



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 5, 2019

CASE NUMBER: 2019OPA-0170

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 (Training Referral)
# 2	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Lawful and Proper)
# 3	8.400 - Use of Force Reporting and Investigation 3. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Following any Use of Reportable Force, As Soon As Feasible	Sustained

Imposed Discipline

Oral Reprimand

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 the Named Employee subjected him to excessive force. OPA added allegations concerning the Named Employee’s potential failure to accurately, completely, and timely report the force he used.

SUMMARY OF INVESTIGATION:

On the date in question, officers, including Named Employee #1 (NE#1), responded to a trespass call at a store. Due to call volume, they did not arrive at the store until several hours after it had closed. However, at that time, the individual who was alleged to be trespassing was still inside the store. The officers located the individual, who was later identified as the Complainant, in the bathroom. The officers attempted to convince the Complainant to leave the store on his own accord, but he did not do so. Given the Complainant’s noncompliance and refusal to leave the store, the officers determined that they had probable cause to arrest him for trespass.

The Complainant resisted the officers’ attempts to place him into custody and, based on the Complainant’s conduct, the officers made the decision to take him down to the ground. While on the ground, he repeatedly moved around and prevented the officers from taking him into custody. The Body Worn Video (BWV) for this incident showed that, at this point, NE#1 made contact with the Complainant’s head using his foot. Immediately thereafter, blood was evident on the side of the Complainant’s head opposite from where NE#1’s foot impacted. The injury occurred on the side of the Complainant’s head that contacted the tile floor of the bathroom.



The officers' supervisor, an Acting Sergeant, was summoned to the scene. All of the involved officers, including NE#1, told the Acting Sergeant that they used de minimis force. One officer told the Acting Sergeant that the Complainant's injury may have been preexisting. NE#1 told the Acting Sergeant that the injury could have been caused by the Complainant's head hitting the floor, but NE#1 did not disclose at that time that his foot made contact with the Complainant's head. The BWV captured the Complainant telling Seattle Fire Department personnel and the Acting Sergeant that he was thrown to the ground and that the officers "crushed" his skull.

The Acting Sergeant discussed this incident with his Watch Lieutenant and screened the force with both an Administrative Lieutenant and the Force Investigation Team (FIT). Based on the information provided by the Acting Sergeant, including a description of the extent of the injuries suffered by the Complainant, FIT decided not to respond to the scene and take custody of the investigation. On March 1, 2019, nearly a week after the incident, the Administrative Lieutenant reviewed the BWV of the incident and recommended that the Acting Sergeant complete a Type II force investigation. At that time, the Acting Sergeant reviewed the BWV and determined that NE#1's foot struck the Complainant's head. The Acting Sergeant directed NE#1 and the other involved officers to complete Type II force reports.

In his report, NE#1 acknowledged that his foot made contact with the Complainant's head. He wrote the following:

[The Complainant] appeared to be in a kind of sitting position initially and he was told to get on his stomach. [The Complainant's] upper body was moved forward towards me. It appeared to me that he was trying to get up. I was going to bend down and hold him but I thought I was going to bump heads with [other involved officers]. I was going to place my left foot on the [the Complainant's] upper back to prevent him from getting up but I missed and got the lower part of either the side or the back of his head. I did not put any downward pressure on his head and I moved my foot immediately

With regard to the injury suffered by the Complainant, NE#1 reported:

When we discovered [the Complainant] had an injury, it appeared it was from the raised tile on the floor when he moved his head across it. I did not think I caused any injury to him when I attempted to place my foot on his back. I did not use any pressure or force to his head to cause injury...

The chain of command referred this matter, and specifically an allegation of potential excessive force against NE#1, to OPA. This investigation ensued. During intake, OPA further determined that NE#1 may have failed to properly report the extent and nature of the force that he used to the Acting Sergeant.



OPA interviewed NE#1, the Acting Sergeant, and one of the other involved officers. NE#1 reiterated that he used his foot to contact the Complainant's body because he was concerned that he would knock heads with other officers were he to kneel down. NE#1 confirmed that his foot hit the Complainant's head. He stated that this was not his intent and that he did not keep his foot on the Complainant's head for a long period of time. NE#1 asserted that this force was reasonable, necessary, and proportional under the circumstances. He stated that, at some point during his career, he had been trained that it was appropriate to use his foot to hold someone down. He acknowledged, however, that this training was not recent. He asserted that there was no Department policy that prohibited him from using his foot in this manner. When asked by OPA why he did not initially report that his foot made contact with the Complainant's head, NE#1 stated:

I – I didn't think I used any force, because I just put my foot down. I didn't press down on it, I didn't – you know, step down on his head or anything. I didn't put any pressure, I mean I just placed it over him, and then – no force on it.

NE#1 denied that he subjected the Complainant to excessive force. He further denied deliberately failing to report the level and type of force he used to the Acting Sergeant.

The Acting Sergeant recounted that, when he arrived on scene, the involved officers reported to him that they had only used de minimis force. The Acting Sergeant did not know of the contact between NE#1's foot and the Complainant's head until watching BWV nearly one week after the incident. The Acting Sergeant opined that NE#1's force was not excessive and that NE#1 did not intentionally fail to fully disclose and describe the force he used.

The other involved officer was not aware of the contact between NE#1's foot and the Complainant's head at the time of the incident. He further stated that he did not hear NE#1 report this specific force to the Acting Sergeant while at the scene.

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.*)

Had NE#1 intentionally struck the Complainant's head with his foot, I would have found that force to have been excessive. However, based on my review of the BWV and when evaluating the totality of the evidence, I credit NE#1's contention that he intended to use his foot to hold the Complainant down, but that his foot inadvertently struck the Complainant's head. As such, even though he did contact the Complainant's head and cause injury, I do not find that the force violated policy.



The above being said, NE#1 used a tactic that is no longer trained and, even if unintentional, that decision resulted in an otherwise avoidable injury to the Complainant. Given this, OPA concludes that NE#1 would benefit from additional defensive tactics training and issues the below Training Referral.

- **Training Referral:** NE#1 should receive additional defensive tactics instruction from the Training Unit. Specifically, NE#1 should receive refresher training on the appropriate techniques to be used on resistive subjects who are on the ground. This retraining and any associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #2

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 instructs officers to report all uses of force except de minimis force. The policy explains that: "Officers shall thoroughly document all reportable uses of force to the best of their ability, including a description of each force application." (SPD Policy 8.400-POL-1.) Lastly, the policy "recognizes the inherent limitations on perception and recall following tense and rapidly evolving circumstances." (*Id.*)

As discussed more fully below, NE#1 did not provide an accurate or complete description of the force he used when he initially screened it with the Sergeant. NE#1 did, however, appropriately document his force when he was directed to do so approximately one week after the incident. As such, I find that NE#1 complied with this policy and I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #3

8.400 - Use of Force Reporting and Investigation 3. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Following any Use of Reportable Force, As Soon As Feasible

SPD Policy 8.400-POL-2 states that officers, including witness officers, will verbally notify a supervisor immediately, unless not practical, following any use of reportable force. This notification must be sufficiently detailed and accurate to allow for the force to be investigated at the appropriate level.

NE#1 initially told the Acting Sergeant that he used de minimis force. However, at that time, he was aware that his booted foot had made contact with the Complainant's head. He was further aware that, virtually immediately thereafter, the Complainant's head was observed to be bleeding. Under policy, NE#1 should have reported the specific force that he used when screening this incident with the Acting Sergeant. Had he done so, the force would have been properly investigated as Type II from the outset. Here, however, this did not occur, and the appropriate investigation was not commenced until approximately one week after the incident.



In order to ensure that SPD remains in compliance with the federal Consent Decree, it is imperative that force is completely and accurately reported, as well as properly and timely investigated. Based on NE#1's failure to disclose at the time of the incident that his foot made contact with the Complainant's head, these requirements were not met in this case. For this reason, I recommend that this allegation be Sustained as against NE#1.

Recommended Finding: **Sustained**