



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

April 29, 2021  
DEPARTMENTAL ORDER OF DISCIPLINARY ACTION  
Case No. IC2020-0051

Diego Archuleta (P16061)  
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 Diego Archuleta. The Written Command determined that Officer Archuleta violated RR-306, Inappropriate Force, of the Denver Police Department Operations Manual, when, during a protest, he discharged his oleo-resin capsicum (OC)<sup>1</sup> fogger at a vehicle stuck in traffic. The Written Command determined that this was a Conduct Category D violation and imposed a mitigated penalty of six (6) days (48 hours) suspension.

May 31, 2020 was the fourth 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 devolved into destructive and violent riots.

Just after midnight on June 1, 2020, District 4 Impact Teams responded to a large disturbance in the 1400 block of North Logan Street. Many rioters were present, several of whom were jumping fences into yards of private residences. Some were breaking glass and spray-painting buildings with graffiti. The officers dispersed individuals with PepperBalls and other less-lethal options and made several arrests.

A review of the evening's body-worn camera (BWC) video by District 4 Sergeant Michael O'Neill led to initiation of this case. Officer Christopher Parton's BWC video shows the District 4 Impact Team officers arriving on scene in a rapid-deployment vehicle (RDV). Several officers fired PepperBalls to disperse the rioters.

Traffic was stalled on Logan Street because of the disturbance. A woman in a small sport-utility vehicle near the RDV was expressing contempt for the officers' actions. According to Sergeant O'Neill's summary in the Use of Force Report documenting the incident, several officers either ignored the woman or asked her to move along. Due to the congestion, the woman was stuck in a line of cars and unable to move.

---

<sup>1</sup> Oleo-resin capsicum spray is also known as "pepper" spray.

## DEPARTMENTAL ORDER OF DISCIPLINARY ACTION

Case No.: IC2020-0051  
Diego Archuleta (P16061)  
Officer in the Classified Service  
Denver Police Department

Officer Diego Archuleta can be seen walking while carrying an OC fogger in his right hand.<sup>2</sup> The woman in the SUV was chastising the officers for “firing on an unarmed crowd.” When Officer Archuleta was near the driver’s side front tire of her car, she said, “What, they gonna kill this guy?” Officer Archuleta turned and sprayed his OC fogger twice at the windshield of the vehicle. He then turned away and walked rapidly up the street.

In his statement for the Use of Force Report, Officer Archuleta wrote:

There was a female in a Green SUV [] that kept rolling her window down and up while screaming at my team and [me]. I asked the female multiple times to move along. The female kept yelling and I heard her say something about “killing”. I was holding an OC fogger[.] I turned and dispersed two shots from the fogger which went on her windshield. Once I dispersed the fogger, the female immediately put her window up and put her head down to read her phone. I realized that I made a mistake and walked away from the female and her car.

In his November 18, 2020, interview with Internal Affairs, Officer Archuleta told Sergeant Brian Pacelko that he has been with DPD for four years. As of May 2020, his training for crowd control and in response to riots was the one-day course he’d received in the Academy (though he has recently received additional training).

Officer Archuleta recounted that his shift prior to the incident ended at 0400 hours and that he returned to work at 1000 hours on May 30<sup>th</sup>. He described that throughout the second shift, he and officers had been assaulted by the crowd with rocks, water bottles, urine, golf balls, and other items.

Officer Archuleta and his team responded to the 1400 block of Logan Street on reports of rioters breaking windows and spray-painting buildings with graffiti. The officers received orders to disperse the crowd.

When asked why he discharged his OC fogger at the windshield of the SUV, Officer Archuleta said, “I made a mistake.” He described that he was under the stress of being hit with objects thrown from the crowd and that the woman was being verbally antagonistic. Officer Archuleta said he told the woman to roll up her window and move along. He then heard her say the word “kill”, and that is when he discharged the fogger. Officer Archuleta said he believed he had not affected her, as she rolled-up her window and went back to looking at her phone. “As soon as I did that, I, y’know, I wanted to remove myself, because I knew I shouldn’t’ve [sic] OC-fogged her windshield-uh, remove myself and just continue walking north to get away from her.” When asked

---

<sup>2</sup> *Officer Christopher Parson BWC Time index 01:23.*

## DEPARTMENTAL ORDER OF DISCIPLINARY ACTION

Case No.: IC2020-0051  
Diego Archuleta (P16061)  
Officer in the Classified Service  
Denver Police Department

later to clarify why he wanted to get away from her, Officer Archuleta said it was because he immediately regretted his decision, and he walked away so “nothing else would happen.”

Officer Archuleta apologized, he characterized what he did as reacting “quickly” and emphasized he was not trying to be “punitive” toward the woman in the SUV. He knows he should have acted differently, “I just don’t want this to paint a picture of an officer that I shouldn’t’ve [sic] been that day. Y’know, I’m better than that, and I just apologize.”

During the Chief’s Hearing in this case, Officer Archuleta said that he immediately realized his poor decision and described how he regretted placing the Department in a bad light. He asked for forgiveness from both the Department and the community. Officer Archuleta described how he has received no prior complaints; a fact made more remarkable considering his assignment to the extremely active Impact Team. He said that he has always felt the support of the Department which has allowed him to succeed. Officer Archuleta said he considers his profession a calling and not a career.

At the time the protests and riots began, Officer Archuleta was scheduled to be off duty for a week. As a Denver native, he said he had never seen the behaviors he witnessed during the first night. He spoke with his sergeant and offered to return to work, which he did the following morning at 0930. Members of his team described “how bad the night before was.” Officer Archuleta described how disturbing it was to see friends and people he had grown up with throwing things at police.

In describing the use of the OC fogger on the vehicle, Officer Archuleta said his action was reactive, not punitive. He said that he immediately knew he made a mistake and that is why he withdrew from the area. He said that he wished he could personally apologize to the woman<sup>3</sup> and says he has learned from this incident.

Officer Archuleta has a minimal disciplinary history consisting of two previous preventable motor vehicle accidents and one photo enforcement citation. He has received three commendations in his four years with the Department.

### **RR-306      Inappropriate Force**

Officers shall not use inappropriate force in making an arrest or in dealing with a prisoner or any other person.

### Other Relevant Policy

---

<sup>3</sup> The driver of the vehicle did not file a complaint and was unable to be identified by the video evidence.

## DEPARTMENTAL ORDER OF DISCIPLINARY ACTION

Case No.: IC2020-0051  
Diego Archuleta (P16061)  
Officer in the Classified Service  
Denver Police Department

### **OMS 105.02 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 to safely accomplish a lawful purpose.

...

**(3) General Guidelines – Force and Control Options:**

Officers will use less lethal force and control options in accordance with department training and policy. Listed as follows are general guidelines.

...

**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.
- ...

2. The use of a chemical agent or munition for crowd/riot control will be in accordance with the DPD Crowd Management Manual.

...

### **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.

## DEPARTMENTAL ORDER OF DISCIPLINARY ACTION

Case No.: IC2020-0051  
Diego Archuleta (P16061)  
Officer in the Classified Service  
Denver Police Department

There is a preponderance of evidence that Officer Archuleta violated RR-306, Inappropriate Force, when he discharged his OC fogger at the windshield of a vehicle stuck in traffic.

Per OMS 105.02(3)(b)(1), and the DPD Crowd Management Manual, the use of chemical munitions is limited to three circumstances: when a suspect engages in Defensive Resistance toward the police; when a suspect exhibits Active Aggression toward the police; or “[t]o quell rioting/dispense unlawful crowds”. None of these circumstances was present here.

The woman in the car was not part of an “unlawful crowd”; she was not resisting or interfering with an arrest; nor was she attempting to injure an officer or third person. She was stuck in traffic, verbalizing her animus toward police. There was no physical interaction, so Defensive Resistance is not applicable to the situation. The driver’s comments directed toward police did not constitute the threat of an assault, as required by the definition of Active Aggression. Officer Archuleta’s use of force (the OC fogger) in this instance was neither necessary, reasonable, nor was it appropriate to accomplish a lawful purpose. These facts support the finding that Officer Archuleta violated this rule and regulation.

A violation of RR-306 appears in Conduct Categories D 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 directing his OC fogger on the windshield of an occupied car when the driver was not part of the riotous crowd, was posing no threat to police, and was only voicing verbal comments at officers, Officer Archuleta’s misconduct substantially interfered with the Department’s professional image. Furthermore, not only did Officer Archuleta’s misconduct involve a demonstrable serious risk to the driver of the vehicle, but potentially also to nearby pedestrians and other officers, whose safety may have been jeopardized by a driver with compromised vision. For these reasons, Officer Archuleta’s misconduct is properly characterized as Conduct Category D behavior.

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 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.

Officer Archuleta’s misconduct was substantially contrary to the Department value of Service and substantially interfered with the Department’s professional image. The Department expects that its officers will provide “respectful police services to all”, no matter the treatment officers receive

DEPARTMENTAL ORDER OF DISCIPLINARY ACTION

Case No.: IC2020-0051  
Diego Archuleta (P16061)  
Officer in the Classified Service  
Denver Police Department

from the public. Officer Archuleta failed to distinguish between individuals participating in illegal activity and those merely verbalizing discontent with police. By inappropriately spraying his OC fogger at the windshield of the car when the force was not warranted, Officer Archuleta 's misconduct substantially interfered with the professional image of the Department.

Officer Archuleta has no prior Conduct Category C, or higher, violations within the specified timeframe of seven (7) years which would mandatorily increase the penalty level. 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 consideration of mitigating and aggravating circumstances is outlined in Sections 19.0-23.0 of the Discipline Handbook. The mitigating circumstances present here include Officer Archuleta's willingness to accept responsibility and acknowledge wrongdoing (Section 19.6.1); at the time of the incident, Officer Archuleta had been working for more than 14 hours, responding to a variety of protest activities, riots, and crowd management situations for the second day in a row (Section 19.6.2); immediately following the spraying of the windshield, Officer Archuleta recognized his error in judgment and walked away from the car (Section 19.6.2); and Officer Archuleta has received three commendations and has a minimal disciplinary history (Sections 19.6.4 and 19.6.7). The aggravating factor present here is that Officer Archuleta's use of OC spray upon the vehicle of a driver stuck in traffic who was unable to drive away resulted in an actual and demonstrable prejudice to the Department. (Section 19.9.6).

When weighed against each other, the mitigating circumstances outweigh the aggravating factor and justify the imposition of a penalty in the mitigated range.

Accordingly, the Written Command is approved and the mitigated penalty of six (6) days suspension is imposed. This suspension is to be served beginning on May 23, 2021, through and including May 28, 2021.

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

BY ORDER:



Chief Deputy Executive Director

4-29-2021

Date

DEPARTMENTAL ORDER OF DISCIPLINARY ACTION

Case No.: IC2020-0051  
Diego Archuleta (P16061)  
Officer in the Classified Service  
Denver Police Department

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 Diego Archuleta this 29 day of April 2021.

TECH. J. CASAS  
Signature

J. CASAS 99026  
Printed Name