



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 5, 2018

CASE NUMBER: 2018OPA-0460

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:	Not Sustained (Lawful and Proper)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

It was alleged that Named Employee #1 may have used excessive force on the subject. It was further alleged that Named Employee #2 may have failed to properly classify and investigate the force, as well as to refer a potential allegation of excessive force to OPA.

STATEMENT OF FACTS:

This case arose out of a demonstration that occurred at the University of Washington. During that demonstration, several individuals were placed under arrest. While the officers were trying to take one such individual into custody, they reported that the subject attempted to prevent them from doing so. This tactic is referred to by law enforcement as an “un-arrest.” Named Employee #1 (NE#1) reported that he observed the subject trying to interfere with the arrest of an individual and expressed that he was worried that her actions could potentially constitute an assault of the arresting officer. NE#1 recounted that he had experienced assaults in the context of un-arrest situations in the past.

NE#1 stated that he tried to pull the subject away once, but was unable to do so. He reported that he tried to do so again and, this time, was successful. He stated that he pulled her away but, while doing so, tripped on a bicycle that was on the ground. He fell backwards down to the ground and the subject did as well. NE#1 wrote in his report that, after he and the subject fell to the ground, other individuals also tried to un-arrest her; however, he and other officers were able to prevent those individuals from doing so and were able to take the subject into custody. He further reported that the subject struck her head when she fell.

The incident was recorded, in part, by another officer’s Body Worn Video (BWV). The BWV showed a struggle occurring and depicted the subject falling to the ground; however, it did not capture what transpired immediately prior to that. The latter portion of the BWV, which showed the subject falling to the ground, was consistent with NE#1’s reporting



of the incident. Moreover, the BWV clearly showed other individuals trying to pull the subject away from the officers and the officers preventing them from doing so, which was also consistent with NE#1's report.

At the time she fell to the ground, the subject stated: "My head, my head. You hurt my head. I didn't do anything." She reiterated this statement to officers when she was placed into the prisoner van. She was later interviewed by Named Employee #2 (NE#2), who was supervising the law enforcement response to the demonstration. NE#2 was the sole supervisor responsible both for prisoner processing and investigating any uses of force. This was ultimately a significant obligation as there were six arrests that had to be processed and four use of force incidents that had to be reviewed. When NE#2 interviewed the subject, she stated that she was pepper sprayed and that an officer threw her to the ground. She further told NE#2, when asked whether she had any injuries, that she had pain to the back of her head. Another individual, who was in the prisoner van with the subject at that time, interjected and said, concerning NE#1's conduct: "he was a little rough with her." NE#2 did not ask any follow-up questions of the subject to determine exactly how NE#1 threw her to the ground and how she incurred the injury to the back of her head. NE#2 also did not explore the other individual's statement concerning NE#1 being a "little rough" with the subject. NE#2 had NE#1 complete a Type II use of force report. NE#2 did not construe the subject's or the other individual's statements to constitute allegations of excessive force. As such, NE#2 did not refer this matter to OPA.

The Department's Force Review Board (FRB) reviewed the force. During that review, the FRB listened to the statements made by the subject at the time force was used and later when she was interviewed by NE#2, as well as listened to the statement made by the individual who was also in the prisoner van. After engaging in a robust conversation concerning this matter, and in consultation with OPA, the FRB referred this matter to OPA as a potential allegation of excessive force and unprofessional behavior. The FRB also referred NE#2 to OPA for potentially failing to report misconduct. OPA then commenced this investigation.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

8.200 - Using Force 1. Use of Force: When Authorized

As discussed below, OPA construed the subject and the other individual to be alleging claims of excessive force against NE#1. Specifically, the subject alleged that that NE#1 used force on her for no reason and that, as a result, her head struck the ground. Moreover, another individual, who was purportedly a witness to the force stated that NE#1 was a "little rough" with the subject.

NE#1 contended that the force he used was consistent with policy. He recounted that, at the time he used force, the subject was standing between him and another officer and NE#1's belief at the time was that she was actively interfering with an arrest. In this respect, NE#1 contended that she presented a threat to other officers and, for that matter, to herself and the arrestee. NE#1 stated, in response to the subject's assertion that she was not doing anything wrong at the time of the force, that he tried to pull the subject away on two occasions and could not break her grip. This established for NE#1 that the subject was actively trying to prevent the arrestee from being taken into custody or was grabbing onto the other officer. Either would have been in violation of law. NE#1 told OPA that the force he used was consistent with policy.



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 BWV video depicted a struggle, NE#1 moving towards the struggle, and then he and the subject falling backwards. The video, while not showing the initial contact between NE#1 and the subject, was largely consistent with NE#1’s account. Moreover, another officer who witnessed the incident corroborated all of the details of NE#1’s statement. I further note that, while the subject claimed to be uninvolved in any activity that warranted force being used, I find, when applying a preponderance of the evidence standard, that she was involved in trying to un-arrest a fellow demonstrator. I base this both on her proximity to the officers at the time they were trying to take that other individual into custody, the difficulty NE#1 had in pulling her away, and the fact that other demonstrators similarly tried to un-arrest the subject when she was taken into custody.

As I find that she was likely engaging in this behavior, I conclude that the force used to prevent her from doing so was consistent with policy. First, it was reasonable to use force to stop the subject from either preventing a lawful arrest from occurring or to stop her from potentially harming other officers. Moreover, the force was necessary to effect this lawful purpose and I find that NE#1 rationally believed that there was no reasonable alternative to using such force. Lastly, I conclude that the force used – grabbing the subject’s arms and body to pull her away from the other officers – was proportional to the threat she posed to the officers and to prevent the possible escape of the arrestee. That the subject fell to the ground and hit her head was an inadvertent and unfortunate result of otherwise permissible force. The fact that this occurred does not yield this force out of policy.

In reaching the above determination, I concur both with NE#1’s chain of command and the FRB that the force was consistent with policy. Accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #2 - Allegation #1

8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:

As discussed in the OPA Auditor’s certification, OPA intended to classify a different policy for investigation in this case. This other policy, SPD Policy 5.002-POL-5, requires that supervisors investigate or refer allegations of policy violations depending on the severity of the violation. Where it is an allegation of minor misconduct it can be investigated by a supervisor; however, were it is an allegation of serious misconduct – such as a claim of excessive force – it must be reported to OPA. Instead, however, OPA classified SPD Policy 8.400-POL-3, which concerns the requirements for sergeants to properly classify each use of force and to ensure that the appropriate investigation is conducted.



While this classification error is frustrating, it is largely academic. Even had the correct policy been classified, I would not have recommended a Sustained finding for several reasons. First, as noted both by the Lieutenant in command of the law enforcement response to the demonstration, the FRB, and by NE#2, herself, NE#2 had a great deal of responsibility during this demonstration given understaffing and was “overwhelmed.” Second, even though she did not refer this matter to OPA, she accurately documented the statements made by both the subject and the other individual in the prisoner van in her use of force review. Third, she told OPA that she screened this matter with the Lieutenant and asked him whether it needed to be referred to OPA. Apparently, he said no. Indeed, OPA’s investigation yielded that the Lieutenant, not NE#2, would have actually been the appropriate named employee on this allegation. Pursuant to NE#2’s account, he would ultimately have been responsible for her failure to refer this matter to OPA, as well as his own failure to do so.

With regard to the policy that was classified for investigation, when NE#2 learned that the subject’s head made contact with the ground, she screened this matter with the Department’s Force Investigation Team (FIT) due to the possibility of a head injury. FIT declined to respond to the scene and investigate the force, and recommended that NE#2 investigate the force as a Type II, which she did. As such, I find that NE#2 properly classified this force and investigated it at an appropriate level.

My only issue with NE#2’s work in this case concerns her failure to have asked follow-up questions concerning the statement made by the individual in the prisoner van that NE#1 was a “little rough” with the subject. Had she done so, she could have conclusively determined whether he was making an excessive force claim. From OPA’s review of these types of cases, this is a consistent issue identified in sergeants’ screenings of force and is not unique to NE#2. I counsel NE#2 to ask more probing questions in the future and have been working closely with SPD to ensure that all sergeants Department-wide are committed to doing so.

For the reasons stated above, and considering the policy that was classified for investigation here, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**