



## CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 29, 2018

CASE NUMBER: 2018OPA-0210

### 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)
# 2	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)

**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	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Lawful and Proper)
# 3	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	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 alleged that he was subjected to excessive force by the Named Employees. It was also alleged that the Named Employees may have engaged in an illegal entry into a motel room.

**STATEMENT OF FACTS:**

On the date in question, officers assigned to the North Precinct Anti-Crime Team (ACT) were conducting law enforcement operations at a motel in North Seattle. The officers were looking for the suspect in a burglary and had reason to believe that he was at the motel. The suspect was also being sought on a VUFA warrant and he was a felon who was believed to have illegally possessed a firearm.

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) went into the motel office and learned that the suspect – later identified as the Complainant – was staying in room 19. NE#1 and NE#2 walked from the office over to the room. At that time, the door of the room opened and an individual walked out. After that point, the Complainant also walked outside of the front door of the room. NE#2 quickly moved to the door as the Complainant began to flee inside. NE#2 reached inside and grabbed onto the Complainant. NE#2 entered the room after the Complainant while holding on to him. He eventually pulled the Complainant outside of the room and NE#1 started to assist NE#2. Together, the



---

officers were able to pull the Complainant out of the room and began to struggle with the Complainant to get him under control and to take him into custody.

The Named Employees continued to struggle with the Complainant, both of them trying to prevent the Complainant – who was substantially larger than either of the Named Employees – from escaping. At that point, the Named Employees and the Complainant fell forward. The Complainant struck his face on a concrete planter. This caused him to suffer a fairly significant laceration to his nose. Due to the severity of the injury, the Department’s Force Investigation Team (FIT) responded to the scene and took over the investigation of the incident. During that investigation, a civilian witness provided a statement to FIT suggesting that the force used by the officers was excessive. It was unclear whether and to what extent she actually observed the incident. The Complainant additionally told FIT investigators that he believed that the force employed by the Named Employees was excessive and alleged that they slammed him into a wall face first. FIT referred this matter to OPA and this investigation ensued.

During its investigation, OPA reviewed the documentation relating to the initial investigation, the FIT investigation, the use of force reports and reviews, and the Department video. OPA also interviewed both of the Named Employees and four other witness employees.

**ANALYSIS AND CONCLUSIONS:**

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

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

The Named Employees described the force they used at both their FIT interviews and OPA interviews. Their statements were consistent over those interviews. NE#2 reported grabbing the Complainant’s arm to pull him out of the room. NE#2 recounted that he and NE#1 struggled with Complainant until they all fell to the ground. NE#2 stated that he was not aware that the Complainant was injured until well after they had fallen down and the Complainant was in custody. NE#1 told OPA that when NE#2 pulled the Complainant out of the room, NE#1 tried to grab his arm but the Complainant pushed him away like a “little rag doll.” NE#1 stated that he then jumped on the Complainant’s back and he, NE#2, and the Complainant fell to the ground. Both Named Employees denied slamming the Complainant into a wall face first and recounted that they simply fell to the ground, inadvertently injuring the Complainant.

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 of the record, I deem the Named Employees’ account of the incident and the force they used to be in line with the evidence. Most notably, I find that the Department video depicted a physical struggle between the Named Employees and the Complainant and then showed all of them falling forward onto the ground. There is no



---

indication that the Named Employees slammed the Complainant into the wall, that the Named Employees ever struck the Complainant, or that they used any intentional force purposed to harm him.

With regard to the force the Named Employees did use, I find that it was consistent with policy. First, the force was reasonable. The Complainant was a known warrant subject who was possibly armed. The Complainant attempted to flee from the officers and then resisted their attempts to take him into custody. The Complainant was significantly larger than the Named Employees and was able to physically resist them for a sustained period of time. The Named Employees had the lawful authority to take the Complainant into custody and, with that authority, came the right to use force where necessary and appropriate. Here, the force used – trying to take the Complainant down to the ground and eventually falling down with him – was reasonable. Second, I find that the force was necessary. I do not find that the officers believed that there was any reasonable alternative to using force and I conclude that the force used was only that needed to take the Complainant into custody. Third and last, the force was proportional to the threat posed to the officers, the resistance exerted by the Complainant, his attempts to flee, and his considerable physical strength. While it is certainly unfortunate that the Complainant suffered a significant injury from this incident, that does not yield the force out of policy. For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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

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

***6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement***

As discussed below (see Named Employee #2, Allegation #2), I find that NE#2 was the only officer who made entry into the motel room. NE#1 did not do so and, by the time he arrived at the motel door, the Complainant was already outside. As NE#1 did not make entry into the room, I recommend that this allegation be Not Sustained – Unfounded as against him.

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

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

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

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

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

**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), I recommend that this allegation be Not Sustained – Lawful and Proper.

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



---

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

***6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement***

SPD Policy 6.180-POL-2 governs searches and seizures, including entries into a residence and/or motel room. It sets forth the general requirement of a search warrant, but also provides several exceptions to that requirement that could justify a warrantless entry. (SPD Policy 6.180-POL-2.) Relevant to this case, one of the exceptions to the warrant requirement is where there are exigent circumstances. (SPD Policy 6.180-POL-2(b).) That exception is explained as follows: "Officers are allowed to enter a home when the suspect retreats into the home or private area and there is reasonable fear of escape, destruction of evidence, or injury to police or public." (*Id.*)

At his OPA interview, NE#2 described that he grabbed the Complainant's arm and, when he did so, the Complainant turned back into the motel room and moved inside. NE#2 stated that, when the Complainant went back inside, he pulled NE#2 after him. In OPA's opinion, this account is inconsistent with the video evidence. The video shows NE#2 approaching the motel door as the Complainant has already gone fully inside. NE#2 is then depicted reaching inside, grabbing the Complainant, and then following him inside. The video does not display NE#2 being pulled into the room by the Complainant.

It is possible that this inconsistency was borne from the speed and intensity of the moment. NE#2 may truly have believed that it occurred as he described at his interviews, even if this does not dovetail with the video. This issue, however, is largely academic, as the entry would have been justified under the exigent circumstances exception regardless of whether it occurred as NE#2 described or as the video depicts.

The policy provides several factors for when exigent circumstances exist for entry into a home or private area. Most notable among these are where: the crime at issue is serious; the subject is armed; there is probable cause to arrest the subject for the crime; there is strong probable cause to believe that the subject is on the premises; the officers identified themselves and provided the subject with the opportunity to surrender before entering; and there was an ongoing investigation or the decision to arrest the subject prior to entering the premises. (SPD Policy 6.180-POL-2(b).) Here, virtually all of these factors were present. While there is no evidence that the Complainant was armed at the time of the entry, given that he was suspected of illegally possessing a firearm, it was plausible that he had another weapon on him or that he could obtain one if allowed to enter and remain in the room.

For these reasons, I find that the entry by NE#2 into the motel room and the seizure of the Complainant therein was consistent with policy. I accordingly recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #2 - Allegation #3**

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. As indicated above, I find that NE#2's entry into the motel room was consistent with policy. Given that, I similarly find that it did not violate the Fourth Amendment or any Washington State laws. Accordingly, I recommend that this allegation be Not Sustained – Unfounded.



**Seattle**  
Office of Police  
Accountability

## ***CLOSE CASE SUMMARY***

OPA CASE NUMBER: 2018OPA-0210

---

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