



## OFFICE OF PROFESSIONAL ACCOUNTABILITY

### Closed Case Summary

Complaint Number OPA#2015-1285

Issued Date: 01/19/2016

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 8.100 (1) Using Force: When Authorized (Policy that was issued 01/01/14)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Allegation #2	<u>Seattle Police Department Manual</u> 8.100 (3) Use of Force: When Safe Under the Totality of the Circumstances - De-Escalation (Policy that was issued 01/01/14)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Allegation #3	<u>Seattle Police Department Manual</u> 8.100 (4) Using Force: Assess and Modulate the Use-of-Force as Resistance Decreases (Policy that was issued 01/01/14)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Final Discipline	N/A

Named Employee #2	
Allegation #1	<u>Seattle Police Department Manual</u> 8.100 (1) Using Force: When Authorized (Policy that was issued 01/01/14)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Allegation #2	<u>Seattle Police Department Manual</u> 8.100 (3) Use of Force: When Safe Under the Totality of the Circumstances - De-Escalation (Policy that was issued 01/01/14)

OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Allegation #3	<u>Seattle Police Department Manual</u> 8.100 (4) Using Force: Assess and Modulate the Use-of-Force as Resistance Decreases (Policy that was issued 01/01/14)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Final Discipline	N/A

<b>Named Employee #3</b>	
Allegation #1	<u>Seattle Police Department Manual</u> 5.002 (6) Responsibilities of Employees: Employees Must Otherwise Report Misconduct (Policy that was issued 01/01/15)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Allegation #2	<u>Seattle Police Department Manual</u> 16.090 In Car Video System 8. Once Recording Has Begun, Employees Shall Not Stop Recording Until Event Has Concluded (Policy that was issued 01/01/15)
Final Discipline	N/A

### **INCIDENT SYNOPSIS**

The named employees were responding to a 911 call where the caller indicated she heard a gunshot. An officer in the vicinity of a call began to check the area and saw a vehicle speed past his patrol car. That vehicle was driving in the wrong lane and then quickly parked. The officer began to conduct a traffic stop of the vehicle. By this time other officers, including the named employees, began to arrive on scene to assist. As officers attempted to handcuff the driver, he physically pushed them and fled the area on foot. An SPD canine unit was in the area and assisted searching for the suspect. Named employee #1 and #2 reported that they heard over the radio that there was probable cause to arrest the suspect for assault. They found the suspect hiding in a plastic garbage bin. The suspect did not respond to commands to show his hands. The officers were concerned that the suspect may have a weapon. They tried to force him out of the plastic garbage bin but the suspect tried to pull himself back down into the bin. So the officers knocked the bin over in order to pull the suspect out and handcuffed him.

Named employee #3 was the supervisor who screened the incident and interviewed the suspect. The suspect reported that his head was injured. The suspect stated that his hands had been in the air and was not trying to resist the officers. Named employee #3 directed named employees #1 and #2 to complete Use of Force Statements.

## **COMPLAINT**

The complainant, the Force Review Unit, alleged that the named employees failed to mark their In-Car Video (ICV) for a Use of Force incident.

## **INVESTIGATION**

The OPA investigation included the following actions:

1. Review of the complaint memo
2. Review of In-Car Videos (ICV)
3. Search for and review of all relevant records and other evidence
4. Review of the Force Review Board findings
5. Interviews of SPD employees

## **ANALYSIS AND CONCLUSION**

The OPA investigation showed that given the totality of the circumstances known to named employee #1 and #2 at the time, including but not limited to the physical assault by the subject, his escape from detention, an active warrant for his arrest on a weapons charge, and his failure to show his hands and follow commands, that their use of force was reasonable, necessary and proportional. Based on what named employee #1 and #2 knew, the investigation found that it was not feasible for the named employees to attempt any further de-escalation tactics before using physical force to secure the subject. The subject told the screening Sergeant, named employee #3, that he had his hands up and was following the officers' orders when he was slammed into the ground. The preponderance of the evidence does not support the subject's version of what took place when named employee #1 and #2 found him hiding in the trash container. Instead the evidence supports the conclusion that the subject was not compliant with and was physically resistant to the officers' efforts to security him. Therefore it was reasonable for named employee #1 and #2 to use the force they did until the subject was in handcuffs and had been searched for weapons.

The OPA investigation determined that named employee #3 conducted a thorough interview with the subject as he screened the arrest and the use of force. He attempted to answer the subject's questions and address his concerns about the officers' use of force. There was no attempt on the part of named employee #3 to downplay the subject's concerns about the force and he assured him that the use of force would be thoroughly investigated and reviewed. Named employee #3 provided a good explanation of the force review process and correctly told the subject that the reviewers would review the matter to OPA if they saw any evidence of misconduct. At the same time, a reasonable person could conclude that the subject was, in fact, complaining to named employee #3 about the officers' use of force and wanted it to be investigated. The evidence is clear that the microphone for named employee #3's In-Car Video was muted and the recording of the audio ended prior to the conclusion of the event. There is insufficient evidence to determine whether the microphone was muted intentionally or inadvertently.

## **FINDINGS**

### **Named Employee #1 and #2**

#### Allegation #1

The weight of the evidence showed that named employee #1 and #2 used force that was reasonable and proportional to take the complainant into custody. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: When Authorized*.

### **Named Employee #1 and #2**

#### Allegation #2

The weight of the evidence showed that in light of the subject's earlier assault on an officer that it was not feasible for named employee #1 and #2 to attempt further de-escalation tactics before using force to secure the subject. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Use of Force: When Safe Under the Totality of the Circumstances - De-Escalation*.

### **Named Employee #1 and #2**

#### Allegation #3

The weight of the evidence showed that it was reasonable for named employee #1 and #2 to use the force they did until the subject was in handcuffs and had been searched for weapons. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Assess and Modulate the Use-of-Force as Resistance Decreases*.

### **Named Employee #3**

#### Allegation #1

The evidence showed that named employee #3 would benefit from additional training on this policy. Therefore a finding of Not Sustained (Training Referral) was issued for *Responsibilities of Employees: Employees Must Otherwise Report Misconduct*.

#### Allegation #2

The evidence could not prove or disprove that named employee #3 muted his In-Car Video (ICV) purposefully. Therefore a finding of Not Sustained (Inconclusive) was issued for *In Car Video System 8. Once Recording Has Begun, Employees Shall Not Stop Recording Until Event Has Concluded*.

**Required Training:** Named employee #3 should receive training specifically targeted to help him understand and put into practice the Department's philosophy regarding public complaints. In particular, he should be encouraged to forward even possible complaints of misconduct to his chain of command so they can be adequately considered. He should be reminded that OPA is always available for consultation should he have any questions regarding how best to handle a possible complaint from a member of the public or another SPD employee.

*NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.*