



## CLOSED CASE SUMMARY

ISSUED DATE: APRIL 15, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0430

### **Allegations of Misconduct & Director’s Findings**

Named Employee #1

| Allegation(s): |   | Director’s Findings          |
|----------------|---|------------------------------|
| # 1            | 8.300 – POL – 10 Use of Force – Blast Balls 3. Officers May Use Blast Balls Only When Such Force is Objectively Reasonable, Necessary, and Proportional           | Not Sustained (Inconclusive) |
| # 2            | 8.300 – POL – 11 Use of Force – 40 mm Less Lethal Launcher 7. Officers Will Only Use a 40 mm LL Launcher When Objectively Reasonable, Necessary, and Proportional | 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 targeted by unknown officers with a CS gas canister and a 40mm blue tipped round. He also alleged a piece of a blast ball struck him in his facemask, and that other protesters were targeted with blast balls, CS, and “rubber bullets.”

### **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.

### **SUMMARY OF INVESTIGATION:**

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 commander gave several dispersal orders. At approximately 12:00 a.m., the protests devolved into violence. Demonstrators began throwing 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 PM the prior evening and continuing into the early hours of June 8 (See 2020OPA-0344).

In his complaint, the Complainant alleged that he was peacefully protesting on 11<sup>th</sup> Avenue, just south of East Pine Street. He stated that some SPD officers came around the corner and blocked the intersection of 11th and Pine.



After about thirty minutes, the officers deployed CS canisters and used impact weapons, such as 40-mm blue nose rounds, to disperse the crowd.

The Complainant did not recall hearing any dispersal orders prior to the officers' use of force. He believed the officers were trying to clear the crowd. He alleged a CS canister was thrown near him, he was impacted by a 40-mm blue nose round, and he was hit by a piece of blast ball in his facemask. He did not allege any injuries. The Complainant did not know the identity of any of the officers.

OPA attempted to determine who the involved employees were by reviewing Body Worn Video (BWV) of employees who were at the incident. After reviewing BWV, OPA could not identify the specific employees that the Complainant alleged targeted him, nor could it identify the Complainant in any of the BWV based on a verbal description the Complainant gave of himself. Moreover, because the incident occurred late at night, it was difficult to identify individual protestors from the video footage.

BWV from Witness Officer #1 (WO#1), who was at the incident location, showed that officers had pushed the crowd of protestors west on East Pine Street and a group of officers blocked the intersection of 11<sup>th</sup> Avenue and East Pine. A standoff ensued between SPD and National Guard personnel and a large group of protestors.

Reports were broadcast and disseminated regarding an individual carrying a "handgun" in the crowd. Officers were able to identify the person and pointed him out in the crowd of protestors. Officers deployed blast balls and CS (prior to the City's ban on CS). OPA reviewed a list of officers who deployed 40-mm "blue nose" rounds at protestors and was unable to identify any of the officers deploying "blue nose" rounds at 11<sup>th</sup> Avenue, south of East Pine Street.

BWV from Witness Officer (WO#2), who was also at the incident location, captured radio communications and the officers' conversations about targeting a man with a gun in the crowd. Fireworks and projectiles were being thrown at the officers when WO#2 deployed a blast ball. At least four other Witness Officers' BWV showed them deploying blast balls as well. The Complainant could not be identified among the protestors in any of these BWV recordings.

The investigator interviewed Witness Officer (WO#3), who was at the incident location. WO#3 recalled targeting an assaultive suspect. The suspect had thrown an unknown object at WO#3 and collected shrapnel from the street. The suspect ran east on Broadway, and WO#3 feared the suspect would step out from behind cover and attempt to assault officers. When the suspect appeared again, he started an overhand throwing motion. WO#3 targeted him with several rounds from a FN303, a nonlethal launcher similar in function to the 40mm. WO#3 believed the use of the force to be effective and ceased force as soon as the suspect ran away.

WO#3 also recalled targeting numerous individuals who were throwing objects at the officers and National Guardsmen. WO#3 targeted individuals who tried to kick or throw CS canisters at the police line and an individual who aimed a green laser at the police line, adversely affecting the officers' vision and potentially causing an injury.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegation #1**

***8.300 – POL – 10 Use of Force – Blast Balls 3. Officers May Use Blast Balls Only When Such Force is Objectively Reasonable, Necessary, and Proportional***



SPD Policy 8.300 – POL – 10 governs the use of blast balls. SPD Policy 8.300-POL-10(3) states that “officers may use blast balls only when such force is objectively reasonable, necessary, and proportional.” (SPD Policy 8.300 – POL – 10(3)) Further, the policy states that, “When feasible, officers shall avoid deploying blast balls in proximity of people who are not posing a risk to public safety or property.” (*Id.*)

OPA is unable to determine which officer deployed the blast ball that hit the Complainant in his facemask. OPA is similarly unable to identify the Complainant in the crowd from BWV.

While, at the time the incident occurred, the use of blast balls had been authorized to disperse the crowd, OPA cannot tell whether the deployment referenced by the Complainant was consistent with policy. Specifically, OPA does not know whether it was directed at a specific threat and deployed in a manner consistent with training. OPA reaches the same conclusion with regard to the CS canister that the Complainant alleged was improperly deployed.

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

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

**Named Employee #1 - Allegation #2**

***8.300 – POL – 11 Use of Force – 40 mm Less Lethal Launcher 7. Officers Will Only Use a 40 mm LL Launcher When Objectively Reasonable, Necessary, and Proportional***

SPD Policy 8.300 – POL – 11(7) states that “officers will only use a 40 mm LL launcher when objectively reasonable, necessary, and proportional.” (SPD Policy 8.300 – POL – 11(7)) An officer may use a 40 mm LL launcher “when a subject poses an immediate threat of harm to any person.” (*Id.*)

As discussed herein, officers generally were permitted to use less lethal launchers to target specific threats. However, as OPA was unable to identify the deployment specifically referenced by the Complainant, OPA cannot determine whether or not it was appropriate under the circumstances.

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

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