



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 12, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0469

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Inconclusive)
# 2	8.300-POL-10 Use of Force – Blast Balls 6. Officers Are Required to Report the Use of Blast Balls, Regardless of Whether a Subject is Struck	Not Sustained (Inconclusive)
# 3	8.300-POL-10 Use of Force – Blast Balls 7. As Soon As Reasonably Possible, Officers Will Request [...]	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, a journalist, alleged that the Named Employee used excessive force when he threw a blast ball in her direction while she was seated on a fire escape, causing injury.

ANALYSIS AND CONCLUSIONS:

This case arises out of the demonstrations that occurred within Seattle and across the nation in the wake of George Floyd’s murder by a Minneapolis Police Officer. These protests were unprecedented in scope and were directed at law enforcement.

The incident at issue in this case occurred on July 25, 2020. On that date, groups of demonstrators gathered near the SPD East Precinct. This incident, which occurred in the afternoon hours, involved a photojournalist for a local publication who stated that she arrived at the demonstration location in and around the intersection of 11th Avenue and Pike Street at approximately 3:00 PM. The Complainant alleged that she spoke to SPD SWAT Team members and identified herself as a journalist and was wearing a press badge on a lanyard around her neck. The Complainant stated that she photographed ongoing demonstration activity, including some deployments of blast balls, and observed that the majority of demonstration activity was moving away from her location.

The Complainant went to rest on a fire escape in a parking lot off 11th Avenue, across from Cal Anderson Park. The fire escape was approximately 10 feet off the ground and the Complainant was seated on the first landing. While she was seated in that location, SPD officers formed a line across 11th Avenue about 20 feet away from her location. A crowd of protesters was gathered facing the SPD line separated by 30-50 feet. The Complainant filmed the demonstration activity with her camera, recording the incident.



On the film, the Complainant could be heard coughing, likely from a previous exposure to blast balls which she alleged she came into contact with earlier that day. (See Declaration ¶ 10.) On the Complainant's video, an SPD officer wearing a bicycle helmet with a visor and face shield, Named Employee #1 (NE#1) could be seen approaching the parking lot in which the Complainant was seated on the fire escape. NE#1 approached to within 5-10 feet of the Complainant and deployed one blast ball in an underhand throw toward the back of the parking lot. He did not turn to look at the Complainant when he did so or speak to the Complainant, although the Complainant contended that she should have been plainly visible to anyone. The Complainant's video ended before the blast ball detonated.

In a declaration filed as part of civil litigation and appended to her statement in this complaint, the Complainant stated that she saw and heard NE#1 throw the blast ball. She stated that she braced herself for the explosion and, afterward, experienced disorientation, choking, and tinnitus. She further alleged suffering a twisted knee because of this incident. (*Id* at ¶ 22.) She stated that, after the incident, she felt unsafe leaving the fire escape and remained in that location. (*Id* at ¶ 23.) In her interview with OPA, the Complainant also stated that she has experienced hearing loss since the incident.

OPA obtained BWV of this incident. A sergeant's BWV recorded an individual later identified as the Complainant sitting on the fire escape approximately 10 feet above the ground. Neither the sergeant nor any other officer appeared to notice, speak to, or interact with the Complainant. The BWV showed the sergeant directing his squad. At approximately 59 seconds into the recording, the sergeant pointed toward the rear of the parking lot and said: "bang out." This describes the disposal of a blast ball that will not be deployed. The BWV showed NE#1 walking toward the parking lot and throwing his blast ball into the area indicated by the sergeant. The sergeant shouted "bang out" twice. During this time, the camera of the BWV appeared to be obscured by the sergeant's arm or hand, but the detonation of the blast ball was audible approximately six seconds later.

BWV of several other officers captured the moments before, during, and after the bang out. Relevant to the complaint, they recorded objects being thrown by the crowd and impacting officers. The BWV also captured NE#1 stating to the sergeant and other officers that he needed to perform a bang out. The sergeant acknowledged this, and NE#1 was filmed walking toward the parking lot. BWV confirmed that NE#1 did not appear to closely scrutinize the target of his bang out (the rear of the parking lot) before throwing the blast ball underhand. Several of the videos captured the Complainant sitting on the fire escape but confirmed that no officer appeared to interact with or notice her.

OPA examined NE#1's use of force report for the day in question. It stated that NE#1 reported conducting the bang out. He reported that: "[a] 'Bang Out' is a taught method to safely dispose of a blast ball after the blast ball has been prepped and the pin has been pulled. We are also taught NEVER to re-pin the blast ball because it is extremely hazardous" (emphasis in original).

In his use of force report, NE#1 stated that, after he advised the sergeant that he needed to do a bang out, the sergeant pointed into the parking lot. NE#1 stated that "the parking lot had a downward slope and I didn't see anyone at the location where I planned to throw the blast ball." He documented that once he performed his "quick look," he turned his attention back to the crowd, which was the "biggest threat." He stated that he reported his bang out over SPD radio.



OPA also examined NE#1's training records. This confirmed that NE#1 has received blast ball training and passed all relevant qualifications.

Finally, OPA interviewed NE#1. NE#1 related the events of this incident consistent with the above. He stated that he initially prepped the blast ball because he saw an individual in the crowd approaching an undetonated SPD blast ball that was lying in the street in a suspected attempt to throw the blast ball back at officers. Before NE#1 could deploy his blast ball, other officers yelled at the individual not to pick it up and the individual retreated. This meant that NE#1 was holding a live blast ball in his right hand and his bicycle in his left hand, and NE#1 was concerned about tripping or otherwise losing control of the live blast ball. This caused him to advise the sergeant that he needed to conduct a bang out.

NE#1 stated that he did not see anyone on the ground in the parking lot where he intended to direct his blast ball. He observed that the parking lot was "downhill" from street level, which meant that the blast ball would roll into a lower area where no people were. NE#1 stated that he did not see the Complainant at the time and was unsure how she got behind the police line and to the fire escape because to his recollection, she was not present there when officers made the initial push north on 11th Avenue. Finally, NE#1 noted that he was wearing a helmet, visor, goggles, and gas mask on the date of the incident, and that the helmet and visor reduced his field of vision by approximately "two inches of vision up top." NE#1 denied targeting the Complainant with the blast ball.

Named Employee #1 - Allegation #1

8.200 - Using Force 2. Use of Force: When Prohibited

SPD Policy 8.200-POL-2 states that employees will not use prohibited force. Implied in this policy and in the general use of force policies is the concept that an officer may not target with force an individual who poses no threat or obstruction at all.

Were there evidence to suggest that NE#1 knowingly or intentionally targeted the Complainant with a blast ball, that action would violate this policy. However, this question is ultimately inconclusive.

While the Complainant contended that she was clearly visible on the fire escape, NE#1 denied that he saw her. NE#1 reported that his vision – and particularly his upward vision – was compromised by the helmet, visor, goggles, and gas mask that he was wearing at the time. This was not inconsistent with his video. In addition, while the Complainant was visible on several officers' and the sergeant's BWV, this does not conclusively prove that NE#1 saw her at the time of the bang out. The BWV did not reflect recognition by any officers, let alone NE#1, that the Complainant was present on the fire escape either before or after the bang out. No one looked appeared to look up at her, spoke with her, or referenced her being there at any point on the recordings.

Moreover, the video and NE#1's actions that were captured on the video were consistent with him conducting a bang out and inconsistent with him intentionally targeting the Complainant. OPA's examination of the parking lot in photographs and BWV showed that it sloped downward as NE#1 stated. A correctly deployed bang out would thus be anticipated to result in the detonation of the blast ball in the far corner of the parking lot, some 20-40 feet from the Complainant's location. As such, it is possible that NE#1 was focused exclusively on that area and, in part because of his equipment limiting his vision, simply did not realize the Complainant was present.



That being said, when evaluating the totality of the evidence and applying the requisite evidentiary standard, OPA cannot definitively determine which account is more likely. Accordingly, OPA recommends that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #2

8.300-POL-10 Use of Force – Blast Balls 6. Officers Are Required to Report the Use of Blast Balls, Regardless of Whether a Subject is Struck

SPD Policy 8.300-POL-10(6) requires officers to document the use of blast balls whether or not a subject is struck. SPD Policy 8.300-POL-10(6). The policy goes on to describe the levels of force for different types of blast ball deployment. *Id.*

The conclusion in Allegation #1 also dictates the conclusion here. While NE#1 documented that he engaged in a “bang out,” the question is whether he failed to report that it affected an innocent party. If so, his report would have been deficient and in violation of policy. However, as discussed above, OPA concludes that the question of whether NE#1 knew that the Complainant was in the vicinity and engaged in the bang out anyway is inconclusive.

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

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

Named Employee #1 - Allegation #3

8.300-POL-10 Use of Force – Blast Balls 7. As Soon As Reasonably Possible, Officers Will Request and/or Render Medical Aid for Subjects Who Appear to Have Been Injured by a Blast Ball Deployment or Who Complain of Pain or Injury Resulting From a Blast Ball Deployment

SPD Policy 8.300-POL-10(7) requires officers to request or provide medical assistance to individuals injured by blast balls as soon as reasonably possible. In prior cases, OPA has not interpreted this policy to require officers to request aid when a reasonable person would not have realized an individual was injured.

Again, whether NE#1 knew that the Complainant was present is an open question and cannot be definitively determined by OPA. Accordingly, for the same reasons as stated in the above allegations, OPA recommends that this allegation be Not Sustained – Inconclusive.

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