



OFFICE OF POLICE ACCOUNTABILITY

Closed Case Summary

Complaint Number 2016OPA-1459

Issued Date: 09/27/2017

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 8.400 (1) Use of Force Reporting and Investigation: Officers Shall Report All Uses of Force Except De Minimis Force (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Unfounded)
Allegation #2	<u>Seattle Police Department Manual</u> 8.100 (1) De-Escalation: When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Training Referral)
Allegation #3	<u>Seattle Police Department Manual</u> 6.220 (1) Voluntary Contacts, Terry Stops & Detentions: Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful (Policy that was issued August 1, 2015)
OPA Finding	Not Sustained (Lawful and Proper)
Allegation #4	<u>Seattle Police Department Manual</u> 6.220 (3) Voluntary Contacts, Terry Stops & Detentions: During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope (Policy that was issued August 1, 2015)
OPA Finding	Sustained

Allegation #5	<u>Seattle Police Department Manual</u> 6.220 (6) Voluntary Contacts, Terry Stops & Detentions: Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop (Policy that was issued August 1, 2015)
OPA Finding	Not Sustained (Lawful and Proper)
Allegation #6	<u>Seattle Police Department Manual</u> 5.001 (9) Standards and Duties: Employees Shall Strive to be Professional at all Times (Policy that was issued April 1, 2015)
OPA Finding	Sustained
Allegation #7	<u>Seattle Police Department Manual</u> 5.001 (5) Standards and Duties: Employees May Use Discretion (Policy that was issued April 1, 2015)
OPA Finding	Sustained
Final Discipline	1 Day Suspension

INCIDENT SYNOPSIS

The Named Employee contacted a subject and asked for the subject's ID.

COMPLAINT

The anonymous complainants alleged the Named Employee may have violated several SPD policies by failing to document reportable force, not completing a Terry Stop template, improperly detaining the subject and asked him for identification. Additionally, upon initial review of the incident, OPA added an allegation of failure to use de-escalation tactics and professionalism.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complaints
2. Search for and review of all relevant records and other evidence
3. Review of In-Car Video (ICV)
4. Interviews of SPD employees

ANALYSIS AND CONCLUSION

The preponderance of the evidence from the OPA investigation showed that the Named Employee did not use any force, beyond de minimis force, to control and handcuff the subject. For this reason, the reporting requirements under SPD Policy 8.400(1) did not apply.

The Named Employee made the decision to contact the subject prior to the arrival of an assist officer. He got out of his police car and began addressing the subject regarding his riding of a skateboard in the street. The Named Employee then demanded the subject's ID and, when the subject refused and asked what authority the Named Employee had for demanding the ID, the Named Employee grabbed hold of the subject and physically took him over to the front of the police car. Once at the car, the Named Employee began to physically force the subject's arms behind his back in preparation for handcuffing. In this particular case, it was the Named Employee, rather than the subject, who required de-escalation. The subject was calm and asked the Named Employee for information concerning the Named Employee's demand for his ID. The Named Employee's improper and needless escalation of this encounter was addressed in Allegation #6 (Professionalism).

The preponderance of the evidence from this investigation showed that the Named Employee had probable cause to believe the subject had committed the Civil Infraction of Playing in Streets (SMC 11.40.250).

The preponderance of the evidence from this investigation showed that, when the subject questioned the Named Employee and did not produce his ID fast enough to suit the Named Employee, the Named Employee took physical control of the subject, telling him he was being arrested and pushing him to the front of a police car where he was handcuffed. This was done without probable cause to believe the subject had committed a crime. Violation of SMC 11.40.250 is not a criminal offense and the Named Employee lacked probable cause to believe the subject had committed the crime of pedestrian interference and/or obstruction. Although the subject questioned the Named Employee's authority to demand his ID and initially said he would not provide it, he took it out of his wallet and offered it to the Named Employee once the Named Employee grabbed and pushed him to the front of the police car. In addition, the Named Employee made no effort to offer the subject alternative means of identifying himself.

The preponderance of the evidence from the OPA investigation showed that the Named Employee requested ID from the subject. The Named Employee had the lawful authority to identify the subject for the purpose of addressing the Civil Infraction

SPD Policy 5.001(9) says, in part, "Employees will avoid unnecessary escalation of events even if those events do not end in reportable uses of force." The Named Employee began his contact with the subject by informing him that skateboarding in the street was a crime. He then demanded the subject's ID and, when the subject said, "No," the Named Employee told him, "Then you'll have to go to jail." When the subject asked the Named Employee what section he was going to get arrested for by not showing his ID, the Named Employee answered, "Do you

really want to go there?” During this conversation, the subject appeared to be calm and spoke in an even conversational tone. As he asked clarifying questions of the Named Employee, the subject had his wallet opened in his hand and appeared to be reaching in to remove something. This appeared to have been an indicator of willingness to provide his ID if the Named Employee would explain his authority to request the ID. The Named Employee then told the subject he was being recorded and that there were two crimes, obstruction and a traffic crime. The Named Employee then told the subject it was his last opportunity to provide his ID or he would be arrested. The subject again asked what section gave the Named Employee the authority to demand ID. In response, the Named Employee took hold of the subject’s arm and told him he was under arrest. This incident began as an opportunity to warn the subject about the potential danger of being struck by a car and escalated to an arrest and the use of de minimis force. This escalation was a direct result of the Named Employee’s unlawful demand for ID and his unwillingness to listen to the subject and answer his reasonable questions. Fortunately, a cover officer arrived on scene to de-escalate the situation before the struggle between the Named Employee and the subject further escalated into a higher level of force.

Once the subject was handcuffed and placed in the back of a police car, the cover officer informed the Named Employee that the “Playing in a Street” infraction he (the Named Employee) had cited as the basis of his original detention of the subject did not apply to the street on which the subject had been skateboarding. Even though it turned out that the cover officer was mistaken, this provided the Named Employee with an opportunity to find an alternative means of identifying the subject for the purpose of issuing a Notice of Infraction or a warning, if he so chose. Instead, the Named Employee exacerbated the situation by directing the cover officer to take the subject to the precinct. Once at the precinct the Named Employee advocated against releasing the subject and instead argued for booking him into jail. Had the Named Employee not received a Notice of Complaint from OPA, it appeared he also intended to contact the Coast Guard and, knowing the subject was about to enlist, tell them about his encounter with the subject. This exercise of discretion by the Named Employee was an unreasonable extension of the unlawful arrest of the subject, and was inconsistent with the mission of SPD.

FINDINGS

Named Employee #1

Allegation #1

A preponderance of the evidence showed that the Named Employee did not use any force, beyond de minimis force, to control and handcuff the subject. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Use of Force Reporting and Investigation: Officers Shall Report All Uses of Force Except De Minimis Force*.

Allegation #2

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *De-Escalation: When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force.*

Required Training: The Named Employee should receive clear coaching from his supervisor with respect to the importance of waiting for an assist officer before engaging a potential violator, so as to use the trained tactic of contact and cover. This will reduce the chances of encountering difficulties with a resistant or assaultive subject.

Allegation #3

A preponderance of the evidence showed that the Named Employee had probable cause to believe the subject had a Civil Infraction. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Voluntary Contacts, Terry Stops & Detentions: Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful*

Allegation #4

A preponderance of the evidence showed that the Named Employee took physical control of the subject and told him he was being arrested, without probable cause to believe the subject had committed a crime. Therefore a **Sustained** finding was issued for *Voluntary Contacts, Terry Stops & Detentions: During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope.*

Allegation #5

A preponderance of the evidence showed that the Named Employee had the lawful authority to identify the subject for the purpose of addressing the Civil Infraction. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Voluntary Contacts, Terry Stops & Detentions: Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop.*

Allegation #6

A preponderance of the evidence showed that this escalation was a direct result of the Named Employee's unlawful demand for ID and his unwillingness to listen to the subject and answer his questions. Therefore a **Sustained** finding was issued for *Standards and Duties: Employees Shall Strive to be Professional at all Times.*

Allegation #7

A preponderance of the evidence showed that this exercise of discretion by the Named Employee was an unreasonable extension of the unlawful arrest of the subject, and was inconsistent with the mission of SPD. Therefore a **Sustained** finding was issued for *Standards and Duties: Employees May Use Discretion.*

Discipline Imposed: 1 Day Suspension

NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.