



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 4, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0483

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	14.090 - Crowd Management 14.090–TSK–3 Issuing the Order to Disperse	Not Sustained (Lawful and Proper)

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 during a demonstration when he was shot with a projectile by an unknown SPD officer. The Complainant further alleged that force was used on him without demonstrators first being given orders to disperse.

SUMMARY OF INVESTIGATION:

This case arises out of the police response to demonstrations that occurred in the vicinity of the East Precinct and Cal Anderson Park on July 25, 2020. There were numerous uses of force that occurred on that day over a prolonged period of time. As a result, OPA received and/or initiated multiple investigation, including this case.

Here, the Complainant alleged that he was struck by a fired projectile and that this caused him to suffer a significant injury to both of his legs. The Complainant provided photographs to OPA that he asserted showed the injuries. Based on OPA’s review of those photographs and research surrounding similar fired projectiles, OPA believed that the injuries were consistent with being struck by a projectile from either a 40mm launcher or an FN303 launcher. However, OPA could not definitively determine the exact mechanism of injury.

The Complainant told OPA that, at the time force was used, he was protesting in the vicinity of the East Precinct. He stated that he and others were marching and chanting, but that no one was engaging in violence. However, he recalled that officers advanced towards the crowd and used gas and fired projectiles. He said that this was done without warning and without SPD first declaring the demonstration a riot. At that time, he was struck on the legs with a projectile. He also saw other demonstrators who were injured. He told OPA that, in his perspective, there was “no reason for this unnecessary violence.” The Complainant further recounted that, as he walked away, he was struck in the back with another projectile. He said that he then ran from the scene.



The Complainant could not describe the officer who used force against him but believed that the officer was wearing a dark blue uniform. He also did not have the identities of any witnesses to the force, but he believed that others likely saw it. He indicated that he was near or at the front of the other demonstrators and, due to this, he thought it possible that the force was captured on at least one officer's Body Worn Video (BWV). The Complainant provided a description of himself and what he was wearing. Based on questioning from OPA, he acknowledged that he was holding a leaf blower that he was given by another demonstrator. He used that leaf blower to direct gas back towards the officers.

As part of its investigation, OPA reviewed BWV from the July 25 demonstration, as well as documentation that was generated by officers, including force reports and reviews. First, OPA verified that, on multiple occasions prior to any force being used, demonstrators were given dispersal orders through an amplified PA system. The orders were given by Named Employee #1 (NE#1). In addition, prior to any less-lethal tools being used – including the firing of projectiles, officers advanced towards the crowd, repeatedly stating “move back.” The crowd was largely non-compliant and did not move back or disperse consistent with the orders. The BWV further indicated that, at the time less-lethal tools began to be used, a number of demonstrators within the crowd were throwing items at officers.

In order to locate the Complainant and to find the specific use of force, OPA reviewed the BWV of each of the officers who were assigned with either a 40mm launcher or a FN303. However, even after doing so and watching the deployments by those officers, OPA could not locate the Complainant or identify the force he described. OPA also watched video from other officers to see whether the Complainant could be located and, again, was unable to do so. OPA notes that the only SPD officers equipped with launchers during the demonstrations were assigned to SWAT and wore light gray uniforms, not the dark blue uniforms described by the Complainant.

OPA did observe that several officers from other law enforcement agencies – including the Bellevue Police Department (BPD) – were present at the demonstration. The BPD officers wore green uniforms. Several BPD officers possessed and deployed projectiles from launchers; however, like with the unknown SPD employee, OPA could not discern a deployment matching that described by the Complainant.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

14.090 - Crowd Management 14.090–TSK–3 Issuing the Order to Disperse

The Complainant alleged that officers used force on demonstrators without first providing any warning and absent an audible dispersal order.

SPD Policy 14.090-TSK-3 governs the issuance of orders to disperse. The policy sets forth the requirements for dispersal orders, including how to give the order, what to say, allowing a reasonable time for dispersal, and repeating the order if needed.

As discussed above, the BWV indicated that multiple dispersal warnings were given by NE#1 over an amplified PA system prior to force being used by officers. To the extent the Complainant was at or near the front of the crowd, as he contended, he would have been able to hear the dispersal orders based on OPA's analysis.

Accordingly, OPA finds that NE#1 complied with this policy and recommends that this allegation be Not Sustained – Lawful and Proper.



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

Named Employee #2 - Allegation #1

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

Based on OPA's review of the Complainant's allegations and given his documented injuries, it appears that he was struck with a launched projectile at some point during the demonstrations. However, despite best efforts, OPA could not discern when and under what circumstances this occurred, or who used the force and whether that officer was even employed by SPD.

If, as the Complainant asserted, he was peacefully standing and chanting when he was struck with a projectile with no warning causing him to suffer a significant injury, this would likely violate policy. However, if the Complainant was involved in throwing projectiles at officers or was engaged in other actions that subjected others to a risk of harm, such force could have been permissible.

Ultimately, OPA cannot reach a determinative conclusion on this allegation based on the totality of the evidence. As such, OPA recommends that this allegation be Not Sustained – Inconclusive.

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