



OFFICE OF POLICE ACCOUNTABILITY

Closed Case Summary

Complaint Number 2017OPA-0410

Issued Date: 02/13/2018

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 8.200 (1) Using Force: Use of Force: When Authorized (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Lawful and Proper)
Final Discipline	N/A

Named Employee #2	
Allegation #1	<u>Seattle Police Department Manual</u> 8.200 (1) Using Force: Use of Force: When Authorized (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Lawful and Proper)
Allegation #2	<u>Seattle Police Department Manual</u> 5.120 (IV) Secondary Employment: Secondary Employment Permit (form 1.30) (Policy that was issued March 19, 2014)
OPA Finding	Sustained
Final Discipline	Oral Reprimand

Named Employee #3	
Allegation #1	<u>Seattle Police Department Manual 8.200 (1) Using Force: Use of Force: When Authorized (Policy that was issued September 1, 2015)</u>
OPA Finding	Not Sustained (Lawful and Proper)
Final Discipline	N/A

INCIDENT SYNOPSIS

The Named Employees were working off-duty when they contacted and arrested the complainant.

COMPLAINT

The complainant alleged that he was the victim of "police brutality" at the hands of the three Named Employees resulting from his arrest. The complainant stated that the Named Employees struck him and took him to the ground by force. During the Intake process, OPA discovered that Named Employee #2 did not have an active Secondary Work Permit.

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. Interviews of SPD employees

ANALYSIS AND CONCLUSION

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.)

SPD policy recognizes that whether force is reasonable needs to be "judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."

(SPD Policy 8.000(4).) The policy also stresses that: “The calculus of reasonableness must allow for the fact that police officers are often forced to make split-second decisions—in circumstances that are tense, uncertain, dynamic and rapidly evolving—about the amount of force that is necessary in a particular situation.” (Id.)

The issue here was whether the force used by Named Employee #1 – pushing the complainant backwards several times, striking him with an open-handed slap to the face, performing a hard takedown to the ground, and securing the complainant’s body to allow for handcuffing – was consistent with policy. While a close question, the OPA Director found, after evaluating the force from the perspective of a reasonable officer faced by these circumstances and applying a preponderance of the evidence standard, that the force was consistent with policy.

A number of the pertinent facts in this case were undisputed. The complainant was highly intoxicated, he had been asked to leave private property by the property owner, he had not left the property, and he was engaged in an ongoing argument with Named Employee #1. It further could not be disputed that, after the complainant refused to leave the vicinity of the stadium, the officers had the legal right and responsibility to remove him. Lastly, when the complainant resisted their attempts to remove him from the vicinity of the stadium, the officers were entitled to use force to effectuate the removal. The amount of force that was justified increased with the evolution of the incident.

When the complainant continued to argue with the officers and indicated, through words and action, that he was not going to leave the vicinity of the stadium, Named Employee #1 used force to push him backwards away from the stadium. Named Employee #1 gave the complainant two quick pushes to the torso, both of which, based on the OPA Director’s interpretation of the video, were purposed to move the complainant back. (Stadium Video 132-1 NW EC Stairs, at 8:12:09 – 8:12:11.) Named Employee #1 then again put his hands on the complainant’s torso and kept them there as he tried to move the complainant backwards. (Id. at 8:12:11 – 8:12:14.) At this point, the OPA Director found that the complainant was actively pushing his bodyweight against Named Employee #1’s hands and towards Named Employee #1, preventing himself from being moved back. (See id. at 8:12:11 – 8:12:15.) Immediately thereafter, the complainant swept his arm in front of his body to knock Named Employee #1’s hands off him. (Id. at 8:12:15.) Named Employee #1 pushed him backwards approximately twice more and these subsequent pushes appeared from the OPA Director’s viewing of the video to have been purposed to continue to move the complainant backwards rather than to cause him physical pain. (Id. at 8:12:15 – 8:12:23.) In between these last two pushes, the complainant bumped into a metal divider. (See id.) After the second push, the complainant stepped forward and shoved Named Employee #1 away from him. (Id. at 8:12:23 – 8:12:26.) This shove caused both Named Employee #1 and the complainant to move backwards. (Id.)

The force used up until that point to push the complainant away from the stadium was reasonable, necessary, and proportional. It may very well be the case that there was a different type of force that would have been more effective given the circumstances, such as an escort

hold; however, reaching such a conclusion constituted engaging in the 20/20 hindsight analysis that the policy cautions against.

Almost immediately thereafter the complainant shoved Named Employee #1 back with two hands, the complainant took a step towards Named Employee #1, leading with his left foot. (Id. at 8:12:26 – 8:12:27.) His right hand dropped down to his right side and it appeared to have been clenched. (See id.) Based on the OPA Director's review of the video, at that instant it seemed that the complainant was about to strike Named Employee #1. (See id.) The complainant then lifted up his hands but did not punch Named Employee #1. (Id.) However, Named Employee #1 virtually simultaneously hit the complainant in the face with an open hand. (Id. at 8:12:27 – 8:12:28.) This appeared to have temporarily stunned the complainant and turned him to his right. (Id. at 8:12:27 – 8:12:29.)

In justifying this specific force, Named Employee #1 pointed to the complainant's aggressive behavior and level of intoxication, the complainant's previous physical assaults on Named Employee #1's person, and the fact that he believed that the complainant was about to strike him. (See NE#1 OPA Interview, at pp. 5-7; see also NE#1 Type II Use of Force Report.) This, in Named Employee #1's opinion, warranted the higher level of force of an open-handed slap. Named Employee #1 explained that this force served two purposes. First, it preempted a strike by the complainant. (See NE#1 Type II Use of Force Report.) Second, it temporarily stunned the complainant to allow him to be taken down to the ground and handcuffed without further incident. (See id.)

It was impossible for the OPA Director to determine whether the complainant actually intended to strike Named Employee #1. The Director could only base his conclusions on what appeared on the video. In his view, it did appear, even if for only an instant, that the complainant was positioning his body to strike Named Employee #1. That he ultimately did not do so was not determinative. A reasonable officer in Named Employee #1's situation could have believed that an assault was possibly imminent and, in the split second available to make a decision, could have believed it to be reasonable, necessary and proportional to use preemptive force to avoid physical harm. As noted by a Lieutenant in his chain of command review of the use of force, "[a]n officer does not have to wait to be assaulted in order to use force." (Lieutenant Swank Type II Use of Force Review.) The OPA Director agreed and found this aspect of the force to have been within policy.

Lastly, once the complainant was temporarily stunned and turned to his right, Named Employee #1 grabbed the complainant's shirt and took him to the ground using a hard takedown. (Stadium Video 132-1 NW EC Stairs, at 8:12:28 – 8:12:29.) Named Employee #1 then put his bodyweight on the complainant until handcuffs were applied. (Id. at 8:12:29 – 8:12:54.) There was no evidence of any further strikes by the Named Employees. (See id.) Given that the OPA Director found it was reasonable to strike the complainant based on Named Employee #1's fear of a possible imminent assault, he also found that it was reasonable to take the complainant down to the ground with a hard takedown. Moreover, once the complainant was on the ground,

Named Employee #1 was entitled to use force to control the complainant's body in order to place him into handcuffs.

In his Use of Force Report, Named Employee #2 stated that he held the complainant's head down to the ground and attempted to gain control of one of his arms. (NE#2 Type I Use of Force Report.) Named Employee #2 indicated, however, that he was unsuccessful due to the fact that the complainant continued to struggle with the officers. (Id.) Named Employee #2 further indicated that when Named Employee #1 and Named Employee #3 were ultimately able to control the complainant's arms, Named Employee #2 placed the complainant into handcuffs. (Id.)

Here, the OPA Director found that the force used by Named Employee #2 to take the subject into custody was reasonable, necessary, and proportional, and thus consistent with policy.

First, with regard to reasonableness, Named Employee #2 had observed the complainant's refusal to leave the stadium and his physical interaction with Named Employee #1. Based on this, there was probable cause to place the complainant under arrest. With that lawful authority came the right to place the complainant into handcuffs. Moreover, when the complainant struggled with the officers after being taken down to the ground, it was reasonable for Named Employee #2 to hold the complainant's head to the ground in order to control his body and arm.

Second, with regard to whether the force was necessary, the OPA Director found that, at the time the force was used, Named Employee #2 believed that there was no reasonably effective alternative and that the degree of force was reasonable to effect the lawful purpose of placing the complainant under arrest and preventing him continuing to struggle against the officers.

Third, with regard to the proportionality of the force, Named Employee #2 used a low level of force commensurate with the complainant's conduct, and only that level of force needed to attempt to control the complainant, place him under arrest and handcuff him.

SPD policy requires officers who seek secondary employment to fill out a secondary employment form and mandates that the form be approved by the employee's chain of command and by the captain of the precinct in which the work is to occur. (See SPD Policy 5.120(IV)(C) – (D).) The employee may only perform the secondary work authorized by the permit. (See SPD Policy 5.120(IV)(E).) Permits last for one year, after which they expire. (See SPD Policy 5.120(IV)(F).) If an employee seeks to continue secondary work, the employee must submit a new permit for approval. (See *id.*) Notably, “[e]mployees are responsible for ensuring that their permit is renewed annually and is current.” (See SPD Policy 5.120(IV)(F)(2).)

At his OPA interview, Named Employee #2 admitted that, on the date in question, he did not have a valid permit to work secondary employment. (See NE#2 OPA Interview, at pp. 2-3.) As he did not have a valid permit, his off-duty employment violated SPD policy.

In his Use of Force Report, Named Employee #3 stated that once the complainant was taken down to the ground, he tried to grab the complainant's right hand, but the complainant continued to twist Named Employee #3's hand and fingers back. (NE#3 Type I Use of Force Report.) Named Employee #3 reported that the complainant then moved his right hand under his body. (Id.) Named Employee #3 indicated that he then pulled the complainant's right arm from under his body and moved it so that it was behind the complainant's body to facilitate handcuffing. (Id.) Named Employee #3 stated that even after the complainant was handcuffed, he continued to struggle against the officers. (Id.) Accordingly, Named Employee #3 reported that he grabbed the complainant's right leg behind the knee and forced it to the cement, pinning the complainant to the ground. (Id.) Named Employee #3 did not use any further force on the complainant. (See id.)

Here, like with Named Employee #2, the OPA Director found that the force used by Named Employee #3 to take the complainant into custody was reasonable, necessary, and proportional, and thus consistent with policy.

First, with regard to reasonableness, Named Employee #3 had observed the complainant's refusal to leave the stadium and his physical interaction with Named Employee #1. Based on this, there was probable cause to place the complainant under arrest. With that lawful authority came the right to place the complainant into handcuffs. Moreover, when the complainant struggled with the officers after being taken down to the ground, it was reasonable for Named Employee #3 to try to pull the complainant's hand behind his back so that he could be handcuffed and to later hold the complainant's leg to the ground to prevent him from further struggling.

Second, with regard to whether the force was necessary, the OPA Director found that, at the time the force was used, Named Employee #3 believed that there was no reasonably effective alternative and that the degree of force was reasonable to effect the lawful purpose of placing the complainant under arrest and preventing him continuing to struggle against the officers.

Third, with regard to the proportionality of the force, Named Employee #3 used a low level of force commensurate with the complainant's conduct, and only that level of force needed to attempt to control the complainant, place him under arrest and handcuff him.

FINDINGS

Named Employee #1

Allegation #1

A preponderance of the evidence showed that the force used by Named Employee #1 was within policy. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Authorized*.

Named Employee #2

Allegation #1

A preponderance of the evidence showed that the force used by Named Employee #2 to take the subject into custody was reasonable, necessary, and proportional. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Authorized*.

Allegation #2

A preponderance of the evidence showed that Named Employee #2's off-duty employment violated SPD policy. Therefore a **Sustained** finding was issued for *Secondary Employment: Secondary Employment Permit (form 1.30)*.

Discipline Imposed: Oral Reprimand

Named Employee #3

Allegation #1

A preponderance of the evidence showed that the force used by Named Employee #3 to take the subject into custody was reasonable, necessary, and proportional. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Authorized*.

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.