



OFFICE OF POLICE ACCOUNTABILITY

Closed Case Summary

Complaint Number 2017OPA-0539

Issued Date: 01/23/2018

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)
Allegation #2	<u>Seattle Police Department Manual</u> 5.001 (9) Standards and Duties: Employees Shall Strive to be Professional at all Times (Policy that was issued April 1, 2015)
OPA Finding	Not Sustained (Unfounded)
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> 5.001 (9) Standards and Duties: Employees Shall Strive to be Professional at all Times (Policy that was issued April 1, 2015)
OPA Finding	Not Sustained (Unfounded)
Final Discipline	N/A

INCIDENT SYNOPSIS

The Named Employees contacted the complainant after he crossed the street against a red light.

COMPLAINT

The complainant alleged that the Named Employees used unnecessary force against him when he was stopped for crossing the street against the light. The complainant further alleged that the Named Employees' behavior was aggressive and harassing, thus violating the Department's professionalism policy.

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

On the date in question, the Named Employees observed the complainant cross the street against a red light in violation of law. At that time, multiple other pedestrians were waiting with the complainant for the light to change, but only the complainant attempted to cross the street illegally. When the Named Employees viewed the complainant do so, they rode up to him on their bicycles and told him to stop. The complainant did not listen to them and tried to walk around them.

Named Employee #2 explained that he and Named Employee #1 tried to get the complainant to stop in order to issue him a citation, but the complainant did not comply with their commands. As such, and after telling him to stop multiple times, Named Employee #2 grabbed the complainant's arm in order to prevent him from continuing to walk away from them and told the complainant that he was not free to leave. Named Employee #2 recalled that the complainant pulled his arm away and told the officers not to touch him.

Named Employee #2 let go of the complainant's arm, but had to again grab it when he tried to walk away from the officers a second time. At that point, Named Employee #2 again told the complainant that he was not free to leave. Named Employee #2 recounted that Named Employee #1 had to take action to prevent the complainant leaving on a third occasion. Named Employee #1 recounted that he put his foot on the complainant's foot in order to prevent him from doing so.

The complainant indicated during a statement to OPA that the light was red and that he crossed against the light. He stated, however, that it was only red because no one had pressed the crosswalk button. The complainant stated that he was approached by two bicycle officers, but that he did not see them at first. He stated that the bicycle officers grabbed his arms multiple times and that one officer rode over his foot with a bicycle. He claimed that the Named Employees were harassing and aggressive, including threatening to handcuff him and take him to the precinct if he did not produce identification. The complainant further alleged that during their interaction one of the Named Employees tried to snatch his cell phone from his hand. The Named Employees denied doing so.

While there was limited video of this incident, it did not conclusively show what happened during the officers' interaction with the complainant. There was also no audio. Accordingly, the video had limited evidentiary value.

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.)

Based on the OPA Director's review of the video, he found that the force used by Named Employee #1 – namely, the use of a foot trap technique to prevent the complainant from walking away – was reasonable, necessary and proportional, and thus consistent with policy. The Director noted that the complainant and Named Employee #1 appeared to disagree as to whether Named Employee #1 rolled over the complainant's foot with his bicycle. It was possible that what the complainant thought was Named Employee #1's bicycle was, in fact, Named Employee #1's purposeful foot trap.

First, while not determinative to the analysis, the OPA Director noted that this was a de minimis use of force. It did not cause injury or complaint of injury and was not required to be reported.

Named Employee #2 also used de minimis, non-reportable force against the complainant. Specifically, Named Employee #2 grabbed the complainant's arm twice when the complainant tried to walk away after Named Employee #2 had initiated the stop.

As with the force used by Named Employee #1, the OPA Director found that the force used by Named Employee #2 was reasonable, necessary and proportional.

The OPA Director concluded that, at the time the force was used, the Named Employees had a lawful basis to stop the complainant, namely that he admittedly crossed a street against the light. As such, they were permitted to detain him in order to determine his identification and issue a citation. When the complainant attempted to leave the scene, Named Employee #1 was allowed to prevent him from doing so. This included using force. As such, the use of force in this case was reasonable. The force used was also necessary to effectuate the lawful purpose of preventing the complainant from leaving the vicinity. Lastly, the Director concluded that the minor force used was proportional and that level of force needed to effectuate the stated lawful purpose.

The complainant alleged various unprofessional behavior on the part of the Named Employees. Specifically, the complainant alleged that the Named Employees engaged in aggressive conduct, including grabbing his arm and trying to snatch his phone out of his hands.

SPD Policy 5.001-POL-9 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-9.)

As discussed above, the OPA Director concluded that the force employed by the Named Employees was consistent with policy. As such, this could not constitute unprofessional conduct on their part.

Moreover, both Named Employee #1 and Named Employee #2, as well as a third officer who was a witness to the incident, reported that the complainant argued with officers concerning the basis for the stop and contended that he was free to leave. The Named Employees stated that, at first, they tried to explain why they stopped the complainant, but after the complainant continued to argue with them they became more authoritative. The OPA Director did not find it unreasonable that after repeatedly discussing the basis for the stop without any apparent progress, the officers’ tone became more authoritative.

After an extended back and forth, Named Employee #1 told the complainant that if he did not provide identification, the officers would be required to fingerprint him. The complainant alleged, somewhat differently, that the officers threatened to handcuff him and take him to the precinct if he did not produce identification. Even were the complainant’s version accurate, the Named Employees were permitted to cite the complainant for his admitted violation and, in order to do so, had the legal authority to require his identification. If the complainant had refused to produce that identification, the Named Employees could have been permitted to place him under arrest.

While the complainant claimed that the officers tried to grab his cell phone during their interaction, both of the Named Employees denied doing so. The witness officer did not recall

seeing a cell phone in the complainant's hands and denied observing Named Employee #2 trying to grab the complainant's cell phone. Certainly had the officers tried to snatch the complainant's cell phone out of his hands it would have been unprofessional, if not illegal. But this occurrence could not be proved by a preponderance of the evidence.

Both of the Named Employees stated their belief that they acted professionally. The witness officer agreed with this characterization, and described the complainant's demeanor as aggressive. The OPA Director noted that the OPA investigator assigned to this case reported having multiple conversations with the complainant in which his demeanor was aggressive. (See Case Summary.) While this was not conclusive evidence that the complainant's conduct on the date in question was aggressive, it certainly raised questions in the Director's mind. Ultimately, even though it appeared undisputed that Named Employee #1 and Named Employee #2 spoke authoritatively to the complainant, there was insufficient evidence to establish that they acted aggressively or unprofessionally.

FINDINGS

Named Employees #1 and #2

Allegation #1

A preponderance of the evidence showed that the force used by Named Employee #1 and Named Employee #2 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

There was insufficient evidence to establish that the Named Employees acted aggressively or unprofessionally. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Standards and Duties: Employees Shall Strive to be Professional at all Times*.

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.