



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 16, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0485

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.300–POL-10 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 - Lawful and Proper
# 2	8.300–POL-10 Use of Force– 40 mm Less Lethal Launcher 8. Officers Will Consider the Risk of the 40 mm LLIM Round Causing Serious Harm When Determining Whether to Deploy	Not Sustained - Training Referral
# 3	8.300–POL-10 Use of Force– 40 mm Less Lethal Launcher 9. Officers Will Not Target a Subject’s Head, Neck or Genitals	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 is alleged that the Named Employee did not appropriately use 40-millimeter less lethal launcher (40mm).

ADMINISTRATIVE NOTE:

This case was referred to OPA from an SPD Force Review Board (FRB) examination. The FRB was unsure if the use of the 40mm was consistent with the 40mm less lethal policy. The FRB noted that Named Employee #1 (NE#1) did not indicate specifically where he targeted a subject when using his 40mm. It was unknown if NE#1 targeted the subject’s head or neck area, which is not permitted by policy unless lethal force is permitted.

SUMMARY OF INVESTIGATION:

As part of the investigation, OPA reviewed reports and BWV associated with the incident. OPA also interviewed NE#1.

NE#1 responded to a disturbance call. Available information indicated that a male (the Subject) from one of the units in the building broke glass items in the hallway and was yelling and swearing. Information also stated that the Subject had a recent history of mental crisis, and that the male was in his apartment and no weapons were seen.

When NE#1 arrived at the scene, four witness officers were already present. NE#1 deployed with his 40mm and took up a position enabling him to see down the hallway towards the Subject’s door, while remaining behind the partial cover of the corner. BWV depicted the Subject throwing an item out of his door (left side of the hallway) in the general



direction of the officers. The item was a rectangular object about the size of a legal pad or laptop computer. The item appeared heavy and possibly made of metal. Incoherent shouting could be heard emanating from the Subject's apartment.

BWV shows the on-scene Sergeant updated SWAT on the situation with respect to locale and building layout. The Sergeant debriefed NE#1 that a SWAT team member was going to attend the scene. The Sergeant was heard on BWV formulating a plan with NE#1 to the effect of "If he comes back out and makes any movement, I want you to fire." The Subject was heard shouting unintelligibly and also the phrase "Black lives matter."

Prior to the use of the 40mm, the Sergeant stated to the NE#1 that "time is our friend, I don't want to rush in and do anything." The Subject was seen on BWV opening and closing the door of his apartment. As the Subject opened the door of his apartment, he leaned out, exposing his right arm, head, and upper chest. With his right arm, the Subject hurled an unknown object in the direction of the officers. NE#1 fired his 40mm at the Subject.

NE#1 was approximately 30-50 feet from the Subject and standing at a corner when he deployed his 40mm. NE#1 fired his 40mm as the Subject retreated into the apartment. The 40mm did not make contact with the Subject and was later recovered from the scene. On OPA's review of the associated BWV, OPA noted that after firing at the Subject and after reloading, NE#1 appeared to chuckle and say "yeah" to himself. While OPA recognizes the situational context involved in this case, NE#1 must be cognizant of the negative impression that this could create after deploying a less lethal round at a Subject. OPA noted that regardless of this utterance, the NE#1 did not change his status and remained focused on the Subject's apartment door.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.300-POL-10 Use of Force- 40 mm Less Lethal Launcher 7. Officers Will Only Use a 40 mm LL Launcher When Objectively Reasonable, Necessary, and Proportional.

It was alleged that NE#1 used his 40mm when it was not objectively reasonable, necessary, and proportional.

SPD policy 8.300-POL-10 limits the use of the 40mm to instances where it is objectively reasonable, necessary, and proportional. The policy notes that Officers may use a 40 mm when:

- (a) a subject poses an immediate threat of harm to any person; or
- (b) public safety interests dictate that a subject needs to be taken into custody and the level of resistance presented by the subject is
 - (1) likely to cause injury to the officer, or
 - (2) if hands-on control tactics or other force options would be likely to cause greater injury to the subject than the use of the 40 mm Less Lethal Impact Munition (LLIM).

The policy also notes that Officers will consider Department training regarding deployment distances and target areas. Each situation must be evaluated on the totality of the circumstances at the time of the deployment.

During his interview with OPA, NE#1 explained how he believed that the Subject had the means, ability and demonstrated intent to engage in behavior that risked the physical safety of both officers on scene and the general citizenry outside of his window. NE#1 stated how the 40mm allowed attending officers to utilize time, distance and



shielding until the situation could be resolved safely for the subject as well as officers. OPA notes that NE#1's Use of Force statements aligned with his BWV and OPA interview.

BWV depicted the Subject throwing a number of objects—which appeared to be small doors and other items—at attending officers over a prolonged period. OPA accepts that the Subject's behavior did not appear to deescalate over time. At scene information indicated that the Subject had been armed with a razor or "sharp object" in his hand. Under the escalatory nature of the circumstances, there was a reasonable concern that the Subject was a danger to anyone walking by, outside his apartment. OPA also finds that NE#1's use of the 40mm was necessary as there was no reasonably effective alternative to prevent the Subject from throwing an additional object at the officers without closing the distance between the officers and the Subject, exposing the officers to a higher risk of harm. Finally, OPA finds NE#1's use of the 40mm proportional to the nature and immediacy of the threats posed to the officers because the Subject—who was reported to be armed with a razor or other sharp object—had already thrown objects at the officers and out of an exterior window. Given the totality of the circumstances at the time of the deployment and the fact that NE#1 targeted the Subject's arm and upper chest—and not the Subject's head or neck—as discussed below at Named Employee #1, Allegation #2, this deployment appeared to be objectively reasonable, necessary, and proportional.

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

Recommended Finding: **Not Sustained – Lawful and Proper**

Named Employee #1 - Allegation #2

8.300–POL-10 Use of Force– 40 mm Less Lethal Launcher 8. Officers Will Consider the Risk of the 40 mm LLIM Round Causing Serious Harm When Determining Whether to Deploy

It was alleged that NE#1 did not consider the risk that his use of the 40mm could cause serious harm when determining whether to deploy.

OPA notes that, had NE#1 missed, there was a risk that he could have hit the Subject in the neck or head. However, NE#1 stated that when the Subject threw an unknown object in the direction of officers, the only areas of the Subject to target were the Subject's head, upper chest, and arm. NE#1 stated he aimed at the arm and upper chest but was aware of the risk of unintentionally hitting the Subject's head. NE#1 stated that that he knew it would be harder to hit the Subject in the arm than the central region of the body. NE#1 indicated that he also considered what his backstop was, should the round miss. OPA notes that NE#1 completed the appropriate training and was certified to use the 40mm.

Given NE#1's distance from the Subject, the small, moving target areas on the Subject's body, and the proximity of the arm and upper chest area to the head and neck, OPA believes this specific use of the 40mm to present an extremely close call. However, it appears to OPA that NE#1 weighed these risks against the threat presented to the officers, the public safety interest of taking the Subject into custody, and the likelihood that hands-on control tactics or other force options would have been more dangerous to all parties. Moreover, NE#1 clearly articulated that he targeted these permissible—if not preferred—areas of the Subject's body because they were the only permissible targets available. However, immediately prior to deployment, the attending Sergeant stated to the NE#1 and other attending officers, "now in this case, time is our friend, I don't want to rush in and do anything." OPA notes that approximately one



minute later, NE#1 fired a round at the Subject. OPA notes that the consideration of risk should also have incorporated the clear instructions given by the acting sergeant at the time.

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

- **Training Referral:** NE#1 should be provided retraining and counseling concerning risk calculations when working as part of a team. While OPA recognizes the intensity of the situation, such actions, particularly when taken independently, could have a detrimental impact in a more serious situation. NE#1's chain of command should emphasize the importance of SPD Policy 8.300-POL-10(10) ("Preferred Target Areas for 40mm LL Launchers Are...") in considering the risk of a specific 40mm use under SPD Policy 8.300-POL-10(8). This training and counseling should be documented, and this documentation should be maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

Named Employee #1 - Allegation #3

8.300–POL-10 Use of Force– 40 mm Less Lethal Launcher 9. Officers Will Not Target a Subject's Head, Neck or Genitals

It was alleged that NE#1 may have targeted the Subjects head or neck, which would be inconsistent with policy unless deadly force were justified.

During OPA's BWV review, only the subject's head, neck and a portion of his upper arm/chest area were visible when NE#1 deployed a Blue Nose round at him. The subject was around 30-50 feet from NE#1 when he deployed his 40mm.

In his original Use of Force statement, NE#1 did not specify which area of the Subject's body he targeted, describing only that the Subject's "right arm, upper chest, and head" were visible. In his revised Use of Force statement, NE#1 stated "...The suspect actively threw an item at Officers, so I fired one Blue Nose 40mm round at the suspect's right arm and upper chest to stop him from assaulting Officers further by potentially throwing more items, possibly sharp object such as a knife, needles, etc. I believe I had struck the suspect in his right arm." OPA also notes that the Subject did not suffer any injury consistent with an impact by the 40mm "Blue Nose" round fired by NE#1. Based on the evidence available to OPA, OPA finds by a preponderance of the evidence that the NE#1 visualized and targeted the permissible areas of the Subject's body—arm and upper chest—and not the Subject's head or neck, during this use.

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

Recommended Finding: **Not Sustained - Lawful and Proper**