



OFFICE OF POLICE ACCOUNTABILITY

Closed Case Summary

Complaint Number 2017OPA-0153

Issued Date: 12/15/2017

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	Sustained
Allegation #2	<u>Seattle Police Department Manual</u> 6.010 (1) Arrests: Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest (Policy that was issued February 1, 2016)
OPA Finding	Not Sustained (Training Referral)
Allegation #3	<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 (Training Referral)
Allegation #4	<u>Seattle Police Department Manual</u> 8.200 (2) Using Force: Use of Force: When Prohibited (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Lawful and Proper)
Allegation #5	<u>Seattle Police Department Manual</u> 5.001 (10) Standards and Duties: Employees Shall Be Truthful and Complete In All Communication (Policy that was issued April 1, 2015)
OPA Finding	Not Sustained (Inconclusive)

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	Not Sustained (Training Referral)
Final Discipline	Written Reprimand

Named Employee #2	
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	Sustained
Allegation #2	<u>Seattle Police Department Manual</u> 6.010 (1) Arrests: Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest (Policy that was issued February 1, 2016)
OPA Finding	Not Sustained (Training Referral)
Allegation #3	<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 (Training Referral)
Allegation #4	<u>Seattle Police Department Manual</u> 8.200 (2) Using Force: Use of Force: When Prohibited (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Lawful and Proper)
Allegation #5	<u>Seattle Police Department Manual</u> 5.001 (10) Standards and Duties: Employees Shall Be Truthful and Complete In All Communication (Policy that was issued April 1, 2015)
OPA Finding	Not Sustained (Unfounded)
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
Final Discipline	Written Reprimand

Named Employee #3	
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	Sustained
Allegation #2	<u>Seattle Police Department Manual</u> 6.010 (1) Arrests: Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest (Policy that was issued February 1, 2016)
OPA Finding	Not Sustained (Training Referral)
Allegation #3	<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	Sustained
Chief's Finding	Not Sustained (Inconclusive)
Allegation #4	<u>Seattle Police Department Manual</u> 8.200 (2) Using Force: Use of Force: When Prohibited (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Lawful and Proper)
Allegation #5	<u>Seattle Police Department Manual</u> 5.001 (10) Standards and Duties: Employees Shall Be Truthful and Complete In All Communication (Policy that was issued April 1, 2015)
OPA Finding	Not Sustained (Inconclusive)
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
Final Discipline	2 Day Suspension

INCIDENT SYNOPSIS

Named Employees #1 and #2 were dispatched to a report of a male subject slumped over the wheel of an automobile in the roadway. Upon their arrival they requested that Named Employee #2 respond to the call as well. The male subject was subsequently placed under arrest for DUI. A dog that had been in the vehicle and gotten loose was recovered by officers

and secured in the rear of one of the patrol vehicles. A female subject, who was with the male subject and had gone to look for the dog, returned to the scene and tried to claim the dog. The female subject was ultimately arrested for obstruction. During the arrest reportable force was used by officers.

COMPLAINT

The complainant, a supervisor within the Department, alleged that the Named Employees violated SPD Use of Force Reporting and Investigation policy for:

- (1) failure to report multiple Type I complaint of handcuff pain
- (2) failure to clearly and reliably report and thoroughly document each time force was used
- (3) failure to include a description of each force application
- (4) engaging in force on a restrained subject

Additionally, the Named Employees may have violated SPD policy by:

- (5) failure to have legal authority to ask the subject for identification;
- (6) failure to have probable cause to arrest the subject;

During Intake, OPA added allegations that the Named Employees may have violated SPD policy by:

- (7) intentionally withholding or obscuring material information from a sergeant that the subject was handcuffed at the time she was taken to the ground and injured; and
- (8) by forming an agreement between them not to tell the sergeant the subject was handcuffed at the time the force was used, the named employees engaged in behavior that undermined public trust in the Department and the officers.

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. Review of Use of Force Investigation Documents
5. Interviews of SPD employees

ANALYSIS AND CONCLUSION

Named Employee #1 completed a Type II Use of Force Report for the takedown, which was his sole reportable use of force from the incident.

In that report, he outlined the force used against the female subject, including the fact that she was handcuffed when she was taken down the ground. (NE#1 Use of Force Report.) Named

Employee #1 indicated that, after being kicked in the knee by the female subject, he took her to the ground using a "c step" technique. (Id.) Named Employee #1 stated that he kept his left hand on her shoulder in order "to better control [her] descent towards the ground and to limit any harm or injury." (Id.) Named Employee #1 further wrote that the female subject did not complain of injury during the takedown or after (at least in his presence). (Id.)

Named Employee #1's report was a technically accurate depiction of the events and was consistent with the ICV (see NE#2 ICV, at 18:25:52 – 18:52:57). Moreover, as indicated by Named Employee #1, the female subject did not complain of pain after the takedown or while in Named Employee #1's presence afterwards. (See id. at 18:25:52 – 18:27:11.)

Pursuant to Manual Policy 8.200(2) any force used against restrained subjects "shall be closely and critically reviewed." Further, pursuant to Manual Policy 8.400-POL-1, force "reasonably expected to cause physical injury" must be reported as Type II force and a sergeant must screen the force at the scene. While the force was appropriately documented by Named Employee #1 in his Use of Force Report, it was not initially properly reported to the sergeant, which prevented her from screening it at the scene, as required by policy.

After a discussion between Named Employee #1 and Named Employee #3, the decision was made to radio the sergeant and report the force. (NE#1 and NE#3 ICV, at 18:30:58 – 18:31:33.) There appeared to be initial confusion between the officers as to whether the force should be reported, with Named Employee #1 indicating that he would "rather be safe than sorry." (Id.) While the ICV audio was at times of low quality, Named Employee #1, when asked about the nature of the force by Named Employee #3, indicated that the female subject was handcuffed at the time she was taken down to the ground. (Id. at 18:31:22 – 18:31:25.) Named Employee #1 further stated that the female subject was not complaining about the force and that he did not believe that she had any injuries. (Id. at 18:31:01 – 18:31:33.) Named Employee #3 asked whether the takedown was hard or soft, but, while Named Employee #1 attempted to answer this question, Named Employee #3 called the sergeant and began to discuss the force. (Id. at 18:31:35 – 18:32:04.) Named Employee #3 represented to the sergeant that the takedown was soft, that the subject did not have any injuries, and failed to disclose that the subject was handcuffed at the time she was taken to the ground.

Not only did the ICV indicate that the takedown in question was a hard takedown (NE#2 ICV, at 18:25:52 – 18:25:57), the fact that the female subject was restrained in handcuffs greatly increased the risk that she could have suffered significant physical injuries. The subject was brought down face first with nothing to stop her fall except for the ground. That she only suffered minor injuries was immaterial; the force used was undoubtedly that which could be reasonably expected to cause physical injury. Moreover, from a review of the ICV, it did not appear that the officers ever checked the subject for injuries. For these reasons, had the force been properly reported to the sergeant, she would have been required to come to the scene to screen the force in-person. (See Manual Policy 8.400-POL-1.) This did not occur, and the force did not receive the close and critical review it required.

While Named Employee #3 was the officer that conveyed the operative facts to the sergeant, Named Employee #1 took no action to correct Named Employee #3 at the time of the call or to call the sergeant back and to provide a more complete and accurate recitation of the facts.

Lastly, Named Employee #1 was aware of at least two other complaints of pain for which he took no action. First, while the female subject was being secured by Named Employee #1 and Named Employee #2 at the front of Named Employee #1 and Named Employee #3's vehicle, she complained four times that the officers' conduct was hurting her. It did not appear that either Named Employee #1 or Named Employee #2 reported this pain to a supervisor, as required, or created any documentation as to those complaints. Second, the male subject made two complaints of pain during his arrest; the first complaint occurred while he was walking from his vehicle to the police vehicle (without shoes) and the second appeared to occur when he was being seated in the police vehicle. Named Employee #1 failed to report the male subject's complaints of pain to a supervisor or to create any documentation as to that complaint.

Manual Policy 6.010(1) states that an arrest must be supported by probable cause. This mirrors the standard for a lawful arrest under both Washington state and federal law.

The complaint in this case only concerned the arrest of the female subject. The OPA Director had some reservations as to the lawfulness of this arrest, which are discussed more fully below.

The arrest of the female subject was effectuated by Named Employee #1, Named Employee #2, and Named Employee #3 in tandem. (See NE#1 and NE#3 ICV, at 18:17:37 – 18:18:01.) The subject was initially placed under arrest for an alleged obstruction of justice. The obstruction, itself, was based on an amalgam of her failure to provide her identification, her movements from the sidewalk into the street, and her "interference" in the officers' investigation. First, at the time the subject was placed under arrest, the officers had no lawful basis to demand her identification and she had no obligation to comply with that demand. Second, it was lawful for her to cross the street in a residential neighborhood. Third, it was debatable whether the subject was, in fact, interfering in the officers' investigation to constitute obstruction. While the female subject was certainly irate and often rude to the officers, neither is a crime. Moreover, pursuant to the Washington Supreme Court's 2015 decision in *State v. EJJ*, 183 Wn. 2d 497, 354 P.3d 815 (2015), verbal statements and insults, without physical conduct, are insufficient to establish obstruction. Here, the officers contended that by repeatedly walking through the scene of the incident and by repeatedly questioning the officers' actions and authority, the female subject "obstructed our investigation by forcing all officers on scene to stop what they were doing and pay full and complete attention to her and her actions." (NE#2 General Offense Report Statement.) It was a close question of whether the female subject's behavior ever crossed the line from that which was simply annoying and inconvenient to the officers to that which was actual physical conduct that prevented the officers from conducting and finishing their investigation.

The OPA Director further found it noteworthy that the Seattle Municipal Court made findings of probable cause for the female subject's arrest in January and February (but did not address

whether there was reasonable suspicion for the Terry stop). Importantly, the Court did not have access to OPA's extensive investigation file and, as such, made its determination based a much less developed record.

In summary, the OPA Director did not find that there was probable cause to arrest the female subject for refusing to show identification and for moving from the sidewalk into the street. However, in applying the preponderance of evidence standard, the OPA Director could not conclusively determine that the officers' perception that the subject's conduct unlawfully interfered with their ability to investigate the DUI scene was clearly unreasonable and incorrect.

Manual Policy 6.220 instructs that a Terry stop must be supported by reasonable suspicion that a suspect has been, is, or will be involved in the commission of a crime. It further requires that the facts underlying the reasonable suspicion be documented using specific articulable facts. Manual Policy 6.220-POL-2 defines and distinguishes between voluntary (social) contacts and Terry stops. Manual Policy 6.220-POL-5 requires that officers be courteous and professional during Terry Stops, including identifying themselves. Lastly, Manual Policy 6.220-POL-6 prohibits officers from requiring a subject to identify themselves or answer questions during a Terry stop.

At approximately 17:44:36 hours, the female subject indicated that she was going to leave the scene to look for her dog. In response, Named Employee #1 said "you're not" and Named Employee #3 instructed her that "no one was leaving." (NE#1 and NE#3 ICV, at 17:43:34 – 17:44:41.) Based on those instructions, she remained at the scene. The officers' statements establish that the subject was, at that point, subject to a Terry stop, as she was not free to leave. There was, however, no reasonable suspicion that she had been, was currently, or was going to be involved in criminal activity. Notably, in his OPA interview, Named Employee #3 admitted that he did not have reasonable suspicion that the female subject was the driver of the vehicle. Named Employee #1 and Named Employee #3 further appeared to concede that there was no reasonable suspicion, as they ultimately did not prevent her from walking away shortly thereafter. (Id. at 17:45:48 – 17:46:20.) While the officers may have wanted to question the female subject concerning the vehicle and who had parked it in the middle of the road, she had no obligation to respond to those questions and the officers had no authority to compel her to do so.

At approximately 18:16:35 hours, the female subject was again subjected to a Terry stop. Prior to that time, she had asked for the officers to return a dog to her and, in response, officers asked her for her identification (which was, in that context, a reasonable request). (Id. at 18:12:48 – 18:13:20.) After a back and forth concerning the identification, the officers informed her that she was "free to leave at any time." (Id. at 18:13:38 – 18:13:43.) Several minutes later, she attempted to walk away by crossing the street, but was apparently instructed that if she did so she would be arrested for obstruction. (Id. at 18:15:18 – 18:15:32.) She then attempted to enter the street and she was physically stopped from doing so by Named Employee #2 and her movement was curtailed. (Id. at 18:16:35 – 18:16:58). At that point, she was subjected to a second Terry stop. As indicated by a captain in his Type II Use of Force Review, given that she

was in a residential neighborhood, "it is lawful to step into the street and cross it at any point." Again, there was no reasonable suspicion that the female subject had been, was currently, or was going to be involved in criminal activity at the time she was stopped.

After her arrest, the subject repeatedly moved and pulled her body away from the officers. While she was being held at the front of Named Employee #1's and Named Employee #3's vehicle, Named Employee #1 and Named Employee #2 could be heard repeatedly instructing her to stop kicking them and stepping on their feet and to stop resisting. (NE#1 and NE#3 ICV, at 18:20:47 – 18:21:00; 18:21:56 – 18:22:06; 18:22:46 – 18:22:51; 18:24:05 – 18:24:13; 18:24:58 – 18:25:08; 18:25:25 – 18:25:30.) At one point, she appeared to grab Named Employee #1's equipment belt and he prevented her from doing so and instructed her not to do that again. (Id. at 18:25:08 – 18:25:25.)

Named Employee #1 then made the decision to place the female subject in a police vehicle and began walking her around the right side of his vehicle. Named Employee #1 stopped in vicinity of the right passenger side door of his vehicle until Named Employee #2 let him know that the other car was ready for the female subject's transport. At that point, the subject, who was facing away from Named Employee #1, kicked her foot backwards, striking the area around Named Employee #1's knee with fairly significant force. (NE#2 ICV, at 6:29:49 – 6:29:54.) Named Employee #1, holding the sides of her shirt, took her down to the ground face-first in a fast, fluid movement. (Id.)

Manual Policy 8.200 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." The policy lists a number of factors that should be weighed when evaluating reasonableness. 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." Lastly, the force used must be proportional to the threat posed to the officer. In addition, 8.200(2) prohibits the use of force on subjects in handcuffs "except in exceptional circumstances when the subject's actions must be immediately stopped to prevent injury..."

Here, the OPA Director found that the force used by Named Employee #1 was reasonable, necessary, and proportional, and thus consistent with policy.

First, with regard to reasonableness, Named Employee #1 was confronted with a subject who had repeatedly pulled her body away from the officers, who had kicked at the officers on several occasions, and who had tried to grab his equipment belt. The subject represented an immediate threat to Named Employee #1 and, indeed, caused him physical harm by kicking him. While Named Employee #1 ultimately did not suffer any lasting injury, the kick by the subject to his knee could have caused serious damage. Named Employee #1 was confronted by an angry and actively resisting subject who, if given additional opportunity, could have tried to harm him again. As such, the OPA Director that the force used by Named Employee #1 to prevent being struck again was reasonable.

Second, with regard to whether the force was necessary, the OPA Director found that, at the time the force was used, Named Employee #1 believed that there was no reasonably effective alternative and that the degree of force was reasonable to effect the lawful purpose of preventing a further assault on his person.

Third, with regard to the proportionality of the force, Named Employee #1 used force commensurate with the threat facing him, and only that level of force needed to get the subject on the ground so that she could not strike him a second time.

While the subject was in handcuffs at the time the force was used, the OPA Director found the force to have been within policy as this represented exceptional circumstances in which the subject's actions had to be stopped to prevent the threat of immediate injury.

As described more fully above, Named Employee #1 and Named Employee #3 failed to disclose to the sergeant that the female subject was handcuffed when she was taken to the ground and incorrectly described the takedown as soft. Here, Named Employee #1 did not directly communicate with the sergeant; he had communicated full information to a fellow officer that was not repeated to the sergeant. However, he did not take extra steps to correct or complete the information provided. There was not sufficient evidence, however, to meet the standard necessary to establish that Named Employee #1 was intentionally dishonest.

Manual Policy 5.001(9) requires SPD employees to be professional at all times and prohibits the unnecessary escalation of events.

While Named Employee #1 engaged in a sarcastic conversation with Named Employee #2 based on an insult levied by the female subject, from a review of the ICV, Named Employee #1's conduct was otherwise professional. Named Employee #1 also did not appear to have substantially escalated this incident by his words or conduct.

That being said, the OPA Director recommended that Named Employee #1 receive additional training on the requirements of Manual Policy 5.001(9) in order to emphasize the department's commitment to de-escalation.

While Named Employee #2 did not use any reportable force, he failed to timely report multiple complaints of pain from both the female and male subject.

First, while the female subject was being secured by Named Employee #1 and Named Employee #2 at the front of Named Employee #1 and Named Employee #3's vehicle, she complained four times that the officers' conduct was hurting her. It did not appear that either Named Employee #1 or Named Employee #2 reported this pain to a supervisor, as required, or created any documentation as to those complaints.

Second, the male complainant made two complaints of pain in Named Employee #2's presence. The first complaint concerned pain to his wrist and occurred during his transport from the

precinct to the medical center. (NE#2 ICV, at 20:59:50 – 21:03:48.) The second complaint of pain, also to the subject's wrist, occurred during his transport from the medical center to the jail. (Id. at 21:33:51 – 21:35:22.) While Named Employee #2 documented the first complaint, he did not report it to a supervisor until hours after it occurred, in violation of policy. Named Employee #2 did not report or document the second complaint, also in violation of policy.

The OPA Director noted that it was unclear from the evidence whether Named Employee #2 heard the male subject's complaints of pain when he was being walked to and placed into the police vehicle. Accordingly, this did not factor into the recommendation.

Based on the evidence, Named Employee #2 did not appear to have used reportable force on either the male or female subject.

From a review of the ICV, Named Employee #2 did not appear to be in the vicinity of Named Employee #1 and Named Employee #3 when the force used on the female subject was reported to the sergeant. The OPA Director found, also based on the ICV, that there was no evidence suggesting that Named Employee #2 overheard that conversation or had the opportunity to correct the misstatements and omissions of Named Employee #3.

In the initial interaction with the male subject and then with the female subject, Named Employee #2 remained professional. Once the female subject was arrested, however, and placed on the front of Named Employee #1's and Named Employee #2's police vehicle, his conduct fell outside of policy.

It was clear that the female subject used abusive language towards the officers, but Named Employee #2's sarcastic responses were inappropriate in and of themselves, and also served to exacerbate the situation. For example, shortly before the takedown occurred, Named Employee #2 and Named Employee #1 sarcastically discussed in the female subject's presence an insult used towards Named Employee #2. (NE#1 and NE#3 ICV, at 18:25:52 – 18:25:57) After this conversation, during which the subject was pinned down by the officers, she continued to grow increasingly more agitated. In this situation, the more appropriate course of action would have been to bear the insults in silence and instead attempt to diffuse an already volatile situation.

This pattern continued after the female subject was placed in Named Employee #2's patrol vehicle. Again, instead of carrying on with his professional duties, Named Employee #2 repeatedly sarcastically responded to the subject's statements. (See, e.g., NE#2 ICV, at 18:13:16 – 18:31:24; 18:31:35 – 18:31:55; 18:32:47 – 18:32:52.)

While the female subject's comments were crude and abhorrent, police officers generally, and Named Employee #2 specifically, have an obligation to comport themselves professionally and to rise above the negative conduct of the subjects with whom they may interact. Manual Policy 5.001(9) requires SPD employees to be professional at all times and prohibits the unnecessary escalation of events. The OPA Director found that Named Employee #2's actions violated this policy.

As discussed more fully above (see Named Employee #1, Allegation #1), Named Employee #3's failure to completely and accurately report the force used on the female subject to the sergeant prevented the force from being properly screened.

The OPA Director noted that it was unclear from the evidence whether Named Employee #3 heard the male subject's complaints of pain when he was being walked to and placed into the police vehicle. Accordingly, this did not factor into the recommendation.

Based on the evidence, Named Employee #3 does not appear to have used reportable force on either the male or female subject.

As described more fully above, Named Employee #3 failed to disclose to the sergeant that the female subject was handcuffed when she was taken down to the ground and errantly characterized the takedown as soft.

While Named Employee #3 was undoubtedly less than forthcoming with the sergeant, there was not sufficient evidence to meet the standard necessary to establish that Named Employee #3 was intentionally dishonest.

Shortly after the female subject arrived on the scene, Named Employee #3 repeatedly and aggressively questioned her and the male subject about who had parked the vehicle in the road. (NE#1 and NE#3 ICV, at 17:43:10 – 17:43:44.) When the female subject mentioned her dog, Named Employee #3 loudly stated that he did not care about the dog. (Id. at 17:43:20.) Shortly thereafter, the female subject touched Named Employee #3 on the shoulder to get his attention. Named Employee #3 responded with an instruction not to touch him and told her to touch him again. When she asked why, Named Employee #3 responded "you'll find out" and then threatened to arrest her. (Id. at 17:44:03 – 17:44:10.)

Later, when Named Employee #3 ordered the female subject to provide identification upon the threat of arrest, he informed her that he was "not a daycare service" and that he did not care about her statements concerning her attorney. (Id. at 18:16:46 – 18:16:56.) Named Employee #3 further told her that he would count to ten and if identification was not provided, he would place her under arrest. (Id. at 18:17:07 – 18:17:37.) This was done in a manner that was dismissive and patronizing towards the subject.

While both the male and female subject were undoubtedly difficult to deal with and while both appeared and sounded intoxicated, Named Employee #3's tone and the nature of his interaction with them (and especially the female subject) incrementally escalated the situation. Had Named Employee #3 modulated his tone and been more respectfully to the female subject, it may very well have been the case that her arrest would have been unnecessary and no force would have been used. Instead, a bad situation was made worse. Manual Policy 5.001(9) requires SPD employees to be professional at all times and prohibits the unnecessary escalation of events. The OPA Director found that Named Employee #3's actions violated this policy.

OPA FINDINGS

Named Employee #1

Allegation #1

A preponderance of the evidence showed that Named Employee #1 took no action to correct Named Employee #3's conveyance of the incident, and that he failed to report the male subject's complaints of pain. 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

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Arrests: Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest*.

Training Referral: The OPA Director recommends that all three officers be retrained as to SPD policies concerning arrest, generally, and as to the elements of the offense of obstruction.

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 *Voluntary Contacts, Terry Stops & Detentions: Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop*.

Training Referral: The OPA Director recommends that Named Employee #1 receive training concerning Terry stops, generally, and on when officers are permitted to ask the subject questions or request identification.

Allegation #4

A preponderance of the evidence showed that the force utilized by Named Employee #1 was reasonable, necessary, and proportional. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Prohibited*.

Allegation #5

There was not a preponderance of the evidence either supporting or refuting the allegation. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Standards and Duties: Employees Shall Be Truthful and Complete In All Communication*.

Allegation #6

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Standards and Duties: Employees Shall Strive to be Professional at all Times*.

Training Referral: The OPA Director recommends that Named Employee #1 receive additional training on the requirements on Manual Policy 5.001(9) in order to emphasize the department's commitment to de-escalation.

Discipline Imposed: Written Reprimand

Named Employee #2

Allegation #1

A preponderance of the evidence showed that the Named Employee failed to timely report multiple complaints of pain from the subjects. 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

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Arrests: Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest*.

Training Referral: The OPA Director recommends that all three officers be retrained as to SPD policies concerning arrest, generally, and as to the elements of the offense of obstruction.

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 *Voluntary Contacts, Terry Stops & Detentions: Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop*.

Training Referral: The OPA Director recommends that Named Employee #2 receive training concerning Terry stops, generally, and on when officers are permitted to ask the subject questions or request identification.

Allegation #4

A preponderance of the evidence showed that the handcuffing of the male subject was reasonable, necessary, and proportional. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Prohibited*.

Allegation #5

There was no evidence suggesting that Named Employee #2 had overheard or had the opportunity to correct the misstatements and omissions of Named Employee #3. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Standards and Duties: Employees Shall Be Truthful and Complete In All Communication*.

Allegation #6

A preponderance of the evidence showed that Named Employee #2's actions violated the policy on professionalism. Therefore a **Sustained** finding was issued for *Standards and Duties: Employees Shall Strive to be Professional at all Times.*

Discipline Imposed: Written Reprimand

Named Employee #3

Allegation #1

A preponderance of the evidence showed that Named Employee #3 failed to completely and accurately report force to the sergeant. 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

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Arrests: Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest.*

Training Referral: The OPA Director recommends that all three officers be retrained as to SPD policies concerning arrest, generally, and as to the elements of the offense of obstruction.

Allegation #3

A preponderance of the evidence showed that Named Employee #3's actions were in violation of policy. Therefore a **Sustained** finding was issued for *Voluntary Contacts, Terry Stops & Detentions: Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop.*

Allegation #4

A preponderance of the evidence showed that the securing and handcuffing of the male subject was reasonable, necessary, and proportional. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Prohibited.*

Allegation #5

There was not a preponderance of the evidence either supporting or refuting the allegation. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Standards and Duties: Employees Shall Be Truthful and Complete In All Communication.*

Allegation #6

A preponderance of the evidence showed that Named Employee #3's actions violated the policy on professionalism. Therefore a **Sustained** finding was issued for *Standards and Duties: Employees Shall Strive to be Professional at all Times.*

Discipline Imposed: 2 Day Suspension

CHIEF'S FINDINGS

Named Employee #3

Allegation #3

Chief O'Toole acknowledged that there were facts from which one could deem the request out of policy, but also believed there were facts from which one could deem the request fully lawful and proper, and did not believe that the record was sufficiently clear to answer that inquiry one way or the other. Chief O'Toole changed the finding to **Not Sustained** (Inconclusive) for *Voluntary Contacts, Terry Stops & Detentions: Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop*.

See attached letter from Chief O'Toole regarding her findings of this case.

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.



City of Seattle

Seattle Police Department

November 6, 2017

The Honorable Tim Burgess
Mayor
City of Seattle
600 4th Avenue
Seattle, WA 98124-4769

The Honorable Bruce A. Harrell
Council President
City of Seattle
600 4th Avenue
Seattle, WA 98124-4769

RE: OPA Case No. 2017-0153

Dear Mayor Burgess and Council President Harrell:

I am writing to report on the findings in OPA 2017-0153. The underlying incident involves a stop for a suspected DUI. As you know, the Office of Professional Accountability (OPA) independently manages misconduct investigations and submits recommended findings to the Department concerning the alleged policy violations. In this case, OPA recommended sustained findings for violations of three Department Policy Manual Sections. I am in full agreement with OPA regarding its recommended sustained findings for two (Department Policy Manual 8.400(1) – Use of Force Reporting and Investigation, and Department Policy Manual 5.001(9) – Professionalism), and based on these sustained findings, I am imposing a two-day suspension¹. After much consideration, however, for the following reasons, I am not following OPA's recommended sustained finding regarding Department Manual Policy 6.220(6) – Voluntary Contacts, Terry Stops and Detentions. Specifically, OPA recommended a sustained finding with regard to the portion of Department Manual Policy 6.220 that prohibits officers from requiring subjects to identify themselves or answer questions during a *Terry* stop.

OPA's recommendation requires me to first accept that the circumstances of this particular incident were indeed sufficiently within the parameters of *Terry* so as to implicate that analysis; second, a sustained finding would also require me to accept, again under the unique facts of that case, that a reasonable officer on that scene would have known that a request for identification was improper. In this case, the subject was present at the scene of an ongoing DUI investigation. She was repeatedly advised that she was free to leave the scene; she initially did not do so, but rather, continued to interfere in that active investigation. At that point, I believe there was existing probable cause to arrest the subject for obstruction; the fact that they did not do so, but rather continued to encourage her to disengage, does not mitigate or negate probable cause.

¹ SMC 3.28.812 directs that this letter not contain the name of the subject employee or any personal information.

When she did leave the scene, she did so in search of a dog that had apparently escaped. By the time she returned, officers – who were still processing the DUI investigation – had recovered a dog; responsive to her repeated demands for them to give her the dog, she was asked for identification for purposes of ensuring that she was, in fact, the proper owner of the dog. Separate and apart from the arguably existing probable cause based on her earlier obstruction, and even if this second encounter, which she initiated, were to be considered within the parameters of *Terry*, I find that there are facts specific to this second contact from which a reasonable officer would believe the request to be lawful and proper; indeed, had officers turned over the animal to the subject, particularly in her highly intoxicated state, without attempting to verify that she was in fact the rightful owner, I would be questioning that decision.

I appreciate that reasonable minds can differ as to the legal application of *Terry*. I am also mindful, however, that officers on the street are not lawyers, are regularly called upon to manage often highly dynamic circumstances as they present, and that despite a robust body of case law, the lines between a voluntary contact, an investigatory detention, and probable cause remain very much fact-driven analyses. I acknowledge that there are facts from which one could deem the request out of policy, but I also believe there are facts from which one could deem the request fully lawful and proper. Simply put, based upon a thorough review of the record, including the testimony of the subject officer at OPA, the relevant video, the criminal charges against the involved citizen, and statements made to me at the *Loudermill* hearing, I do not believe the record is sufficiently clear to answer that inquiry one way or the other. For that reason, I am changing the recommended sustained finding for violation of Department Manual Policy 6.220(6) – Voluntary Contacts, Terry Stops and Detentions to not sustained – inconclusive.

Please let me know if you have additional questions.

Sincerely,



Kathleen M. O'Toole
Chief of Police

cc: Lorena González, Councilmember
Sally Bagshaw, Councilmember
Kshama Sawant, Councilmember
Lisa Herbold, Councilmember
Kirsten Harris-Talley, Councilmember
Debora Juarez, Councilmember
Rob Johnson, Councilmember
Mike O'Brien, Councilmember
Andrew Myerberg, Interim OPA Director
File