

DRAFT CASE SUMMARY – REPORT OF INVESTIGATION

Date: [Report Date]

To: Gino Betts
Director – Office of Police Accountability

From: Kris Cappel, Esq.
Seabold Group

I. COMPLAINT SUMMARY

On June 5, 2020, former Seattle Police Department (SPD or Department) Chief Carmen Best announced during a press conference that the Department was amending its policies regarding the deployment of CS gas, also known as tear gas. Later that evening, SPD distributed an internal, department-wide email regarding the amended policy, which stated in full:

By order of the Chief, the temporary authorization for personnel, other than trained SWAT officers, to deploy CS canisters for purposes of crowd control has been rescinded. Where SWAT is on-scene, consistent with Manual Section 14.090(4), SWAT will follow all department policies and procedures regarding the use of specialty tools, to include the use of CS gas, in life-safety circumstances and consistent with training.¹ ***In such instances, and until further notice, any deployment must be approved by the Chief or the Chief's designee.*** The City of Seattle Accountability Partners are conducting a review of all crowd control tactics and tools and will issue recommendations within thirty (30) days. (emphasis added).²

On June 8, 2020, at 12:14 a.m., former SPD Capt. Matthew Allen authorized members of SWAT to deploy CS gas during a protest event near the East Precinct located in Seattle's Capitol Hill neighborhood. The order was rescinded at 12:46 a.m. During that 32-minute period, only SWAT members deployed CS gas. This use of force incident is referred to as Event 2020-183044. On June 9, 2020, the City of Seattle's Office of Police Accountability (OPA) received a citizen complaint alleging that SPD employees used CS gas after it had been "banned" by Chief Best. A preliminary intake investigation was conducted by OPA Investigator Sgt. Leslie Smith and the Case Summary – Report of Investigation was submitted on June 30, 2020.³

¹ Ordinarily, only Special Weapons and Tactics (SWAT) officers are authorized to use CS gas as a crowd control tool. Chief Best, however, had temporarily authorized patrol officers to deploy CS canisters during the demonstrations that occurred May 31, 2020, through June 5, 2020, because the department had depleted its other less lethal tools.

² The June 5, 2020 email is attached as Exhibit 1.

³ The report (without exhibits) is attached as Exhibit 2.

Seabold Group was retained to review the preliminary intake report to determine whether additional investigation was warranted, and if so, to conduct the necessary follow-up investigation. Below is our summary of additional investigative steps and findings of fact.

II. NAMED EMPLOYEE & SUMMARY OF ALLEGATIONS

OPA was deemed the complainant and Chief Best is the only named employee.⁴ OPA alleged that the deployment of CS gas on the morning of June 8 may have been an abuse of discretion, unprofessional, and undermining of public trust and confidence in the Department. OPA identified the following potential policy violations:

14.090 – Crowd Management 8. The Incident Commander Retains Ultimate Responsibility for the Decisions of Subordinates.

5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy.

5.001 – Standards and Duties 6. Employees May Use Discretion.

5.001 – Standards and Duties 10. Employees Shall Strive to be Professional.

This investigator believes that SPD Policy 1.020 and 5.001 Standards and Duties 11 are also applicable.

1.020 (1) – Department Employees Follow a Structured Chain of Command

1.020 (4) – Employees May Delegate Duties to Their Subordinates

5.001 – Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication.

III. RECORDS REVIEW

In this investigation, Seabold Group reviewed OPA's June 30, 2020 Case Summary – Report of Investigation, and the accompanying documentary records. Those records are incorporated herein by reference and will not be restated in this report. Seabold Group also conducted an extensive review of publicly available records, including social media posts and various media reports relating to the deployment of CS gas on June 8, 2020.

On June 9, 2020, multiple parties sued the City of Seattle and SPD in federal court, alleging the use of excessive force during protests that occurred from May 29 through the date of the filing.⁵ The allegations included the deployment of CS gas on June 8, 2020. Plaintiffs moved for a temporary restraining order (TRO), seeking to “enjoin the City from ‘deploying chemical weapons or projectiles of any kind for the purpose of crowd control at protests or demonstrations.’” The District Court granted a partial TRO on June 12, 2020, stating:

⁴ July 6, 2020 OPA-0345 Classification Notification to Chief Best, attached as Exhibit 3.

⁵ A copy of the federal complaint is attached as Exhibit 4.

Based on the Court’s review, the video and testimonial evidence show that on some occasions the SPD has in fact used less-lethal weapons disproportionately and without provocation.”⁶

The Court enjoined SPD from using chemical irritants against peaceful protesters, but also stated that the order “did not preclude individual officers from taking necessary, reasonable, proportional, and targeted action to protect against specific imminent threat of physical harm to themselves or identifiable others or to respond to specific acts of violence or destruction of property.” In its ruling, the Court referred to video-evidence taken during June 1 protests, but there were no specific findings as to the deployment of CS gas on June 8, 2020. As part of its investigation, Seabold Group reviewed the docket and litigation records that were available as of the date of this report.

Seabold Group interviewed Assistant Chief (AC) Thomas Mahaffey, the incident commander on June 7, 2020. Seabold Group also undertook efforts to interview Chief Best and Capt. Allen, but both declined our request to participate in this investigation.⁷

IV. SUMMARY OF FACTUAL FINDINGS

Following days of protests and multiple deployments of CS gas, on June 5, 2020, Chief Best rescinded a temporary order that had authorized SPD personnel other than SWAT to deploy CS gas “for purposes of crowd control.” She announced the change in public statements and in an internal, department-wide communication. The amended policy was inaccurately described by some as a 30-day “ban” on the deployment of CS gas. In fact, the order restored SPD’s policy, which provided that under normal circumstances, SWAT members were authorized to use CS gas. The amended policy continued to authorize SWAT to use CS gas for crowd control purposes. The only apparent modification to SPD’s policy was that SWAT needed approval from the Chief or her designee before deploying CS gas.

Under SPD’s command structure, Chief Best had the discretion to delegate her authority, but she remained responsible for her subordinates’ decisions. AC Mahaffey was the incident commander at all relevant times and he believed he was the Chief’s “designee” for purposes of the June 5, 2020 directive. On June 7, 2020, AC Mahaffey delegated his authority to order the deployment of CS gas to Capt. Allen, who was the operations section chief. On June 8, 2020 at 12:14 a.m., Capt. Allen exercised his discretion as the operations chief and ordered SWAT to deploy CS gas based on his assessment of the public-safety issues at the time. It does not appear that Capt. Allen sought or obtained approval from AC Mahaffey or Chief Best before issuing his order. However, AC Mahaffey stated that Capt. Allen did not need his or Chief Best’s approval; he had the authority and the discretion to issue the order if he deemed it necessary and appropriate under the circumstances.

On June 11, 2020, Chief Best explicitly stated during a press conference that it was her decision to deploy CS gas on June 8. The totality of her public remarks gave the impression that she had been consulted before the order was issued and agreed that the circumstances warranted the use of CS gas. Based on the evidence gathered in this investigation, it appears that Chief Best learned of Capt. Allen’s order to deploy CS gas *after* it had been issued. And though Chief Best may have intended to take responsibility for her subordinate’s actions, after-the-fact, her public statements were not as

⁶ A copy of the Court’s order is attached as Exhibit 5.

⁷ Chief Best and Capt. Allen have both retired from the department.

forthcoming or transparent as they could have been. Chief Best could have stated that she had delegated her authority to her command staff, and that based on a review of the information available to her, she agreed with Capt. Allen's decision to order the use of CS gas.

The original complaint submitted to OPA seems to have assumed that Chief Best issued the order to deploy CS gas two days after she had announced that she had banned its use for 30 days. Neither of those factual predicates were accurate.

V. SUMMARY OF INVESTIGATION

A. Captain Matthew Allen

On June 7, 2020, Capt. Allen was assigned as the operations section chief for events that were occurring outside SPD's East Precinct, located in Seattle's Capitol Hill neighborhood. As the operations chief, Capt. Allen had command authority regarding the deployment of SPD personnel and the use of crowd control tools.⁸

Use of Force Report

Capt. Allen drafted a detailed Use of Force (UOF) report regarding the June 7-8, 2020 events, a copy of which is attached as Exhibit 6. In the report, Capt. Allen wrote that he had worked six shifts in a "demonstration management role" before the incident that is the focus of this investigation. Capt. Allen stated that on June 7, he attended one of two roll calls and discussed the Incident Action Plan (Plan) with Lt. Brooks, the assigned deputy operations chief.⁹ Capt. Allen said he read aloud portions of the Plan for that day at roll call, which stated in part:

During each operational period, we will ensure that our officers remain safe and that no police facilities are compromised by any person or group of people whose intent is to damage or destroy them. We will accomplish this by ensuring that our officers have appropriate safety equipment and maintain a stand-off distance from any gathered crowd. We will deploy sufficient resources so that we are able to proactively protect police facilities and prevent any significant damage or destruction to them. We will allow unpermitted marches to occur and deploy police resources only as needed based on an assessment made by the Operations Section Chief or on-scene commander. If there is any danger to public safety risk or significant property destruction being caused, we will muster sufficient resources and formulate a plan in accordance with our incident objectives and my commander[']s intent." Our General Control Objectives remained the same, 1) Provide for the safety of the general public, spectators, first responders, and participants during the statewide COVID-19 state of emergency which did not permit public gatherings. 2) Facilitate citizen's right to peacefully express their First Amendment free speech rights within the parameters set forth by the Washington State Governor's Stay at Home

⁸ SPD Policy 14.090(1) – Crowd Management provides that the incident commander "may delegate authority and assignments." AC Mahaffey stated that he delegated crowd management authority to Capt. Allen, including whether to deploy CS gas or other less lethal tools.

⁹ The Incident Action Plan covers the operational period June 7, 2020, 0000-2400 hours, however, as it happened, Capt. Allen's shift extended past 2400 hrs.

proclamation and the suspension of permitted events. 3) Take enforcement action for violent crimes committed against persons or significant property damage, while ensuring arrest[s] are conducted in a safe and effective manner and in accordance with training and law. 4) Deter criminal activity and protect public and private property by providing a significant uniformed patrol presence. 5) Minimize the disruption to traffic through the use of traffic diversion as required.

In his UOF report, Capt. Allen also stated that he was familiar with the Chief's June 5 email placing limitations on the use of CS gas and said that he had spoken to AC Mahaffey about the Chief's directive. Capt. Allen said that AC Mahaffey told him he (Mahaffey) was the Chief's "designee" for purposes of the email and instructed Capt. Allen "to keep our officers safe and defend the East Precinct. He told me if things turn violent and there is a life safety need to use CS then I was authorized to do so."

Capt. Allen's UOF report details the conditions on the ground in the days before June 7, including references to the fact that Capt. Allen had personally observed or was informed that numerous officers had been injured by violent acts of some of the protesters. Capt. Allen further described the conditions he observed and/or was informed of before issuing his order to SWAT to deploy CS gas in the early morning hours of June 8, to include:

- Protesters continually breached the fencing surrounding the East Precinct, which served as a "protective barrier" to keep officers and protesters "safely apart."
- Protesters took possession of some of the bicycle fencing and were using it to make advances on the officers.
- At approximately 2000 hours, an estimated crowd of 100 protesters had breached the fencing and were advancing toward the police line.
- At 2020 hours, a vehicle drove into the crowd, and the driver shot one of the protesters who tried to stop him.
- Radio communications reported that a protester was handing out rocks to some of the other protesters.
- By 2103 hours, the crowd of protesters was estimated to have grown to approximately 300, and some were shining lasers into officers' eyes.
- Some protesters were heard chanting to burn down the East Precinct.
- It was reported that protesters disassembled portions of the fencing, which could potentially be deployed as weapons against the officers.
- By 2253 hours, it was reported that protesters had moved within five feet of the officers, and later reports indicated they had moved to within one to three feet and were becoming increasingly hostile.
- By 2300 hours, Capt. Allen had received multiple communications that protesters were continuing to advance toward his officers, that some protesters were observed donning

shields, helmets, and gas masks, and that some of the wooden shields distributed to protesters had nails in them.

- Over a period of hours, Capt. Allen had issued multiple dispersal orders and orders to the protesters to return to their side of the fencing that went unheeded.
- By 2400 hours, Capt. Allen had been informed that officers found an unlit Molotov cocktail on the ground and that someone had thrown a water bottle containing a chemical irritant at an officer.¹⁰

In his UOF, Capt. Allen further reported:

Meanwhile, at approximately 0004 hours in the 1100 block of E. Pine St., there was reportedly a disturbance on the north side of the line followed by a deployment of OC spray and OC blast balls. I was facing the crowd and caught a glimpse of OC spray being deployed near the front center/left of the police line and then heard the blast balls being deployed. Officers are authorized to individually deploy OC spray and OC blast balls to protect themselves and others or to prevent significant property damage. I did not know what precipitated the officers' use of force, but I knew we needed to quickly disperse the crowd before things escalated out of control and someone got injured. I got on the PA system and issued multiple orders for the crowd to disperse and officers began moving the crowd westbound toward 11th and Pine St. I did not direct them to move forward. Per the SPOC log,¹¹ at approximately 0005 hours there is a notation that the camera shows protesters throwing items at officers and a minute later, fireworks and bottles were reportedly being thrown by the crowd. While standing at the microphone I observed a green laser being shined towards the officers and the National Guard troops from somewhere just west of the intersection and more blast balls were being deployed. The officers and National Guard troops moved the crowd westbound towards 11th and Pine St. but it appeared as if the crowd eventually held at that location. I observed multiple projectiles flying towards our personnel and observed an adult male on the south side of Pine St. pick up a large traffic cone and hurl it towards our officers. Per the SPOC log at approximately 0010 hours officers moved forward to block the intersection and shortly thereafter, Lieutenant Brooks advised they were taking bottles, meaning someone was throwing bottles at them. Per the SPOC log at approximately 0011 hours, our personnel were reportedly being surrounded on three sides (of the intersection): south, west, and north. Blast balls had been deployed but there were still people in the crowd who would not retreat. I then heard someone on the radio announce that there was a man with a gun at 11th and Pine St. and I was gravely concerned that someone was going to get shot and killed.¹² There had already been one person shot earlier in the evening and I did not want there to be another. Further de-escalation efforts were neither safe nor

¹⁰ Officers were ordered to activate their body cameras at approximately 7:35 p.m. (1925 hours). As such, there should be numerous recordings available that show the conditions on the ground as the evening progressed. This investigator did not request to review those videos because the actions of the officers and command staff were not within the scope of the investigation. The scope of this investigation was limited to whether **Chief Best** abused her discretion in ordering the deployment of CS gas or otherwise engaged in misleading or unprofessional conduct.

¹¹ SPOC is an acronym for Seattle Police Operations Center. A copy of the SPOC log referred to by Capt. Allen in his UOF report is attached as Exhibit 8.

¹² There had also been earlier radio communications reporting a man with a gun (10:06 p.m.). Attached as Exhibit 7 is a copy of SPD's dispatch log for this event.

feasible. To protect the lives of everyone present, I directed the SWAT Commander, Lieutenant Bergmann (Unit 271), to deploy CS gas with the expectation that it would help quell the violence and further disperse the crowd. As mentioned in one of my previous statements, I know from my time serving as a Sergeant in SWAT and later serving as a Lieutenant in SWAT that CS tends to be a more potent irritant than OC. People who may be willing and able to withstand the effects of OC, whether it is a barricaded suspect holed up in a house or violent actors embedded in a highly animated crowd, will want to quickly flee the area to avoid the effects of CS. If a person effected by CS promptly leaves the area where it is deployed, then the effects of the product should start to dissipate. Deployment of OC and CS munitions in a crowd control setting is intended to repel and avoid physical contact/injuries. Lieutenant Bergmann had his personnel deploy CS at 11th and Pine St. and it helped suppress the violence against the officers temporarily as some people dispersed. At some point, I donned my gasmask and moved forward towards 11th and Pine St. . . .

Per the SPOC log, at approximately 0046 hours there is a notation that if the crowd stays static then there would be no more CS and that the only munition to be deployed if necessary, is OC spray.

Capt. Allen said he remained on duty until approximately 0430 hours, when he transferred command to Capt. Swank.

Capt. Allen's Investigative Interview

Capt. Allen was interviewed by OPA on November 5, 2020, regarding the deployment of CS gas on June 8, 2020, as a witness. Capt. Allen is not a named employee in this investigation.

In his investigative interview, Capt. Allen's testimony was consistent with his UOF report. He reiterated that his priority was maintaining public safety and avoiding the destruction of the East Precinct. He further stated that one of the objectives of the incident plan for the June 7 shift was to minimize interactions between police and protesters and to create and maintain a safe barrier. He said that despite their objectives, SPD experienced "a large number of people come over the fence in fairly short order" and that the protesters ignored his orders to return to their side of the fencing. Over a period of hours, the crowd inched closer to the officers on the line, ignoring multiple requests from Capt. Allen to move back. Capt. Allen said that his officers were outnumbered and that he did not have sufficient personnel to withstand a potential rush on the precinct by the protesters.

Capt. Allen further reported that as the evening progressed into the early morning, his officers and members of the National Guard were taking on more projectiles. One such incident that occurred around midnight triggered the deployment of OC spray by one of his officers, which appears to have escalated the situation.¹³ Capt. Allen told the OPA investigator that he became increasingly concerned that there was a risk to public safety after hearing someone announce on the radio that they had observed a man with a gun at 11th and Pine. Capt. Allen said it was at that time, he gave the order to SWAT members to deploy CS gas with the intent of dispersing the crowd that surrounded his officers. After receiving the initial order, individual SWAT members used their discretion whether to continue

¹³ Whether that officer's deployment was justified under the circumstances is not within the scope of this investigation.

deploying CS gas based on their assessments of the then-existing threat. None of the SWAT officers who deployed CS gas during this event were named employees, and whether they properly exercised their discretion is not within the scope of this investigation.

Capt. Allen was pushed by the OPA investigator about the trigger or triggers leading to his decision to order the use of CS gas. He was asked whether using CS gas was proportional to one incident involving a protester throwing a water bottle at one of his officers. Capt. Allen said his decision to deploy CS gas was not based on that one incident. He said it was based on the “totality of circumstances” he previously described, including radio communications that a man with a gun had been observed in the crowd, the fact that there had already been one shooting that day, and that the crowd was becoming increasingly violent toward his officers.

SPD documentation established that at approximately 0046 hours, Capt. Allen issued an order to cease the use of CS gas if the “crowd stays static.” In his interview, Capt. Allen said he “made it clear” “that we’re done doing that (deploying CS gas), we’re going back to the original format.” Capt. Allen said he gave the order to deploy CS gas “to deal with what I was perceiving as a very real life safety incident, that if – if we didn’t do [it], likely people are going to get killed, and that was my concern.”

Communications with Chief Best

Capt. Allen did not indicate one way or another in his UOF report and was not specifically asked during his investigative interview, whether he spoke to Chief Best before giving the order to deploy CS gas on June 8. Capt. Allen was asked by the OPA investigator whether he spoke to Chief Best after the incident, and he responded that he did not recall speaking with Chief Best after the event. He said that Chief Mahaffey may have talked with Chief Best but he couldn’t be certain.

B. Lieutenant John Brooks

Lt. Brooks was interviewed on November 12, 2020, by OPA as a witness. Lt. Brooks was the deputy operations chief during the June 7-8 events.

June 5, 2020 Email

Lt. Brooks said he was familiar with the Chief’s June 5 directive. He said that he understood that deployment of CS gas after that directive required the approval of the Chief but that she could delegate her authority. Regarding the use of CS gas, Lt. Brooks said:

CS is intended to impact a large area. Most of the times as its used in crowd control situations, it’s used for area denial. It’s really not used to move a crowd. It’s actually used mostly to break up violent activity and/or confrontations, deny access to an area, and then give space for movement or tactical decisions that are made in the field.”

It is the most effective crowd control munition there is. And, frankly, it’s the – probably the least dangerous.

June 7-8, 2020 Events

Lt. Brooks was asked to describe the events leading up to the deployment of CS gas on the morning of June 8, 2020, as he understood them. He stated:

[S]o we had the confrontation at the line. We had started – in talking with Captain Allen, we were – our hope was to if we had to use – take action; our hope was to gain space and distance to reduce the risk to – of confrontation and injury to officers. We ended up using munitions to gain space and distance. We started with our progression of OC, then blast balls. Um, the impact of that was negligible, if at all; we did create some distance, but very little.

And we were receiving numerous rocks, bottles, you name the type of items – fireworks, other things – being thrown at officers.

I made a decision to advance towards the intersection with the belief that if we started some movement, it would create distance and space and reduce the potential for injuries to officers. We got to the intersection. We were packed so closely that we couldn't use any other tactics. We ended up – we got to that intersection. I held the crowd, and we just start taking an absolute deluge of additional projectiles.

And as a result, . . . I was advising Captain Allen. And he made [the] decision to authorize the deployment of CS.

Lt. Brooks added that “if I would have been in [Capt. Allen’s] shoes . . . I would authorize CS. I believe that the decision was made on – it was predicated on extreme emergency and exigency. . . [W]e only had two choices. Either we charged moving forward or we had to do something to disrupt the crowd, or people were going to get hurt – seriously hurt.”

C. Assistant Chief Thomas Mahaffey

AC Mahaffey was interviewed by this investigator on June 17, 2022 as a witness.¹⁴ He confirmed that he was the assigned incident commander on June 7-8, 2020. He said the incident commander has “overall command of the event, sets the – what the intent is for the operation, what the goals are, and then it’s up to the operation section chief to put the plan together” to achieve those goals. “[T]he actual deployment in the field will fall under the operations section chief.”

SPOC Logs

AC Mahaffey stated that SPOC was activated when the protests began in May 2020. Personnel were assigned to monitor events in real time and maintain a “running log of what was going on in the field.” He said the log included radio communications and also sometimes included “notations about what was going on in the operations center to support the operation in the field as well.”

¹⁴ A copy of his interview transcript is attached as Exhibit 12.

June 5, 2020 Email

AC Mahaffey was asked about the June 5, 2020 email limiting the deployment of CS gas, and he said he was familiar with the directive but did not recall what, if anything, specifically triggered it. He also did not recall speaking with Chief Best regarding the intent or limitations of the directive. AC Mahaffey stated he did not recall that Chief Best formally named him a “designee” for purposes of the directive, but he said that he was the “on-duty incident commander for all of these protests,” starting on or near June 2 or 3 of 2020. As such, AC Mahaffey said, “it would be logical sense for the assistant chief that was overseeing the operation to be the Chief’s designee. The chief . . . can’t be available at all hours, so there’s delegation of authority to the commanders.”

AC Mahaffey stated that as the incident commander, he also had the discretion to delegate his authority to order the deployment of CS gas to Capt. Allen without requiring Capt. Allen to first obtain AC Mahaffey’s approval. He said that he told Capt. Allen he would have this authority in the following circumstances:

[I]f it’s so severe that it’s a life-safety emergency that you feel it’s necessary to deploy gas immediately, i.e., you’re in the field, you’re viewing what’s happening in front of you, you’re getting the information in real time.

He added:

We just felt that it would be too cumbersome for him to have a life-safety emergency, . . . to try and get ahold of me on the phone, discuss it, and then move forward. Like I say, if it’s that severe, they do have my authorization to deploy the CS. And I based it on my trust in Capt. Allen’s judgment, the fact that he had been a SWAT commander in the past; he had experience working not only on these protests but the ones before that.

AC Mahaffey said he did not believe that he was expected to consult Chief Best before delegating his authority to deploy CS gas to Capt. Allen.

June 7-8, 2020 Events

AC Mahaffey said he attempted to travel to the East Precinct the evening of June 7, 2020, “[b]ut the area was barricaded and there were lines of protestors in all the intersections, and I felt it would have . . . potential for confrontation if I needed an escort to try and get in, so I didn’t try to get in through the perimeter; I went back [to] the operations center.” AC Mahaffey believed he tried to approach the area between 9:00 and 10:00 p.m. and said that at the time, he was three to four blocks from the area and he, personally, did not see any violent behavior by the protesters.

AC Mahaffey reported that he was “monitoring” communications off and on that night, and he believed he spoke to Capt. Allen that evening but did not recall any specific details of their conversations. He did not believe he spoke to Capt. Allen about deploying CS gas before the order was given, stating:

[M]y recollection about when that came out, it was – it was very immediate. There were reports – several reports that somebody has a firearm in the crowd. So I don't think we had any conversations about it prior to that other than the one that, you know, he had mentioned previously where we discussed, you know, the parameters of its use.

AC Mahaffey said he didn't have a specific recollection of hearing Capt. Allen's order to deploy CS gas, but that it came to his attention that such an order had been issued. AC Mahaffey said that after learning of the order, he spoke to Chief Best. He did not recall speaking with Capt. Allen about his order before speaking with Chief Best. He said it's possible he spoke with Capt. Allen but he could not be certain.

Communications with Chief Best

AC Mahaffey said he spoke to Chief Best by telephone. Without recalling the specific details, AC Mahaffey believed he reviewed the incident and the reasons for deploying CS gas based on live-stream video that was available to him and on radio communication.¹⁵ AC Mahaffey said that Chief Best was not in SPOC that night and he did not know if she was monitoring communications or events on the ground in real time.

AC Mahaffey believed that by the time he spoke to Chief Best, the order to deploy CS gas had been withdrawn because the "emergency had passed." He stated, "We had a matter-of-fact conversation about what occurred and what the reasoning was for the gas being used." AC Mahaffey said that Chief Best never suggested to him that he or Capt. Allen had exceeded their authority or abused their discretion in connection with the use of CS gas that morning.

AC Mahaffey said he knew the decision would be controversial:

I knew that night that it was going to be problematic. While I agree with the decision-making and why it was used based on what we had, you got to recall we had had a shooting earlier that evening where somebody entered the crowd with a gun and shot somebody. Now we had the report of somebody armed, we had reason to believe, based on statements that we had seen online and what people were chanting in the crowd, that there was potential for significant violence against police officers and the building itself. [Inaudible] kind of all the circumstances leading up to it but knew once we used it, based on kind of what had been occurring the weeks prior, that it was going to cause some concern. I was – I was not, you know, blind to that fact.

AC Mahaffey was asked whether he had any reason to believe that Capt. Allen spoke to Chief Best to obtain her authorization before giving the order to deploy CS gas. He responded that he did not believe that happened. "For one, I don't think Captain Allen would do that. He knew that I was in his direct chain of command. We had the conversation about expectations for that evening, how things would go, so I have no reason to [believe] that."

¹⁵ AC Mahaffey said that SPD was continually monitoring open-source video during this period. He said "[t]here was [sic] a lot of people live streaming through this area, various social media-type accounts that was [sic] open to anyone . . . to see. So I think that's where we got the majority of our video from."

AC Mahaffey was asked about a press conference that Chief Best participated in on June 11, 2020, wherein she said it was her decision to deploy CS gas on June 8, 2020. AC Mahaffey said he didn't recall hearing that statement at the time and that Chief Best "might have just been taking ownership as being the leader of the organization, but I don't remember her specifically saying that."

AC Mahaffey Sworn Declaration

AC Mahaffey submitted a sworn declaration in support of one of the City's filings in the federal litigation filed on June 9, 2020, described above. In relevant part, AC Mahaffey stated that "the use of certain crowd management tools commonly referred to as less lethal tools, which include blast balls, flash bangs, CS gas and OC spray," is governed by "Title 8 of the SPD manual, and also SPD's crowd management policy." He further stated:

Prior to the deployment of any less lethal tools, SPD first attempts to manage the event without their use, whenever possible, while balancing that priority against the need to secure public and officer safety. In past years, when it has been required at past demonstrations or marches based on conditions at the scene, less lethal crowd tools have been utilized on occasion as needed; this is not unique to the current demonstrations and marches (referring to the George Floyd protests).

Regarding the specific deployment of CS gas on the morning of June 8, 2020, AC Mahaffey reported:

Based on my assessment of preliminary reports, on June 7, 2020, at around 10:10 p.m., officers on the ground observed that members of the crowd near the East Precinct broke and weaponized protective fencing. Concurrently, officers observed another group of about 20 individuals possessing shields, helmets, and gas masks attempted to create a disturbance, while the crowd advanced slowly. SPD officers on scene also identified a possible IED nearby. Officers reported seeing items that some individuals were taking out of their bags and setting on the ground, including walkie talkies. Several specific warnings and dispersal orders were given to the crowd to cease advancing. The crowd advanced to within 5 feet of the officers, and while Officers continued to issue dispersal orders that went unheeded, they did not use less lethal devices at this time. SPD received a report of a white male individual in possible possession of a gun in his front pocket. The crowd continued to advance, while some crowd members flashed lights into officers' eyes. A physical disturbance was also reported to have developed in the front of the crowd between and amongst the demonstrators. Meanwhile, other demonstrators continued to throw items at National Guard and officers – include [sic] one un-lit Molotov cocktail and a water bottle filled with chemical irritants. Officers continued to advise the crowd to move back. The crowds began to block 13th and Pine with rocks, boulders, and trash bins – which was the designated safe entry/exit point for SPD. There was a report of a man with a gun in the area. The crowd also brought wooden shields with nails in the front of the line. Continued dispersal orders were given, and largely unheeded, while officers were being hit with fireworks, bottle[s], and projectiles causing officer injury. OC and blast balls were deployed. Concurrently, the crowd began to surround officers from three sides while continuing to throw fireworks and bottles at the officers.

Just after midnight on June 8, 2020, due to the life-safety circumstances presented to the surrounded officers, CS gas was authorized and deployed per the amended policy, dispersing the

crowd for some time, but demonstrators remained in the area. Officers continued to be hit with bottles and other projectiles, and with other reports of armed individuals in the area.

AC Mahaffey's declaration, dated June 11, 2020, was the most contemporaneous statement he has provided regarding this event.¹⁶

D. Chief Carmen Best

Chief Best retired from SPD in or about September 2020, and when contacted about this investigation, she declined to participate. Accordingly, this investigator relied on the Chief's public statements and other publicly available information, as well as witness statements regarding Chief Best's role in issuing the June 5, 2020 directive regarding the use of CS gas and the order to deploy CS gas on the morning of June 8, 2020.

June 5, 2020 Memo – Joint Statement on Use of CS Gas in SPD's Response to Mass Demonstrations in the Wake of the Killing of George Floyd.

On June 5, 2020, the Community Police Commission (CPC), OPA, and Seattle's Office of Inspector General (OIG), distributed a memo to Seattle Mayor Jenny Durkan, Chief Best, and Seattle City Attorney Pete Holmes, addressing the use of CS gas as a crowd control tool.¹⁷ The memo was prepared in response to the City Council's inquiry at a Public Safety and Human Services Committee meeting on June 3 of "whether the City should ban the use of tear gas (CS gas) at demonstrations or take any other immediate measures to ensure the safety and health of the people of Seattle as they exercise critical constitutional rights."

The authors of the memo recommended that SPD "cease the use of CS gas" "until such time as any appropriate use can be vetted by oversight entities and incorporated into a written SPD policy."

June 5, 2020 Press Conference

Chief Best appeared with Mayor Durkan at a press conference on the afternoon of June 5, 2020, to address, among other topics, crowd management tools used by SPD during multiple days of protests. Mayor Durkan spoke first and announced an immediate "ban" on the use of CS gas for a period of 30 days, adding that Chief Best agreed that SPD did not need to use tear gas as a crowd management tool. Chief Best took the podium and stated that she had met with her command staff and, together, they had decided to temporarily suspend the use of tear gas for crowd management purposes for 30 days. Chief Best added the caveat that during that 30-day period, "SWAT will maintain the trained ability to use CS to protect life and end stand-offs" as approved by "the Chief or her designee."

In response to a reporter's question about why the "ban" was for only 30 days, Chief Best responded that the department wanted time to review all of its crowd control policies and practices. She said that in the meantime, "only specialized trained SWAT personnel" were authorized to use CS gas, and "only in situations where [there are] life safety issues," and "only if I approve it." Chief Best reiterated that CS

¹⁶ A copy is attached as Exhibit 9.

¹⁷ A copy of the memo is attached as Exhibit 13.

gas may still be deployed in cases of “life-safety,” to “protect property,” or “stabilize situations.” She said the department did not “want to remove that tool wholly across the organization without a full and thorough review.”

The June 5, 2020 Email

SPD released an internal, department-wide email at 8:31 p.m. on June 5, 2020, announcing an amended policy regarding the deployment of CS gas. The full email is cited above, and it made clear that the use of CS gas had not been “banned,” but authorized deployment was limited to SWAT members with the approval of the Chief or the Chief’s designee. Later that evening (June 5), SPD also posted on its website that SWAT was still authorized to deploy CS gas for purposes of crowd control.

Confusion regarding the Scope of the Amended Policy

Mayor Durkan and Chief Best’s statements at the June 5 press conference led to confusion about the scope of the amended policy regarding the use of CS gas as a crowd control tool. Multiple media outlets and elected officials inaccurately reported that Chief Best had “banned” the use of CS gas. As just one example among many, on June 10, 2020, the Seattle Times headline read, “How ambiguity and a loophole undermined Seattle’s ban on tear gas during George Floyd demonstrations.” In the body of the article, the Times reported that during the June 5 press conference, Mayor Durkan and Chief Best failed to clearly articulate that the “SWAT exception would apply during the ongoing demonstrations,” while also noting in that same article that “at 9:44 p.m. Friday, several hours after the news conference, a post to the SPD’s website for the first time **explicitly** stated that SWAT officers could still deploy tear gas ‘for purposes of crowd control.’” (emphasis added)¹⁸ That was one of many public statements conflating a “ban” on the use of CS gas with the exception described by Chief Best during her press conference, and in the directive itself.

June 7, 2020 Press Conference

Mayor Durkan and Chief Best held another press conference the evening of Sunday, June 7, 2020. Chief Best addressed the events of the prior evening (Saturday, June 6), during which SPD had deployed blast balls and pepper spray. Chief Best stated:

The standoff situation at the East Precinct is like nothing I’ve seen before. The East Precinct has become a dangerous flashpoint . . . for community members and officers. I expect a proportional response to any action from the crowd. Our policies and our training explicitly state that. Force must be reasonable, it must be necessary and it must be proportional. That is my expectation. . . .

Our situation on Capitol Hill on 11th and Pine – it has been different. Last night, protesters moved the barricades . . . repeatedly as we asked them not to do so. Bottles and other incendiary devices were thrown at the officers. Six officers were injured and two were hospitalized. The situation was tenuous at best. Pepper spray and blast balls were deployed, but

¹⁸ A copy of the article is attached as Exhibit 10.

no tear gas was deployed. After 30 minutes or so, the barricade was moved back to the previous location. . . .

There are bad actors in the crowd [and] in an organized effort [are trying] to incite violence.

Chief Best went on to state that the SPD was continually adjusting its practices to emphasize and prioritize de-escalation. She said that there would be changes that evening to include minimizing SPD's posture by significantly reducing the number of officers on the line and in the immediate area. They also planned to reduce the officer's protective gear (referred to as "riot" gear) "that caused people some concern." In addition, Chief Best said that going forward, the National Guard would not be deployed on the front line "unless the situation deteriorates to the point that they're needed" and that SPD would deploy "de-escalation teams" to work with community members to help "manage crowd expectations."

June 11, 2020 Press Conference

On June 11, 2020, Mayor Durkan and Chief Best again appeared together at a press conference, and among other topics, addressed the deployment of CS gas on June 8. One reporter directed a question to Chief Best, stating:

So Chief you stood here on Friday, and you said it was going to be your decision, your decision alone, to use tear gas. Tear gas was deployed on Sunday. You released a video today to say it was not your decision to close the East precinct. So who is making tactical decisions right now for the Seattle Police Department?¹⁹

Chief Best responded:

Those are two very different incidents. For the tear gas, **it was my decision**. I think I prefaced that and made it very clear that we did not want to use any of the pepper spray, flash bang, blast balls or tear gas, and we suspended the use for 30 days unless there was a life-safety situation. And that was the exemption. I was keeping abreast of what was happening in the precinct. They had a shooting earlier in day, [and] at some point it got unruly. There was a man with a gun in the crowd. The officers felt like it was a life-safety situation based on what was occurring and I concurred. And I own that decision. **I made that decision** and I will own any decision when I think it is in the best interest of everyone's public safety . . . **I totally own that decision.** (emphasis added)

- E. Black Lives Matter Seattle-King County, et al v. City of Seattle, Seattle Police Department, Case No. 2:20-cv-887-RAJ

As noted above, the City of Seattle and SPD were sued on June 9, 2020, in the Western District of Washington. The lawsuit includes claims that SPD used excessive force during various demonstrations that included the June 7-8, 2020 events. At the time of this report, the litigation is pending and appears to be in the discovery phase. The factual and legal issues to be resolved through litigation include

¹⁹ The focus of this investigation is limited to the Chief's role in the deployment of CS gas on June 8, 2020, but both issues (leaving the East Precinct and the use of tear gas) were addressed at the June 11 press conference.

whether the deployment of CS gas on June 8, 2020, constituted excessive force to the extent that it deprived the plaintiffs of their First and Fourth Amendment protections.

F. Office of Inspector General – June 12, 2020 Report

On June 12, 2020, OIG issued a report entitled, “Less Lethal Weapons Usage in Protests.” One of the report’s stated objectives was to provide an informational summary of less lethal weapons used by SPD during demonstrations that occurred May 29 – June 7, 2020.²⁰ In the report, OIG addressed the “general criteria” for using “less lethal weapons,” stating:

Much of the criteria for the use of less lethal weapons distills down to a subjective assessment by the involved officer that the use of the weapon is necessary to prevent harm to the officer or the public.

Excerpts of SPD policy are provided in Appendix B, and readers will find the phrase “reasonable, necessary, and proportional” repeated multiple times as thresholds for the use of less lethal tools. These factors apply to all uses of force by SPD. The reasonableness requirement is based on Supreme Court case law, and the necessary and proportional requirements adopted by SPD are policy choices that go beyond legal requirements. However, it is important for non-police readers to know that officer decision-making on these factors is judged against the information known and understood by the officer using the force at the time of the force, rather than 20/20 hindsight. The manual – and case law – does not expect police officers to be omniscient, but it does require them to use their best judgment in making a force decision.

Similarly, the SPD manual cites a “life safety emergency” as criteria for the use of less lethal weapons in crowd management situations. This is based on the information known to, and interpreted by, officers on the scene.

Police officers analyze potential threats to safety based on their training and experience, which is different from that of an average person. For this reason, force decisions made by police officers may not align with community interpretation of the same event, and thus the actions taken by the police may not align with community expectations.

OIG considered external sources as part of its review, which included the International Association of Chiefs of Police (IACP). On the issue of using CS gas for crowd management purposes, IACP has suggested that:

CS should be used with caution in crowd control situations, as ‘uncontrolled use can have negative consequences with respect to efforts to control, management [sic] or disperse crowds.’ . . . [U]se of CS may escalate violence and ‘the crowd should be warned prior to CS deployment and provided with avenues of egress.’

²⁰ A copy of the report is attached as Exhibit 11.

G. Office of Inspector General – Sentinel Event Review

As a result of the protests that began in late May 2020, OIG led a “Sentinel Event” review process to conduct an in-depth analysis of the protests that occurred throughout 2020. OIG has released two reports, one on July 22, 2021, and another on March 14, 2022. The reports are titled, “Sentinel Event Review of Police Response to 2020 Protests in Seattle” Wave 1 (Downtown Protests May 29-June 1, 2020) and 2 (East Precinct Protests June 2-7, 2020), respectively.²¹ OIG described the work as a “collaborative effort between community members, SPD, and OIG to identify the causes and contributing factors of undesired incidents with the **goal of prevention.**” (emphasis in the original) OIG stated that the focus of its efforts was “on fixing the system, not on assigning individual liability.”

The Wave 2 report included analysis of several incidents leading up to the deployment of CS gas on June 8, 2020, including a shooting by a man driving a vehicle into demonstrators located at Pine Street and 11th Avenue, injuring one of the protesters, and the deployment of OC spray at approximately 12:05 a.m. The report described the latter incident as follows:

At roughly 12:05 a.m., with protesters inches away from the police line, an officer at the front deployed OC spray in response to a protester depicted on body worn video blowing smoke into the face of the officer and using a rude hand gesture. Protesters carrying umbrellas in the area immediately lowered them into a defensive position. A water bottle was thrown at officers from another part of the crowd and SPD officers deployed pepper spray in the thrower’s direction, affecting many protesters in the area and prompting more projectiles from within the crowd. In less than a minute, SPD issued an unlawful assembly order and a dispersal order over the sound system. SPD officers used blast balls, CS gas, and 40 mm launchers to clear the intersection.

At roughly 12:09 a.m., five protesters stood or knelt peacefully in the middle of the intersection in a line facing dozens of SPD officers, while additional protesters were on the north, west, and south side of the intersection. A protester to the west threw what appeared to be a plastic bottle at the police line. A few seconds later, an SPD officer threw a blast ball, striking one of the peaceful protesters standing in the intersection in the chest. The impact caused the blast ball to explode, and the person collapsed. Protesters behind the line rushed forward, creating a protective circle around the injured person. They picked the person up and carried them to a volunteer medic station established by protesters a block away at 10th Avenue and Pine Street. Protesters called 911, but were unable to quickly secure an ambulance, prompting community members to transport the injured person to a nearby hospital by private vehicle for treatment.²²

It appears to this investigator that the incidents described in the WAVE 2 report are the same incidents described by Capt. Allen and Lt. Brooks that contributed to Capt. Allen’s decision to order SWAT to deploy CS gas at 12:14 a.m.

²¹ Both reports can be found on OIG’s website at seattle.gov/oig/reports.

²² OPA conducted an investigation and found that the deployment of the blast ball on that occasion violated SPD policies.