



Mary J. Dulacki
Chief Deputy Executive Director
Department of Public Safety

April 22, 2021
DEPARTMENTAL ORDER OF DISCIPLINARY ACTION
Case No. IC2020-0074

Derek Streeter (P15065)
Officer in the Classified Service
Denver Police Department

This is before the Executive Director of the Department of Safety to approve, disapprove or modify the Chief of Police's Written Command ordering disciplinary action against Officer Derek Streeter. The Written Command determined that Officer Streeter violated RR-102.1, Duty to Obey Departmental Rules and Mayoral Executive Orders, as it pertains to Section 105.02(3)(b) Force and Control Options – Chemical Agents and Munitions, of the Denver Police Department Operations Manual, when he fired PepperBall¹ rounds at a vehicle driving away from the May 29, 2020 riot, when a passenger was verbalizing animus toward the police. The Written Command determined that this was a Conduct Category D violation and imposed a mitigated penalty of six (6) days (48 hours) suspension.

Friday, May 29, 2020, was the second day of the Justice for George Floyd Protests in Denver arising from the death of George Floyd in Minneapolis. The protests were of an unprecedented scale and each day after sundown, the legitimate protest activity degraded into destructive and violent riots.

Following the incidents, the Internal Affairs Division of the Denver Police Department (DPD) conducted reviews of body-worn camera (BWC) footage from officers assigned to the events. The review of footage from Officer Derek Streeter on May 29, 2020, beginning at 2300 hours raised concerns about his use of PepperBall and an investigation was opened. The investigation reviewed several instances of Officer Streeter's deployment of PepperBalls captured on the video from his BWC. The Written Command found one of the incidents (Incident A) to be out of policy.

Incident A (BWC Time Index 10:27)

Prior to the event in question, Officer Streeter and his fellow officers had been engaged in crowd control operations for several hours. (The police operation began at 1100 hours on May 29th and

¹ A PepperBall launcher fires a spherical or rounded-cylindrical container of pepper powder. The container breaks apart on impact, releasing a cloud of chemical irritant having a similar effect as pepper spray.

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concluded at 0200 hours on May 30th.²) Officers had been subjected to rioters throwing various objects and substances at them and several officers had been injured. The BWC video captured Officer Streeter riding on the running board of the RDV³ as the vehicle traveled north on Broadway, stopping just south of the intersection with 14th Avenue. Officers dismounted from the vehicle and assumed positions around it. One officer can be seen showing an injury to his elbow. Officer Streeter is seen reloading and recharging his PepperBall launcher.

Officer Streeter turned his attention to the west. A light-colored sedan drove by, traveling southbound on Broadway. Someone yelled out the window: "You can't even spell country [unintelligible]." A second light-colored sedan passed, and a female voice was heard yelling, "this is what y'all get [unintelligible]." A male, pulling himself out from one of the passenger side window areas, screamed, "F—kwad! You p-ssies! [unintelligible]." Officer Streeter responded by firing three PepperBall rounds in the car's direction.⁴

During his interview with Internal Affairs, Officer Streeter was asked by Sergeant Michael Reifsteck, "Did you shoot your PepperBall at the subject hanging out of the vehicle because he was yelling obscenities at you and the other officers in the area?" Officer Streeter responded,

No, I observed a hostile male yelling numerous obscenities at officers and climbing out of the rear passenger[-]side window. [Because of] the amounts of missiles and objects we had been assaulted by through the course of the night, I believed this male was positioning himself to throw something at us or assault us as he passed, [because of] the fact I could not see both of his hands as he was hanging out of the vehicle.

Sergeant Reifsteck asked him if his PepperBall gun malfunctioned when he initially attempted to shoot. He said it did. He had just recharged the gas canister and had forgotten to open the valve. Once he did so, he said, "I observed that the male hanging outside of the vehicle had leaned back into the vehicle window and then repositioned himself out the window as if he was arming himself with unknown weapons to assault myself or fellow officers by throwing or shooting unknown missiles a[t] us. When asked if he believed the subject was still a threat at the distance the driver had attained by his first shot, Officer Streeter said,

Yes, I did feel that the subject could be a threat at that distance. Over the course of the 13 hours as well as the night prior, subjects in the hostile and riotous crowd had used items such as sling shots and lacrosse sticks to shoot rocks and golf balls at officers to assault them from a further distance. Only minutes prior, I was engaged

² See After Action Report, "Justice for George Floyd Protest Event", GO Number 20-332215.

³ A Rapid Deployment Vehicle (RDV) is a truck with storage units and running boards on both sides, used during crowd control operations.

⁴ *Officer Streeter BWC*, at 10:30.

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with the hostile crowd that was throwing objects, using fireworks and engaged in hostile criminal activity towards me and other officers.

Incident B (BWC Time Index 05:34)

Prior to the event described above, while Officer Streeter was riding on the running board of the RDV as it traveled southbound on Broadway at 14th Avenue, a large firework exploded in the middle of the street about half a block behind the RDV.⁵ Seconds later, sounds of objects hitting the RDV can be heard on the BWC video and Officer Streeter fired his PepperBall in the direction of the suspects toward the east.

Shortly thereafter, two males can be seen moving down the sidewalk on the east side of Broadway. One male, wearing a white shirt, is several yards behind the other male who was wearing a dark shirt. Officer Streeter engaged in a verbal exchange with the male wearing the dark shirt. The young male said, "I didn't do anything," and later asked "where should I go?" in response to officers' admonishments to go home. During the exchange, Officer Streeter fired a single PepperBall which did not strike either of these individuals. The young male flinched at the discharge, but he immediately held his arms out again and asked the officers which side of the street he should be on.

In his statement written for the police report, Officer Streeter wrote:

...As we approached the intersection of 14th on the side of the RDV rails, me and officers were again assaulted from our east by numerous missiles striking us and the RDV. To defend myself and other officers, I deployed my less lethal pepper ball against a brick retaining wall for area saturation. As we continued SB, a male in black clothing was asking us where to go, and we verbally informed him to go home. As this was happening, I observed another male in a white shirt running up behind him from the area we were just actively assaulted. I perceived this party to be attempting to throw more missiles at our RDV and my fellow officers. I deployed one round from my less lethal pepper ball system to disperse him the other direction so we would not be struck by any more missiles.

Incident C (BWC Time Index 09:17)

Just south of the intersection of 14th Avenue and Broadway, Officer Streeter and other officers deployed PepperBalls on the asphalt between them and a young female west of their position,

⁵ *Officer Streeter BWC*, at 05:10.

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running south in the street. At least one more individual was running on the sidewalk in the same direction, ahead of the female. Just before this incident, an officer yelled, "Get out of the street." The female shouted obscenities at the officers when she gained more distance from them. Officer Streeter said this female was part of a group to the southwest that had thrown missiles at them. No impact noises can be heard on the BWC audio track immediately before the officers launched the PepperBalls. However, at time index 06:40, an officer said, "I took one to the f—king elbow," after showing his elbow to Officer Streeter.

Additional Evidence

Officer Streeter described an injury he received on that evening from a thrown brick as "severe swelling and bruising to my entire lower left leg with a deep bone contusion." Photographs of the injury show a sizable bruise to his left shin.⁶

The After Action Report for May 29, 2020 summarized various riot-related events from that evening including fires; broken windows on buildings and cars; graffiti; liquids, fireworks and rocks thrown at officers; shootings; firearms recovered from individuals; lootings; burglaries; and injuries to several officers.

The Computer-Aided Dispatch (CAD) report for the event contains the following call notes relevant to this case:

23:03:22	14/BROADWAY – MALE WITH A CROWBAR BREAKING WINDOWS//LEATHER JACKET WALKIN SB
23:05:22	1400-BLK BROADWAY TAKING ROCKS AND BOTTLES
23:05:59	1400-BLK BROADWAY IN THE BUSHES WITH ROCKS

RR-102.1, Duty to Obey Departmental Rules and Mayoral Executive Orders

Officers shall obey all Departmental rules, duties, procedures, instruction, and orders; the provisions of the Operations Manual; and Mayoral Executive Orders.

as it pertains to

OMS 105.02(3)(b), Force and Control Options-Chemical Agents and Munitions, ⁷

⁶ Image files *Streeter injury front*, *Streeter injury side 1*, and *Streeter injury side 2*.

⁷ OMS 105.02(3)(b) (Revised Jan. 27, 2019), which was in effect on May 29, 2020. The section applicable to this case is unchanged in the September 30, 2020, revision which was in effect as of this writing.

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(of the Denver Police Operations Manual), provides as follows:

...

b. Chemical Agents and Munitions:

1. The minimum type of resistance for application of a chemical agent or munition is Defensive Resistance. Deployment of any chemical agent or munition requires that the officer be an authorized user for that item. Chemical agents and munitions may provide an effective force option and may be used in the following situations:

- To prevent injury to an officer or a third person,
- Against an individual resisting and/or interfering with an arrest.
- To quell rioting/disperse unlawful crowds.

...

Other Relevant Policy:

OMS 105.01(3) Use of Force Policy – Types of Resistance

...

d. Defensive Resistance: Physical actions that attempt to prevent an officer's control, including flight or attempt to flee but do not involve attempts to harm the officer (includes "turtling," which involves a pronated individual pulling his or her arms and/or legs to their chest to prevent access and control by an officer).

e. Active Aggression: An Overt act or threat of an assault, coupled with the present ability to carry out the action, which reasonably indicates that an assault or injury to a person is likely.

OMS 105.02(1) Force and Control Options

(1) Policy

...When applying force and control options, the initial application, and each subsequent application, must be individually reasonable and necessary under the totality of circumstances.

There is a preponderance of evidence that Officer Streeter violated this departmental rule when he fired PepperBall rounds at a vehicle driving away from the May 29, 2020 Denver riot while a passenger in the vehicle was expressing animus toward the police.

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At time index 10:27 of Officer Streeter's BWC video, two cars are seen traveling south on Broadway, passing the officers stationed at the intersection with 14th Avenue. Someone in the first car yelled insults at the officers, without further incident. The driver of the second car also yelled something without provoking a police response. Then, a passenger in the second car pulled himself out of one of the passenger-side windows and screamed obscenities at the officers. Officer Streeter fired three PepperBall rounds at the vehicle as it continued to move away from the officers. As the PepperBall launcher malfunctioned and did not initially fire, Officer Streeter cleared the malfunction and then was able to fire the three rounds.

Officer Streeter's explanation for discharging the rounds is that he feared the passenger may have been preparing to launch missiles at the officers, possibly with the aid of something like a slingshot or lacrosse stick, as he had seen rioters using such items to assault officers from a distance. He justified this concern by saying he could not see the passenger's hands as he was hanging out the car window.

It must be acknowledged that Officer Streeter and his fellow officers had been hit and injured by projectiles thrown by rioters that night. However, Officer Streeter's explanation for firing the three rounds is not plausible. The passenger was hanging out of the window while screaming obscenities at the officers, likely holding onto the moving car as it proceeded away from the officers. The moving car was a significant distance away from the officers when Officer Streeter first attempted to fire PepperBalls and the launcher malfunctioned. At that initial distance, the passenger did not present a viable threat to the officers. The vehicle was even farther away at the time of the firing of the three rounds, which further reduces the likelihood of any potential threat being posed by the passenger.

OMS 105.02(3)(b) allows chemical munitions to be deployed in three circumstances: where a suspect displays Defensive Resistance to the police; when a suspect displays Active Aggression toward the police; and "to quell rioting/disperse unlawful crowds". None of these circumstances were presented by the passenger or the car such that Officer Streeter would have been justified in deploying chemical munitions. There was no physical interaction, so Defensive Resistance is not applicable. The car was driving away from the area of the riots, so the participants were dispersing. The driver and passenger were yelling numerous obscenities at the officers, but those remarks did not constitute the threat of an assault, as required by the definition of Active Aggression. The suggestion that the passenger was preparing to throw or shoot some type of missile as the vehicle was moving away from the officers is not credible. Officer Streeter's use of force (a chemical munition) in this instance was neither necessary, reasonable, nor was it appropriate.

Additionally, there is a preponderance of evidence that Officer Streeter violated this departmental rule when he fired a PepperBall in the direction of one of two males moving on the sidewalk away from the protest activity.

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At the time of this discharge, Officer Streeter was engaged in a verbal banter with a young male in a dark shirt. Officer Streeter said that the PepperBall was directed for the second male in the white shirt because he perceived the young man was “attempting” to throw more objects at police. Officer Streeter was on the moving RDV at the time of this deployment. Though the officers had just taken a volley of missiles from that side of the street near the intersection with 14th Avenue, there was nothing in the young man’s actions that supported Officer Streeter’s contention that he was preparing to throw missiles at the officers. There was no physical interaction, so Defensive Resistance is not applicable. The men were moving away from the area of the riots, so they were dispersing. There is nothing captured by the video that supports an inference that the man posed a viable threat and was attempting an assault, as required by Active Aggression. Officer Streeter’s use of force (a chemical munition) in this instance was neither necessary, reasonable, nor was it appropriate.

Finally, there is a preponderance of evidence that Officer Streeter violated this departmental rule when he discharged PepperBalls in the direction of a female running in the street away from the area of the riots.

Just prior to this specific discharge, an officer yelled, “Get out of the street,” and the female responded by shouting obscenities back at the officers as she gained more distance away from them. Though this female could have been part of the group of assailants who had previously assaulted officers, at the time of the deployment, she was not posing a viable threat to the officers and was not attempting an assault, as required by Active Aggression. There was no physical interaction, so Defensive Resistance is not applicable. The female was running away from the officers and the area of the riots, so she was dispersing. Officer Streeter’s use of force (a chemical munition) in this instance was neither necessary, reasonable, nor was it appropriate.

A violation of RR-102.1 appears in Conduct Categories A through F of the disciplinary matrix.

Conduct Category D violations include misconduct “that is substantially contrary to the values of the Department or that substantially interferes with its ...professional image, or that involves a demonstrable serious risk to...public safety.” By using force that was neither necessary, reasonable, nor appropriate by firing PepperBall:

- at a vehicle moving away while a passenger was screaming obscenities at police;
- toward two pedestrians who were leaving the area of the riots while one engaged in banter with officers; and
- at a female who had yelled obscenities at the officers while running away from them and the riot area.

Officer Streeter’s misconduct was substantially contrary to the Department value of Service and substantially interfered with the Department’s professional image. The Department expects that

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its officers will provide “respectful police services to all,” no matter the treatment officers receive from the public. Officer Streeter failed to discriminate between individuals participating in illegal activity and those simply verbalizing discontent with police. By inappropriately firing PepperBall at protestors when the force was not warranted, Officer Streeter’s misconduct substantially interfered with the professional image of the Department.

Pursuant to the disciplinary matrix for a discipline level of five (5), the mitigated penalty is four (4) to six (6) days suspension; the presumptive penalty is ten (10) days suspension; and the aggravated penalty is fourteen (14) to sixteen (16) days suspension.

The Written Command determined that a mitigated penalty was warranted, citing Section 19.6.2 of the DPD Discipline Handbook, “Circumstances under which the rule was violated.” The circumstances described in mitigation included that Officer Streeter “had been under siege from screaming people throwing objects for hours” and that he was likely in considerable pain from being hit in the shin with a brick. While the Written Command did not excuse Officer Streeter’s lapse in judgment, it determined that the mitigating circumstances warranted a decrease in the presumptive penalty.

The unprecedented scale of the spontaneous protest activity that began in May of 2020 required a massive, unplanned police response. Unfortunately, the relatively peaceful daily protests turned into violent riots at night. Officers worked long hours and were subjected to not only a steady verbal barrage of anti-police sentiments, but also to assaults by numerous rocks and missiles throughout the evening. These circumstances tested the professionalism of each and every officer. However, even under these extraordinary conditions, the Department’s mission and values remain and its officers are held to standards beyond what is expected of others.

Regrettably, whether due to fatigue, pain from his injury, or weariness from the continual barrage of anti-police sentiments, Officer Streeter inappropriately responded to three individuals by deploying PepperBall. None of the three incidents identified herein were within policy. The fact that there was not just one lapse in judgment but three individual instances where Officer Streeter reacted inappropriately within a matter of minutes, is appropriately considered as an aggravating circumstance.⁸

When weighed against one another, the mitigating factors are not so significant as to nullify the aggravating circumstance identified above. As such, there are insufficient reasons that would justify a departure from the presumptive penalty of ten (10) days suspension.

⁸ Section 19.10, DPD Discipline Handbook.

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Accordingly, the Written Command is hereby modified and the presumptive penalty of ten (10) days suspension is imposed. This suspension is to be served June 6, 2021, through and including June 10, 2021; and July 11, 2021, through and including July 15, 2021.

Pursuant to Denver City Charter § 9.4.15(A), Officer Streeter has ten (10) days from receipt of this Order to file an appeal with the Civil Service Commission.

BY ORDER:




4-21-2021

Chief Deputy Director of Safety

Date

OFFICER'S RETURN

I hereby certify that I received the within Departmental Order of Disciplinary Action and have delivered a true copy thereof to the within-named Derek Streeter this 24 day of April 2021.

 98026
Signature

J. CASIAS
Printed Name