed the use of force reports generated by each of the Named Employees and interviewed them. Named Employee #1 (NE#1) responded to the location in question with his bicycle unit. He said that he was aware that people in the crowd had been throwing projectiles at officers. He recalled that, even as the crowd began to respond to officers' dispersal orders to move southbound from the area, some demonstrators continued to throw projectiles at officers. NE#1 said that he deployed two blast balls to the west side of 4th Avenue. He stated that, at the time he deployed, protesters were actively throwing projectiles. NE#1 said that the basis for his deployment was to protect himself and other officers and to create space between the crowd and the arresting officers who were situated behind him. NE#1 stated that he did not target any specific person with his first blast ball and, instead, he threw it in an open area to keep the crowd moving out of the location. He indicated that his second deployment was directed towards an individual who was holding a compost bin in front of him while moving down the street. NE#1 explained that he felt that this individual presented a threat as the individual could be using the compost bin as cover to throw projectiles at officers. NE#1 stated that he did not know where the Complainant was in the crowd and that he did not target her with his blast ball deployments.

Named Employee #2 (NE#2) also deployed one blast ball. He stated that protesters in the crowd were not complying with orders to disperse. He reported that he rolled a blast ball towards protesters in order to get the crowd moving because, from his perspective at the time, they were not dispersing. NE#2 said that his deployment was also based on an order from a Lieutenant authorizing blast balls and to ensure officer safety from projectiles. He stated that he did not target anyone with the blast ball and, instead, rolled it towards the sidewalk in front of the protesters. The blast ball hit the curb of the sidewalk and bounced back towards officers. Accordingly, the blast ball ultimately discharged in the street and did not affect any protesters. He said that he did not see or target the Complainant.

Named Employee #3 (NE#3) said that she was escorting a crowd when she heard over the radio that protesters were throwing projectiles and officers had been injured. She arrived at that location with her bicycle unit and worked to set up a perimeter. She recalled that the crowd was pushing towards officers and was yelling for arrestees to be released. She said that the crowd again began throwing projectiles at officers. The crowd then became stagnant. She heard a Lieutenant go over the radio to authorize the use of blast balls to disperse the crowd and to prevent assaultive behavior towards officers. NE#3 said that she observed a stagnant crowd standing at a street corner near an intersection. She rolled a blast ball towards that group to get the protesters to begin moving and to disperse. She said that she did not target anyone in particular and that the blast ball detonated in her desired location. Ultimately, NE#3's rationale for her deployment was to move the crowd and protect officers. She, like the other Named Employees, said that she did not target the Complainant or know where she was in the crowd.



The deployment of the blast balls was recorded on Body Worn Video (BWV) of multiple officers, as well as recorded on a video taken by the Complainant. From a review of that BWV, it was clear that ongoing conflicts were occurring earlier between protesters and officers. However, at the time that the Named Employees deployed blast balls, there was no video evidence showing projectiles being actively thrown. The BWV also indicated that, at the time of the deployments, the crowds were largely moving, while slowly. Several individuals in the crowd, including the Complainant, had their hands up while walking away.

Named Employee #1 - Allegation #1

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 use of blast balls and it directs that use of this less-lethal tool shall have the primary objective of defending the officer, defending another, or preventing significant destruction of property. SPD Policy 8.300-POL-10 provides further guidance on blast balls. SPD Policy 8.300-POL-10(3) generally provides for when such force is appropriate. It states that the use must be objectively reasonable, necessary, and proportional. (SPD Policy 8.300-POL-10(3).) This section of the policy further directs that: “When feasible, officers shall avoid deploying blast balls in the proximity of people who are not posing a risk to public safety or property.” (*Id.*) Lastly, SPD Policy 8.300-POL-10(4) instructs that: “The preferred method of blast ball deployment is low deployment (‘bowling style’). Officers may use a high deployment (‘overhand throw’) when the need for a farther deployment or the need to get around an obstruction outweighs the risk created by the separating sub-munition.”

In evaluating the uses of blast balls by the Named Employees, OPA recognizes that the protests were, at times, chaotic, and that projectiles were thrown at officers at various points. However, at the time of the deployments in question, both the BWV and the third-party video showed no evidence of projectiles coming from protesters towards officers. The BWV also indicated that, albeit slowly, the demonstrators were moving out of the area at the time of the deployments and that a number of individuals held their hands up while walking away.

OPA initially recommended that, based on the circumstances and when applying the relevant policies, the Named Employees’ blast ball deployments were inconsistent with policy. In reaching this preliminary finding, OPA found no evidence supporting the conclusion that, at the time of the deployments, any officers, including the Named Employees, were being subjected to projectiles or otherwise being physically harmed. As such, and again at the moment of the deployments, there was no indication that the protesters in that location were currently posing a risk to public safety or property. The sole exception to this may have been the deployment of the blast ball towards the individual holding the compost bin in front of them. However, even in that situation, there was no evidence on video showing that individual actually throwing projectiles. Moreover, even if that deployment was consistent with policy, NE#1 deployed one other blast ball under the same circumstances as the other Named Employees that has the same problems. In addition, at the times of the deployments, the protesters in whose direction the blast balls were rolled were walking away from the location. While perhaps they were not doing so as quickly as the officers may have wanted, this undermined the need to use a blast ball under these circumstances and yields the conclusion that the deployments were not justified.

At the discipline meeting for this case, the officers’ chain of command raised a compelling point – at the time of this incident, the deployments in question were consistent with the officers’ training. Moreover, the deployments were consistent with the Department’s practice in moving crowds. The chain of command posited that, until a recent finding



by United States District Court Judge Jones that a similar deployment was violative of a temporary restraining order agreed to by the City and SPD, officers were not on notice that such conduct was improper. While still concerned with the deployments, OPA agrees with the chain of command in this respect. Accordingly, as the Named Employees' acted consistent with Department training and practice, it would be procedurally improper to discipline them for this incident.

However, it is clear that SPD's policies surrounding such deployments must be altered to avoid similar situations in the future. OPA also takes this opportunity to recommend additional modifications to the blast ball policy to address other issues highlighted by investigations into demonstration cases (including, but not limited to, 2020OPA-0333, 2020OPA-0335, and 2020OPA-0344). As such, OPA issues the below Management Action Recommendation.

- **Management Action Recommendation:** OPA recommends that SPD make the following modifications to the blast ball policy and that officers be notified of and trained on these changes as soon as possible: (1) officers should be prohibited from rolling blast balls directly into crowds unless individuals in those crowds are posing a direct threat of harm to officers. A direct threat cannot be established simply because a crowd is not moving as quickly as officers want or is standing stationary; (2) officers should be prohibited from deploying a blast ball directly at a person and in a manner that creates a likelihood that the person could be struck unless to prevent imminent serious bodily harm or death; and (3) officers should be prohibited from overhand deployments of blast balls unless to prevent imminent serious bodily injury or death.

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

Named Employee #2 - Allegation #1

14.090 - Crowd Management 10. 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 #1), OPA recommends that this allegation be Not Sustained – Management Action Recommendation.

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

Named Employee #3 - Allegation #1

14.090 - Crowd Management 10. 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 #1), OPA recommends that this allegation be Not Sustained – Management Action Recommendation.

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