



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 22, 2017

CASE NUMBER: 2017OPA-0565

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation, 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Inconclusive)
# 2	8.100 - De-Escalation, 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)
# 3	16.110-POL-5 Responding to Subjects in Behavioral Crisis	Not Sustained (Lawful and Proper)
# 4	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation, 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Inconclusive)
# 2	8.100 - De-Escalation, 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)
# 3	16.110-POL-5 Responding to Subjects in Behavioral Crisis	Not Sustained (Lawful and Proper)
# 4	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)

Named Employee #3

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation, 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Inconclusive)
# 2	8.100 - De-Escalation, 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)
# 3	16.110-POL-5 Responding to Subjects in Behavioral Crisis	Not Sustained (Lawful and Proper)
# 4	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)



CLOSE CASE SUMMARY

OPA CASE NUMBER: 2017OPA-0565

Named Employee #4

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation, 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Inconclusive)
# 2	8.100 - De-Escalation, 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)
# 3	16.110-POL-5 Responding to Subjects in Behavioral Crisis	Not Sustained (Lawful and Proper)
# 4	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)

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:

The Complainant is the Court-appointed Monitor overseeing the Consent Decree over the City and the Seattle Police Department. In a review of a Significant Incident Report concerning the incident described herein, the Complainant conveyed to both the Chief of Police and the Department's Chief Operating Officer his displeasure with how the Named Employees handled this incident. In that email correspondence, the Complainant specifically asserted that the involved officers may have failed to properly de-escalate this matter, may have violated the Department's policy concerning its officers' responses to individuals in crisis, and may have acted unprofessionally. In her response to the Complainant's email, the Chief of Police included the former OPA Director and indicated that she was requesting that OPA open an investigation into this case. OPA did so that same day.

During its intake investigation, OPA discovered that the Named Employees may have failed to report a complaint of pain made by the subject, potentially in violation of policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.400 - Use of Force Reporting and Investigation, 1. Officers Shall Report All Uses of Force Except De Minimis Force

SPD Policy 8.400-POL-1 sets forth the general requirements for the reporting of force used by officers. The policy sets forth four levels of force – de minimis; Type I; Type II; Type III. All categories of force must be reported, documented and investigated to varying extents, except for de minimis force. De minimis force need not be reported or investigated. De minimis force is defined as: "Physical interaction meant to separate, guide, and/or control that does not cause pain or injury." (SPD Policy 8.400-POL-1.) Where there is a complaint of transient pain, force should be reported as Type I. In this case, a sergeant must screen the force in person and a Type I use of force report must be completed. (*Id.*)

On the date in question, the Named Employees, along with other SPD officers, responded to a report of an individual who was in the vicinity of a business located at University Way and 42nd Street in violation of a court order. The Named Employees reported that the subject was well known to officers in the North Precinct as suffering from



mental illness and substance dependency. She was also known to be violent towards officers in the past as well as other civilians, and had previously assaulted her caseworker. (See NE#4's Significant Incident Report; see also General Offense Report.)

Prior to approaching the subject, the involved officers developed a plan of action. It was determined that Named Employee #1 (NE#1) and Named Employee #2 (NE#2) would be the arrest team, Witness Officer #1 would be the backing unit if the subject resisted arrest, and Named Employee #3 (NE#3) and Witness Officer #2 would provide cover. Named Employee #4 (NE#4) was also on the scene and a transport wagon was located nearby.

The officers' initial interaction with the subject was not captured on video, but the audio was recorded on the rear In-Car Video (ICV) system of the transport van. NE#1 and NE#2 approached the subject and informed her that she was in violation of a court order. At that time, her voice was already raised and she appeared to deny that she violated the order ("I didn't go over there"). (See Rear ICV, at 10:20 minutes.) The officers engaged in an extended back and forth with the Complainant, during which she continued to assert that she did not do anything. The subject could be heard on ICV yelling at the officers. The subject was then handcuffed. During the handcuffing, the officers were not required to use any force to manipulate the subject's arms. The handcuffs were double locked to ensure that they would cause minimal discomfort

NE#1 and Witness Officer #1 then walked her over to the transport van where their interaction was captured by the ICV. (See *id.* at 12:25 minutes.) The subject continued to state that she did not do anything. At that time, she was in handcuffs. NE#1 had one arm and Witness Officer #1 had the other. The officers motioned that she needed to get into the transport van, but the subject continued to ask what she had done and refused to do so.

At one point, the subject leaned forward, bending at the waist, into the van. It did not appear as if the officers pushed her forward, but more that her body weight caused her to move in that direction. (See *id.* at 12:40 – 12:44 minutes.) The officers then lifted her back up. All during this time, the subject continued to state that she did not do anything. The officer turned her around to face away from the van and held her stationary. Witness Officer #1 then walked outside of the view of the ICV and NE#3 took his place.

The subject then turned towards NE#1 and, according to NE#1, spat. (See *id.* at 13:46 – 13:53 minutes.) NE#1 turned the subject's face away with her right hand. (*Id.*) This is a tactic that is trained for exactly this type of situation. NE#1 did not use any other force. An officer, who appeared from my review to be NE#2, then approached the subject from the rear and placed a spit sack over her head. (See *id.* at 13:53 – 14:01 minutes.) This was done consistent with policy and without incident. The subject continued to state that she did not do anything and did not appear to react adversely to the spit sack.

NE#1 reported that during her interaction with the subject, the subject kicked her on multiple occasions. However, NE#1 did not use force in response. Instead, NE#1 used a foot trap (placing her foot on the subject's foot and pushing down to prevent further kicking). I could not find the kicking or the foot trap on the video.

The officers then sat the subject down on what appeared from my review of the ICV to be the back bumper of the van. The subject then called NE#1 a bitch (which she also stated on several earlier occasion). None of the officers reacted to these statements. The officers then discussed calling AMR. The officers held the subject in that location until the ambulance arrived. During this time, the subject continued to yell and had to be instructed by NE#3 to stop



kicking. The officers repeatedly tried to explain to the subject why she had been arrested, but she continued to yell over and over that she did not do anything. The subject, at times, tried to move her body around, but the officers used their body weight to hold her down.

Approximately nine minutes after the initiation of the contact, the ambulance arrived. EMTs rolled a gurney over to the officers' location. (*See id.* at 19:50 – 20:00 minutes.) Once the gurney was set up, NE#1 and NE#3 lifted the subject up by her arms in order to walk her over to the gurney. (*See id.* at 20:16 – 20:19 minutes.) At that time, her body weight caused her to fall forward towards the ground. NE#1 and NE#3 were able to hold onto her arms and ease her down to the ground. NE#1 and NE#3 then attempted to pick the subject off of the ground. During this time, she stated that the officers were hurting her and called NE#1 a "dumb fucking bitch." (*See id.* at 20:30 – 20:35.) None of the officers appeared to react to that statement. (*Id.*) Another officer had to help NE#1 and NE#3 stand the subject up on her feet. She was then placed on the gurney and wheeled to the ambulance. The subject was transported to the King County Jail.

Based on my review of the paperwork generated in this case, the ICV, and the various statements of the involved SPD employees, I find that the force used on the subject by the Named Employees was de minimis and, thus, was not required to be reported or investigated.

The more pertinent question in this case appears to be whether the failure to report the complaint of pain made by the subject was in violation of policy. As indicated above, the subject did not stop yelling and complaining for the ten minutes of the Named Employees' interaction with her. While it is undisputed that she complained of pain at the end of that interaction, all of the officers in her immediate vicinity contended that they did not hear her statement. This assertion is, in my opinion, consistent with the lack of any reaction or response from the officers at that time. Certainly, had the Named Employees heard the statement, they would have been required to report and document the force. Here, however, I take into account the officers' assertion that, given the stressful circumstances and given the continuous yelling by the subject, they simply did not hear or comprehend her complaint of pain. For these reasons, I find the question of whether the Named Employees violated policy by failing to report the subject's complaint of pain to be inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #1 - Allegation #2

8.100 - De-Escalation, 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

"De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance." (SPD Policy 8.100-POL-1.)

The policy further instructs that: "When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution." (*Id.*) Officers are also required, "when time and circumstances permit," to "consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors" such as "mental impairment...drug interaction...[and/or] behavioral crisis." (*Id.*)



As set forth in the general offense report relating to this incident:

[The subject] is a chronic problem on University WY NE. [She] violates SMC 15.48.040, the Sit and Lie ordinance almost every day that she is seen in the University District. She is a constant source of verbal disturbances. He[r] behavior is very threatening, and she has assaulted both citizens and police. [The subject] has about half a dozen Anti-Harassment orders against her for both people and businesses.

Notably, before interacting with the subject, the officers created a plan of approach, which involved three crisis-certified officers taking the lead. The officers initially tried to calmly reason with the subject and attempted to gain voluntary compliance; however, the subject was unreasonable and refused to comply with the officers' repeated requests that she leave the location.

As indicated herein, the officers acted calmly and politely during their interaction with the subject, never raising their voices or using any inappropriate language. This was the case even though they were dealing with a very difficult and uncooperative individual who repeatedly called them demeaning and insulting terms, kicked them, and tried to spit at them.

The officers dealt with the subject in this manner for over nine minutes, during which time they slowed down the incident and called for additional resources, including an ambulance that ultimately transported her from the scene.

The officers took all of these actions in order to avoid using force. When their attempts at continued de-escalation were unsuccessful and they were ultimately required to use force, they used the least amount of force necessary in order to place her into custody.

While de-escalation is inarguably a crucial component of the Department's obligations under the Consent Decree, it is not purposed to act as a bar to enforcing the law when necessary. Based on the above, the officers took appropriate action in attempting to remove the subject, who had previously presented as dangerous and violent to both civilians and police, from an area that she was legally barred from being in. While the subject indisputably was in behavioral crisis, this did not, in and of itself, preclude the officers from enforcing the law. Here, I find that the officers did their best to balance the need to treat the subject with dignity and care with the public safety interests in removing her from that location in compliance with the court order.

As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #3

16.110-POL-5 Responding to Subjects in Behavioral Crisis

SPD Policy 16.110-POL-5(1) requires that when responding to subjects in behavioral crisis, "officers shall make every reasonable effort to request the assistance of CIT-Certified officers." The policy further states that "CIT-Certified officers will take the lead, when appropriate, in interacting with subjects in behavioral crisis." (SPD Policy 16.110-POL-5(2)).



Here, when developing their plan of action, NE#4 was aware that NE#1, NE#2 and NE#3 were all Crisis-Certified. Each had completed the training required by SPD Policy 16.110-POL-3. Moreover, during the initial interaction with the subject, NE#4 assigned NE#1 and NE#2 as the leads. NE#3 later joined NE#1 as one of the lead officers interacting with the subject. As such, the officers' plan of action and their designation of Crisis-Certified officers to be the lead actors in their interaction with the subject was consistent with policy.

Moreover, during its investigation, OPA obtained the 2016 Crisis Intervention Training and the 2017 Small Team Tactics Training. In my review of these materials, I found nothing that suggested that the officers' planned course of action and their ultimate interaction with the subject were inconsistent with this Department training.

Lastly, I note that the subject was ultimately diverted to mental health court, where she has hopefully obtained treatment.

I find that the Named Employees acted appropriately, and consistent with their training and SPD policy, when they arrested the subject for violating a court order and took her into custody.

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

Named Employee #1 - Allegation #4

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

SPD Policy 5.001-POL-9 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-9.)

During their interaction with the subject, all of the involved officers, including the Named Employees, interacted and spoke with her calmly. No officers raised their voices or used any language that was pejorative or offensive. Moreover, in my opinion, none of the officers acted in a manner that undermined the Department or diminished the community's trust or confidence in SPD.

I note that the Named Employees were required to deal with an extraordinarily difficult situation for over ten minutes. They were kicked at, spit on, and insulted, but all the while maintained their composure and acted consistent with policy and the expectations of the Department. I conclude that their behavior did not violate SPD's professionalism policy.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #2 - Allegation #1

8.400 - Use of Force Reporting and Investigation, 1. Officers Shall Report All Uses of Force Except De Minimis Force

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



Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #2 - Allegation #2

8.100 - De-Escalation, 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

For the same reasons as above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #3

16.110-POL-5 Responding to Subjects in Behavioral Crisis

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #4

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

For the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #3 - Allegation #1

8.400 - Use of Force Reporting and Investigation, 1. Officers Shall Report All Uses of Force Except De Minimis Force

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

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #3 - Allegation #2

8.100 - De-Escalation, 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #3 - Allegation #3

16.110-POL-5 Responding to Subjects in Behavioral Crisis

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #4

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

For the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #4 - Allegation #1

8.400 - Use of Force Reporting and Investigation, 1. Officers Shall Report All Uses of Force Except De Minimis Force

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

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #4 - Allegation #2

8.100 - De-Escalation, 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #4 - Allegation #3

16.110-POL-5 Responding to Subjects in Behavioral Crisis

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #4 - Allegation #4

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times



For the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**