



ISSUED DATE: AUGUST 19, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0224

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.300 - Use of Force Tools 2. Uniformed Officers Are Required to Carry at Least One Less Lethal Weapon	Sustained
# 2	8.300 – POL-10 Use of Force – 40mm Less Lethal Launcher 4. Officers Who Have Been Trained and Issued a 40mm LL Launcher Will Deploy with It During Their Shift	Sustained

Imposed Discipline

Written Reprimand

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, the FIT Lieutenant, identified that the Named Employee may have violated policy when he did not deploy with an issued less-lethal tool during his patrol shift. Specifically, it is alleged that the Named Employee responded to an incident without his 40mm launcher or any other less-lethal tool and this incident later resulted in an officer-involved shooting.

SUMMARY OF INVESTIGATION:

On February 9, 2021, Named Employee #1 (NE#1) was working 3rd watch patrol for the South Precinct. NE#1 and his partner responded to a shots fired call that resulted in a homicide. During their response to this call, the officers were involved in a shooting that resulted in the death of the Subject, who was the suspect in the homicide.

As with all officer-involved shootings, the Department’s Force Investigation Team (FIT) responded to the scene and conducted an investigation into the incident. As part of that investigation, FIT conducted multiple interviews with NE#1. The first interview took place the night of the incident on February 10, 2021. The second interview was held on February 24, 2021.



During his first FIT interview, NE#1 said that he and his partner took the place of two other officers that were initially dispatched and responded to the call instead. (NE#1 FIT Interview 1, at p. 2). At his second FIT interview, NE#1 disclosed that he only realized after the incident that he had failed to deploy with a less-lethal tool. (NE#1 FIT Interview 2, at p. 9, 10). This included the 40mm less-lethal launcher assigned to NE#1.

NE#1 explained that, although he usually carries an expandable baton on his vest: “Sometimes when I take off my vest – the baton will fall down and fall out – and unbeknownst to me, that’s what happened.” (*Id.*) With regards to his 40mm launcher, NE#1 stated that he: “was preparing pizza for the precinct at the time, prior to this incident. A call came out . . . another person was sent as primary who hadn’t gotten to eat the pizza. So, I told my partner that we should answer for him so Left without the proper stuff on my uniform or the 40mm.” (*Id.*) NE#1 also stated that “. . . we got sent to a call and ran out, left my 40-millimeter and my rifle in the locker. And then on our way back to pickup the 40mm and rifle this occurred.” (NE#1 FIT Interview 2, at p. 11).

As a result of its investigation and the officers’ FIT interviews, the FIT Lieutenant identified and referred NE#1’s failure to deploy with less-lethal equipment to OPA as potential misconduct. OPA initiated its investigation, which included gathering NE#1’s training records, reviewing SPD’s 40mm launcher training and policy, and interviewing NE#1.

Training records indicated that NE#1 took SPD’s 40mm launcher training, had completed the requisite certification and recertification programs, and was issued a 40mm launcher. (See Training Record). The power point for the training program covers SPD policy starting on page 22. On page 26, it explains SPD Policy 8.300-POL-10(4), which requires officers who have been trained, certified, and issued a 40mm launcher to deploy with it during their shift. Page 31 describes SPD Policy 8.300-POL-10(12), which mandates that officers assigned a 40mm launcher securely store it in their patrol vehicles while on duty and their Department lockers when not on duty.

At his OPA interview, NE#1 acknowledged that he did not comply with policy during this incident. With regard to not having a less-lethal tool when he responded to the scene, he stated: “Yes I didn’t have one on me, so I violated that policy.” (OPA Interview). With regard to SPD Policy 8.300-POL-10(4), he stated: “I also violated that policy.” (*Id.*)

When asked what he has done to correct these issues at the OPA interview, NE#1 stated: “every day I make sure that I put my keys in my 40mm and rifle bag, so that I don’t forget them. Put them in the back of my car. Also, looking into getting a longer baton that won’t fall out, when putting [on] my – exterior vest.”

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.300 - Use of Force Tools 2. Uniformed Officers Are Required to Carry at Least One Less Lethal Weapon

SPD Policy 8.300-POL-2 requires all uniformed officers to carry at least one less lethal tool. On the date in question, NE#1 had been trained and certified on the use of the 40mm launcher and had been issued a 40mm launcher. He was also issued a baton to carry as another less lethal tool. However, he indisputably failed to deploy with either less-lethal tool during this incident.

The facts of this case are very similar a prior OPA case – 2017OPA-0609. In that case, an officer was issued a taser and the policy required him to carry it during his shift; however, he failed to deploy with it. The officer later disclosed that the battery of the Taser was not working so he left it in his locker. The officer confirmed that he did not notify the



Taser coordinator that he was not carrying the Taser and that he did not seek to obtain a replacement. The officer subsequently responded to an incident that resulted in a fatal shooting.

OPA believes that the officer in 2017OPA-0609 had more culpability than NE#1 given that the officer failed to obtain a replacement despite being aware of the problems with his Taser for an extended period of time and because he then knowingly deployed to an initially non-exigent call without his Taser. In comparison, NE#1 deployed to an exigent call involving shots fired and inadvertently left both his 40mm launcher and baton behind.

In finding that NE#1 did not comply with this policy, OPA notes that a baton would not have been an appropriate tool under the circumstances. OPA also notes that, virtually immediately after NE#1 responded to the scene, the subject pointed a firearm at him and the other officers present, resulting in their decision to fire their weapons. As such, while it does not excuse him from failing to deploy with his 40mm launcher, this tool almost certainly would not have been utilized given the subject's actions and how fast the incident transpired.

For the above reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

8.300 – POL-10 Use of Force – 40mm Less Lethal Launcher 4. Officers Who Have Been Trained and Issued a 40mm LL Launcher Will Deploy with It During Their Shift

SPD Policy 8.300-POL-10(4) states that: "officers who have been trained and issued a 40mm LL Launcher will deploy with it during their shift." It also states that: "officers deploying with a 40mm LL Launcher will deploy with a primary less lethal device in accordance with 8.300(2)."

As explained above, it is undisputed that NE#1 was trained on and issued a 40mm launcher, but that he failed to deploy with it or any other less-lethal tool.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**