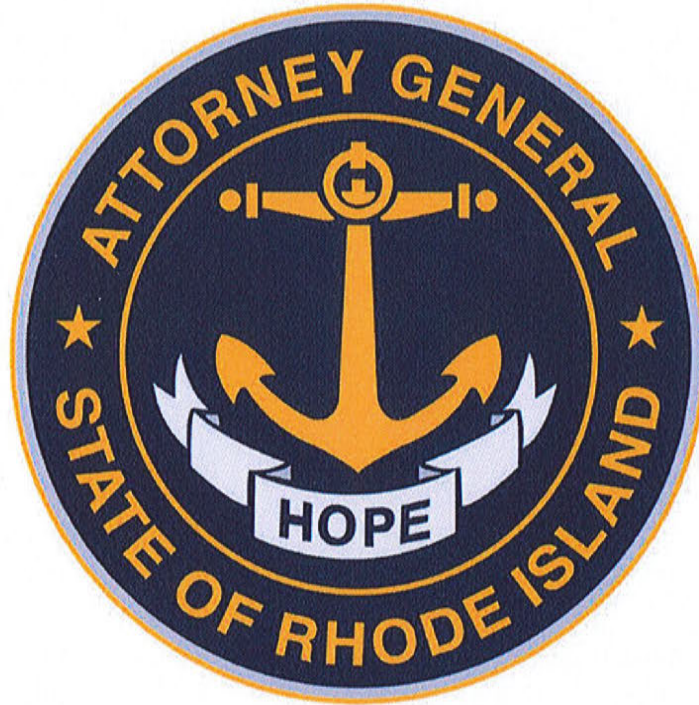


**STATE OF RHODE ISLAND
OFFICE OF THE ATTORNEY GENERAL**

*Peter F. Neronha
Attorney General*



**INVESTIGATIVE REPORT
October 18, 2022**

Incident Type:	Less Lethal Munition - Serious Bodily Injury
Incident Location:	Providence, Rhode Island
Incident Date:	June 2, 2020
Police Department:	Providence Police Department
Officer Involved:	Sgt. Sean Comella

INTRODUCTION

During the early morning hours of June 2, 2020, Providence Police Sergeant Sean Comella discharged a less-lethal round in the direction of the operator of a sports utility vehicle while providing security for other officers who were arresting a breaking and entering suspect. The operator, [REDACTED], suffered significant facial injuries resulting in the loss of an eye.

The Office of the Attorney General, working together with the members of the Providence Police Department Office of Professional Responsibility (OPR), investigated and reviewed the incident. The purpose of that review was to determine if Sergeant Comella committed a criminal act. After an examination of all available evidence and a legal analysis, which is set forth in this report, this Office concludes that, under the unique and dangerous circumstances facing police and the public on the night in question, Sergeant Comella's discharge of a less-lethal munition was legally justified.

EVIDENCE REVIEWED

1. Witness statements from the following members of the Providence Police Department:
 - a. Sergeant Sean Comella – Recorded statement dated June 5, 2020 and proffer session (not recorded) on August 27, 2020
 - b. Lieutenant James Barros – Recorded statement dated June 18, 2020
 - c. Officer Erik Breault – Recorded statement dated June 25, 2020
 - d. Officer Daniel Carnigan – Recorded statement dated June 18, 2020
 - e. Officer Raymond Criner – Recorded statement dated July 2, 2020
 - f. Officer Eric Cuellar – Recorded statement dated June 18, 2020
 - g. Lieutenant Christopher Currier – Recorded statement dated June 25, 2020
 - h. Sergeant Brian Dyer – Recorded statement dated July 2, 2020
 - i. Officer Matthew Greely – Recorded statement dated June 18, 2020
 - j. Detective David Harrington – Typewritten statement dated July 1, 2020
 - k. Officer Scott Kennan – Recorded statement dated June 18, 2020
 - l. Officer Lewis – Report and narrative dated June 2, 2020
2. Statements from the following civilian witnesses:
 - a. [REDACTED] – Recorded statement dated June 2, 2020
 - b. [REDACTED] – Recorded statement dated June 24, 2020
3. Rhode Island Hospital medical records for [REDACTED]
4. Video interview (not recorded) of Doctor [REDACTED] on October 12, 2021
5. Report prepared by Middletown Police Lieutenant David Bissonnette dated March 11, 2021

6. Video footage from the following sources:
 - a. [REDACTED] cellular telephone
 - b. City of Providence – City Hall (three cameras)
 - c. Rhode Island Public Transit Authority (one camera)
7. Providence Police Department Use of Force policy
8. Providence Police Department Less-Lethal Munitions & 40mm Launcher policy
9. Providence Police Department Office of Professional Responsibility Investigative Action Report (Use of Force 2020-025)
10. Providence Police Dispatch calls
 - a. Rhode Island Hospital Emergency Department call to Providence Police (6/2/2020 at 4:09 a.m.)
 - b. Seven radio broadcasts (6/2/2020 from 4:12:20 am through 4:19:45 am)
11. Providence BCI photographs of red sports utility vehicle, Oregon license plate [REDACTED] (42 photographs)

FINDINGS OF FACT

On the night of June 1, 2020, and early morning hours of June 2, 2020, the City of Providence experienced large scale civil unrest throughout the downtown area and the Providence Place Mall. The rioting included setting a police vehicle on fire, setting off fireworks, throwing bricks, rocks, bottles, and “Molotov cocktails” in mason jars at the police, as well as sporadic looting. Initially focused on the Providence Place Mall, the unruly crowds dispersed to other locations including Kennedy Plaza where some continued to engage in criminal behavior. Members of the Providence Police Department, including patrol officers and members of the Special Response Unit (SRU) first responded to the Mall and then spread out through the city. One group of officers ended up in Kennedy Plaza where they observed multiple people inside a then-closed Subway restaurant. As suspects fled from that location, several officers pursued them on foot.

Patrol officers caught up with and apprehended one of the suspects as he ran across Kennedy Plaza. While those officers focused on securing that suspect, others, including Sergeant Sean Comella (Sgt. Comella) and other members of the SRU arrived on scene, wearing clearly marked police tactical gear, and provided cover for the arresting officers. While providing cover, numerous bystanders, including individuals driving by, yelled at the officers and at least one glass bottle was hurled in the direction of the officers, shattering at their feet. This last event prompted Sgt. Comella to discharge his less-lethal munition (LLM) at a male who was leaning out of a red SUV at the intersection of Dorrance and Fulton Street. This was the direction from which Sgt.

Comella believed the bottle was thrown. Immediately after discharging the weapon, the vehicle took off, heading southbound on Dorrance Street. Neither Sgt. Comella nor anyone else at the scene at the time knew whether the discharged projectile struck the intended target or his vehicle. This incident occurred at about 2:50 a.m. on the morning of June 2, 2020.

It was not until about 4:09 a.m. that Rhode Island Hospital notified the Providence Police Department that that a male arrived at the Emergency Department with a "gunshot" wound to the face that was believed to be caused by a "non-lethal" round. This information was relayed over police radio by dispatch. Dispatch initially relayed the information as a "victim shot in the face," and later clarified that it was "likely a less lethal round." Radio broadcasts indicated that the victim suffered a serious injury to his left eye and noted that the location of the incident was unknown. As further described below, it was not until about 7 or 8 a.m. that Sgt. Comella and his supervisor Capt. Aspinall learned that the incident occurred at Kennedy Plaza and likely was linked to Sgt. Comella's discharge of his weapon. Upon learning this information, Sgt. Comella reported the matter to his commanding officers and to OPR.

1. Complainants' Account

Providence Police OPR Sergeants James Mellor and Paul Zienowicz conducted interviews of injured driver, [REDACTED], and his girlfriend, [REDACTED], who was in the front passenger seat when Mr. [REDACTED] was struck with the projectile. Attorney Chad Bank was present for both interviews.

Sergeants Mellor and Zienowicz interviewed Ms. [REDACTED] on the afternoon of June 2, 2020. Ms. [REDACTED] stated that she and Mr. [REDACTED] were driving past Kennedy Plaza in the early morning hours of June 2, when she observed several subjects "banging out" the windows of the Subway restaurant near the skating rink and a subject running from police across the Plaza, away from the Subway. As that person ran, Mr. [REDACTED] drove their vehicle toward the TD Bank located at Dorrance and Fulton Streets. Ms. [REDACTED] stated that Mr. [REDACTED] began yelling at the officers who were arresting the suspect through the driver's side window, stating "why are you beating on him?" Ms. [REDACTED] indicated that the driver's side window was fully down, and that Mr. [REDACTED] leaned out of the window. According to Ms. [REDACTED], due to heavy traffic conditions and police activity, their vehicle was forced to come to a stop while police were yelling commands for vehicles to leave the area.

She stated she observed "ten guys dressed in black with the SWAT and they are walking across. So, we are still waiting but the cop was still yelling get the fuck out of here. So, as we are ready to go, [REDACTED] is tapping the gas, the other car is already going, Boom! a shot fired." Ms. [REDACTED] realized that Mr. [REDACTED] was struck in the eye and was bleeding heavily. The vehicle pulled slightly to the side of the road and came to a stop. Ms. [REDACTED] stated that she managed to maneuver herself into the driver's seat without leaving the vehicle and assumed control. She immediately took off to transport Mr. [REDACTED] to Rhode Island Hospital due to his injuries. (Hospital records document

their arrival at the emergency department at 03:00 a.m.). Ms. [REDACTED] statement is largely corroborated by the video footage obtained as part of this investigation.

Ms. [REDACTED] could not provide any specific information about the identity of the shooter. She stated that there was blood all over the car and that there was “a plastic piece” found in the car, but she did not know whether that came from the projectile. As Ms. [REDACTED] drove the red SUV to the Providence Police Department for her interview, Providence Police Detective Romano took photographs of the vehicle. There is no indication that any evidence of note was seized from the vehicle or that any markings consistent with impact of a projectile was observed. The photographs depict large blood stains on the driver’s seat and the console between the driver’s seat and front passenger seat.

Mr. [REDACTED] was interviewed by OPR on June 24, 2020 – after he was released from the hospital and medically fit to be interviewed. Mr. [REDACTED] stated that he went to the Kennedy Plaza area to make a deposit at the TD Bank on Dorrance Street. He recalled driving through the area of City Hall and Kennedy Plaza on Dorrance Street, specifically at a time when several officers were chasing a suspect through the Plaza and effectuating an arrest. Mr. [REDACTED] described seeing six officers “beating on a kid with sticks.” He responded by yelling out of the window at the officers to stop. Mr. [REDACTED] also stated that he heard other people yelling at the officers. He denied sticking his body outside the driver’s side window of his vehicle, claiming that the only part of his body outside of the vehicle was his arm. This statement is contradicted by the video footage described below. Mr. [REDACTED] also denied throwing anything at the officers from his vehicle. This is uncontradicted by the video footage (though, as described below, video footage did show a bottle thrown at police by another, unidentified party). Mr. [REDACTED] stated that he did not hear any verbal responses or commands from the officers. When his vehicle was stopped at a red light at the intersection of Fulton and Dorrance Streets something struck him in the eye without warning. He did not see an officer point or discharge a weapon or hear any warnings from an officer. Mr. [REDACTED] confirmed that his vehicle was stopped when he was struck by the projectile. He stated that after he was struck, Ms. [REDACTED] took over operation of the vehicle and drove him to the hospital.

Mr. [REDACTED] stated that, to his knowledge, no one found evidence of the projectile that struck him in the car. Mr. [REDACTED] stated that he heard that some “yellow stuff” was found on the driver’s side window and that there was an indentation on the rear passenger door, on the driver’s side of the vehicle, that looked like it came from a “gunshot.” However, it does not appear that he had personal knowledge of these facts, but was relaying what he learned from others.

2. Surveillance Video Footage

Providence Police obtained copies of four surveillance video feeds, each depicting different portions of Kennedy Plaza and the surrounding area. While lighting conditions, distance, positioning of the cameras and the presence of a large monument make it difficult to clearly view all relevant activity, the surveillance videos are of some assistance. Specifically, the videos depict officers chasing and apprehending the Subway

suspect, as well as a portion of Mr. [REDACTED] vehicle's traveling south on Dorrance Street. They do not, however, reveal the exact time and location of Sgt. Comella's deployment of the less lethal munition.

The following is a summary of the surveillance video footage taken from the OPR investigative report:

The timestamp of this incident begins at 0250 hours from the City Hall viewpoint camera. The vehicle in which Ms. [REDACTED] and Mr. [REDACTED] were traveling, a large, red Chevy Tahoe can be observed operating on Dorrance St. toward Fulton St. and in the right hand travel lane. Mr. [REDACTED] does appear to be leaning heavily outside of the driver's side window . . .

As this vehicle leaves the camera view it is clear, based on continuous viewing by the OPR that the vehicle in question does at some point come to a stop without impediment and remains behind the Monument/RIPTA viewpoint starting at the time of 2:50:14.233. It remains unseen and behind the monument for a total of eight seconds and reappears at 2:50:22.900. This interval of time cannot be seen from the City Hall angle (opposite view) as the vehicle has driven out of the view of that camera. The vehicle can however be observed from the Fulton St. (toward Dorrance) camera angle which was also obtained by the OPR from City Hall. It is observed entering at 2:51:27. This angle only shows the vehicle from the passenger side however and once again lighting conditions, distance and quality deteriorate the angle. Also, due to this angle, the scene of the arrest location cannot be observed.

It should be noted that via the City Hall View, a [second] vehicle [] enters the footage just behind the red Tahoe as it leaves this view and [this vehicle, which] is also travelling in the right-hand lane, throws a projectile from the passenger side window and into the intersection of Dorrance St. and Fulton St.

This object cannot be identified but appears to be light in color and skips off of the pavement with some weight to it. The times stamp of this fact can be seen on the City Hall angle at 2:51:30 and 2:50:17:633 via the RIPTA view. During that view, the red Tahoe is present behind the monument and still at the arrest location.

Taken together, the four surveillance videos show the red SUV which Mr. [REDACTED] was operating southbound, in the right-hand lane of Dorrance Street. As the SUV passes City Hall, half of Mr. [REDACTED] body appears to be outside the driver's side window. Officers can be seen chasing a suspect and then arresting him as members of the SRU team formed a perimeter around them. There were many other pedestrians running across the Plaza and the surrounding streets, as well as many other vehicles around, including a white van/SUV in the left lane, and other sedans in front of and behind the

red SUV. As the red SUV stopped at the light of the Dorrance St./Fulton St. intersection, the white vehicle next to it was also stopped, and a patrol car crossed the intersection in front of them. The white vehicle then proceeded forward, and the red SUV loitered in the intersection, by itself, moving very slowly. As it was there, a bottle could be seen thrown from the dark sedan directly behind it towards the officers effecting the arrest in the Plaza, just as the dark sedan was approaching the intersection. The red SUV and the dark sedan behind it then proceeded down Dorrance Street. None of the videos depict Sgt. Comella discharging his weapon and it is impossible to ascertain Sgt. Comella's perspective from these videos.

3. Cellphone Video

OPR also obtained a copy of a cellphone video taken by Ms. [REDACTED] immediately before Mr. [REDACTED] was struck. The cellular telephone video is thirty-five seconds long, however the pertinent portion of the video is twenty-six seconds. After the twenty-six second mark the video, which was taken via the social media application Snapchat, cuts off and an advertisement runs for the duration of the clip.

Ms. [REDACTED] told investigators that she heard three shots fired followed by something striking Mr. [REDACTED]. She stated that when the round struck Mr. [REDACTED] it jolted his body toward her causing her to lose control of her cellular telephone, thereby ending the recording.

The video clip begins as Mr. [REDACTED] vehicle travels on Dorrance Street with City Hall on its passenger side, and the skating center to its left. At all relevant times the vehicle travels in the outside southbound lane. As the vehicle slowly moves towards the intersection of Dorrance and Washington Streets, the video focuses in on Providence Police officers pursuing a person across Kennedy Plaza, which is located on the driver's side of the vehicle. The chase ends with several officers subduing the suspect on the ground and effectuating an arrest. While this arrest is underway, there are other officers that appear to be acting in a sentry function watching the surrounding area.

From inside the vehicle, Mr. [REDACTED] can be heard yelling at the police officers from his driver side window. He yells "Why are you hitting him?!" and "Stop fucking hitting him!" towards the officers several times. Ms. [REDACTED] does not verbally engage with the police officers. Rather, Ms. [REDACTED] can be heard urging Mr. [REDACTED] to calm down and imploring him not to exit the vehicle. The video does not show whether Mr. [REDACTED] exits or is outside of the vehicle. The video shows the white vehicle in the driver's side mirror and it does not appear to show that vehicle passing the SUV. The video stops just as the SUV appears to enter the intersection. While the video does depict at least one of the officers looking directly at the vehicle, it does not show any officer aiming or discharging a weapon at the vehicle.

4. Rhode Island Hospital

Doctor [REDACTED] examined and treated Mr. [REDACTED] at Rhode Island Hospital Emergency Department immediately after the incident. He observed that Mr. [REDACTED]

suffered injuries to his left eye and face consistent with being struck by a less lethal round. Doctor [REDACTED] immediately referred Mr. [REDACTED] to an ophthalmologist for consultation and surgery. Doctor [REDACTED] performed surgery on Mr. [REDACTED], noting a ruptured left eye globe and left eyelid lacerations. Doctor [REDACTED] did not find any obvious foreign bodies in the wound. Neither the medical records, nor Dr. [REDACTED], noted eye or respiratory irritation or symptoms that are commonly reported in connection with deployment of OC (pepper spray) rounds.

5. Interviews of Providence Police Officers on Scene

Sergeants Mellor and Zienowicz identified and interviewed eight officers (not including Sgt. Comella) who were at Kennedy Plaza on the night of June 2, 2020. Most described a loud and chaotic scene with groups of people engaging in various acts of civil unrest and looting. It is clear from all the interviews, and public reporting of events that night displayed on television and elsewhere, that the officers faced a high-stress, volatile, and dangerous situation that evening that, for most if not all of them, was unprecedented.

(1) Lt. Barros was the commanding officer of the Special Response Unit (SRU) team that responded to the Mall and to Kennedy Plaza that night. Lt. Barros recalls that there was a suspect running from the Subway restaurant at the skating rink and he was unable to stop him. Lt. Barros indicated that the SRU team “organically” set up a parameter around the plaza area to provide security for the arresting officers. He confirmed that Sgt. Greeley and Sgt. Comella were both equipped with 40mm launchers of less-lethal munitions (LLM) at the time. Lt. Barros stated that he was positioned facing the skating rink as the arrest was happening. He stated that he did not see or hear the deployment of the 40mm launcher. Lt. Barros stated that he first learned of the deployment of the launcher when the SRU team returned to the station later that morning (he estimated 7 a.m.) and Sgt. Comella informed him that he learned that a subject was injured, possibly as a result of his deployment of the LLM. Lt. Barros instructed Sgt. Comella to report it to OPR (which he did). Lt. Barros also stated that he and the other members of the SRU were instructed to hold off on doing any use of force documentation at the time by Commander Verdi. Lt. Barros noted that members of the team had been up for 24-hours at that point and he wanted to release them to get some rest before returning for what they expected would be continued activity later in the day.

Lt. Barros stated that, under ordinary conditions, Sgt. Comella should have informed him right away following deployment of the launcher, so that a supervisor’s investigation could be initiated. Lt. Barros stated that he was not informed at the time, which he attributed this to the chaotic conditions that night, as well as the fact that, immediately following the Kennedy Plaza incident, the SRU split into smaller teams to respond to other areas around the city where continued looting and unrest was ongoing.

(2) Officer Greeley was the other member of the SRU team who was equipped with a 40mm less-lethal launcher. Officer Greeley stated that he, Officer Frank Moody and Sgt. Comella were the three members of the SRU team equipped with 40mm launchers of less-lethal munitions. Officer Greeley described the various types of

munitions that can be deployed from that launcher. Officer Greeley stated that the discharge of the launcher makes a loud "thump" noise. Officer Greeley stated that he was first deployed to the Providence Place Mall at around 1:15 a.m. He similarly described the chaotic scene at the Providence Mall area. He recalls deploying his launcher "several times" while in that area with OC munitions. He stated he was later instructed to respond to the area of City Hall by Lt. Barros which he did with other officers in the SWAT truck. He described the situation involving the looting at the Subway restaurant and observed several male suspects running from Subway. He also stated that there were multiple people (both pedestrians and motorists) milling about the Plaza, yelling at officers, honking horns, and throwing objects. Officer Greeley stated, "I can specifically remember brown glass crashing at our feet. The scene was incredibly chaotic." Officer Greeley stated that he recalls seeing people yelling from a silver sedan that was driving by and he believes that they threw an object in the direction of the officers. He did not recall seeing the red SUV.

Officer Greeley stated that he deployed one 40mm less lethal device, specifically an impact marking round, to identify a suspect in order to effect an arrest while he was at the Plaza. He believed that he struck the suspect with the marking round but was uncertain if that subject was later apprehended. Officer Greeley stated that this was the one and only occasion that he deployed his device in the Kennedy Plaza area.

Officer Greeley was asked if any other officers deployed a less lethal device in the Plaza area. He stated that he learned later that night that Sgt. Comella had deployed his launcher. Officer Greeley did not see or hear Sgt. Comella's deployment. Officer Greeley was asked why, given his proximity to Sgt. Comella, he did not hear the launcher deploy. Officer Greeley stated that the scene was similar to the Mall area in that it was loud and chaotic. He stated that he became aware that a subject was possibly injured by way of a less lethal round when he heard the broadcast over the radio and then speaking directly with Sgt. Comella while they were in the car together, a couple of hours after the incident. According to Officer Greeley, Sgt. Comella said he was concerned that the subject may have been injured by his round and that he deployed his launcher at a subject hanging out of a vehicle's window because he believed that the subject threw a glass bottle at the assembled officers.

(3) Patrol Officers Eric Cuellar, Daniel Carrigan, and Scott Keenan were also interviewed. All three reported a loud and chaotic scene at Kennedy Plaza during the arrest of the subject fleeing from the Subway. The officers recalled people yelling, car horns beeping and objects being thrown at the officers. Officer Keenan specifically recalled a brown glass object thrown from a passing vehicle in the Dorrance Street and Fulton Street intersection which then shattered. None of these officers reported seeing or hearing the deployment of a launcher by Sgt. Comella. They did not learn of its deployment until later in the day.

(4) Sgt. Brian Dyer described the Kennedy Plaza situation as "an open riot condition." While he could not recall observing any projectiles being thrown at police, he did recall people yelling at the police and it being tremendously noisy. Sgt. Dyer also

recalled a silver sedan with particularly unruly occupants. He stated that he went up to that vehicle, raised his baton to express the seriousness of his intentions, and directed the occupants to leave the area, which they did. On the RIPTA surveillance video, it appears that this sedan was travelling westbound on Fulton Street towards Dorrance Street, thus, on the other side of the monument from [REDACTED] vehicle. Sgt. Dyer stated that when he was walking back, he heard Sgt. Comella discharge his launcher and he saw Sgt. Comella eject a spent cartridge out of the launcher. Sgt. Dyer did not see Sgt. Comella fire the launcher, nor did he see where the discharged round went.

(5) Officers Criner and Breault were directly involved in the apprehension and arrest of the individual who was running from the Subway by the skating rink. Both officers stated that they were focused on effectuating the arrest and did not notice whether any objects were thrown at the officers. While both officers were generally aware of the noise and chaos around, they did not hear any particular shouts directed at them. Neither officer heard or saw the deployment of the 40mm launcher by Sgt. Comella and neither learned about the deployment at the scene.

6. Interviews of Sgt. Comella

Sgt. Comella is a fifteen-year veteran of the Providence Police Department and a nine-year member of the Department's SRU. He also has served within the Department's weapons bureau, which includes overseeing the Department's tactical training program. Sgt. Comella completed the required training for the operation and use of the 40mm launcher and less lethal munitions and the Department authorized him to carry and deploy them. The following information is based on Sgt. Comella's recorded statement to members of the Providence Police Department Professional Responsibility Unit dated June 5, 2020 and a proffer session (not recorded) on August 27, 2020.

During the early morning hours of June 2, 2020, Sgt. Comella reported for duty in response to civil unrest within the City of Providence. He retrieved a 40mm launcher and less lethal munitions from the police station and responded to the area of the Providence Place Mall. Sgt. Comella described the munitions available to him as follows: long-range CS gas munitions (Spede Heat) which are used to disperse a crowd; direct impact marker rounds which are used to mark a subject for arrest with a chalk-like substance, and direct impact OC rounds which he described as being used to stop a threat.

When at the Providence Place Mall, Sgt. Comella was confronted by the sight of a burning police cruiser and a crowd of people throwing objects, including bricks and cinderblocks, at his fellow officers. Sgt. Comella deployed several less lethal rounds while at that location, including the "Spede Heat CS" rounds and a sting ball grenade which was a hand-held device.

Once the crowd outside of the Providence Place Mall began to disperse, Sgt. Comella and other officers spread out to other areas, eventually being dispatched to Kennedy Plaza for a report of a break into the Subway restaurant. Along the way, Sgt.

Comella received reports that some rioters had been observed possessing and throwing mason jars filled with gasoline. Sgt. Comella reported that he pre-loaded his 40mm launcher while he was in the back of the SWAT truck heading towards the Plaza. He stated that he was "99.9% sure" that he loaded the launcher with a direct impact OC round, but that he "wouldn't bet his life on it."

As he arrived at Kennedy Plaza, Sgt. Comella observed people running out of the Subway restaurant. One individual ran across Kennedy Plaza, where he was tackled by police officers. After falling to the ground, the suspect continued to struggle with the arresting officers. Sgt. Comella then positioned himself to provide cover for the officers as they focused on securing the suspect. Sgt. Comella was next to the monument near the southwest corner of the Plaza, directly across from City Hall to the west and the Seven Eleven to the south.

While attempting to protect the other officers, Sgt. Comella heard people yelling and screaming at the officers. Sgt. Comella observed a glass bottle land and shatter in the immediate vicinity of Sgt. Comella and several other officers. In response, Sgt. Comella estimated the trajectory of the bottle as coming from the area between City Hall and the Seven Eleven on the intersection of Dorrance and Fulton Streets. Sgt. Comella observed a male subject either leaning out of the driver's window or with the driver door open aggressively screaming at police officers. Sgt. Comella described the vehicle as a dark SUV. Believing this person to be the source of the thrown bottle and perceiving this person to be a threat to the officers, Sgt. Comella aimed his launcher at or below the mid-chest area and fired a less lethal OC round at the vehicle. Sgt. Comella did not recall issuing a warning prior to firing the weapon. At that time, Sgt. Comella estimated that the vehicle was located approximately twenty yards away, and it was stopped at the intersection. Sgt. Comella stated he fired only one shot, and that he was "99.9% sure" that he used a direct impact OC round.¹ The suspect vehicle then fled the area at a high rate of speed, with Sgt. Comella unsure if the less lethal round struck anyone. At his proffer session, Sgt. Comella stated various times that at the time he fired the launcher, the SUV was the only vehicle at the intersection at the time, and it was stopped. (The Fulton St. surveillance video depicts the SUV alone in the intersection for at least a portion of the relevant timeframe).

Several hours later, Sgt. Comella heard dispatch over the radio state that Rhode Island Hospital reported that a male subject may have been struck in the eye by a less lethal round. The location of the incident was not reported. After Sgt. Comella returned to the Police Station, later that morning, he spoke with Detective Dave Harrington. Det. Harrington had responded to the Rhode Island Hospital and spoke with Ms. [REDACTED].

¹ It bears noting that neither Mr. [REDACTED] nor Ms. [REDACTED] reported experiencing any of the expected side-effects (e.g. eye irritation and respiratory distress) of being hit with a crushable soft-foam OC round of the type discharged by the Sgt. Comella. While there is little doubt that Mr. [REDACTED] was struck by a less lethal munition discharged by Sgt. Comella, the absence of these symptoms injects some doubt as to the type of munition used (or whether it functioned as intended), particularly as no physical evidence of the round was recovered. The medical records are also not instructive on this issue. This discrepancy does not alter our analysis of the incident.

Sgt. Comella learned from Det. Harrington that the injury occurred in the vicinity of Providence City Hall and was due to an LLM. Sgt. Comella then advised Captain Timothy O'Hara and Captain Roger Aspinall that the male subject may have been struck by Sgt. Comella's less lethal deployment. Sgt. Comella also reported the incident to Major Robert Lepre, the officer in charge of the Department's OPR.

Sgt. Comella explained that, due to the riot conditions throughout Providence that night, officers did not complete use of force reports immediately after they deployed the less lethal munitions, as they would under normal circumstances. He stated, "Under normal circumstances, the whole entire scene would be shut down. We'd be, we'd be calling the FIT team back, and everything would be done right then. These are unchartered territories where we are with the, with the civil disturbance."

7. Lieutenant David Bissonnette

Lieutenant David Bissonnette is a 21-year veteran of the Middletown Police Department, holding the rank of lieutenant for the last thirteen years. He also serves as the Department's Field Training Coordinator and Lead Use of Force Instructor. In addition to his duties with the Middletown Police Department, Lieutenant Bissonnette works as a Senior Master Instructor in use of force at the Rhode Island Municipal Police Academy. He has taught use of force and related subjects at the Academy since 2004.

Lieutenant Bissonnette reviewed all the witness statements, video footage and other evidence related to the June 2, 2002 incident. He also read and familiarized himself with the Providence Police Use of Force, Less Lethal Munitions and 40mm Launcher policies. Based upon that review and his expertise in the field of police use of force, Lieutenant Bissonnette concluded that Sgt. Comella's deployment of the 40mm launcher was objectively reasonable under the circumstances and, therefore, a justified use of force.

Specifically, Lieutenant Bissonnette found that Sgt. Comella perceived that Mr. [REDACTED] had thrown a glass projectile at him and other officers, thereby representing an active threat to the safety of the officers. While it appears that Sgt. Comella was ultimately mistaken in identifying Mr. [REDACTED] as the source of the thrown bottle, that was his belief at the time based upon the projectile's trajectory and Mr. [REDACTED] loud verbal comments directed at police.

Sgt. Comella had limited options available to mitigate the threat and protect his fellow officers. Because of the approximately twenty yards of distance between Sgt. Comella and Mr. [REDACTED], the use of chemical munitions was reasonable. Deadly force was obviously not authorized in these circumstances, and Sgt. Comella was too far from the source of the threat to use any other techniques. Sgt. Comella decided to deploy a chemical munition, in this case a less lethal direct impact OC round, with his launcher. Considering all the circumstances, Lieutenant Bissonnette determined that Sgt. Comella acted reasonably and in compliance with the relevant Providence Police Department policies.

8. Providence Police Department Policies

The Providence Police Department's Use of Force policy (300.01) lists less lethal munitions (LLMs) as one of the force options available to officers, categorizing it as a serious use of force. Less lethal force should only be used when objectively reasonable and an officer should employ the minimum amount of force needed to accomplish lawful objectives. Lawful objectives include protecting the officer or others from physical harm and to resolve an unlawful situation safely and effectively.

Under the Department Less Lethal Munitions policy (310.05), only officers who are specifically trained in the use of LLMs and have been specifically authorized by the Department may use LLMs in the line of duty. The governing policy at that time set forth the following authorized LLMs: 1) The DefTec® Model #1425 40mm munitions launcher; 2) Direct Impact® 40mm Marking Crushable Foam Round; 3) Direct Impact® LE 40 mm Extended Range OC Crushable Foam Round; and 4) Stinger® 40mm 60-Caliber Rubber Balls Round.²

The Department's LLM policy authorizes the use of the launcher and munitions to assist officers in bringing certain incidents under control while protecting the safety of the officers or others. A properly trained and approved officer may discharge a less lethal munition to prevent an individual from harming others when the use of deadly force is not authorized. An officer may also use a less lethal munition if a subject is actively resisting or exhibiting aggression and attempts to subdue the subject using lesser force options will likely be ineffective. The policy prohibits discharge of LLMs at an operator of a moving vehicle unless exigent circumstances exist. See Providence Police Policy 310.05.

The Less Lethal Munitions and 40mm Launcher policy requires, when tactically feasible, the officer to notify the dispatcher that a less lethal munition discharge is imminent, with the dispatcher then rebroadcasting that information to all other officers. The officer should also issue a warning to the targeted subject prior to discharging the launcher unless doing so would place anybody at risk. Finally, the policy requires officers to report the use of LLM and prescribes the use of force review that must follow.

Importantly for our evaluation of this incident, the policy does not appear to contemplate situations of large scale civil unrest and does not specifically address the use of LLMs to control riot conditions. Indeed, the circumstances facing law

² The 40mm Direct Impact® munition is a point-of-aim, point-of-impact direct-fire round. According to the manufacturer, it has an effective range of 5-120 feet. It is a lightweight, high-speed projectile that consists of a plastic body and crushable foam nose. The round contains OC gas which is Oleoresin Capsicum, or pepper spray. These rounds are most often used to temporarily incapacitate an aggressive, non-compliant subject at longer distances, without causing permanent damage. Similar rounds can also contain CS powder which is Chlorobenzylidene malonitrile, or tear gas, as well as marking powder which is used to spread whitish chalk-like powder to mark a subject for arrest. The Stinger® rounds are rubber ball rounds that are often used for crowd-control.

enforcement that night were unprecedented, at least for anyone presently on the Providence Police Department.

LEGAL ANALYSIS

A. Applicable Law

When considering a police officer's actions which involve the use of force in their capacity as a peace officer a two-part analysis is required. First, it must be determined if the officer's use of force in arresting or detaining the suspect was necessary and reasonable. If an officer's conduct is found to be necessary and reasonable, then the inquiry ends, and no criminal charges will stem from the incident. If, however, it is determined that the use of force was not necessary and not reasonable then an inquiry must be made as to whether the use of force meets the elements of the applicable criminal statute, in this case Felony Assault, R.I. Gen. Laws § 11-5-2.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." A "seizure" of a "person," can take the form of "physical force" or a "show of authority" that "in some way restrain[s] the liberty" of the person. Terry v. Ohio, 392 U.S. 1, 19, n. 16, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968). An arrest or seizure of a person carries with it the right of police officers to use some degree of force. Graham v. Connor, 490 U.S. 386, 396 (1989). "All claims that law enforcement officers have used excessive force – deadly or not – in the course of an arrest ... or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard...." Graham, 490 U.S. at 395; Tennessee v. Garner, 471 U.S. 1 (1985).

The Fourth Amendment instructs that the *degree* of force law enforcement officers are permitted to use must be "objectively reasonable" under the totality of circumstances. Garner, 471 U.S. at 8-9. Relevant facts include "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting or attempting to evade arrest by flight." Graham, 490 U.S. at 396. The reasonableness of an officer's use of force "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Graham, 480 U.S. at 396. The Supreme Court has held that the determination of reasonableness must allow "for the fact that police officers are often forced to make split-second judgements – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." Graham, 490 U.S. at 396-97. Critically, the reasonableness inquiry is an objective, not a subjective, one. The "question is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." Id. (emphasis added). The Supreme Court could not have made this clearer: "An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional." Id. at 397. In other words, in an excessive force case, for purposes of the first part of the test, it does not matter what is in the particular officer's mind at the

time of the use of force. What matters is what the reasonable officer would have done if faced with the situation at hand. Rhode Island law must be applied in light of these constitutional principles.

If the facts and circumstances support a finding that the officer's use of force was objectively reasonable and necessary, the inquiry ends there. If, however, the force used was objectively *unreasonable*, prosecutors must also analyze whether the officer met all the elements of the applicable criminal offense. This includes evidence that the officer acted with the requisite *mens rea*, or criminal intent, required to prove a specific criminal offense.

As stated above, the potential criminal charge in these circumstances would be felony assault.³ An assault is an "unlawful attempt or offer, with force or violence, to do a corporal hurt to another, whether from malice or wantonness." State v. Lomba, 37 A.3d 615, 620 (R.I. 2012) (quoting State v. Pope, 414 A.2d 781, 788 (R.I. 1980)). In the context of this charge, malice means "wrongful intention," "[t]he intent, without justification or excuse, to commit a wrongful act," or "ill will or wickedness of the heart." Lomba, 37 A.3d at 620 (internal quotations omitted). Wanton means "[u]nreasonably or maliciously risking harm while being utterly indifferent to the consequences." Manning v. Bellafiore, 139 A.3d 505, 525 (R.I. 2016) (quoting Black's Law Dictionary 1815 (10th ed. 2014)). Of relevance to this case is the principle that a valid claim of self-defense or defense of others would negate the required criminal intent. Under Rhode Island law, individuals who believe they are in "imminent peril of bodily harm can use such nondeadly force as is reasonably necessary in the circumstances to protect themselves." State v. Martinez, 652 A.2d 958, 961 (R.I.1995).

B. Analysis

The reasonableness of Sgt. Comella's actions must be judged by an objective standard in light of the circumstances confronting him at that moment, and not with the benefit of 20/20 hindsight. Sgt. Comella described a chaotic situation which he believed presented an immediate threat to the safety of his fellow officers, and the evidence bears that out. Specifically, Sgt. Comella observed at least one glass bottle being thrown in the direction of police officers, which is corroborated by other officers and by one of the surveillance videos. In response to that threat, he decided to deploy a less lethal munition that he reasonably believed would address the threat with little or no danger of inflicting permanent harm to the person he believed to be the source of that threat.

Sgt. Comella's perception of that threat must be evaluated in light of the unprecedented circumstances of that night: there was wide-spread rioting throughout the downtown area with numerous people engaging in dangerous and violent behavior which necessitated multiple deployments by numerous police officers of less-lethal munitions. Sgt. Comella had previously observed dangerous objects being hurled at

³ A felony assault is either an assault committed with a dangerous weapon or an assault resulting in serious bodily injury. There is no question that Mr. ██████ sustained serious bodily injury and that the weapon used could be considered a dangerous weapon. Thus, for purposes of this analysis, we focus on the assault element only.

officers and was reasonably concerned about that possibility in Kennedy Plaza. Indeed, the other officers interviewed likewise described the chaotic and dangerous events of that evening, and Sgt. Greeley also stated he deployed his LLMs on a number of occasions. It is notable that Officer Greeley also noted that subjects were throwing glass bottles at the officers while they were at Kennedy Plaza and that Officer Greeley also deployed a less-lethal munition (a marker round) while at the Plaza.

The videos we reviewed confirm that at least one object was thrown at the group of officers congregating at the southwest corner of the Plaza while they were attempting to take someone into custody.

In evaluating the reasonableness of Sgt. Comella's use of force, we also considered whether it complied with Providence Police policies. Providence Police Less Lethal Munition policy clearly authorizes the use of LLMs to protect the safety of officers from physical harm where lethal force is not permitted and where other less serious options may not be available. Given the distance between Sgt. Comella and the source of the thrown bottle, as well as the fact that there was motor vehicle traffic in the street, and there was a lot of surrounding noise (making verbal commands less effective), it appears that Sgt. Comella's options were limited. This was also the conclusion of the use of force expert who reviewed this incident. Sgt. Comella reported that Mr. [REDACTED] vehicle was stopped at the time he discharged the LLM, consistent with the policy. Mr. [REDACTED] account agrees with that assertion and it is also consistent with the video footage (though that is not conclusive either way). Sgt. Comella reported that he aimed below Mr. [REDACTED] chest, consistent with his training and policy. Although Mr. [REDACTED] denies sticking his body outside the window, the video footage shows most of Mr. [REDACTED] head and upper torso outside the driver's side window as the vehicle approached the intersection. The fact that Mr. [REDACTED] was struck in the eye could be attributed to any number of factors and does not, in itself, negate Sgt. Comella's account as to his aim.⁴

Finally, it is true that Sgt. Comella's deployment of LLMs did not strictly comply with certain provisions of the policy in that he did not first issue a verbal warning and did not report his use of force to dispatch or to his commanding officer as quickly as the policy requires.⁵ But, as noted, this was not a typical situation, given the rioting and violence occurring throughout Providence that night, and the ongoing and repeated threats to officer safety. It does not appear that the policy contemplated these conditions, nor does it appear that any other deployments of LLMs that night complied with these requirements.

⁴ Some possibilities include movement by Mr. [REDACTED] just as the LLM was deployed, bad aim, or the round could have bounced off the vehicle door.

⁵ Of course, in the context of a use of force investigation delayed reporting is problematic, as it undermines efforts to secure and preserve the scene for evidence collection and processing. However, we recognize that given the volatile and unprecedented circumstances of that night, the deployment of officers throughout the city, and multiple uses of less lethal munitions throughout the night that did not result in contemporaneous reporting, it is highly doubtful that the scene would have been able to be preserved or secured, and that civilian witnesses would be identified, even if the reporting had been timely.

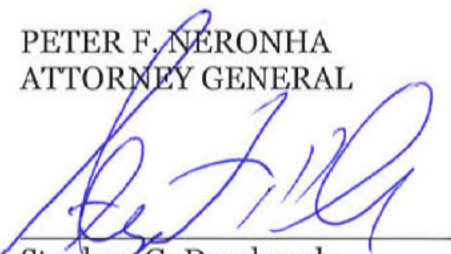
The unprecedented chaos and violence on the night in question is critical to evaluating the situation facing Sgt. Comella and other officers that night. Based on the evidence available to us, we conclude that Sgt. Comella's conduct in discharging the less lethal round was reasonable. Statements provided by several other Providence Police officers, and the available video footage, corroborate the conditions Sgt. Comella cites as significant factors in his decision-making process, including his concern for the safety of the arresting officer in light of the aggressive behavior of the passing pedestrians and motorists and the fact that at least one glass object was thrown at them. Given his perception of the threat, as well as the fact that he used a less lethal round which, in his training and experience, was not likely to inflict serious bodily injury, we cannot conclude that his actions were not objectively reasonable at the time.

Even if we found that Sgt. Comella's use of force was not objectively reasonable, which we do not, the available evidence fails to establish that he acted with malice or wantonness. Rather, it supports the conclusion that he discharged the less lethal munition to remediate or eliminate a perceived threat to himself and his fellow officers, not with any malicious intent to harm Mr. [REDACTED] or anyone else.

CONCLUSION

It is extremely unfortunate that Mr. [REDACTED] suffered significant and lasting injury on June 2, 2020. That night was one of unprecedented violence in the City of Providence. At least one vehicle was set on fire. Rioting and looting occurred throughout the city. The lives of law enforcement and the public in general were at risk, in a way never before seen, at least in living memory. Sergeant Comella's actions must be evaluated in this context. Based on the facts of the investigation, and the relevant body of law, we conclude that the evidence does not support a finding that Sgt. Comella's actions were objectively unreasonable or violated Rhode Island criminal law.

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