



OFFICE OF POLICE ACCOUNTABILITY

Closed Case Summary

Complaint Number 2017OPA-0526

Issued Date: 01/17/2018

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 8.400-POL-1 (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> 8.400-POL-2 (2) Use of Force - TYPE I INVESTIGATIONS: Officers Shall Document All Uses of Reportable Force (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Unfounded)
Allegation #3	<u>Seattle Police Department Manual</u> 11.020 (10) Transportation of Detainees: Officers Will Use the Transport Vehicle's Seat Belts to Secure Detainees (Policy that was issued March 1, 2017)
OPA Finding	Not Sustained (Training Referral)
Allegation #4	<u>Seattle Police Department Manual</u> 8.200 (1) Using Force: Use of Force: When Authorized (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Lawful and Proper)
Final Discipline	N/A

Named Employee #2	
Allegation #1	<u>Seattle Police Department Manual</u> 8.400-POL-1 (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	Sustained
Allegation #2	<u>Seattle Police Department Manual</u> 8.400-POL-2 (2) Use of Force - TYPE I INVESTIGATIONS: Officers Shall Document All Uses of Reportable Force (Policy that was issued September 1, 2015)
OPA Finding	Sustained
Allegation #3	<u>Seattle Police Department Manual</u> 11.020 (10) Transportation of Detainees: Officers Will Use the Transport Vehicle's Seat Belts to Secure Detainees (Policy that was issued March 1, 2017)
OPA Finding	Not Sustained (Training Referral)
Allegation #4	<u>Seattle Police Department Manual</u> 8.200 (1) Using Force: Use of Force: When Authorized (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Lawful and Proper)
Final Discipline	Written Reprimand

INCIDENT SYNOPSIS

The Named Employee arrested the subject and transported her to the jail.

COMPLAINT

The complainant, a supervisor within the Department, conveyed to OPA that a subject alleged that the Named Employees used excessive force while placing her under arrest. OPA's intake revealed further allegations that the Named Employees failed to report Type I Force (handcuff pain), as well as failed to properly seatbelt the subject in the back of the patrol vehicle.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complaint memo
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 subject made a complaint of injury while she was sitting in the back of a patrol vehicle. The complaint was regarding pain from her handcuffs. She further made a request that the handcuffs be loosened. While Named Employee #2 heard and addressed the complaint (indeed he made the conscious decision not to loosen the cuffs because of the subject's behavior), Named Employee #1 was outside of the vehicle when this occurred and did not hear the complaint of injury. This was confirmed by a review of ICV.

As he did not hear the complaint of injury, Named Employee #1 had no duty to report it. He was not required to either report or document what he was not aware of.

SPD Policy 11.020-POL-10 requires that officers ensure that seatbelts are used for subjects that are being transported in Department vehicles. The policy provides an exception when a Department vehicle does not have seatbelts or where circumstances prevent the officer from securing the subject. (See SPD Policy 11.020-POL-10.) In the latter scenario, the officer must document these circumstances in a later report. (See *id.*)

Based on a review of ICV, it was undisputed that the subject was not secured with seat restraints during her transport from the scene to the jail. When asked at their OPA interviews, both Named Employee #1 and Named Employee #2 indicated that they were unaware that the subject was not secured. Both further stated that had they been aware of this fact, they would have ensured that she was secured. This was simply not an excuse for failing to secure the subject. Once the Named Employees had custody over her, they were responsible for ensuring her safety, which included making sure that she was secured in the patrol vehicle. Notably, the patrol vehicle was equipped with seatbelts and neither officer reported the failure to secure the subject in the General Offense Report relating to this case or in any other paperwork.

The failure to secure the subject prior to transporting her from the scene was in violation of policy. Had the officers been involved in an accident or had to brake suddenly, she could have suffered serious injury. This was particularly the case given that she was in handcuffs at the time.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends "on the totality of the circumstances" known to the officers at the time of the force and must be balanced against "the rights of the subject, in light of the circumstances surrounding the event." (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (See *id.*) Force is necessary where "no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose." (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

The subject was suspected to have committed property damage and potentially assault. When officers arrived at the scene, they were informed that she had already left the vicinity. The

officers tried to locate the subject and observed her walking back towards the scene. The officers pulled their vehicle over and made contact with the subject, who was yelling at the victims. The officers approached the subject, who was standing with her child. Named Employee #1 took hold of the subject's left arm and asked the subject to let go of her child's hand and put her right hand on her head. While the subject initially did not comply with Named Employee #1's requests, she eventually did so. While he was attempting to place the subject in handcuffs, she continued to pull away and spin towards him. However, Named Employee #1 was able to handcuff the subject. Named Employee #1 did not use any further force. While Named Employee #2 indicated at his OPA interview that he assisted with the handcuffing, he stated that he did not use any reportable force.

The officers' attempts to control the subject's person and to place her in handcuffs was not captured on ICV. However, the video did show the officers bringing the subject in front of their patrol vehicle. Contrary to the complaint the subject made to the Sergeant, at no point did the video show her being slammed against the patrol vehicle.

Based on the OPA Director's review of the evidence and testimony, the force used by the officers to arrest and handcuff the subject was reasonable, necessary and proportional. There was no evidence in the record that the officers used excessive force against her.

Named Employee #2, unlike Named Employee #1, was in the rear of the patrol vehicle when the subject complained of pain from her handcuffs. Named Employee #2 clearly heard the complaint, as he addressed it with her. Named Employee #2 refused to loosen her handcuffs because of what he believed to be her escalating behavior. Even though he heard the complaint of pain, he did not report it to a supervisor.

Pursuant to SPD Policy 8.400-POL-1, officers are required to report all uses of force except de minimis force. The policy further states that a complaint of transient pain is investigated as a Type I use of force and a complaint of physical injury greater than temporary pain is investigated as a Type II use of force. Both must be reported to and screened in-person at the scene by a sergeant (with regard to Type I force, in-person screening is not required if not practical under the circumstances). (SPD Policy 8.400-POL-1.)

Named Employee #2's failure to report the subject's complaint of pain to a supervisor prevented an in-person screening from occurring. It also prevented an investigation into the complaint. As discussed below, this complaint was not documented in a use of force report or, for that matter, in any paperwork. Moreover, this complaint of pain apparently was not caught by anyone in Named Employee #2's chain of command. As such, it was never investigated. It was not until OPA reviewed the ICV that this complaint and the failure to report was discovered.

At his OPA interview, Named Employee #2 claimed that he was not aware that he was required to report a complaint of pain from handcuffing that occurred separate and apart from the handcuffing. This was contrary to the policy and there was no indication from Named Employee #2's interview of where this belief stemmed from. Certainly, there was nothing written in the

policy that provided an exemption from reporting for complaints of pain unrelated to the handcuffing itself.

As indicated above, not only did Named Employee #2 fail to report the subject's complaint of pain, he further failed to complete any documentation concerning the complaint. Under SPD policy, Named Employee #2 was required to complete a Type I use of force report. However, he undisputedly did not do so.

FINDINGS

Named Employee #1

Allegation #1

A preponderance of the evidence showed that Named Employee #1 did not hear the complaint of injury. 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

A preponderance of the evidence showed that Named Employee #1 did not hear the complaint of injury. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Use of Force - TYPE I INVESTIGATIONS: Officers Shall Document All Uses of Reportable Force .*

Allegation #3

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Transportation of Detainees: Officers Will Use the Transport Vehicle's Seat Belts to Secure Detainees.*

Training Referral: Named Employee #1 should receive additional training on the requirements of this policy and specifically concerning the Department's expectation that, once a subject is placed in the back of a patrol vehicle, the officers ensure that a seatbelt is applied prior to operating their patrol vehicles.

Allegation #4

A preponderance of the evidence showed that the force used by the officers to arrest and handcuff the subject was reasonable, necessary and proportional. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Authorized.*

Named Employee #2

Allegation #1

A preponderance of the evidence showed that Named Employee #2 heard the complaint of pain but did not report it to a supervisor. Therefore a **Sustained** finding was issued for *Use of Force - REPORTING AND INVESTIGATION: Officers Shall Report All Uses of Force Except De Minimis Force.*

Allegation #2

A preponderance of the evidence showed that Named Employee #2 heard the complaint of pain but failed to complete any documentation concerning the complaint. Therefore a **Sustained** finding was issued for *Use of Force - TYPE I INVESTIGATIONS: Officers Shall Document All Uses of Reportable Force*.

Allegation #3

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Transportation of Detainees: Officers Will Use the Transport Vehicle's Seat Belts to Secure Detainees*.

Training Referral: Named Employee #2 should receive additional training on the requirements of this policy and specifically concerning the Department's expectation that, once a subject is placed in the back of a patrol vehicle, the officers ensure that a seatbelt is applied prior to operating their patrol vehicles.

Allegation #4

A preponderance of the evidence showed that the force used by the officers to arrest and handcuff the subject was reasonable, necessary and proportional. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Authorized*.

Discipline Imposed: Written Reprimand

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.