



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 13, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0490

Allegations of Misconduct & Director’s Findings

Named Employee #1

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

Named Employee #2

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

Named Employee #3

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)
# 2	8.300 – POL-11 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 (Inconclusive)
# 3	14.090 - Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 – Use-of-Force	Not Sustained (Unfounded)

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 she was subjected to excessive force during a demonstration when she was pepper sprayed in the face while she was moving backwards and away from officers. She further alleged that her partner was also subjected to excessive force when he was shot in the leg with a projectile.

SUMMARY OF INVESTIGATION:

This case stems from the demonstrations that occurred on July 25, 2020, and SPD’s response thereto. The demonstrations that took place on that day were the largest since the protests began in late May/early June. As a general matter, a large crowd marched from the Central District/South Seattle to the East Precinct. Along the way,



individuals within the crowd caused property damage, including shattering the windows of businesses and setting trailers and other buildings on fire in a cordoned off area in the vicinity of the Youth Service Center. SPD additionally reported that demonstrators threw at least one explosive device at the East Precinct, which caused damage to the precinct wall.

As demonstrators passed the East Precinct and walked towards Cal Anderson Park, officers emerged from the precinct and proceeded towards the crowd. SPD issued a number of dispersal orders, which were not complied with. Ultimately, both groups clashed repeatedly, resulting in numerous uses of force against demonstrators and violence towards officers over a prolonged period of time. As a result, OPA received and/or initiated multiple investigations, including this case.

The Complainant was among the demonstrators who were in the vicinity of the East Precinct and Cal Anderson Park. She later relayed to OPA that she was pushed with other demonstrators down Pine Street. She said that she was then subjected to force, including less-lethal tools. The Complainant asserted that officers used tear gas, that officers hit demonstrators who were attempting to shield themselves, and that officers “peeled” demonstrators off and hit them with batons “even more violently.” The Complainant said that she was trying to move back but the officers advanced quickly, and she could not go fast enough. The Complainant contended that an officer pushed her with a baton and her partner was shot with a rubber bullet. She stated that the officers continued to move her and others back, including using batons and bikes to do so. She said that this was despite demonstrators’ inability to move anywhere at that time. The Complainant recalled keeping her distance from officers and “clearly” moving away from them. She stated that an officer then deployed pepper spray in her face.

The Complainant provided a photograph of a man’s leg with an injury consistent with being hit by a 40mm projectile. She identified this as being the injury that her partner suffered. The partner declined to provide a statement to OPA and remained anonymous.

This incident was captured on Body Worn Video (BWV). The BWV indicated that dispersal orders were given to the crowd and that officers began to move towards the crowd in order to push demonstrators back. The BWV confirmed that demonstrators were moved by officers down Pine Street. At that point, there were multiple points of egress for the crowd in a number of directions. Less-lethal tools were used by officers at that time to disperse the crowd. In addition, at that time, demonstrators threw numerous projectiles at officers, including fireworks and other incendiary devices. A review of BWV and the documentation completed concerning the law enforcement response to this demonstration confirmed that CS gas was not used at any point. OPA could not find any video evidence corroborating the Complainant’s assertions that officers hit demonstrators who attempted to shield themselves or that officers “peeled” demonstrators off from the group and struck them with batons.

The BWV captured the Complainant and an individual who OPA identified as her partner standing at the front of the line of demonstrators facing the officers. At the time, neither the Complainant nor her partner were backing away from the officers and they remained standing where they were. In addition, the BWV showed the Complainant’s partner holding a leaf blower that he was using to blow smoke and OC spray back at officers, as well as indicated that he was kicking less-lethal munitions back towards officers. Officers advanced towards them in a deliberate manner. The BWV did not support the Complainant’s assertion that the officers quickly rushed the demonstrators, thus preventing her and her partner the opportunity to back away. Witness Officer #1 (WO#1) was shown on video pushing the Complainant’s partner back with his baton. He did so by extending the baton in front of his body and pushing forward. This did not cause the Complainant’s partner to fall to the ground or appear to cause him any pain.



OPA examined the BWV to identify whether and when the Complainant's partner was shot with a 40mm projectile. OPA found no evidence that this occurred at the time referenced by the Complainant. There were no reported deployments from SPD officers at that time and a review of the contemporaneous video recorded by officers equipped with 40mm launchers did not reveal the deployment in question. Moreover, the Complainant's partner did not recoil in pain or engage in other actions that would have suggested his being struck by a projectile.

OPA determined that both Named Employee #1 (NE#1) and Named Employee #2 (NE#2) deployed pepper spray at that time. Both officers reported targeting the Complainant's partner with pepper spray. They explained that they did so because: he was not dispersing; he was kicking less-lethal munitions back at officers; and he was using a leaf blower to direct gas and smoke back at officers. Both denied targeting the Complainant with pepper spray. That the officers targeted the Complainant's partner with pepper spray, rather than directed it at the Complainant, was supported by the BWV. However, it appeared possible that the Complainant was affected by the spray either because of her close proximity to her partner or because of her partner's continued use of the leaf blower. At the time of the pepper spray deployment, the Complainant was wearing goggles over her eyes and a respirator over her nose and mouth.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

SPD Policy governs when officers may make the individual decision to use OC spray and/or blast balls. The policy provides that such use is appropriate to: "defend oneself; defend someone else"; and/or "prevent significant destruction of property." The force must also be consistent with the general requirements of reasonableness, necessity, and proportionality.

Both of the Named Employees reported that they directed OC spray at the Complainant's partner because he was failing to disperse after being given multiple lawful orders to do so, because he was kicking less-lethal munitions back at officers thus putting them at risk and harm, and because he was using a leaf blower to direct gas and smoke towards officers also subjecting them to danger. The Named Employees contended that these actions permitted them to use force in defense of themselves and other officers. They further asserted that their force was reasonable, necessary, and proportional under the circumstances as they specifically targeted the Complainant's partner with brief bursts of OC spray and, once he backed away, they ceased using force towards him.

The Named Employees' description of the force they used and their justifications for why it was permissible were supported by the BWV. The video indicated that the Complainant's partner was engaging in the conduct they identified, as well as that he was targeted with brief bursts of OC spray to stop his actions and to move him back. Once this was successful, the video depicted that both officers stopped using force.

With regard to the Complainant, there was no evidence indicating that either of the Named Employees targeted her with OC spray. Specifically, there was no support for her claim that the Named Employees sprayed her in the face with OC spray. Again, as indicated above, while the Complainant may have very well been affected by OC spray, this was likely the inadvertent result of her close proximity to her partner or due to his use of the leaf blower.



For the above reasons, OPA finds that the force used by both Named Employees was consistent with policy. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

Named Employee #2 - Allegation #1

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

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #1

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

This allegation was added based on the Complainant's assertions that unknown officers engaged in excessive force towards demonstrators and that an officer pushed her partner with a baton.

As discussed above, OPA could not find any evidence indicating that officers hit demonstrators who were attempting to shield themselves or that officers "peeled" demonstrators off from the group and struck them with batons. While officers did continually move towards the crowd and push demonstrators back, this largely appeared to be done consistent with training and did not constitute excessive force.

With regard to the push of the Complainant's partner, this was also within policy. The Complainant's partner was standing in the street and refusing to disperse as officers advanced, despite being given lawful orders to do so. WO#1 pushed the Complainant's partner back by using his extended baton in front of him. This did not appear to cause the Complainant's partner to suffer any discomfort or cause him to fall to the ground. This force was appropriate under the circumstances.

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

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

Named Employee #3 - Allegation #2

8.300 – POL-11 Use of Force– 40 mm Less Lethal Launcher 7. Officers Will Only Use a 40 mm LL Launcher When Objectively Reasonable, Necessary, and Proportional

This allegation was classified based on the allegation that the Complainant's partner was struck by a projectile shot from a 40mm launcher and that this was improper.



While OPA could not verify who the individual was in the photograph provided by the Complainant, and even though the Complainant's partner declined to participate in an interview, OPA believes that the injury depicted is consistent with that caused by a 40mm launcher.

However, OPA could not identify when the Complainant's partner was struck with a projectile and who deployed that projectile. This was the case even after reviewing BWV from those SPD officers who were equipped with 40mm launchers at the time. OPA notes that there were officers from the Bellevue Police Department who were at the scene in a mutual aid capacity and who were equipped with 40mm launchers. As such, it is possible that one of those officers were responsible for the deployment that caused the Complainant's partner's injury.

Without being able to identify the deployment in question, OPA cannot assess whether it was consistent with policy. Indeed, based on the facts present here and the Complainant's partner's conduct, it very well could have been. However, this allegation is ultimately inconclusive and OPA recommends that it be Not Sustained.

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

Named Employee #3 - Allegation #3

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

This allegation was classified for investigation based on the possibility that an unknown SPD employee sprayed the Complainant in the face with OC spray.

Based on OPA's review of the evidence, including the BWV, there was no evidence that this occurred at the time identified by the Complainant. The only deployments of OC spray that OPA observed occurring in her vicinity were those that targeted her partner by the Named Employees.

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

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