



## CLOSED CASE SUMMARY

ISSUED DATE:      JANUARY 23, 2018

CASE NUMBER:     2016OPA-0293

### 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)

**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:**

During a review of the incident by the Force Review Board (FRB), it was determined that the subject alleged that the Named Employees kicked him and broke his arm. Accordingly, the FRB referred an excessive force allegation to OPA.

**ADMINISTRATIVE NOTE:**

In addition to referrals for the Named Employees, the FRB also referred an allegation to OPA that a Department supervisor failed to screen with the Department’s Force Investigation Team (FIT) the subject’s allegations that he was kicked in the pancreas and that his arm was broken. During its intake investigation, OPA leadership made the determination that because the supervisor sufficiently investigated the subject’s allegations and obtained medical evidence that belied the subject’s claims, no FIT screening was required. OPA removed the allegation against the supervisor and notified FRB of that decision.

I note that even if FIT was not required to be notified, I interpret the subject’s claims to raise an allegation of excessive force. Moreover, even if believed to be unwarranted, I further read existing policy to require the supervisor to have referred these allegations to OPA and he apparently failed to do so. I agree with the Interim OPA Auditor’s assertion in his Certification that this allegation should have been investigated as part of this case. However, given that it was not classified, I do not reach any finding in this regard.



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**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegations #1**

***Force - Use - 8.200 - Using Force 1. Use Of Force: When Authorized***

The subject alleged that the Named Employees broke his arm during his arrest and kicked him in the pancreas. Officers, including the Named Employees, contacted the subject based on a complaint of a suspicious person trespassing in a parking garage. The subject ran from officers when they attempted to identify him. He was caught after a short foot pursuit and taken into custody. During his arrest, the subject complained that the officers kicked him and broke his arm. The supervisor who screened this incident determined that these allegations were false after confirming with the Seattle Fire Department (SFD) that the Complainant did not have any injuries.

As discussed above, the Complainant ran from officers when they tried to arrest him. When he was caught, the subject resisted attempts to put him into handcuffs. The Named Employees used force to subdue the Complainant consisting of a tackle to the ground, as well as force necessary to pull his arms behind his back and place him into handcuffs.

SFD responded to treat the subject for his alleged injuries. As discussed above, SFD determined that the subject did not have a broken arm. The subject did not participate in this investigation.

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.*)

From my review, the force used by the Named Employees was reasonable, necessary, and proportional, and thus consistent with policy. The Named Employees had reasonable suspicion to stop the subject to investigate possible trespassing in the parking garage. Once they verified that the subject was not lawfully on the premises, the officers had probable cause to arrest him for trespass. The subject then ran from the officers in an attempt to escape being taken into custody. The officers had legal authority to use force to take him into custody. The force used, a tackle to the ground and then de minimis force to place the subject into handcuffs, was reasonable under the circumstances of this case. The force was further necessary to ensure that the subject was captured and prevented from causing physical harm to officers. Moreover, the force was proportional to the threat facing the officers. Force was only used when the subject was actively trying to escape officers and resisting being handcuffed and, even then, only the least force necessary was used.

Lastly, the subject’s allegations of being kicked in the pancreas and suffering a broken arm were inconsistent with the evidence. First, a review of the In-Car Video relating to this case yielded no evidence that the subject was ever kicked. Second, a medical examination by SFD explicitly ruled out a broken arm.

For the above reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.



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

**Named Employee #2 - Allegation #1**

***Force - Use - 8.200 - Using Force 1. Use Of Force: When Authorized***

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

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

**Named Employee #3 - Allegation #1**

***Force - Use - 8.200 - Using Force 1. Use Of Force: When Authorized***

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

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