



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 28, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0344

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.300-POL-10 – Use of Force – Blast Balls 3. Officers May Use Blast Balls Only When Such Force is Objectively Reasonable, Necessary, and Proportional	Sustained
# 2	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	Not Sustained (Unfounded)
# 3	8.300-POL-10 Use of Force – Blast Balls 5. Officers Must Justify Each Separate Blast Ball Deployment	Not Sustained (Management Action)

Imposed Discipline

Disciplinary decision pending before the Chief. CCS will be updated when discipline is final.

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 improperly deployed a blast ball, striking the Subject, and subjected her to serious injuries. It was also alleged that the Named Employee failed to provide the Subject with medical treatment and did not properly report the force he used.

ADMINISTRATIVE NOTE:

This case has several different 180-day timelines given that there are Named Employees belonging to different bargaining unit and one Named Employee who is no longer employed by SPD. This CCS solely concerns the actions of Named Employee #1 (NE#1), as the timeline for his case is the earliest and expires on January 4, 2021. The remainder of the CCS will be submitted at a later date.

SUMMARY OF INVESTIGATION:

A. Background and Incident

This case arises out of the demonstrations that occurred within Seattle and across the nation in the aftermath of the killing of George Floyd by a Minneapolis Police Officer. The specific case addressed here occurred on the evening of June 7, 2020 and early morning hours of June 8, 2020.



Over the week prior, there had been ongoing protests in the vicinity of the East Precinct. Several of those protests were dispersed with less-lethal tools. On June 8, officers reported observing individuals in the crowd preparing projectiles to be thrown. Demonstrators had also repeatedly breached fencing set up by officers and continued to push towards the precinct. Eventually, an SPD commander gave several dispersal orders. At approximately 12:00 a.m., the protests devolved into violence. Demonstrators began throwing projectiles at officers and, in response, an SPD commander gave the officers on the line authorization to disperse the crowd using less-lethal tools. Named Employee #1 (NE#1) was one of the officers on the line. He reported initially using a 40mm launcher to deploy four to five OC rounds. Video of the protest showed that the dispersal was successful in moving the crowd back. However, demonstrators continued to remain on the street. The police line proceeded forward and, while doing so, continued to deploy blast balls and CS gas. The demonstrators threw projectiles at officers throughout.

At approximately 12:07 a.m., the demonstrators were pushed south of 11th Avenue. The majority of the crowd was around a fourth of the way down the block. The demonstrators in front had umbrellas facing the officers. There were several individuals who were standing across the street, in the vicinity of the intersection and in front of the larger crowd. These individuals were not throwing projectiles. At around 12:08 a.m., the Subject walked into the intersection and joined the other individuals. She, like the others in the intersection, did not throw projectiles at the officers; however, others in the crowd continued to do so and were subjected to blast balls and CS gas. NE#1 threw several blast balls, predominantly overhand. At around 12:09, the Subject knelt down to the ground for an unknown reason. She stood up several seconds later and continued to stand in the intersection. Shortly thereafter, she again sunk to the ground, putting her head in her hands. She stood up, moved quickly to her left, turned around and began to walk backwards, behind some of the other individuals in the intersection. At that point, there was a bright spark in her chest area when she appeared to be struck by a blast ball. She turned and then fell down to the ground in a seated position. Several demonstrators from the crowd ran up to her and pulled her back. She then disappeared from the view of the video.

It was later reported that the Subject went into cardiac arrest and needed to be resuscitated three times prior to being transported to the hospital for further treatment. Based on this information, the Department's Force Investigation Team (FIT) was notified and commenced an investigation. An OPA referral was made and OPA also initiated an investigation.

B. FIT Investigation

During its review of this incident, FIT was able to identify that NE#1 threw the blast ball that struck the Subject. FIT interviewed NE#1 and obtained his explanation for the force. NE#1 stated that, prior to being interviewed by FIT, he did not know that a blast ball he deployed struck the Subject. He asserted that the use of the blast ball was necessary to create space between officers and demonstrators. This was required both because the officers were trying to move the line forward and because the officers had been taking projectiles and were at risk of harm.

FIT further obtained two sets of medical records for the Subject. The first set was provided by the Subject's attorney. The records were redacted in various parts. FIT also obtained an unredacted set from the hospital. The full set of records indicated that, upon admission, the Subject was diagnosed with acute hypoxic respiratory failure – where oxygen levels are dangerously low in the blood. The records indicated that this was possibly secondary to acute alcohol intoxication. The records stated that the Subject's ethanol level was 308 (for context, an ethanol level of 400 can be fatal). The records further noted that the Subject suffered from aspiration and potentially had a seizure



history given a medication she was prescribed that could be used to treat seizure disorders. There was no indication in the records of bruising to the Subject's body, including to her head, brain, and chest.

Upon discharge, the Subject was diagnosed with cardiac arrest with several possible causes, including: commotio cordis – a disruption of the heart rhythm that can be caused by a blow to the area around the heart; a seizure; and alcohol intoxication. She was further diagnosed with acute alcohol intoxication and possible aspiration. The records stated that, while she was reported to have been resuscitated three times prior to hospitalization, she was not defibrillated so the hospital could not verify whether the Subject was pulseless.

C. OPA Investigation

As part of its investigation, OPA watched BWV and third-party video, reviewed use of force reports and the FIT investigation, and analyzed the Subject's medical records. OPA further interviewed NE#1, the Subject, and several other witnesses, as well as reviewed declarations submitted by three medics.

1. NE#1's OPA Interview

NE#1 was assigned to the Chemical Agent Less-Lethal Response Team. He said that, on that evening, the officers were on a line behind barriers that had been set up. There were approximately 1,000 protestors in the vicinity of the East Precinct. NE#1 said that an SPD commander gave continuous orders to demonstrators who continued to approach and then breach the line. The SPD commander continued to do so even when the demonstrators started to disassemble the barriers. At some point, the demonstrators completely breached the line and officers moved back. The demonstrators then set up their own barricades. NE#1 said that the demonstrators began distributing shields and communicating via walkie talkies. Demonstrators then began throwing projectiles at officers. The SPD commander directed the crowd to disperse and then authorized the use of less-lethal tools.

OPA asked NE#1 about four blast balls that he deployed and that were recorded on BWV, the fourth of which struck the Subject. With regard to the first three deployments, NE#1 said that they were purposed to disperse the crowd and move the demonstrators back. He stated that the deployments also served to protect officers on the line from being assaulted. NE#1 believed that these deployments were reasonable, necessary, and proportional for those reasons.

With regard to the fourth deployment, he said that he did not remember where he threw the blast ball or specifically why. He further did not notice at the time that it struck anyone. He felt that this deployment was reasonable, necessary, and proportional for the same reasons as his other three deployments.

NE#1 explained that he did not seek medical attention for the Subject because he did not know that she had been hit by a blast ball. Similarly, he did not report her being struck by the blast ball in his use of force report, because he was not aware that this had occurred.

2. Subject's OPA Interview

The Subject was interviewed with her attorney present. The Subject stated that, earlier that evening, she tried to play a peacemaker role between officers and demonstrators. She indicated that she was not successful in developing dialogue with the officers and they began dispersing the crowd. After the crowd had been pushed back,



she remained in the street in front of the other demonstrators. She said that she was unarmed at the time. She was with several other individuals who were also unarmed. She recalled that, at this point, she was struck in the chest by a blast ball. She said that she lost consciousness and, when she awoke, she was intubated at the hospital.

The Subject told OPA that volunteers medics reported that she had to be resuscitated three times. The Subject's attorney volunteered that the Subject's medical records indicated that she suffered cardiac arrest. The Subject's attorney said that the Subject was taken to a medic tent but had to be removed because police came into the tent and used blast balls and CS gas therein. An ambulance was called for but did not come. She was then transported to the hospital via private vehicle. The Subject asserted that her medical records indicated bruising to her brain. She further stated that she had bruising to her body, including her chest, as well as a cut to her neck.

3. Witnesses' OPA Interviews and Declarations

OPA interviewed three complainants to other alleged misconduct that occurred on June 8. While these complainants were generally aware of the Subject being struck by a blast ball, none of them witnessed it.

OPA obtained the declarations of three other witnesses. These witnesses all reported providing medical treatment to the Subject, as well as contended that officers struck the medic tent with less-lethal tools. None of these three witnesses witnessed the deployment that struck the Subject.

Witness #1 identified as a practicing registered nurse. She said that she was in the medic tent when she heard a dispersal order and less-lethal devices began to be used by police. Shortly thereafter, the Subject was brought into the medic tent by other demonstrators. They reported that she had been struck by a blast ball. Witness #1 said that the Subject was conscious and was walking and talking with assistance. The Subject indicated that her chest hurt when she breathed. Witness #1 recalled that, as they were assessing the Subject, officers began to deploy less-lethal tools in the medic tent. They retreated to a safe area with the Subject, who was on a cot. The Subject was still conscious, but drowsy. She had no external injuries, and her breathing was regular. The Subject began becoming more awake and tried to rise off the cot. She then stopped responding and became pulseless and apneic. Witness #1 began CPR and, after approximately two minutes, the Subject gasped for air, regained consciousness, and asked what was happening. She lost consciousness for a second time, again became pulseless, and CPR was restarted. She regained a pulse. They discussed transporting the Subject from the scene. The Subject lost a pulse a third time but regained her pulse after several compressions. She was then driven from the scene to the hospital and brought to the emergency room.

Witness #2 said that he was volunteering at the protest medic tent. He was helping demonstrators when the Subject was brought into the tent. While assessing the Subject's injuries, he was told that the Subject had been hit by a blast ball and was exposed to OC spray. Witness #2 offered to wash out the Subject's eyes. She said that her chest hurt, and she was placed on a cot. Witness #2 heard loud explosions and saw people running out of the medic tent. He and others brought the Subject to a safe area. Witness #2 recalled the Subject hyperventilating. Her chest was red, but she said her side hurt more. She lost consciousness. She was not responsive to light or to a sternum rub. One medic began chest compressions while another called 911. The 911 dispatcher said that it would be difficult for an ambulance to get to their location. Shortly thereafter, the Subject lost consciousness for a second time. Her pulse became weak and CPR was performed. After two to three rounds of CPR, she awoke. As they began to transport the Subject to the hospital, she lost consciousness for a third time. She awoke after one round of CPR.



Witness #3 was treating demonstrators in the medic tent with other medics. The Subject was brought into the tent. She complained of chest pain and trouble breathing. Witness #3 became aware that officers were proceeding towards the tent, so he and other medics left. They transported the Subject, who was on a cot. Witness #2 stated that, while leaving the tent, he and others were targeted with less-lethal munitions. The Subject appeared to be recovering but she had trouble breathing. She then became unresponsive and they were unable to find a pulse. One of the medics called 911 and another started CPR. The Subject awoke and took a deep breath. She had a difficult time staying awake and again fell unconscious. One of the medics restarted CPR. They continued CPR until the Subject's heart started beating on its own. The Subject was loaded into a vehicle. At that time, the Subject's head was struck by the door and the vehicle ran over Witness #3's foot. The Subject was taken to the hospital.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.300 – POL – 10 Use of Force – Blast Balls 3. Officers May Use Blast Balls Only When Such Force is Objectively Reasonable, Necessary, and Proportional

SPD Policy 8.300-POL-10 governs the use of blast balls. SPD Policy 8.300-POL-10(3) generally provides for when such force is appropriate. It states that the use must be objectively reasonable, necessary, and proportional. (SPD Policy 8.300-POL-10(3).) This section of the policy further directs that: "When feasible, officers shall avoid deploying blast balls in the proximity of people who are not posing a risk to public safety or property." (*Id.*) Lastly, SPD Policy 8.300-POL-10(4) instructs that: "The preferred method of blast ball deployment is low deployment ('bowling style'). Officers may use a high deployment ('overhand throw') when the need for a farther deployment or the need to get around an obstruction outweighs the risk created by the separating sub-munition."

As discussed above, NE#1 deployed four blast balls in quick succession, the last of which struck the Subject. With regard to the first three deployments, NE#1 appeared to throw the blast balls into open space. They did not strike any demonstrators. At the time of the deployments, the use of blast balls had been authorized to disperse the crowd. While the crowd had moved back, there were still numerous demonstrators at 11th Avenue. Moreover, projectiles were still being thrown from the crowd at officers. Given this, OPA finds that it was within policy to use blast balls to continue to push the crowd back, thus creating a buffer between officers and demonstrators and protecting officers from being struck by projectiles.

However, OPA finds that the fourth deployment violated policy. As indicated above, NE#1 threw the fourth blast ball overhand and towards a person – the Subject. At the time of the deployment, the Subject was unarmed and was not throwing projectiles at officers. Moreover, the other individuals in her immediate vicinity also were not doing so. While NE#1 said that he did not intend to hit the Subject and that he did not know that he did so until he became of the FIT and OPA investigations, this, in and of itself, is a problem. It was NE#1's responsibility to be aware of where he was throwing a blast ball, particularly when deployed overhand and in the vicinity of a person. Indeed, NE#1 was trained to do exactly this by SPD. His failure to comply with his training, as well his engaging in actions that resulted in injury to the Subject, constituted a violation of policy.

In reaching this finding, OPA does not reach an opinion of the extent of the injury suffered by the Subject and whether the blast ball represented the cause of her most severe complications. While, based on the witness declarations, it appears that the Subject did need to be resuscitated, the hospital could not verify that she was ever pulseless. However, the hospital records also indicated that, at the time of the incident, the Subject suffered from



acute alcohol intoxication. The ethanol level in her blood was 308, which is extremely high. To put this into perspective, a level of 400 could cause death as it may reduce the ability to respire normally. This is likely why the hospital initially diagnosed the Subject with acute hypoxic respiratory failure, which it deemed possibly secondary to acute alcohol intoxication. OPA also finds it troubling that, in the medical records initially provided to FIT by the Subject's attorney, the information concerning this diagnosis and her ethanol level was redacted throughout. While not dispositive of the appropriateness of the force, this is certainly relevant information to be considered given that the Subject claims to have suffered cardiac arrest *caused by* a blast ball.

Ultimately, regardless of the level and cause of injury suffered, OPA concludes that the fourth blast ball deployment that struck the Subject violated SPD policy and training. Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

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

SPD Policy 8.300-POL-10(7) states that: "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."

For the same fundamental reason that OPA recommends that Allegation #1 be Sustained, OPA finds that NE#1 did not violate this policy. Specifically, in Allegation #1, OPA found that NE#1 failed to recognize that the Subject was directly hit by his blast ball and, thus, he was not aware that she was injured. He cannot be held liable for failing to provide medical assistance to someone he did not know was injured. Moreover, as the Subject was quickly removed from the street by other demonstrators and given the distance he was away from her, it would not have been feasible for NE#1 to provide her with medical treatment even if he was aware that she had been struck. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #3

8.300-POL-10 Use of Force – Blast Balls 5. Officers Must Justify Each Separate Blast Ball Deployment

SPD Policy 8.300-POL-10(5) requires that officers justify each separate blast ball deployment. In addition, where officers deploy blast balls overhand, SPD Policy 8.300-POL-10(3) states that: "Officers must document their deployment method and the reasoning for using such in their use-of-force report."

Upon a review of NE#1's use of force report from this incident, he provided overall context concerning the demonstration and gave a broad recitation of the force he and other officers used. As several examples, he included the below content:

I deployed four to five OC muzzle blast rounds from my 40mm multi-launcher towards the front line of the rioters. I then started deploying inert and OC blast balls in between



the line Officers and the protesters to move the crowd back from the line and to keep the Officers from being assaulted.

I used force multiple times throughout this event. I deployed numerous inert and OC blast ball grenades, 40mm direct impact rounds, 40mm OC muzzle blast rounds, and CS grenades to protect myself and the line Officers from being feloniously assaulted, to create time and distance between the line Officers and the rioters, and to disperse the crowd.

I used the blast balls and CS grenades to move the assaultive crowd back from the Officers and to stop felony assaults. I deployed the blast balls in both the underhand and overhand method. I was forced to use overhand deployments due to being behind a line of Officers at times and to get them deployed farther out.

On each occasion that I used force, I made my decisions based on specific circumstances that warranted the level of force used to stop the occurrence of crimes and actions listed above. I felt that the resistance and assaultive behavior presented by the rioters were likely to cause injuries to Officers and that hands-on control tactics and other force options would be likely to cause greater injury to the rioters than my use of blast balls, CS grenades and direct impact munitions.

NE#1 did not, however, itemize each use of force and set forth the specific justifications for the deployment and the method of deployment. Technically, he was required to do so by policy, which calls for this information to be included in the report. This is the second recent case stemming from the demonstrations in which OPA has seen use of force reports not delineate each individual use of force. OPA notes, however, that NE#1's report is significantly more detailed than that in the other case – 2020OPA-0335. In that case, the report contained no detail except for the following: "I deployed several blast balls and CS munitions while dispersing an assaultive crowd westbound from 11th/Pine then northbound from 11th/Pine." OPA found that report so deficient that it violated policy.

With regard to NE#1's report, it is clear that he genuinely made an effort to articulate what he did and why he did it. As such, OPA does not believe that it rose to the level of a violation of policy, as was the finding in 2020OPA-0335. The issue here is that the quantity of the force NE#1 used, coupled with long and sustained shifts, made it difficult if not impossible to fully document his force as contemplated by policy. This appears to OPA to be a systemic problem with Department policy and the expectations it places on officers, rather than being emblematic of individual misconduct on NE#1's part. As such, OPA recommends the below Management Action Recommendation.

- **Management Action Recommendation:** SPD should endeavor to put in place a better process for documenting force used during demonstrations. The process should recognize the possibility of, as existed this summer, sustained protests in which reportable force is used multiple times. This could be achieved by, for example, assigning officers to serve as administrative sergeants to screen and assist in the documentation of force in real-time. Regardless of how the Department chooses to address this matter, SPD needs to ensure more robust force reporting in the demonstration context because, without doing so, it is inordinately difficult to critically assess force and to discern and apply lessons learned.

Recommended Finding: **Not Sustained (Management Action)**