



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 29, 2019

CASE NUMBER: 2019OPA-0132

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 (Unfounded)
# 2	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	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 (Unfounded)
# 2	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	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 (Training Referral)
# 2	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	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:

On October 31, 2018, the Named Employees were dispatched to a suspicious circumstances call involving a blue Ford Taurus that was parked near the 3800 Block of Beacon Avenue South. After the Named Employees approached the vehicle, they had an encounter with its occupant, the Complainant, who was subsequently arrested. The Complainant alleged that the Named Employees lacked probable cause to arrest him and "beat him up" during this incident.

ADMINISTRATIVE NOTE:

This incident was investigated by SPD’s Force Investigations Team (FIT). As such, the Named Employees were interviewed as part of FIT’s review and OPA was present during those interviews. Given the substance of those interviews, and in light of the available evidence, this case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General’s review and approval, believed that it could reach and issue recommended findings without OPA requiring the Named Employees to be interviewed again.



SUMMARY OF INVESTIGATION:

According to SPD's records, the Named Employees responded to a report of a woman screaming inside of a parked blue Ford Taurus. The witness, an off-duty Seattle Fire Department employee who remained at the scene and provided additional information to officers upon their arrival, reported that she observed a man exit the vehicle and pace around it looking into the vehicle, but did not see whether there was a woman inside. The witness described the suspect as a slender, Black male, approximately 5'8", wearing a dark jacket with hood up and jeans, who was then currently sitting in the driver's seat.

Named Employee #1 (NE#1), Named Employee #2 (NE#2), and Named Employee #3 (NE#3) approached the vehicle on foot. NE#3 touched the trunk of the Taurus as he moved in the direction of the driver's side front window. At that time, the Complainant quickly exited the vehicle and demanded to know why NE#3 was touching it. NE#3, with his hand outstretched in a stopping motion, identified himself as he backed away from the Complainant. The officers then explained that they responded to a report of a disturbance. The Complainant warned the officers to get away from him. The Complainant continued to act in an agitated manner and specifically cursed at NE#3. At an early point in this exchange, one of the Named Employees called for backing units to respond. The Complainant then opened the driver's side front door of his vehicle and told the officers that they could look inside. The officers responded by directing him not to go in the car and the Complainant reacted by becoming more agitated. He again warned the officers to get away from him. The Complainant appeared to take on a more aggressive position and was captured on Department video balling up his fists while walking in NE#3's direction. The Complainant also balled up his fists while walking in NE#3's direction and stated to NE#3 that he was "gonna beat [NE#3's] ass!"

Believing that an assault was imminent after the Complainant told NE#3 that he was going to "beat [NE#3's] ass," the Named Employees decided to arrest him for harassment. When the officers tried to take the Complainant into custody, he struggled and strongly resisted their efforts. It ultimately took three additional officers to assist in getting the Complainant under control and into custody. The Complainant alleged that the Named Employees pulled weapons on him, choked him, punched him, and gave him a concussion. He also alleged that he was raped by officers. Based on the seriousness of those claims, officers requested that he be transported first to the hospital for evaluation. Once at the hospital, the Complainant refused treatment and was transferred to King County Jail and booked for felony assault and harassment. Additionally, the Department's Force Investigation Team (FIT) was notified about this incident and responded to assume jurisdiction over the investigation. The Complainant declined to provide a statement to FIT detectives.

NE#1 reported that, while the Complainant was on the ground, the Complainant struck her in the left eye. Following the incident, NE#1 sought treatment at Swedish Hospital for a possible concussion. NE#1's eye was swollen and bruised, and she was unable to work the following day.

OPA initiated this investigation in response to a walk-in complaint about this incident that was made by the Complainant.

Interviews & Statements

The Complainant



The Complainant stated that he was praying in his car when he noticed that he was surrounded by the Named Employees. The Complainant recalled being told by the Named Employees that they were investigating a woman screaming. The Complainant stated that he responded by telling them that he was the only person in his car, but they would not accept his explanation. According to the Complainant, he opened his car to get his bible and to show the Named Employees that his car was empty, when two of the Named Employees came at him from his blindside, knocked the bible from his hands, and then assaulted and raped him. The Complainant stated that he received medical attention at the hospital that evening for what happened to him, but not for the rape because it was spiritual, not physical. The Complainant was arrested for assault and harassment in connection with this incident and remained in jail from October 31, 2018 until January 2019. The Complainant stated that the charges against him were dropped in January 2019. The Complainant maintains that he did not assault anyone and it was the Named Employees who assaulted him.

911 Caller – Witness

The witness provided an audio-recorded interview with SPD following incident. The witness reported that, in addition to speaking with officers when they arrived, she stayed at the scene and watched what took place. The witness reported that the Complainant was acting very aggressively and was pointing at each officer, though he seemed specifically focused on the two male officers. The witness heard the officers warn the Complainant to stop acting in that way, while they attempted to explain the reason for their contacting him. After the Complainant ignored the officers' warnings and started to act more aggressively, the witness watched as the officers wrestled the Complainant to the ground. The witness heard the Complainant yell that he was being choked, but she did not see anything like that and noted that the Complainant continued talking throughout the incident. The witness stated that it took all three officers to hold the Complainant down. The witness stated that she observed one of the officers strike the Complainant in the groin in an apparent effort to get the Complainant on the ground because he was not going down without a struggle. The witness did not see any other strikes being delivered by the officers. The witness stated that she did not observe anything about the officers' actions that concerned her.

Named Employees Statements

NE#1 stated that the Complainant responded to the initial contact with officers by in a manner that was "instantly hostile and yelling at officers." NE#1 recalled that the Complainant's hostility seemed to be mostly directed at NE#3, and NE#1 stated that she made several attempts to re-direct and de-escalate the Complainant. NE#1 recalled the Complainant threatening NE#3, and that he ultimately stated that he was "going to fuck [NE#3] up, and that's for real." NE#1 told OPA that she believed that the Complainant was intending to assault NE#3. As such, NE#1 and NE#2 took control of the Complainant's arms and attempted to arrest him for harassment. NE#1 stated that the Complainant struggled, resisted, and tried to get away. NE#1 detailed her use of force, which included a trained cross-face technique (placing an arm below an individual's cheekbone and applying pressure to force compliance). NE#1 recalled hearing the Complainant complain about being choked and that she responded by checking the location of her arm to confirm it was not on his neck. NE#1 noted that the Complainant was breathing and yelling throughout this incident. During the struggle, NE#1 recalled that she was struck in her left eye, which later became swollen and bruised. NE#1 was unable to say when or how the injury occurred.

NE#2 confirmed that the Named Employees used verbal techniques and distance in trying to de-escalate the situation involving the Complainant. NE#2 noted how aggressive and hostile the Complainant was and that he made



several threats to assault NE#3. After it appeared to NE#2 that the Complainant was preparing to assault NE#3, NE#2 moved in to take him into custody for harassment. NE#2 detailed the struggle that ensued, NE#2 recounted that the Complainant seemed to have strength beyond his size and that he resisted in a manner that made it very difficult for the officers to gain control of him. NE#2 detailed his use of force, which involved mostly body control maneuvers.

NE#3 stated that he attempted to make contact with the Complainant but was immediately met with aggression. NE#3 tried to explain that they were investigating a woman screaming, but the Complainant did not listen to the officers. The Complainant repeatedly approached NE#3 in an aggressive manner. NE#3 attempted to de-escalate the situation by backing up and using a calm demeanor in an attempt to de-escalate the Complainant. The Complainant repeatedly went into the vehicle and put his hands in his pockets. Moreover, despite being told to stay back, the Complainant continued to approach NE#3 in an aggressive manner. NE#2 approached the Complainant from behind, and NE#1 grabbed the Complainant's left arm. NE#3 put the Complainant in a front head control hold and NE#2 gave the command to the Complainant to get on the ground; however, the Complainant continued to fight against their efforts. In order to weaken his stance, NE#3 acknowledged that he kicked the Complainant approximately three times in his groin area. After that, they were able to get him to the ground, but he continued to resist. After backing officers arrived, the Complainant was taken into custody. NE#3 stated that he believed that the Complainant was under the influence of some type of drug or stimulant because of the strength he exhibited.

SPD's Use of Force Review

SPD conducted an evaluation of the incident and concluded that the Named Employees' uses of force were reasonable, necessary, and proportional. Specifically, they noted the various techniques that the Named Employees used and the level of resistance they faced from the Complainant during this incident. They found that NE#1's use of a cross-face maneuver, though ineffective, was a trained and approved force technique and that nothing in their review of the videos or the sounds made throughout this incident by the Complainant indicated that he was ever choked by NE#1 or any of the other officers. They also addressed NE#3's use of a head control and his delivering three kicks to the Complainant's groin area. The head control was identified as a trained technique for bringing a subject to the ground. Though they found nothing prohibiting kicks to the groin in policy, they recommended that the Department provide further guidance on how to classify and process targeted kicks to the groin. They noted that only 8.300 POL-5(4) prohibits the use of an impact weapon to the groin unless deadly force is justified, but there is nothing that deals with the potential injuries that could result from kicks to the groin.

Body Worn Video and In-Car Video

A majority of this incident and the physical struggle that took place between the Complainant and the Named Employees was captured on Body Worn and In-Car Video. The video corroborates the accounts of the Named Employees and the analysis in the force reviews. The video evidence does not support the Complainant's version of what took place during this incident.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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



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.*) Here, the Complainant alleged that NE#1 and the other officers engaged in excessive force in that they “beat him up” during this incident.

The evidence in this case establishes that the officers engaged in a physical struggle with the Complainant when he immediately resisted their efforts to arrest him. In addition to using general body control holds, NE#1 described how she applied a cross-face maneuver as a means of getting the Complainant onto his stomach, but that this effort failed. She used no other force. At the time this force was used, the Complainant was forcefully resisting the officers’ attempts to take him into custody and, at one point, struck NE#1. As such and based on OPA’s analysis, including its review of the video, the force used by NE#1 was reasonable, necessary, and proportional. There is no indication that, as the Complainant alleged, she subjected him to excessive force.

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

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

Named Employee #1 - Allegation #2

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy.

The Named Employees responded to a report involving a woman screaming inside a vehicle. NE#3 attempted to contact the involved vehicle in order to investigate the report. OPA believes that he had reasonable suspicion to do so at the time. However, he was met by the Complainant, who aggressively moved toward him. The Complainant remained in an agitated state throughout his encounter with officers and did not respond to the officers’ attempts to de-escalate the situation. Near the end of this encounter, the Complainant again moved aggressively toward NE#3 and threatened him. Believing that an assault was imminent, the officers determined that they had probable cause to arrest the Complainant for harassment and moved to take him into custody.

OPA’s review of the video is consistent with the officers account and establishes the Complainant acted in the manner they described by the officers. Given this, the officers had sufficient probable cause to arrest him and I recommend that this allegation be Not Sustained – Lawful and Proper as against all of the Named Employees.

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



Named Employee #2 - Allegations #1

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

NE#2's use of force was limited to body control holds. When applying the same analysis as discussed in the context of NE#1, I find that this force was reasonable, necessary, and proportional. For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#2.

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

Named Employee #2 - Allegation #2

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

For the same reasons as indicated 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 - Allegations #1

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

As noted above in the Summary of Investigation, NE#3's use of force primarily included the use of a head control technique and multiple kicks to the Complainant's groin area.

The head control tactic constituted de minimis force that was consistent with policy for the same reasons as discussed in the context of NE#1 and NE#2.

With regard to the groin kicks, OPA finds whether the force was within policy to be a closer question. At his FIT interview, NE#3 acknowledged that the kicks to the Complainant's groin were not inadvertent and that, instead, he targeted that area. According to NE#3, he chose to use that force because it "felt like [the Complainant] was trying to punch" him and that the Complainant was attempting to get away. NE#3 rationalized that the groin kicks would weaken the Complainant's stance, get him to the ground quickly, and end the conflict. From a review of NE#3's statements, it does not appear that he considered other force options aside from the groin kicks. Indeed, he stated that this was the first force that came to mind during the incident. It further does not appear that he considered the potential physical harm that groin kicks could cause, as compared to strikes to other parts of the body.

In evaluating whether this force was permissible, OPA recognizes that Type II force was certainly appropriate under the circumstances. Based on the Complainant's continued aggressive resistance, NE#3 would have been warranted in using a knee strike, a punch, or other similar force. However, it does not necessarily follow that intentional kicks to the groin would also have been appropriate. Notably, strikes to the groin are not discussed in the SPD Policy Manual aside from in the section concerning the use of impact weapons. Otherwise, there is no policy provision either explicitly allowing or prohibiting the use of groin strikes. At his FIT interview, NE#3 contended that his kicks to the Complainant's groin were a trained force tactic. However, OPA has found no support for that assertion in SPD's training materials.



While OPA has significant concerns about the level and type of force used, OPA does not believe that it would be appropriate to issue a Sustained finding in this instance. This is predominantly based on the lack of any discussion of this type of force in either training or policy and the lack of any explicit prohibition on such strikes. For these reasons, I instead issue the below Training Referral.

- **Training Referral:** NE#3 should receive additional defensive tactics training. The training should specifically center around this incident and, specifically, around NE#3's belief that the strikes to the groin were a trained tactic. This training should also involve a discussion of alternate force tactics that could have been used, the potential threat of harm that the strikes posed to the Complainant, and the Department's expectation that NE#3 will consider both factors prior to using a high level of force. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database. Lastly, If, in fact, strikes to the groin are being trained as appropriate intermediate force to be used on resistive subjects, the Training Unit should consider whether that training is appropriate, whether it is sufficiently clear, and whether the use of such force is consistent with SPD policy and applicable caselaw.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #3 - Allegation #2

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

For the same reasons as indicated 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)**