



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 9, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0611

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	14.090 - Crowd Management 10. a& b Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 – Use-of-Force	Not Sustained (Lawful and Proper)

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 the Named Employee may have engaged in an out of policy deployment of OC spray.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

This case arises out of the protests that occurred in Seattle after the killing of George Floyd by a Minneapolis police officer. This incident occurred on July 19, 2020. On that date, there was a demonstration that occurred in downtown Seattle. Around 200 to 300 demonstrators marched and, during this time, caused property damage. SPD officers assigned to monitor the protest were subjected to thrown projectiles. The demonstration was eventually declared to be a riot and dispersal orders were provided.

Named Employee #1 (NE#1) was part of a bicycle squad working that day. He and other bicycle officers formed a line across 8th Avenue and Virginia Street, which is the street running by the West Precinct. The demonstrators indicated their intent to march past the precinct, which was acceded to by SPD. NE#1 and other officers stepped to the side to allow the demonstrators to pass. The demonstrators began to move down the block. Some demonstrators, including the Subject who was riding a bicycle, stood in between the officers and those who continued to march. Other demonstrators opened umbrellas to block officers’ views of the marching demonstrators.

As this was occurring, an officer went over the radio and stated that protestors appeared to be either trying to access or damage the West Precinct sally port door. One officer’s BWV indicated that, as he rode up, protestors were in the immediate vicinity of the sally port. One individual was holding up an umbrella to block the security camera. People on bikes – including the Subject – tried to block NE#1 and other officers from accessing the area.



Officers eventually moved in front of the sally port and began to direct the crowd to move back. The crowd, however, began to approach. Individuals in the crowd threw water bottles and projectiles at officers, including NE#1. Others in the crowd detonated improvised explosive devices, with shrapnel from one causing a bicycle officer to suffer a cut to his neck. OPA was able to conclusively verify that these explosive devices were solely used by demonstrators, as SPD officers did not deploy any blast balls, NFDDs, or other similar less-lethal tools.

BWV showed an individual open up an umbrella in NE#1's face, which appeared to block his view. NE#1 tried to pull the umbrella away and the individual threw it at NE#1. NE#1 yelled out that the officers were "taking bottles." The BWV then indicated that the Subject lifted up his bike and advanced towards NE#1. Bottles continued to be thrown at the officers. A traffic cone was thrown at NE#1, striking his bike and knocking it over. At this point, some members of the crowd had started to back away, but the Subject remained in front of NE#1. NE#1 then deployed OC spray at the Subject, which caused the Subject to move away. The crowd again began to surge with one demonstrator grabbing onto an officer's bicycle.

Explosions continued to be heard in the vicinity and an explosive device appeared to go off at NE#1's feet. He yelled out: "are you fucking kidding me." NE#1 broadcasted over the radio that officers were taking explosives from demonstrators. Officers began trying to arrest some of the demonstrators engaging in criminal activity. As they did so, the Subject lifted up his bicycle and moved towards the arresting officers. NE#1 yelled "back" but the Subject did not comply. As a result, NE#1 again deployed OC spray at the Subject, causing him to back away. Two other demonstrators began to move towards the arresting officers. NE#1 deployed OC spray at both of them. One backed away but the other continued to proceed towards the officers. That demonstrator was arrested by NE#1. NE#1 brought the demonstrator into the precinct. He did not use any further force.

During the chain of command review of NE#1's OC spray deployments, a Lieutenant referred the deployments towards the Subject to OPA to determine whether those uses of force were consistent with policy. This investigation ensued. OPA reviewed extensive BWV from a number of officers, as well as reviewed the documentation generated surrounding the uses of force.

SPD Policy 14.090-POL-10 governs the use of OC spray in the demonstration management context. The policy states that such force may be used by officers to protect themselves, protect others, or to prevent significant destruction of property. Such force is also subject to the general requirements that it be reasonable, necessary, and proportional.

Based on a review of the totality of the evidence, OPA finds that NE#1's two deployments were both justified under SPD policy. In reaching this decision, OPA believes it important to assess not just the instance of the force, but also the moments before and after and the overall situation facing NE#1 and other officers. Notably, at the time force was used, demonstrators, including the Subject, had been given numerous orders to back up and away from officers and the sally port door. While some demonstrators did so, the Subject did not. To the contrary, the Subject took affirmative actions throughout this incident that showed deliberate non-compliance. For example, he stepped in front of NE#1 as he tried to advance towards the sally port and moved towards officers twice with his bicycle, including when they were trying to arrest a demonstrator. Moreover, at this time, officers were subjected to numerous thrown projectiles, including bottles and a traffic cone, and exploding devices. Even if the Subject, himself, did not throw any of these projectiles or explosive devices, his failure to move out of the area and, to the



contrary, his decision to block and move closer to officers, made a dangerous situation even more so and created a significant risk that NE#1 and other officers would be subjected to harm.

For these reasons, OPA finds that NE#1's OC spray deployments were consistent with the requirements of SPD Policy 14.090-POL-10. OPA further finds that these deployments were reasonable, necessary, and proportional under the circumstances. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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