



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 9, 2020

FROM: DIRECTOR ANDREW MYERBERG
 OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0158

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	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained

Imposed Discipline

Written Reprimand

Named Employee #3

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	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 the Named Employees subjected the Complainant to excessive force, and that Named Employee #2 was unprofessional towards him.

ADMINISTRATIVE NOTE:

OPA asked Named Employee #2 (NE#2) if he would like to process his case under Rapid Adjudication (RA). RA is provided for in the Seattle Police Officers’ Guild’s collective bargaining agreement (CBA) with the City. It allows for employees to recognize that their conduct was inconsistent with Department policies and standards, and to accept discipline for the policy violation rather than undergoing a full OPA investigation. NE#2 indicated that he wished to do so.

After reviewing the complaint and completing its intake investigation, OPA determined that one of the allegations in this case – the professionalism allegation against NE#2 – could be appropriate for resolution by RA. However, before proceeding with its recommendation, OPA sought the Office of Inspector General’s (OIG) input. The OIG concurred with the OPA’s determination. Consistent with the procedure in the CBA, OPA forwarded to the Chief of Police its recommended disposition and proposed discipline in the form of a Written Reprimand. The Chief of Police concurred



with OPA's recommended findings and proposed discipline. NE#2 also agreed to the discipline and, in doing so, stipulated that the finding and discipline were final and could not be appealed or otherwise later disputed.

Lastly, it was also initially alleged that Named Employee #1 (NE#1) made some sarcastic comments towards the Complainant that may have been inconsistent with the Department's expectations of his professionalism. However, given that his comments were minor in nature, OPA returned that allegation to NE#1's chain of command to be handled as a Supervisor Action.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Named Employees responded to a call of a trespass at a business. The officers determined that the Complainant was the trespasser. They asked the Complainant to leave the business, but he did not initially do so. The Complainant asked for medical assistance. The Named Employees said that they would get him aid, but that he needed to leave the business for this to occur. After he continued to refuse to do so, the officers lifted the Complainant up by his arms and walked him outside.

While outside, the Complainant continually placed his hands in his pockets, even after being asked to stop doing so by officers. The Complainant was told that, if he continued this behavior, he would be placed into handcuffs. He was eventually handcuffed. The Complainant was instructed to sit down, and he did not do so. He was then pushed down into a seated position. After remaining there for a period of time, the Complainant quickly stood up. The officers again caused the Complainant to sit down by pushing down on his shoulders. At around that time, the Complainant quickly jutted his head forward and bit NE#2. The officers held him down until he was under control.

The Complainant complained that the officers hurt him and broke his neck. A Sergeant responded to the scene and screened the arrest and the use of force. The Complainant told the Sergeant that the officers grabbed his neck and tried to break it. He also asserted that the officers threw him to the ground and raped him. An OPA investigation was ultimately initiated.

OPA tried to locate and interview the Complainant but was unsuccessful. OPA reviewed Body Worn Video (BWV), which fully captured what occurred, and the written documentation of the incident. Based on that review, OPA finds that there is no evidence supporting the Complainant's allegations, which OPA construes to be claims of excessive force. First, the Complainant's allegation that he was raped is frivolous. Second, the Complainant was never thrown to the ground. Third, the BWV conclusively established that no officer ever grabbed his neck, broke his neck, or tried to break his neck. To the contrary, the officers used minimal force to seat the Complainant twice and to prevent him from being assaultive, including stopping him from further biting NE#2. This force was consistent with policy and was reasonable, necessary, and proportional under the circumstances of this case.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against all three Named Employees.

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



Named Employee #2 - Allegation #1

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

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #2

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.)

When reviewing BWV, OPA determined that NE#2 made several statements that were potentially unprofessional in contravention of SPD policy. Specifically, when the Complainant first asserted that officers were breaking his neck, NE#2 responded: “no one’s breaking your neck, no one’s touching your fucking neck.” Second, shortly thereafter, NE#2 told the Complainant to “shut up.” Third, and most problematic in OPA’s opinion, NE#2 said, after being bitten by the Complainant: “if I ever see you again and you try to fucking touch me, I’m going to fucking punch you in the face.”

While the first and second statements constituted borderline unprofessionalism and, standing alone, may not have warranted a Sustained finding and discipline, the third statement was clearly improper. Indeed, NE#2 recognized this shortly after the incident and self-reported to a supervisor.

OPA has consistently found that threats to harm individuals unrelated to a last-ditch effort to obtain de-escalation and avoid using force, are unprofessional. This is especially the case where, as here, the threat is coupled with profanity. Given this, OPA concludes that the collective statements made by NE#2, and particularly the third statement, violated SPD policy.

By agreeing to proceed with RA, NE#2 recognized that his actions were contrary to the Department’s professionalism policy. OPA appreciates and commends NE#2 for taking accountability for this incident and for agreeing to RA. OPA accordingly recommends this allegation be Sustained – Rapid Adjudication. This finding is both final and binding.

Recommended Finding: **Rapid Adjudication - Sustained**

Named Employee #3 - Allegation #1

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

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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