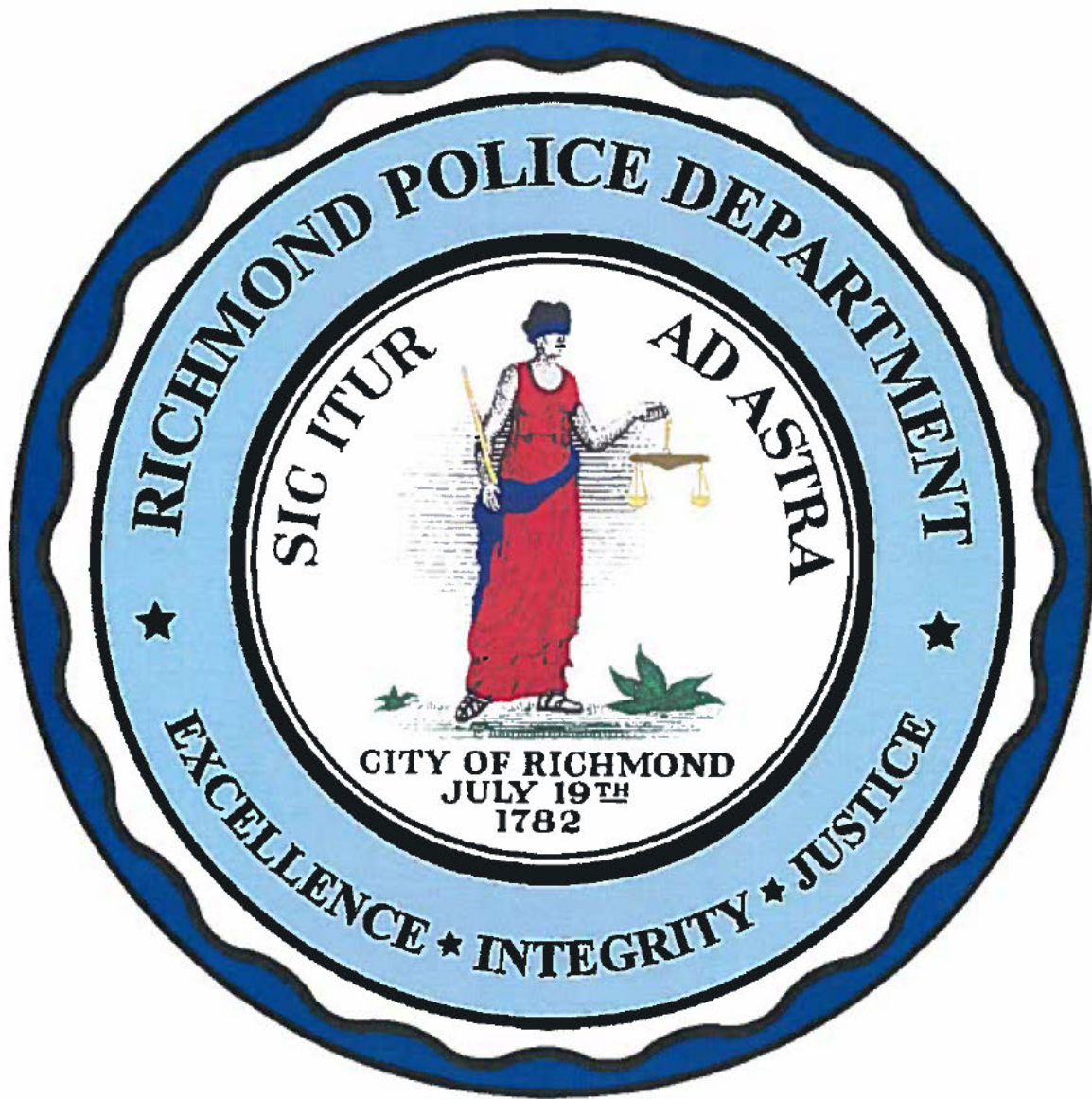


INTERNAL AFFAIRS DIVISION



I.A.D. 2020-0038

REVIEWER COMMENTS AND TRACKING

REVIEWER NAME: Chief Gerald Smith

DATE RECEIVED: 12/9/2021

I ☒ **CONCUR** ☐ **DO NOT CONCUR** with the Investigator's recommendation.

REVIEWER'S RECOMMENDATION:

- ☐ **Substantiated** – The allegation is true.
- ☐ **Unfounded** – The allegation is false.
- ☐ **Exonerated** – The incident occurred, but the employee acted lawfully and properly.
- ☒ **Exonerated, other violations noted** – Employee exonerated of the initial charge, but violation not alleged in the complaint is disclosed during the investigative process.
- ☐ **Not Substantiated** – Evidence is not sufficient to prove or disprove the allegation.
- ☐ **Secondary Violation Substantiated** – Substantiated violation not alleged in the complaint, but disclosed during the investigative process.

☒ **See attached or COMMENT below:**

The violations wedged against Officers Cleophas Williams, Officer Nicolas Ceasar, and Officer Seth Layton are exonerated. Their imperfect actions are not completely absolved by the stressful situation they faced for other officers in the same or similar situation did not respond in the same manner. One compelling point in favor of exoneration is the fact that the officers were not trained consistently.


SIGNATURE

12/10/2021
DATE

Victoria D. Pearson - *sum*
DELIVERED TO

12/16/21
DATE

IAD Control #

REVIEWER COMMENTS AND TRACKING

REVIEWER NAME: Victoria Pearson

DATE RECEIVED: _____

I ☒ **CONCUR** ☐ **DO NOT CONCUR** with the Investigator's recommendation.

REVIEWER'S RECOMMENDATION:

- ☐ **Substantiated** – The allegation is true.
- ☐ **Unfounded** – The allegation is false.
- ☐ **Exonerated** – The incident occurred, but the employee acted lawfully and properly.
- ☒ **Exonerated, other violations noted** – Employee exonerated of the initial charge, but violation not alleged in the complaint is disclosed during the investigative process.
- ☐ **Not Substantiated** – Evidence is not sufficient to prove or disprove the allegation.
- ☐ **Secondary Violation Substantiated** – Substantiated violation not alleged in the complaint, but disclosed during the investigative process.

☒ **See attached or COMMENT below:**

I concur with the recommendations made by IAD Detective Kirby: EXONERATED WITH OTHER VIOLATIONS NOTED -

- 1) Cleophas Williams - violation of G.O. 1-1 Code of Conduct, Paragraph 38 Use of Force cross reference G.O. 1-8 O.C. Spray & Fogger
- 2) Nicolas Ceasar - violations of a) G.O. 1-1 Code of Conduct, Paragraph 38 Use of Force cross reference G.O. 1-8 O.C. Spray & Fogger; and b) G.O. Code of Conduct, Paragraph 5 Conduct Unbecoming.
- 3) Seth Layton (No longer w/ RPD) - G.O. 1-1 Code of Conduct, Paragraph 38 Use of Force cross reference G.O. 1-8 O.C. Spray & Fogger

I also concur with Lt. Angie Smith's comments re: context for that evening and on-going circumstances officers were facing on a daily basis in addition to the COVID-19 pandemic.

Lastly, I also note as stated by Captain Hudson, while the officers (Williams and Ceasar) had received training on the foggers in 2017 during Use of Force annual training, they had not received any refresher training and their prior certifications would have expired in 2019. Notwithstanding, they had also both signed for having read G.O. 1-8, O.C. Spray and Foggers.



SIGNATURE

12/9/2021

DATE

Chief Gerald Smith

DELIVERED TO

12/9/2021

DATE

REVIEWER COMMENTS AND TRACKING

REVIEWER NAME: Captain Jason Hudson

DATE RECEIVED: 11/19/2020

I ☒ **CONCUR** ☐ **DO NOT CONCUR** with the Investigator's recommendation.

REVIEWER'S RECOMMENDATION:

- ☐ **Substantiated** – The allegation is true.
- ☐ **Unfounded** – The allegation is false.
- ☐ **Exonerated** – The incident occurred, but the employee acted lawfully and properly.
- ☒ **Exonerated, other violations noted** – Employee exonerated of the initial charge, but violation not alleged in the complaint is disclosed during the investigative process.
- ☐ **Not Substantiated** – Evidence is not sufficient to prove or disprove the allegation.
- ☐ **Secondary Violation Substantiated** – Substantiated violation not alleged in the complaint, but disclosed during the investigative process.

☒ **See attached or COMMENT below:**

I concur with the recommendations by Detective Kirby of Exonerated, with other violations noted for Officers Cleophas Williams, Nicholas Caesar (x2) and Seth Layton for the reasons listed in the Investigative Report.

On the night in question, there were factors that certainly should be taken into consideration in reference to the fogger deployment -

1. The involved officers were working a third straight night of protests/riots in which there were large protests, marches, and assaults on officers.
2. Due to the conditions noted above, foggers were handed out to personnel that potentially obtained little or no refresher training on the OC Fogger. When in extreme situations, and in the absence of repeated training, officers refer back to "muscle memory" and past practice (with personal OC spray).

I believe that those factors noted above for Officers Williams, Caesar and Layton, and the totality of the circumstances surrounding events of the night, should be taken into consideration.


SIGNATURE

11/19/2020
DATE


DELIVERED TO

11-20-2020
DATE

REVIEWER COMMENTS AND TRACKING

REVIEWER NAME: Angela M. Smith **Date Received** 11/19/2020

I ☒ (X) **CONCUR** ☐ () **DO NOT CONCUR** with Investigators recommendation.

REVIEWERS RECOMMENDATION:

- ☐ () **Substantiated** - The allegation is true.
- ☐ () **Unfounded** - The allegation is false.
- ☐ () **Exonerated** - The incident occurred, but the employee acted lawfully and properly.
- ☒ (X) **Exonerated, other violations noted** – Employee exonerated of the initial charge, but violation not alleged in the complaint, but disclosed during the investigative process.
- ☐ () **Not Substantiated** - Evidence is not sufficient to prove or disprove the allegation.
- ☐ () **Secondary Violation Substantiated** - Substantiated violation not alleged in the complaint, but disclosed during the investigative process.

☒ (x) See attached or COMMENT below:

I concur with the finding of **Exonerated, with other violations noted** for Officer Cleophas Williams, Officer Nicholas Caesar, and Officer Seth Layton.

It should be taken into account that the officers who worked during this period of civil unrest faced many challenges to include: unruly crowds, armed individuals, objects being thrown at them, fatigue from working continuous nights of protests, and lack of resources and equipment. However, in reviewing the facts associated with this investigation, "extreme circumstances" or justification for Officers Williams, Caesar, and Layton to deploy the O.C. Fogger directly in the face of the citizens they encountered was not established per General Order 1-8.

As revealed in this investigation, all three officers acknowledged/signed General Order 1-8. Officers Williams and Caesar were also trained in the proper use of the O.C. Fogger.

Angela M. Smith
Signature

11/19/2020
Date

GIVEN TO: Captain Jason Hudson

DATE: 11/19/2020

REVIEWER COMMENTS AND TRACKING

REVIEWER NAME: Claude Picard

Date Received 11-18-2020

I ☒ **CONCUR** () **DO NOT CONCUR** with Investigators recommendation.

REVIEWERS RECOMMENDATION:

- () **Substantiated** - The allegation is true.
- () **Unfounded** - The allegation is false.
- () **Exonerated** - The incident occurred, but the employee acted lawfully and properly.
- ☒ **Exonerated, other violations noted** - Employee exonerated of the initial charge, but violation not alleged in the complaint, but disclosed during the investigative process.
- () **Not Substantiated** - Evidence is not sufficient to prove or disprove the allegation.
- () **Secondary Violation Substantiated** - Substantiated violation not alleged in the complaint, but disclosed during the investigative process.

() See attached or COMMENT below:

Sgt. Claude Picard
Signature

11-18-2020
Date

GIVEN TO: Lt. Angela Smith

DATE: 11-18-2020



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INTERNAL AFFAIRS DIVISION

INTERNAL AFFAIRS FINAL INVESTIGATIVE REPORT

DATE: November 17, 2020

TO: Chief Gerald M. Smith
Chief of Police

THRU: Deputy Director Victoria Pearson *V. Pearson*
Captain Jason B. Hudson
Lieutenant Angela M. Smith *Angela M. Smith, 2054*
Sergeant Claude M. Picard *C. Picard, #3052*

FROM: Detective Michael A. Kirby
Internal Affairs Division (IAD) *M. Kirby 3256*

IAD NUMBER: 2020-0038

IBR NUMBER: N/A

TYPE OF INCIDENT: Excessive Force

POLICE EMPLOYEE(S) INVOLVED: Officer Cleophas Williams, Code 3936, Second Precinct, FMT, Tactical; Officer Nicholas Caesar, Code 3571, Second Precinct, FMT, Tactical; Officer Seth Layton, Code 4108, Second Precinct, FMT, Tactical (Separated 09/22/20)

INCIDENT DATE: 05/31/2020

INCIDENT TIME: 2112 hours

INCIDENT LOCATION: 1000 block E Marshall Street

SYNOPSIS OF INCIDENT:

On 05/31/20 at 2127 hours, IAD Detective Michael Kirby was working as the assigned IAD investigator for the on-going protests in Richmond. Kirby received a phone call from Major Roger Russell and was asked to report to the operation center at 2nd Precinct. Kirby spoke with Media Relation Supervisor Gene Lepley. Lepley showed Kirby a tweet that



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was posted at 2118 hours by Roberto Roldan. Roldan, who is a local news reporter, wrote that he was pepper sprayed and pushed down on the ground by an officer with the number "3397" on his helmet.

Code # 3397 is Sergeant Anthony Catoggio. Kirby notified IAD Lieutenant John Beazley of the complaint and it was assigned to Kirby to investigate. Kirby interviewed Roldan and reviewed all Body Worn Camera (BWC) footage of the incident. Roldan said that both himself and his photographer, Crixell Matthews, were wearing "high visibility vests" and had their issued press passes visible when he was sprayed and pushed to the ground. BWC footage shows that Roldan was near a group of people that was trying to run from the police in the area of N. 10th Street / E. Marshall Street. Officer Cleophas Williams sprayed a fogger toward a group that's running west on E. Marshall Street toward N. 11th Street. Some of the group turns around and runs east on E. Marshall Street. Williams sprayed his fogger again toward the people that turned around. This spray of the fogger gets onto Roldan.

Roldan calls Williams a "fucking dickhead." Williams then sprayed the fogger toward Roldan's head. Roldan takes a step to the right and says "fuck you." As Roldan is saying "fuck you" two things happen simultaneously. Williams sprays his fogger in the direction of Matthews and Catoggio runs into Roldan. After reviewing multiple angles of the collision, it was clear that the collision was accidental.

Catoggio is running in a full sprint going east on the sidewalk. As Williams sprays his fogger at Roldan, Roldan steps into the path of Catoggio. Almost immediately after Roldan steps away from the fogger spray the collision occurs. This entire incident happened very fast. It only took 3 seconds from the first time Roldan is sprayed to the time the contact happened with Catoggio.

While searching BWC footage for this incident, it was discovered that Shannon Theresa Kelly-Christley was sprayed multiple times in the face with foggers prior to her arrest. Kelly-Christley was running with the group that Williams initially sprayed. When some of the group turned around and ran back east on E. Marshall Street, Kelly-Christley stops running and stands (or possibly slowly walks) against the wall of a building. Officer Nicholas Caesar runs past and sprays her in the face with a fogger while repeatedly saying "everybody gets some." Immediately after Caesar stops spraying and runs past Kelly-Christley, Officer Seth Layton runs past Kelly-Christley and sprays her in the face with the fogger. Caesar and Layton then continue to run east on E. Marshall Street behind Catoggio.

This incident involving Kelly-Christley also happened very quickly. Beginning with the first time Kelly-Christley is sprayed by Williams, then Caesar and finally Layton, only 5 seconds



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elapses. Officer Zachary Seldes then orders Kelly-Christley on the ground 8 seconds after she is sprayed by Layton. She is then placed into handcuffs and arrested.

This entire event, from the time Williams sprays the group that is running on the sidewalk to the time Kelly-Christley is ordered to the ground, including the spraying and collision with Roldan, occurs in 13 seconds.

This incident was referred to the Commonwealth Attorney's (C/A) office for review. The C/A determined that indictments for simple assault would be presented to the grand jury for Layton and Caesar. The C/A declined to pursue charges against Williams. On 10/05/20, the case against Layton and Caesar was presented to the Grand Jury. The Grand Jury declined to proceed with charging the officers and voted for a "no true bill."

Administrative interviews were conducted with Caesar and Williams on 10/28/20. Both Williams and Caesar stated that they deployed foggers because the crowd was being hostile and violent by cursing and throwing objects at the police. They were sent into the crowds to make arrests for curfew. They both believed that people in the crowd were to close for the safety of themselves or other officers, so they deployed their foggers in a way that used the least amount of force possible to make an arrest. Both officers were worried about going directly hands on with the offenders because they had seen officers get swarmed by the crowd when they were trying to make arrests without fogger spray being present. They also did not know which suspect was throwing the objects at the police or what they may have been armed with. Therefore, it was safest for everybody to deploy the foggers and keep people at a distance.

Both officers stated that they deployed the fogger into the face of people because they were not trained on the equipment. Because of their lack of training they assumed the fogger was to be treated like a big can of individual O.C. spray.

Kirby reviewed BWC footage from before the incident and was able to confirm that the crowd did throw objects at officers while they were marching through the area. This included water bottles containing unknown liquids, fireworks and other hard objects that could injure officers or civilians. Most of this activity by the crowd occurred at N. 6th Street and E. Marshall Street.

COMPLAINANT:

Name:
Personal:
Home:

Roberto Roldan
White Male





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Phone: [REDACTED]
Statement Provided: Interviewed

Name: Shannon Theresa Kelly-Christley
Personal: White Female
Home: [REDACTED]
Phone: Not Provided
Statement Provided: Interviewed

COMPLAINANT STATEMENT:

Roberto Roldan Interview

On 06/11/20 at 0930 hours, Kirby met with Roberto Roldan in his work conference room. Roldan's attorney (Craig Merrit) and his boss (Bill Miller) were also in the meeting.

Roldan stated that he got to the Lee Monument around 1830 hours and he followed the crowd of 300-500 people towards the Capitol. The crowd took a round-about route, cutting from E. Franklin Street to N. 2nd Street, to E. Broad Street and then south on N. 6th Street. This route appeared to happen because the crowd was trying to avoid police SUV's in the area.

They eventually got to the area of N. 7th Street / E. Franklin Street and went toward the Capitol. Roldan stated that he never heard any officer make an announcement like "curfew has now started." Roldan first noticed that police deployed some type of chemicals in the area of the Children's Hospital on Broad Street near the Pulse bus stop. The crowd continued east on E. Broad Street as the first tear gas canisters were deployed. As he was speaking with his photographer trying to figure out where to go, another reporter approached and said he was pepper sprayed. Roldan assisted him in trying to flush out his eyes.

After that reporter left the area, Roldan began to notice the tear gas was affecting him and his photographer. They continue to walk east on Broad Street and turned left onto College Street where the road bends into E. Marshall Street. A group of "volunteer medics" with the protest helped flush out their eyes. Once they felt somewhat better they continued west on Marshall Street.

At that point Roldan noticed a line of police were set up around N. 9th or N. 10th Street / E. Broad Street. Roldan said by the time he got to this area on E. Marshall Street most of the crowd had dispersed. Roldan and his photographer decided to approach the police line



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to identify themselves as media and to get to the other side of the police so they were not "trapped" with the protesters.

As Roldan approached the line he held out his "state issued ID" (for the press). Roldan also said that he was wearing a "high visibility vest." He wanted it known that he was not trying to blend in with the crowd. As he got to the police line, Roldan lifted his badge and stated "I'm with the press" so that he could both "physically and verbally identify himself." He stated everything happened quickly and he did not have much time to say anything other than "I'm with the press" before the pepper spray "was let out." Roldan cannot identify the specific officer who sprayed him.

Kirby asked if he believed the officer was spraying at him or other people in the area. Roldan stated, "I was facing the police line, but do not recall a large amount of protesters near us." He explained that to his left, somebody was "on the ground." Roldan continued and stated, "As we approach the police line, I hold up my press pass and say 'I'm with the press' and almost immediately someone releases pepper spray at us. I am wearing goggles at this point, so I don't get it directly in my eyes, but my face is on fire. I have a long sleeve shirt, but the top of my hands are on fire. I sort of keel over where I am. I don't approach the police line. The photographer is sort of there, saying 'hey, are you okay?'"

Roldan stated he was approximately 8 feet away from the officer when he was sprayed. Roldan then said that almost immediately after he stopped walking toward the police and was sprayed an officer "comes trucking down from the direction of the police line. At that point, he hits me hard and I fall backwards."

Kirby asked Roldan to explain how the contact occurred. Roldan described it as "he hits me on his right shoulder. It looked to be an elbow or a shoulder tackle." After Roldan is ran into, he falls off the sidewalk and is "kind of in shock about what the hell is going on." When he stands up they approach the police line and identify themselves. They do not have any issues getting across the street through the police line the second time.

Roldan stated that he was positive that he identified himself as the press before he was sprayed by the officer. He did not receive any instructions on where to be or what was expected of him by any of the officers. Roldan stated that he did not ask for any medical treatment, nor did any officer offer an apology or medical attention.

Roldan stated he was able to see the number on the back of the helmet after the incident happened because the officer was "very tall. Very tall shouldered." Roldan reiterated that the officer stuck out from all the others and was very identifiable because of his size. He stated that when he saw the officer again he yelled to get a name and badge number, but



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did not get any response or acknowledgment. That was when he saw the number on the back of the helmet.

Roldan identified both himself and his photographer from a BWC camera screenshot. Roldan was wearing the yellow traffic vest and his photographer was wearing the orange traffic vest.

At the conclusion of the meeting, Merritt asked that all contact with Roldan be through him and his office. His information is:

Craig Merritt
909 E. Main Street, Suite 1200
804-697-4128
cmerritt@cblaw.com

Shannon Kelly-Christley Interview

On 08/07/20 at 1300 hours, Kirby met Kelly-Christley at her attorney's office (Courtney Winston) for an interview. She confirmed that she was the person who was sprayed by Layton, Caesar and Williams by the building wall. She stated that her night started at the Lee Monument. The group there eventually began to march toward downtown and she was near the back of the crowd.

At some point during the march the police started throwing pepper spray and gas "for no reason." Kelly-Christley did not hear police making any announcements to disperse, nor did she see the crowd throw anything at the police. She began to run from the gas and around a few different roads. Eventually she ran into a cloud of gas and stopped running.

As soon as she stopped she was sprayed two more times in the head/neck/face area of her body. She was then yelled at and she eventually laid down on the ground. Once handcuffed she was passed off to a female officer, led to a van and taken to jail. She stated she was held for over 5 hours and not offered any medical attention.

Kelly-Christley described her injuries as a bruise on her arm, bruising on both knees and her face and her hands burned for 3 or 4 days. She did not know any of the officers involved in her incident and cannot identify them. She asked that any contact with her be through her attorney, who is:

Courtney Winston
1506 Staples Mill Road, Suite 101
804-250-5050



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cw@cpenlaw.com

INVOLVED OFFICER(S):

Name:	Cleophas Williams	Code #3936
Personal:	Black Male	[REDACTED] - 32 YO
Duty & Uniform Status:	On- Duty, In-Uniform	
Statement Provided:	Interview	
Assignment:	2 nd Precinct – FMT Tactical Unit	
Appointed to RPD:	08/11/2014	
Current Status:	Active	

Name:	Nicholas Caesar	Code #3571
Personal:	Black Male	[REDACTED] - 38 YO
Duty & Uniform Status:	On- Duty, In-Uniform	
Statement Provided:	Interview	
Assignment:	2 nd Precinct – FMT Tactical Unit	
Appointed to RPD:	08/04/2008	
Current Status:	Active	

Name:	Seth Layton	Code #4108
Personal:	White Male	[REDACTED] - 24 YO
Duty & Uniform Status:	On- Duty, In-Uniform	
Statement Provided:	Interview	
Assignment:	2 nd Precinct – FMT Tactical Unit	
Appointed to RPD:	06/05/2017	
Current Status:	Resigned 09/22/20	

INVOLVED OFFICER STATEMENT(S):

Cleophas Williams Interview

On 07/09/20 at 1716 hours, Williams reported to IAD for a criminal interview. The PD-2A (Notice to Employee of Investigation) and a PD-75 (Rights Waiver Form) was read to him. He signed the forms but did not want to make a statement.

On 10/28/20 at 1559 hours, Williams reported to IAD for his administrative interview. Williams was shown the PD-2A (Notice to Employee of Investigation) that he previously



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INTERNAL AFFAIRS DIVISION

signed to remind him of the basis for the investigation. A PD-22A (Administrative Proceeding Rights) was read and signed by Williams.

Williams stated that he started his shift on 05/31/20 at a mass briefing. He did not remember any specific instructions or orders that were given. He recalled at some point prior to the decision to address the crowd, he was told that the plan for the curfew enforcement was to "give these people verbal commands, multiple verbal commands. We are going to use the loud speakers and tell them curfew is in effect. You are to get off the streets. Vacate the streets. We are going to give them ample time to do so. And those that don't are going to be arrested for violating the Governors order." Williams did not recall any specific instructions on the plan to actually arrest people.

Williams' assignment for 05/31/20 was "strike team." Williams described a strike team as a response unit to any location there were issues that needed a police response. Williams stated that he arrived in the area of this incident because orders for "everybody working the protest" to respond were given. These orders were given because of the "giant throng of people. They had been given orders multiple times as I said, starting at 8 o'clock, to vacate the streets. If they did not they would be arrested. They were still being given commands, I believe maybe five or ten minutes before this incident all happened and they decided to stay in-mass. We were told we were going to start making arrests."

He could not recall where he first encountered the crowd. He remembered they were at the Lee Monument and marched on Broad Street. At some point during the march his team began to follow the crowd. Williams described the crowd's demeanor as "hostile." He stated that the crowd was cursing and "being hostile." Williams began to explain his experience with hostile crowds over the prior days. He stated that the large crowds threw items at him, to include concrete and unknown liquids. Williams said people in the crowd also shot at officers. Williams saw a similar demeanor from the crowd on 05/31/20 that was consistent with the way the crowd was acting previously. Williams believed the actions of the crowd could create a dangerous situation for both officers and citizens.

Kirby asked Williams about his experience with O.C. and the O.C. Fogger. Williams stated that he has not received any department training on the use of the fogger. Williams stated he was issued the fogger on either the 30th or 31st. The foggers were issued from the CMT trailer at the academy. He did not recall who issued them, but he was not given any instruction to go along with the equipment.

Williams explained that on the night of the 31st he thought that the fogger was "just a large bottle of O.C. and I used it as such." Williams stated that per general order, a Sergeant was supposed to be issuing them and keeping a record of them. However, Williams was sure it was not a supervisor who was passing out the foggers.



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INTERNAL AFFAIRS DIVISION

Williams stated that he specifically remembered the announcements for the crowd to disperse being given to the crowd because somebody in his car was saying it over the loud speaker. He could not recall the time of the announcements, but knew that they gave the crowd "over a hour to get off the streets" before arrests started to be made. Williams stated that prior to instructions to make arrests, the crowd began to throw objects at the police. He could only remember that they were throwing objects somewhere near Broad Street. He wasn't sure what the objects were, but he knew that they could injure somebody.

Kirby then showed Williams his BWC from the incident. Kirby played the BWC video until he first sprayed in the direction of Kelly-Christley, paused the video and asked, "What caused you to start spraying?" Williams replied: *(This is an exact statement and has not been edited or altered.)*

"You can see half the crowd is going that way (west). I'm in the middle of the crowd at this point. The crowd is coming up approaching us from this way (east). I don't want to be over run. I have a battle...military mind set. I don't want to be over run. So I'm going to use the least force I can. I could have gone hands on, but that would have been stupid at that point because I could have been surrounded at that point. I'm out numbered. I have an ASP, but I believe that is too much force. So I used the least amount of force possible. I have been (sprayed with) O.C. I know it hurts. I know it burns. I know it irritates your eyes and your sinuses. But you get over it. So I used the least amount of force that I possibly could to begin effecting arrests."

Williams reiterated that he did not want to simply go hands on because the large crowd could have circled back to "save their friends." He stated that this happened in the past during the riots. Kirby continued to play the video and paused again when Williams sprayed Roldan and the photographer. Kirby again asked why he sprayed and Williams replied: *(This is an exact statement and has not been edited or altered.)*

"Again, they are continuing to walk towards me. I don't know who they are. I don't know...what their purpose is at all. So they are continuing to walk towards me and as you hear the man say, 'Fuck you.' I don't know if he has hostile intent. I don't know if he is trying to injure me at that point because he is mad that I sprayed him. So...I don't know who he is or what his intentions were."



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Williams reiterated that he did not know who in the "hostile crowd" was throwing items at them "so anybody in that mass of people could have been the one's throwing stuff at us....but I can say everybody in that mass of people was violating curfew an hour after instructions were given to vacate the street. At this point we are trying to effect arrests."

Kirby asked if he heard the man in the video say anything other than what is picked up by the BWC. Kirby replayed the footage and Williams replied, "I heard him say 'dick head' and 'fuck you'." Williams did not recall the man saying anything else to him. Williams stated he definitely did not hear Roldan identify himself as a reporter. Williams believed that Roldan was just part of the crowd and stated, "For all I know...I see the vest in this video clearly. But all I know is he could have been a leader. He could have been one of their street medics or field medics or whatever they call them. I don't know who he is."

Kirby asked Williams about all the equipment he was issued at the academy. He said he was issued a helmet and a gas mask in addition to the fogger. Williams said that he has not had any experience with a gas mask in the department. He has never shot or qualified with one, but was issued one to wear that night.

Kirby asked Williams if he was aiming for any particular body part when he sprayed the fogger and he replied, "I believe the face because I thought it was like O.C., but pretty much the body because after the first time I pressed it I saw it was a much larger stream than a little can of O.C. So just in the general direction after that." Williams reiterated that he learned how to use the fogger "on the fly."

Williams stated that he heard everybody on CMT was given refresher training on the use of the fogger prior to the start of the protests. He did not understand why the other officers who were issued foggers did not get the same training. Williams defined excessive force as "sending somebody to the hospital because they pissed you off...using more force necessary to make an arrest." Williams does not think he used excessive force during this incident.

Nicholas Caesar Interview

On 07/02/20 at 1352 hours, Caesar reported to IAD for a criminal interview. A PD-2A (Notice to Employee of Investigation) was read and signed by Caesar. Caesar requested an attorney before the PD-75 (Rights Waiver Form) could be read to him.

On 10/28/20 at 1458 hours, Caesar reported to IAD for his administrative interview. Caesar was shown the PD-2A (Notice to Employee of Investigation) that he previously signed to remind him of the basis for the investigation. A PD-22A (Administrative Proceeding Rights) was read and signed by Caesar.



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Caesar stated that he recalled the night of 05/31/20 and brought a PD-35 (Use of Force) report that he wrote a couple days after the incident with him. He read the report and stated that he deployed his O.C. fogger to disperse an unruly and hostile crowd. He then described the start of the night and stated that he attended a briefing. Kirby asked if he had an understanding of the mission for the evening and Caesar replied, "The mission was not clarified throughout this whole process." Caesar said that he is in the military and the mission statement is always clearly presented from the commander of the unit prior to any execution of orders. Caesar reiterated that there was no specific mission statement given from the command structure in the department.

Caesar's only direct knowledge of his assignment was to be a response team to go wherever he was sent by command. Kirby asked Caesar if there was any instruction on the use of foggers or chemical agents. Caesar replied, "No" and took out the CMT operation manual. He began to quote from the manual and explained that foggers could only be issued by the commander of CMT or the commander of the precinct that you were assigned. Caesar stated that he has not been trained on foggers and is not a member of CMT. He continued to read the policy again and explained when fogger training is supposed to occur and how the equipment is obtained, maintained and issued.

Caesar reiterated that neither he nor anybody else in his unit had received training for the fogger, but the foggers were being handed out like "pez candy." Caesar went on to say that he was forced to ask another officer on how to properly use the fogger. Caesar was not sure when he was issued the fogger, but estimated it was sometime in the middle of the first night of riots. He stated they were out there on an actual "battlefield" being handed the foggers. Caesar reiterated that there was zero training on the fogger and he had to ask someone how to properly use it. He could not recall the name of the officer who instructed him on how to use the fogger. Caesar stated that he did not recall receiving any training on the fogger at any point in his career.

Caesar could not recall exactly where he first encountered the crowd on 05/31/20, but it was somewhere on Broad Street. He recalled that at one point before they started curfew enforcement the crowd began to throw bottles with liquid in it and rocks. He said there was also fireworks thrown at officers. He stated at one point, he saw something that was smoking thrown at officers. Caesar described the crowd as "hostile and violent."

Caesar did recall some type of announcement being made to the crowd. He doesn't know who did it or exactly what was said, but time was given after 2000 hours before enforcement took place. Caesar stated that they followed the orders given to them from command. Caesar stated it was hard to hear what was being said during the announcement because he was wearing a gas mask. He then said that he did not have



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INTERNAL AFFAIRS DIVISION

any experience with a gas mask from the department. He stated that he was in the military so he knew how to put it on and properly fit it, but he had never shot a gun or qualified through the department with a gas mask.

Caesar did not recall who gave out the gas mask, but thinks that they were given out the second night of rioting. He stated that nobody with the department fit them for the masks, so he had to help teach other officers how to properly wear the gas masks.

The topic switched back to 05/31/20 and Caesar stated he was following the "violent and hostile crowd." The order came down from command that it was time to engage the crowd. Caesar stated that by the time they were allowed to engage the crowd it had become a "riot." Caesar said that his mission was to effectively and safely disperse the crowd and then arrest them. This was to stop them from destroying the city and injuring officers or citizens.

Caesar described his past experience with the same type of hostile crowd. The crowd in the previous nights went from throwing rocks to "shooting at us" and "exploding cars." Caesar stated that he had all this on his mind while he was being sent by the command staff into this crowd to arrest the crowd for curfew violations.

Caesar stated that on the night of 05/31/20, he did not have knowledge of the fogger policy. Caesar explained, "I don't know anything about that. I wasn't trained on that piece of equipment. And as Chief Gerald Smith said...he literally said that on the news. Talking about the command staff wasn't trained or whatever." Caesar stated that this entire situation was "un-trained people giving out equipment to un-trained people." Caesar stated that he thought the fogger was to be treated like the individual can of O.C. when you are spraying it toward a person or crowd.

Caesar stated that he "read up" on the policy after his first visit to IAD and is now aware of the proper use. He then quoted the policy and said that under extreme circumstances the fogger could be sprayed from any distance. Kirby then showed Caesar his BWC footage from the incident involving Kelly-Christley. Caesar pointed out that they were walking through a construction area. He stated that as he was approaching the intersection he was trying to keep everybody in line and close because he did not want anybody to get lost in the crowd of rioters.

Kirby asked Caesar what he meant when he was repeating "everybody gets some" as he was moving. Caesar replied: *(This is an exact quote and has not been edited or altered.)*

"In the performance of duties...heat of the moment...under the circumstances...after I'm getting pelted, shot at, etc. I mean. I'm pretty



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INTERNAL AFFAIRS DIVISION

sure that I could have said worse. Right? But it wasn't malicious in intent or anything like that. It was everybody gets a spray so they can clear out. It was the least amount of force...to be able to use effectively to stop the threat. Because I didn't put my hands on anybody. Didn't pull out my ASP. Didn't do any of those things. Those things weren't done. For a couple of reasons. One being of course, once you put yourself in those situations people can attack you because you might have tunnel vision. So there is the least amount of force used. An irritant. What is defined as, per these general orders as well. An irritant just to get the person away from me. Breaking contact."

Caesar then addressed his decision making process in deciding to spray Kelly-Christley:
(This is an exact quote and has not been edited or altered.)

"She had broke the curfew, obviously...This has been the first time that there have been riots in Richmond...during my time here. It's very difficult to single particular people out... given...unless of course you actively see somebody with...which did happen also...like a gas tank or something like that. So she was within that group that had attacked. Attacked us earlier. Attacked us presently during that time as well throwing stuff. So. Again it was the least amount of force used when the threat was all around to begin with."

Caesar went on to explain that he had not yet identified her and did not know what she had in her possession. Caesar stated, "I used the least amount of force possible to get that person away. Because O.C. spray...fogger...is used to get that person away. You don't want that person there to be 'hey, get off me' so that's the same concept. At least that's what I had."

Kirby asked Caesar why he sprayed Kelly-Christley in the face and he answered that he did not know the proper use of the fogger due to his lack of training by the department. Caesar went on to quote the exigent circumstances part of the O.C. and fogger policy and how riots would qualify as exigent circumstances. Kirby asked Caesar to define excessive force and he replied, "More force than is necessary to stop the threat or execute an arrest." He does not think he used excessive force "and the grand jury didn't think so either." Caesar further explained that malice and intent are also needed for excessive force. His only intent was to get the person away. He stated that he could have stood there and kept spraying, but he sprayed and moved on "to the next threat. I sprayed, get away, move on...get away, get back. Get away from the citizens. Stop destroying property. Stop attacking my fellow officers. Etc. That was my intent."



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Richmond Police Department

INTERNAL AFFAIRS DIVISION

Caesar finished off the interview by saying that he felt street level officers were being held responsible for decisions made by "white shirts" in the department.

Nicholas Caesar PD-35 Statement

During the interview, Caesar provided a copy of the PD-35 (Use of Force Report) he completed on 06/06/20 in reference to the incident. He stated: *(This is an exact replica and has not been edited or altered.)*

On 05/31/2020, Officer Caesar (code # 3571) was part of a response team during the 2020 Riots and Civil Unrest in and around the VCU area. Officers were enforcing the curfew put in place by the Mayor of Richmond and the Governor of Virginia. Officer's approached the intersection of E. Marshall/15th St., in order to address a large, unruly and hostile crowd. Officer Caesar deployed his O.C. Fogger in an attempt to disperse the crowd and restore order. Officer Caesar's deployment of the O.C. Fogger was successful and no other force was necessary.

Seth Layton Interview

On 07/02/20 at 1500 hours, Layton reported to IAD for a criminal interview. The PD-2A (Notice to Employee of Investigation) and a PD-75 (Rights Waiver Form) was read to him. He signed the PD-2A (Notice to Employee of Investigation), but did not want to sign the PD-75 (Rights Waiver Form) or make a statement.

Layton resigned from the department prior to the declination from the Grand Jury. When Layton left he contacted Kirby and asked to be notified about any updates to the case. Layton explained that he would be hard to reach by phone and provided a personal e-mail address for any further communication. On 10/28/20 at 1232 hours, Kirby e-mailed Layton to offer him the opportunity to make a statement about this incident. As of 11/17/20, Layton has not made any attempt to contact Kirby about an interview.

WITNESS OFFICER(S):

Name:	Anthony Catoggio	Code #3397
Personal:	White Male	██████████ – 48 YO
Duty & Uniform Status:	On- Duty, In-Uniform	
Statement Provided:	PD-118 (Complaint/Officer Statement)	
Assignment:	Major Crimes – Aggravated Assault/Sex Crimes	
Appointed to RPD:	03/19/2007	



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Richmond Police Department

INTERNAL AFFAIRS DIVISION

Current Status: Active

WITNESS OFFICER STATEMENT(S):

On 06/02/20 at 0004 hours, Catoggio submitted the following statement via a PD-118 (Complaint/Officer Statement): *(This is an exact replica of his statement and has not been altered or edited.)*

On May 31st at around 2130 hours I was attached to my CMT Unit working a 3rd straight 12 hour shift with riots that have been taking place in the city. After 2 nights of making little to no arrests and horrific damages that in my estimate totaled in the millions of dollars a new strategy was devised. A curfew was enacted by the Office of the Mayor and we were told after an announcement at 2000 hours RPD Units were going to target violent groups and enforce this curfew violation. The hope was this would save further destruction of our city.

My unit became engaged with a large group of violent protestors near the State Capitol. We were trying to catch up with this group to arrest them since it was well past curfew. The group formed a line in the area of 10th and Broad St. The group struck us with rocks, bottles and various items. Imbedded in that crowd of protestors is a man unknown to me who claims to be a journalist named Roberto Roldan. My unit began firing tear gas at the demonstrators. This scattered the group and allowed us to close the distance. The CMT Unit and FMT arrests teams split and began to corner some of the demonstrators. One unit flushed a group in my direction. I had been running for over a block with a gas mask on my face I had residual CS gas reacting inside of my mask because I always make sure my officers are masked before me so I always get some.

As I was running down a side street we were about to apprehend some protestors an Officer fired an OC Fogger right in my face. It covered my face shield and the liquid came into my mask. At that point I crashed into someone later identified as Mr. Roldan. I kept on running because I wanted to get out of the group before I could check my vision due to these protestors being extremely violent. Also we wanted to apprehend as many as possible

A short time after we had several people in custody I didn't see or speak to anyone on the scene. The only people on the ground were people getting



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INTERNAL AFFAIRS DIVISION

arrested and no one confronted me. Later in the evening I was shown a Tweet "After showing my badge and yelling I am with the press a Richmond Police Officer sprayed pepper spray in my face and shoved me to the ground had 3397 on his helmet I am out". As his tweet explains we were both Fogged in the face which seems to be an issue with Officers because at the time of this statement I was fogged in the face again by another unknown Officer on a scene, and someone else was sent home for fogging in the face. I don't know why this is happening but I have gotten it twice in the face in 2 days. I never heard anyone yell they were with the press probably because my helmet and mask were on and I never saw any credentials cause as his tweet explains we both got fogged.

Today on Mr. Roldans supposed employer website VPM he stated he believes I tackled him which I did not and it was deliberate but he would rather we focus on the police mistreatment of citizens and not the media. Both this statement I made and his own tweet verified my vision was blurred. So if I could barely see anything and anyone who has ran in a gas mask can verify that vision is much reduced how could I deliberately targeting anyone? Also I would like the Police Department to explain to this man's employer that even if he had media credentials he was in the middle of a protest not following or reporting from the sideline. The man was right smack dab in the middle of the very group of people we were trying to arrest. I am not a small person by any stretch of the imagination so my question is if he saw me lumbering down the street instead saying you are with the press how about you get out of the way? Now I am sorry he got knocked over if he was just trying to report on the protest however my actions were purely accidental. This is also one of many reasons most reputable news agencies have pulled their reporters from the protests when things turn violent. I have asked Lt. Giles where exactly we thought this incident took place. I don't want this to be viewed as if I am being evasive but we have been chasing and fighting criminals all over the city these past 4 days on 12 hour shifts so I all I remember is 11th or 12th Street a block north of broad. I do not have a BWC so that's the best location I have from recollection. Please feel free to contact me if you have any further questions I hope this clearly explains the events of that evening.

(End of statement.)



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INTERNAL AFFAIRS DIVISION

CIVILIAN WITNESS:

N/A

CIVILIAN WITNESS STATEMENT(S):

N/A

INVESTIGATION:

Kirby reviewed the Twitter account belonging to Roberto Roldan (username ByRobertoR). Roldan identifies himself as the Richmond City Hall reporter for radio station 88.9. He had multiple tweets and re-tweets related to the protests in Richmond. There were multiple tweets that were found in reference to his interaction with RPD officers on 05/31/20. At 2105 hours, Roldan tweeted: *(This is an exact replica of the tweet and has not been edited.)*

Cops are now firing tear gas at protesters from the back of the crowd. Now moving down Broad toward Shockoe.

At 2107 hours, Roldan tweeted: *(This is an exact replica of the tweet and has not been edited.)*

Taking a break. I've been tear gassed.

At 2118 hours, Roldan tweeted: *(This is an exact replica of the tweet and has not been edited.)*

After showing my badge and yelling "I am with the press" a @RichmondPolice officer sprayed pepper spray in my face and shoved me to the ground. Had "3397" on his helmet. I'm out.

On 06/01/20 at 1320 hours, Roldan tweeted: *(This is an exact replica of the tweet and has not been edited.)*

In light of Chief Will Smith's comments at the presser today, here is my full accounting of what I experienced last night in Richmond. But let's also stay



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INTERNAL AFFAIRS DIVISION

focused on the important moment we are in right now and what the folks in our community are trying to tell us. @myVPM

Included with this tweet, is a screenshot of a statement that was written in a word processing program: *(This is an exact replica of the written statement and has not been edited)*

Last night, me and my photographer were walking alongside a group of protesters moving east on Broad Street near the Children's Hospital around 9 pm. A police line from behind the group fired tear gas directly into the crowd. As me and my photog looked for an escape route, another Richmond-based reporter ran toward us from the police line saying he had been gassed and could not see. I poured a milk and water mixture on his face until he felt comfortable moving on.

Me and my photog also began coughing, eyes burning, so we ducked down E. Marshall Street. Volunteer protest medics attended to us with a water/milk mixture. Me and my photog moved where a police line had been set up around 10th E. Marshall Street. We approached the Richmond Police line. Officers had pepper spray in hand. I pulled my state-issued press badge off my chest and physically and verbally identified myself as a member of the press. We also had had high-visibility vests on. An officer on the line sprayed pepper spray into my face. Almost immediately, another RPD officer (had "3397" on his helmet) rushed off of the line and shoulder tackled me to the ground. At this point, other than myself and my photographer, a handful of protesters remained on E. Marshall St. The rest had scattered after the gas.

On 06/03/20, Kirby called VPM to speak with Roldan. A female who answered the phone stated that reporters do not have desk numbers and do their work via e-mail. Kirby sent an e-mail to Roldan (rrolan@vpm.org), requesting that he make contact in reference to this investigation. Roldan replied and a meeting was scheduled for 06/11/20 at 0930 hours.

BWC Footage from Incident

After viewing multiple hours of BWC footage, multiple officers BWC's that captured the incident on video was found. Below is a summary of the relevant BWC footage: *(A complete breakdown of all the footage, with timestamps, is included as Attachment 13.)*



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INTERNAL AFFAIRS DIVISION

At approximately 2110 hours, multiple canisters of some type of crowd dispersal gas is fired from 40 mm launchers. The canisters are fired from E. Broad Street northbound on N. 10th Street. The group of police officers begin to walk north on N. 10th Street. Catoggio and Layton are in the front row of the group and Williams runs up next to Catoggio as they approach the intersection. Also in the front of the group with BWC cameras were Officers Justin Assenat, Herbert Baer, Fred Bates, Caesar, Mitchell Cooper and Seldes. At 2111, the officers arrived to the intersection, walking in the following formation: (Note: There are a couple dozen other officers behind this lead group.)

Seldes		Ceasar	Layton	Catoggio	Bates
X	X				Williams
	Nayntaki		X	Baer	
X		Assenat			X
Cooper					

(X= Unidentified officer or Sergeant)

As the group gets to the intersection of N. 11th Street / E. Marshall Street, Layton and Catoggio run forward through the intersection.

Seth Layton BWC

Layton stops running and sprays his fogger toward a crowd of people running north on N. 11th Street. He turns to the right and runs east on the E. Marshall Street sidewalk. After he takes a few steps, another officer (later identified as Caesar) runs in from his right and sprays a female walking on the sidewalk, against the wall of the building, in the face with a fogger. The female covers her face with her hand and then is sprayed again in the face by Layton. The female is wearing blue jeans with holes in both knees and an unbuttoned long sleeve shirt with a black shirt under it. She is later identified to be Kelly-Christley.

Further east of Kelly-Christley, on the sidewalk, Roldan and Matthews are seen in their traffic vests. The view of Williams and Matthews is mostly blocked by the officer in front of Layton, but you can see Roldan fall into the road and Matthews walk toward him. Layton then runs past Roldan and Matthews.



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INTERNAL AFFAIRS DIVISION

Justin Assenat BWC

As Assenat get to the intersection, he goes east on E. Marshall Street and an officer is further out in front of him, spraying a fogger in the direction of a person in all black who is running toward the large group of officers. The person gets closer to the group and is tackled to the ground by an unidentified Sergeant. Another unidentified officer comes in to assist the Sergeant with the arrest process. Assenat stands on the other side of the person being arrested. Roldan is seen in the background laying on the ground in the roadway. Matthews is then seen helping Roldan stand up.

Assenat points east down E. Marshall Street and says something that sounds like "go." Roldan holds out something around his neck and says "... (inaudible) ... I'm the press." Assenat tells the reporters to get "up on the sidewalk." The reporters then walk toward the sidewalk going westbound and leaves the camera frame. After a moment, Assenat turns toward them and Roldan is walking west on the E. Marshall Street sidewalk. Matthews bends down to pick something up on the sidewalk and follows Roldan.

Assenat eventually walks over to the northeast corner of the intersection of N. 11th Street / E. Marshall Street. Two unidentified officers are seen helping Kelly-Christley stand up. She has been placed into handcuffs.

Nicholas Caesar BWC

As Caesar gets to the intersection, Layton and Catoggio run forward. Catoggio turns as he gets to the sidewalk and runs east on E. Marshall Street, running up the sidewalk. Caesar runs toward Kelly-Christley and sprays her in the face with the fogger as he runs. He continues to run and follows Catoggio. As Caesar is spraying Kelly-Christley, Catoggio is seen running into Roldan. Catoggio continues to run east on E. Marshall Street and Matthews' crosses in front of Caesar and reaches down toward Roldan.

Zachary Seldes BWC

As Seldes gets to the intersection, Catoggio and Layton run out in front of the group of officers. Neither the incident involving Roldan, nor Kelly-Christley is captured by Seldes. After a few seconds, Seldes approaches Kelly-Christley after she has been sprayed by Layton and Caesar. Seldes orders Kelly-Christley on the ground. As another unidentified officer approaches Kelly-Christley, Roldan asks him "go where?" The officer replies something that is inaudible. Roldan says "that's not a very clear order." He then walks out of frame as another unidentified officer gets to Kelly-Christley to put her into handcuffs.



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INTERNAL AFFAIRS DIVISION

A better description of the female (Kelly-Christley) is visible from Seldes BWC. The black shirt she is wearing appears to have some type of white lettering or logo on it. The long sleeve shirt that is not buttoned appears to be a black shirt with white lines going vertical.

Cleophas Williams BWC

As the group of officers approaches the intersection, a large group of people are running west on E. Marshall St. and turning north onto N. 11th Street. Catoggio points and says "right there. Go." Catoggio and Layton then run forward and Williams runs to the right. Williams runs toward the sidewalk and both Roldan and Matthews are visible on the sidewalk, to the right of Williams. Kelly-Christley is seen running with the group of people trying to go north on N. 11th Street.

Williams sprays his fogger into the group running on the sidewalk. Kelly-Christley slows down and continues west on the E. Marshall Street sidewalk. Another female, wearing shorts, a green shirt and carrying milk, who was running next to Kelly-Christley, turns around and runs east on the E. Marshall Street sidewalk. Williams sprays his fogger at the female in the green shirt and some of the spray goes in the direction of Roldan.

Roldan says "fucking dickhead" and Williams sprays the fogger next to his head. Roldan is holding out something that is around his neck. Roldan says "fuck you" as Williams sprays the fogger in the direction of Matthews. Roldan disappears off the left side of the camera, as Catoggio is seen entering into the camera from the left side. Catoggio is sideways as he enters the view. His left arm enters first, followed by his head and then his body. His body is entirely sideways, as if he was trying to sidestep Roldan.

Identification of Shannon Theresa Kelly-Christley

After reviewing all the BWC footage related to the incident, Kirby began to review the arrest records and mug shots for the mass arrests of the curfew violators on 05/31/20. Eventually, the female in jeans and long sleeve unbuttoned shirt was able to be identified, due to the distinctive shirt with white vertical stripes. She is listed on the arrest roster and in RMS with her names mixed up in various formats. After running her through various databases, her information was discovered to be:

Shannon Theresa Kelly-Christley

A large black rectangular redaction box covering several lines of text.



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INTERNAL AFFAIRS DIVISION

Assistant Commonwealth Attorney Christopher Bullard put Kirby into contact with Kelly-Christley's attorney (Winston). Kirby arranged an interview with Kelly-Christley through Winston on 08/07/20.

Air Unit Recordings

The video starts recording at 2039 hours (The time stamp on the video is an hour off, it says 1939 hours) as the crowd is walking north on an unknown street. The crowd stops at E. Broad Street and begins to walk east on E. Broad Street. They are walking on both sides of the street and cutting between vehicle traffic. The video has audio and all police radio traffic is heard.

Radio traffic begins trying to get the proper police personnel in the area to address the crowd. The time markers below are the minutes and seconds that the incident occurs in the video recording.

- 05:37 = The crowd gets to N. 5th / E. Broad Street.
- The police radio is still trying to get police resources into place to block traffic and address the crowd.
- 07:40 = The crowd is at N. 6th / E. Broad Street. They stop for about 20 seconds, then turn south onto N. 6th Street.
- 09:23 = The crowd is at N. 6th / E. Grace Street, they begin to run south on N. 6th Street.
- 10:05 = *(Heard over the radio)* "Be advised. We are at 6th and Grace. The crowd is hostile. They are chucking objects at the police."
- 10:30 = *(Heard over the radio)* "Awad to all units with the crowd. Gas. Gas. Gas. The crowd has deployed gas against our team. The crowd has deployed gas against our team."
- 10:47 = The crowd is turning east on Franklin Street from N. 6th Street.
- The crowd is now going toward the Governor's Mansion and the police personnel are trying to arrange personnel in the correct locations.
- 16:59 = The crowd is going north on N. 9th Street.



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INTERNAL AFFAIRS DIVISION

- 18:05 = The crowd is at N. 9th Street / E. Grace Street.
- 19:48 = Authorization is given to engage the crowd when there is enough personnel on scene.
- 20:37 = Crowd gets to N. 9th Street / E. Broad Street. They turn east on Broad Street.
- Strike teams are told to return to vehicle to "push forward."
- 20:53 = The crowd is at N. 10th Street / E. Broad Street.
- 23:11 = *(Command calls Awad and says)* "State is on the way, if you want to engage the crowd...if you want to make the effort to engage."
- 23:18 = *(Awad states over the radio)* "We are engaging as soon as my team holds this intersection. We are going to (...inaudible...possibly 'put gas on') the crowd."
- 23:28 = *(Heard over the radio)* "This is Cat, go ahead and engage, I will cover your rear guard."
- 23:36 = Air unit calls out that they are going through the intersection at N. 10th Street and E. Broad Street, approaching N. 11th Street / E. Broad Street.
- 23:42 = *(Heard over the radio)* "Awad to all units. Gas. Gas. Gas."
- The officers are then told to move forward.
- 25:04 = Crowd at N. 11th Street / E. Broad Street is now running.
- 25:39 = *(Heard over the radio)* "The crowd has now split into two groups. One is heading eastbound on Broad Street. One is headed northbound on 11th."
- 26:06 = All units are told to stage at N. 11th Street / E. Broad Street.
- 26:50 = The crowd has gotten to Governor Street / E. Broad Street.
- 27:50 = Awad and Sergeant Michael Spinos arrange a plan to force the crowd back toward the officers at N. 11th Street / E. Broad Street.



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INTERNAL AFFAIRS DIVISION

- 28:52 = Once Spinors is in place, more gas will be launched.
- 29:21 = Crowd is still stationary at N. 12th Street / E. Broad Street.
- 30:13 = (*Heard over the radio*) "Deploy gas. Now. Now. Now."
- Chesterfield CMT is en-route to the area.
- 30:31 = The crowd is running north on N. 12th Street.
- 31:11 = Crowd is now going west on Marshall.
- The group of police is preparing to go north on N. 10th Street toward E. Marshall Street.
- 31:51 – The crowd is now walking, starting to go north on N. 10th Street from E. Marshall Street. A warning is given that there is a lot of objects at a construction site that could be used as weapons.
- 32:22 (2112 hours) = Gas is seen being shot from the officers, over E. Marshall Street going north on N. 10th Street.
- 32:32 = Officers get to the intersection at N. 10th Street / E. Marshall Street. Two officers (known to be Layton and Catoggio because of BWC footage) run across Marshall Street.
- The plane continues to follow the crowd, none of the other events that occurred at 2112 hours are recorded. The crowd goes toward N. 10th Street / E. Clay Street.

By this time the incident involving Caesar, Layton and Williams has now concluded.

Additional BWC Footage

After hearing the police audio from the air unit, additional BWC footage was searched to try and locate the crowd throwing objects and gas at the police. The following was found (the time stamps are the time that an event occurred in the video):



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INTERNAL AFFAIRS DIVISION

Michael Verbena BWC

- 1:41 = (*Heard over the radio*) "Crowd is at 3rd / Broad going east on Broad."
- 1:51 = An unknown male makes an announcement over a vehicle intercom system. It says: (*Heard over the radio*)

"You are out past curfew. Clear the streets or you will be arrested. It is 8 PM curfew. You need to clear the streets or you will be arrested."
- The person making the announcement continues to repeat the message, but the car puts distance away from Verbena and it becomes more difficult to hear.
- 06:37 = (*Heard over the radio*) Sgt Awad is "directly in front of the crowd at 7th and Broad. We are going to give commands."
- 08:19 = The crowd is running near the intersection of N. 6th Street / E. Grace Street, going east on E. Grace Street. Verbena and his group stop at N. 6th Street / E. Grace Street.
- 08:55 = (*Heard over the radio*) "We are at 6th and Grace. The crowd is hostile. They are chucking objects at police." (The time is approximately 2049.)

Kevan Kirby

- 05:12 = Kirby is riding in the back of a SUV. They stop at N. 6th Street / E. Grace Street. The crowd is seen running through the intersection. When they stop there is no cloud of white smoke at the intersection.
- 05:52 = Smoke is seen at the intersection.
- 06:03 – Awad makes the announcement that gas has been deployed against the team and the front of the crowd is now at N. 6th Street / E. Franklin Street.

Zachary Seldes

- The camera is turned on and the crowd can be heard yelling in the background.
- 0:09 = A breaking sound (glass) is heard. Seldes yells, "Oww, fuck."



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INTERNAL AFFAIRS DIVISION

- 00:10 = Glass or liquid is seen reflecting in the headlights of a vehicle next to Seldes.
- The crowd is seen walking south on N. 6th Street, crossing over E. Grace Street. Items can be heard hitting the ground and sliding on the pavement.
- 00:20 = Awad says, "We are at 6th and Grace. The crowd is hostile. They are chucking objects at police."
- Zeldes then goes back to his car to get a helmet.
- 00:50 = Awad makes the announcement about gas being deployed against the team.
- 1:49 = Seldes says to another officer, "They fucking hit me with a bottle. I already got hit with some shit."

Fred Bates BWC

- When the Camera starts recording, Bates is the front passenger in a SUV. The car is stopped, the audio turns on 30 seconds into the video and "the crowd is hostile. They are chucking objects at the police" is heard. As this is being said, Bates arrives at N. 6th Street / E. Grace Street where Awad is standing.
- 00:45 = Smoke begins to build up at the intersection.
- 00:51 = A male officer says, "They are throwing gas." Awad then makes the announcement "Gas. Gas. Gas. The crowd has deployed gas against our team. The crowd has deployed gas against our team."
- 01:58 = Seldes is heard telling officers that he got hit with a bottle.

Nicholas Caesar

The video starts and Caesar is standing at N. 6th Street/ E. Grace Street. The crowd is crossing and Caesar turns his back to the intersection. He turns back to the intersection 7 seconds later and the white smoke cloud is seen in the intersection. As the audio turns on, "The crowd has deployed gas against our team" is heard. He goes back to the vehicle and continues to follow the crowd.



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Richmond Police Department

INTERNAL AFFAIRS DIVISION

Interview with Use of Force Coordinator

On 08/19/20 at 0945 hours, Kirby met with RPD Use of Force Coordinator Michael Musselwhite in reference to the use of O.C. foggers during the protests. He said that it would be up for each officer to explain the perceived threat that caused them to deploy the fogger, but said it should be easy for them to explain why chemical agents were deployed in this situation.

Musselwhite said it should be easily explained because officers had dealt with a large, roving, violent crowd for multiple hours and days. The individual officer would need to fill in the specific details about why they felt a person (or group of people) was a threat to themselves or others.

Musselwhite reiterated that as long as officers could articulate why they deployed the fogger, the riots are an acceptable situation to use it and would not be excessive force. However, deploying the fogger at somebody's face is a clear violation of policy.

PowerDMS Records

Kirby requested the PowerDMS records for Layton, Williams and Caesar from Operations Manager Daryl Jones. This was to determine if they had read and were aware of the contents of the O.C. fogger policy (01-08 Oleoresin Capsicum (O.C.) Spray Canister and Fogger). This policy contains specific direction on the use of the O.C. fogger. These records are kept for all general orders and show that the employees have knowledge on how to use the equipment, regardless if they have received training on it.

Layton signed the policy on 09/12/18 at 1403 hours. Williams signed the policy on 09/11/18 at 1620 hours. Caesar signed the policy on 09/07/18 at 1459 hours. All officers involved had signed the O.C. fogger policy and are responsible to comply with the contents of the policy.

Academy Records

Kirby spoke with IAD Detective Christina Bartley about her investigations involving the department's use of the O.C. fogger during the protests. Bartley stated that she interviewed CMT Sergeant John Barkley on 09/09/20 in reference to O.C. fogger training that was taught to the department. Bartley provided the transcript of her interview and a copy of an O.C. fogger lesson plan that she received from RPD Academy Training Officer Cynthia Weaver.



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Richmond Police Department

INTERNAL AFFAIRS DIVISION

Barkley explained that CMT was asked to do instruction on the O.C. fogger in the spring 2017 use of force session. This was to certify everybody in the department on the O.C. fogger. The certification is valid for two years and would require a recertification to continue to use it. There was not any department wide effort to recertify everybody when the qualification expired in 2019. Barkley stated that if somebody is interested in recertifying, they need to "come to the separate training and get that."

The lesson plans for the use of force session listed the O.C. fogger class as being one hour long. The instruction included a lecture, PowerPoint presentation and group exercise. The group exercise was for each officer to physically deploy an O.C. fogger. According to the lesson plan, the officers were instructed on where to aim the fogger when it was deployed. It can be deployed above the head, below the waist or at the ground.

Kirby contacted RPD Academy Training Sergeant Cynthia Marlow to obtain records for Williams and Caesar attending the spring 2017 use of force session. Marlow provided copies of the class roster for each officer attending. Williams attended on 04/06/17 and Caesar attended on 04/03/17. Layton was not hired by the department until 06/06/17, therefore he did not attend the use of force session.

Governor Ralph Northam Executive Order 64

Because of the two nights of rioting in Richmond, Governor Ralph Northam signed Executive Order 64 on 05/31/20. Executive Order 64 granted authority to law enforcement to arrest anybody who was in a street, road, alley, or any public place in the City of Richmond from 05/31/20 to 06/03/20 between the hours of 2000-0600. The only exceptions were people traveling to work or places of worship, hospital employees, members of the press and various other first responders and government employees.

ISSUES/CONCERNS:

It is clear that equipment was not issued and distributed properly to officers working the riots from 05/29/20-05-31/20. However, the riots were a situation that nobody in the department was prepared for or had ever encountered. Judgment calls were made (to issue helmets, gas mask, foggers, etc.) to everybody working the event, regardless of their particular training with the equipment. The Chief at the time of these decisions was William Smith. According to a NBC 12 new article published 06/16/20, Mayor Levar Stoney requested William Smith's resignation because "of his handling of the protests in the City in recent days." This shows that Caesar's comment about "white shirts" not being held responsible for decisions was not accurate.



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Richmond Police Department

INTERNAL AFFAIRS DIVISION

Caesar used the term "riot" to describe the crowd on 05/31/20. It is clear that rioting occurred on 05/29/20 and 05/30/20 in Richmond. A review of the Virginia State Code shows that Caesar is correct in his description of the crowd on 05/31/20. The large group of protesters became rioters at N. 6th Street / E. Grace Street when they began to throw objects at police.

VA Code 18.2-405 defines a riot as: (This is the exact code taken from law.lis.virginia.gov/vacode)

Any unlawful use, by three or more persons acting together, of force or violence which seriously jeopardizes the public safety, peace or order is riot.

Although Williams and Caesar were adamant that they did not receive any training on the O.C. fogger, it is clear that they did based on academy records. Although their statement appears to be misleading, Williams and Caesar are not the only employees who forgot they had the training.

Kirby did not recall having O.C. fogger training during any use of force sessions with the department. Kirby spoke with other members of IAD about the training. Detective Chelsea Tovar also did not recall attending the session where the O.C. fogger was taught.

RECOMMENDATIONS:

Based on the evidence gathered during the course of this investigation, I recommend a finding of **Exonerated with Other Violations Noted** for Officer Cleophas Williams, Officer Nicholas Caesar and Officer Seth Layton.

Caesar and Williams were able to articulate why they deployed their foggers in the 1000 block of E Marshall Street. They both experienced the rioting in the previous nights and they were now presented with another group of rioters that were throwing objects at the police. According to 01-08 Oleoresin Capicum (O.C.) Spray Canister and Fogger, VI. Procedures, D. Use of Fogger:

The O.C. Fogger is generally used to disperse disorderly crowds when non-deadly force is needed, but the potential to be injured is present for the responding officers or citizens.

An object thrown in the direction of the police (specifically unknown liquids and rocks) can potentially injure officers or citizens. Caesar explained that he did not know who was



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INTERNAL AFFAIRS DIVISION

throwing the objects at police, so anybody who got close to himself or other officers could be a potential safety risk. Therefore, the use of the fogger was justified against Kelly-Christley.

Although Roldan and his photographer were excluded from Executive Order 64 because they are members of the press, there is no evidence to show that Williams knew they were members of the press when he deployed his fogger against them. Williams did not hear Roldan say he was with the press, nor did the BWC record Roldan telling anybody he was with the press. However, the BWC did record Roldan saying "fuck you" and "fucking asshole" to Williams. This statement is consistent with officers describing the rioters as "cursing" at them. Roldan and his photographer were wearing "traffic vests" which Williams stated was also consistent with people who offered medical support during the riots.

Williams was able to articulate that he believed the individuals wearing the traffic vests were participants in the riot. Williams explained that unknown people in the crowd were throwing objects at the police. He did not know if the two people close to him were those offenders, so he deployed his fogger. Because Williams was able to articulate his use of force, the use of the fogger against Roldan and the photographer was justified.

Although Layton, Williams and Caesar are exonerated from an excessive force violation, each of them committed other policy violations during this incident.

Officer Cleophas Williams

Violation 1- General Order 1-1 Code of Conduct, X Rules of Conduct, #38 Use of Force-All Other Violations which states:

Officers shall use force in accordance with law and Department procedures.

In reference to **General Order 1-8 Oleoresin Capsicum (O.C.) Spray Canister and Fogger , VI. Procedure, D. Use of O.C. Fogger, Section 5** which states:

If used, the O.C. Fogger should not be directed at a person's face. The Fogger should be directed at the lower portion of the body or over the head of the crowd, unless there are extreme circumstances. When aiming at the lower portion of the body, the Fogger should not be used at distances less than three (3) feet. However, in an extreme situation, officers may use their discretion in deploying the O.C. Fogger at less than the recommended distances. The maximum effective distance of the Fogger is 10-12 feet.



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Richmond Police Department

INTERNAL AFFAIRS DIVISION

IN THAT: Williams should not have sprayed the fogger into the face of Roldan during the incident. Although Williams was able to explain the use of his fogger on Roldan, he was not able to establish an "extreme circumstance" that would allow for the spraying in the face of an individual.



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INTERNAL AFFAIRS DIVISION

Officer Nicholas Caesar

Violation 1- General Order 1-1 Code of Conduct, X Rules of Conduct, #38 Use of Force-All Other Violations which states:

Officers shall use force in accordance with law and Department procedures.

In reference to **General Order 1-8 Oleoresin Capsicum (O.C.) Spray Canister and Fogger, VI. Procedure, D. Use of O.C. Fogger, Section 5** which states:

If used, the O.C. Fogger should not be directed at a person's face. The Fogger should be directed at the lower portion of the body or over the head of the crowd, unless there are extreme circumstances. When aiming at the lower portion of the body, the Fogger should not be used at distances less than three (3) feet. However, in an extreme situation, officers may use their discretion in deploying the O.C. Fogger at less than the recommended distances. The maximum effective distance of the Fogger is 10-12 feet.

IN THAT: Caesar should not have sprayed the fogger into the face of Kelly-Christley during the incident. Although Caesar was able to explain the use of his fogger on Kelly-Christley, he was not able to establish an "extreme circumstance" that would allow for the spraying in the face of an individual. Caesar attempted to explain that a "riot" is an extreme circumstances, but that does not appear to fit the description.

The word extreme is not defined in the policy, however dictionary.com defines the word as "of a character of kind farthest removed from the ordinary or average." Although Kelly-Christley was participating in a riot, she did not do anything that was inconsistent with anybody else involved. If Caesar or the BWC would have shown Kelly-Christley actively throwing an object, about to throw an object or doing something that could have caused imminent threat to an officer or a citizen, the "extreme circumstances" provision may have been applicable. .

Violation 2 - General Order 1-1 Code of Conduct, X Rules of Conduct, #05 Unbecoming Conduct which states:

Members shall conduct themselves at all times, both on and off duty, in such a manner as to reflect favorably on the Department. Before charging an employee with "unbecoming conduct", the supervisor should examine all other rules to ascertain whether a specific rule violation is applicable. If



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INTERNAL AFFAIRS DIVISION

a particular rule applies, it should be used instead of "unbecoming conduct".

IN THAT: Caesar was very clearly heard in his BWC footage repeating "everybody gets some" as he was running through the intersection deploying his fogger. Although it is unknown if it was heard by anybody, the courtesy section of the code of conduct requires that "employees shall be tactful in the performance of their duties, shall control their tempers, and exercise the utmost patience and discretion..." Caesar was not able to articulate a satisfactory reason for his comment and stated, "I could have said worse." This comment is certainly not tactful while performing his duties.

On 06/30/20 at 1530 hours, Kirby met with Richmond Commonwealth Attorney Collete McEachin for a case review and for her to make a determination if the case would be presented to the grand jury. When she heard the "everybody gets some" comments from Caesar, she made a comment about how disturbing it was to hear during the use of force. It was clear from her comment that the statement from Caesar did not reflect favorably on the department during the use of force incident.

On 06/01/20, RPD Legal Counsel David Mitchell received a preservation letter from Jayme Swain in reference to this incident. Swain is the CEO of Virginia Foundation for Public Media and President of VPM. The letter requests various types of records be preserved, to include all BWC footage. Generally, preservation letters are followed up by lawsuits. BWC footage during a civil trial of an officer repeating "everybody gets some" before he deploys his fogger on an individual has the potential to reflect very unfavorably on the department. *(Note- Generally a comment like this would be a courtesy violation, however the comment was not directed at a specific individual, so it is not applicable. Therefore, unbecoming conduct is more appropriate.)*



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Richmond Police Department

INTERNAL AFFAIRS DIVISION

Officer Seth Layton

Violation 1- General Order 1-1 Code of Conduct, X Rules of Conduct, #38 Use of Force-All Other Violations which states:

Officers shall use force in accordance with law and Department procedures.

In reference to General Order 1-8 Oleoresin Capsicum (O.C.) Spray Canister and Fogger , VI. Procedure, D. Use of O.C. Fogger, Section 5 which states:

If used, the O.C. Fogger should not be directed at a person's face. The Fogger should be directed at the lower portion of the body or over the head of the crowd, unless there are extreme circumstances. When aiming at the lower portion of the body, the Fogger should not be used at distances less than three (3) feet. However, in an extreme situation, officers may use their discretion in deploying the O.C. Fogger at less than the recommended distances. The maximum effective distance of the Fogger is 10-12 feet.

IN THAT: Layton should not have sprayed the fogger into the face of Kelly-Christley during the incident. Layton did not make a statement due to his separation from the department. Although there is no explanation as to why Layton sprayed his fogger, Williams and Caesar were able to explain the use of foggers on the crowd when they were close to officers. Williams and Caesar were not able to establish an "extreme circumstance", which would allow for the spraying in the face of an individual.



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Richmond Police Department

INTERNAL AFFAIRS DIVISION

BIOGRAPHICAL DATA PAGE:



Officer Cleophas Williams, Code #3936

Supervisor:
Personal:
Duty & Uniform Status:
Statement Provided:
Assignment:
Appointed to RPD:
Current Status:

Sergeant Daniel Awad
Black Male
On-Duty, In-Uniform
Interviewed
2nd Precinct – FMT, Tactical
08/11/2014
Active

██████████ – 32 YO



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Richmond Police Department

INTERNAL AFFAIRS DIVISION

BIOGRAPHICAL DATA PAGE:



Officer Nicholas Caesar, Code #3571

Supervisor:	Sergeant Daniel Awad
Personal:	Black Male
Duty & Uniform Status:	On-Duty, In-Uniform
Statement Provided:	Interviewed
Assignment:	2 nd Precinct – FMT, Tactical
Appointed to RPD:	08/04/2004
Current Status:	Active

██████████ – 38 YO



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Richmond Police Department

INTERNAL AFFAIRS DIVISION

BIOGRAPHICAL DATA PAGE:



Officer Seth Layton, Code #4108

Supervisor:	Sergeant Daniel Awad
Personal:	White Male
Duty & Uniform Status:	On-Duty, In-Uniform
Statement Provided:	Interviewed
Assignment:	2 nd Precinct – FMT, Tactical
Appointed to RPD:	06/05/2017
Current Status:	Separated on 09/22/2020

██████████ – 24 YO



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INTERNAL AFFAIRS DIVISION

ATTACHMENTS:

1. PD-2 (Initiation of Employee Investigation)
2. PD-2A (Notification to Employee of Investigation)
3. PD-75 (Rights Waiver Form)
4. PD-22 (Administrative Proceeding Rights)
5. PD-118 (Complaint/Officer Statement)
6. PD-35 (Use of Force Report)
7. BWC Screenshots
8. E-mails
9. Shannon Kelly-Christley Information & Injury Photos
10. Operation Plan 05/31/20
11. PowerDMS Records
12. Executive Order 64
13. BWC Notes
14. Roldan Twitter Screenshots
15. Air Unit Video Notes
16. Barkley Interview by Bartley
17. Spring 2017 UOF Rosters
18. Academy Lesson Plan
19. Control Card
20. BWC & Interviews