



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 2, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0550

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	14.090 - Crowd Management 10. Officers May Make Individuals Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 - Use-of-Force a & b	Not Sustained (Lawful and Proper)
# 2	8.100 - De-Escalation - When Safe, Feasible and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalations Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	14.090 - Crowd Management 9. Crowd Dispersal a & b	Not Sustained (Lawful and Proper)
# 2	8.100 - De-Escalation - When Safe, Feasible and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalations Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)

Unnamed Employee(s)

Allegation(s):		Director’s Findings
# 1	14.090 - Crowd Management 10. Officers May Make Individuals Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 - Use-of-Force a & b	Allegation Removed
# 2	8.100 - De-Escalation - When Safe, Feasible and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalations Tactics in Order to Reduce the Need for Force	Allegation Removed

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:

It was alleged that during citywide demonstrations on June 6, 2020, SPD officers shoved demonstrators back from a fenced police line and targeted them with blast balls and tear gas, even though there was an individual in a wheelchair present in the crowd. OPA’s intake investigation identified Named Employee #1 (NE#1) as the officer who released blast balls in the direction of the demonstrator in a wheelchair. OPA also identified that the blast balls were released in response to a dispersal order issued by Named Employee #2 (NE#2), who was working as Incident Commander at



the time. The intake investigation further determined that no tear gas was used during the demonstration and, as such, this allegation was not further addressed.

SUMMARY OF INVESTIGATION:

OPA received multiple complaints that SPD officers subjected demonstrators to OC spray, blast balls, and CS gas on June 6, 2020, even though there was an individual in a wheelchair who was in the crowd. This investigation ensued.

OPA determined that, in a change of tactics, SPD made the decision to set up a fenced barricade to create significant distance between officers and demonstrators. Given what had occurred during the demonstrations up to that date, it was thought that this new tactic could further de-escalation and lessen the likelihood of violence occurring. However, through the early evening, demonstrators moved back the barricades and came closer to where the officers were stationed. SPD commanders provided numerous warnings (at least seven) to the demonstrators to move back and away from the line. The concept behind this was that the officers would move forward, buttress the line, and then step back, having re-created additional distance. However, the demonstrators did not move back from the line. Ultimately, NE#2 – a Captain – gave officers authorization to move forward and re-take the line. As part of that authorization, officers were permitted to use less-lethal tools – including OC spray and blast balls – if there were threats to safety. OPA confirmed that CS gas was neither authorized nor used at that time.

As the officers approached the line, the demonstrators at the front had umbrellas opened and facing towards the officers. Based on OPA's review of Body Worn Video (BWV), it would have been inordinately difficult, if not impossible, for the officers to have seen what was behind those umbrellas, and no individual in a wheelchair was readily viewable.

Through video analysis, OPA was able to identify that NE#1 deployed the two blast balls that detonated in the approximate vicinity of the person in a wheelchair. Based on a review of NE#1's BWV, a person in the wheelchair was not viewable at the time of the deployments.

From NE#1's viewpoint, as he approached the left side of the line, NE#2 gave amplified orders telling demonstrators to move back from the fence to allow the officers to re-set the line. NE#2 asked the demonstrators to take five steps back, described their routes of egress, and again asked for their cooperation. The demonstrators did not move. Officers began physically moving demonstrators back from the line and started taking away umbrellas that were pointed at them. Small scuffles broke out in front of NE#1. After around a minute, NE#1's BWV captured him get hit by a projectile. Other BWV indicated that projectiles were being thrown at officers on other parts of the line. It did not appear that either blast balls or OC spray had been used up to that point. NE#1's BWV also showed that the scuffles on the line were increasing and officers were unable to move the demonstrators back.

NE#1 moved towards the line and rolled a blast ball under the fence, where it detonated. He deployed a second blast ball in the same general location shortly thereafter, again rolling it under the fence.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

14.090 - Crowd Management 10. *Officers May Make Individuals Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 - Use-of-Force a & b*



SPD Policy 14.090-POL-10 states that the deployment of OC spray or blast balls shall have the primary objective of defending the officer, defending another, or preventing significant destruction of property. (SPD Policy 14.090-POL-10). The policy also states that when feasible, officers will provide aid to subjects exposed to OC and/or blast balls and will request medical assistance when subjects complain of continued effects from OC or blast balls. Officers will request medical assistance when a subject appears to have been injured. (*Id.*) An officer's decision to deploy OC spray or blast balls must be consistent with Title 8 – Use of Force. (*Id.*)

Based on a review of the totality of the evidence, including the BWV, OPA finds that NE#1 did not violate Department policy in this instance. NE#1 deployed two blast balls to protect himself and other officers from assaults by demonstrators by creating space between the two groups. At that time, officers, including NE#1, were repeatedly the target of projectiles thrown by demonstrators who were also continuing with their attempts at closing the space between themselves and officers despite multiples requests to move back.

NE#1's two deployments in question were targeted and not indiscriminate. On both occasions, he rolled blast balls under fencing towards groups that were actively engaged with officers and from which projectiles were being thrown. While not everyone in the immediate vicinity was engaging in assaultive behavior – for example, a journalist was at the front of the line recording – this did not yield the force out of policy. Indeed, NE#1 did not show any sign that he was aware that the journalist was even there. Moreover, there is no evidence indicating that NE#1 had any concept that a person in a wheelchair was present in the crowd. As indicated above, that person was not visible on NE#1's BWV. In addition, it would have been difficult, if not impossible, for NE#1 to have heard people saying in the crowd that someone with a wheelchair was there given the noise level and chaos. Indeed, he denied that he heard this.

OPA notes that a significant amount of force was used during this specific demonstration, including by NE#1. OPA does not assess the entirety of that force here and only evaluates whether the two deployments in question were appropriate. This does not mean that the other forced used was permissible; it was simply outside of the scope of this investigation.

With regard to the two deployments by NE#1 in the vicinity of the person in the wheelchair, for the reasons stated herein, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

8.100 - De-Escalation - *When Safe, Feasible and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalations Tactics in Order to Reduce the Need for Force*

“De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.” (SPD Policy 8.100-POL-1)

The policy further instructs that: “When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.” (SPD Policy 8.100-POL-1) Officers are also required, “when time and circumstances permit,” to “consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors” such as “mental impairment...drug interaction...[and/or] behavioral crisis.” (*Id.*) These mental and behavioral factors



should be balanced by the officer against the facts of the incident “when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.” (*Id.*)

De-escalation is inarguably a crucial component of the Department’s obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. Where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department’s policy and expectations.

OPA finds that NE#1 did not violate the Department’s de-escalation policy during this incident. Prior to force being used, demonstrators received numerous orders to move back from the line, explanations as to why this was being requested, and information about routes of egress. However, the demonstrators did not heed these orders and, instead, remained at the line. When scuffles broke out between officers and demonstrators and projectiles began to be thrown, de-escalation was no longer safe or feasible. This was the case when NE#1 used force.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #1

14.090 - Crowd Management 9. Crowd Dispersal a & b

SPD Policy 14.090-POL-9 states that an Incident Commander may order the dispersal of a crowd upon the determination that a group of four or more individuals are conducting themselves in such a way that they create a substantial risk of injury to any person or substantial harm to property. (SPD Policy 14.090-POL-9). The policy states that the Incident Commander should consider whether less restrictive means are available including, “strategies such as area denial and/or seeking voluntary compliance.” (SPD Policy 14.090-POL-9(a)). Once the Incident Commander determines that a dispersal order is an appropriate avenue to pursue, they are responsible to ensure there is a path of egress for the crowd’s dispersal. *Id.* The policy further states that the Incident Commander has the authority to direct subordinates on the use of blast balls and OC spray to disperse the crowd. (SPD Policy 14.090-POL-9(b)).

NE#2 told OPA that he authorized the use of blast balls if needed for officer safety and to disperse the crowd. He stated that he made sure that only trained officers were permitted to deploy blast balls. While he did not approve every individual use of force in real-time, he believed that the force used at that time was necessary to push the crowd back and to protect officers from harm. He further explained that he felt that a dispersal of the crowd was warranted given the crowd’s repeated non-compliance with lawful orders and violence towards officers.

Based on OPA’s review of the totality of the evidence, OPA finds that NE#2 acted within policy when ordering the dispersal of demonstrators and authorizing the use of blast balls and OC spray to disperse the crowd. At the time of the demonstration, officers had previously clashed with demonstrators on prior nights. Officers had been injured by projectiles and had used OC spray, blast balls, and other less than lethal force against demonstrators in response. The streets around the East Precinct, where much of demonstration activity was taking place, were cordoned off by fence lines, with officers deployed at each fence line. On the night of the June 6 demonstration, there were demonstrators at each of the fence lines, with a large majority behind the fence line at 11th Avenue and East Pine Street. The fence line was continually pushed eastbound, closer to the line officers. This was documented in officers’ reports and BWV and can also be seen in footage from a witness to the events alleged in the complaint.



Given this, it was permissible to move the crowd back to create more space and, when projectiles began to be thrown, to use force to prevent harm to officers and to disperse the crowd. Moreover, the dispersal order was lawful given the ongoing violence and the repeatedly non-compliance of the crowd.

For these reasons, OPA recommends that this allegation be Not Sustained - Lawful and Proper.

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

Named Employee #2 - Allegation #2

8.100 - De-Escalation - *When Safe, Feasible and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalations Tactics in Order to Reduce the Need for Force*

As discussed in the context of NE#1, OPA finds that, at the time the two blast balls in question were deployed, further de-escalation was no longer safe or feasible. Moreover, it is clear from the BWV that NE#2, himself, engaged in a significant amount of de-escalation prior to any force being used by providing clear repeated orders to the crowd. OPA accordingly recommends that this allegation be Not Sustained – Lawful and Proper as against him.

OPA notes that, with regard to the tactical decision made by NE#2, as well as other SPD commanders throughout the demonstrations, to set lines (sometimes arbitrary) and to disperse crowds and use force when those lines were breached, OPA believes that this is a larger systemic issue. OPA preliminarily addressed this tactic in its initial report of less-lethal tools submitted to the Seattle City Council and recommended that SPD not set such lines up and avoid direct contact with demonstrators when at all possible. However, OPA will be flagging this issue for further examination by the Office of the Inspector General for Public Safety in its upcoming Sentinel Event Review.

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

Named Employee #3 - Allegation #1

14.090 - Crowd Management 10. *Officers May Make Individuals Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 - Use-of-Force a & b*

As OPA identified NE#1 as the officer who deployed the blast balls in question, OPA recommends that both allegations against the unknown SPD employee be removed.

Recommended Finding: **Allegation Removed**

Named Employee #3 - Allegation #2

8.100 - De-Escalation - *When Safe, Feasible and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalations Tactics in Order to Reduce the Need for Force*

For the same reasons as stated above (see Named Employee #3 - Allegation #1), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**