



## CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 19, 2018

CASE NUMBER: 2017OPA-0746

### 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 (Lawful and Proper)
# 2	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)
# 3	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 4	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)
# 5	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)
# 6	5.001 - Standards and Duties 5. Employees May Use Discretion	Not Sustained (Inconclusive)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	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:**

Named Employee #1 (NE#1) was working in the area of the off ramp from Aurora Avenue to Denny Way. He saw items of clothing that he knew from previous experience belonged to the subject. NE#1, as well as other officers, had previously warned the subject regarding trespassing on DOT property and hanging his belongings in a manner that causes a hazard to passing motorists. NE#1 removed the articles from the hangers and took them to the car. The subject became upset that his property was being removed by NE#1. A confrontation ensued resulting in the arrest of the subject. During the arrest, NE#1 and Named Employee #2 (NE#2) used force to take the subject into custody.

OPA received several complaints from the community members regarding the actions of NE#1; however, only one of the complainants personally observed any of the incident.

The subject contended that he was subjected to excessive force by NE#1 and NE#2. He further alleged that he was unlawfully arrested, harassed, and treated unfairly due to his housing and economic status by NE#1.



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**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #1**

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

It was alleged that the subject was subjected to excessive force during his arrest by the Named Employees.

During his arrest, the subject was not cooperative and, from a review of In-Car Video (ICV), appeared to be angry. Officers attempted to place him into handcuffs and the subject physically resisted. He was placed on the ground and NE#1 held him down with his knee on the subject's back, which is a trained handcuffing technique for non-compliant arrestees. Once the subject was placed into handcuffs no further force was used. The subject acknowledged in his interview that he physically resisted and refused to place his hands behind his back because he did not want to be arrested. The subject did not complain of excessive force during the arrest; his primary complaint was that he was held on the ground too long. ICV captures the fact the subject was not on the ground for a prolonged period of time. Notably, none of the civilian complainants actually witnessed the arrest, they just relayed what the subject told them happened.

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.*)

From my review, the force used by the Named Employees was reasonable, necessary, and proportional, and thus consistent with policy.

The subject was actively trying to resist officers' attempts to handcuff him. The involved officers, including NE#1, had the lawful authority to place him under arrest. When the subject resisted attempts to handcuff him, the officers had the lawful authority to use force to take him into custody. As such, I believe that the force was reasonable.

The force was further necessary to ensure that the subject was properly secured and to prevent him from causing physical harm to officers or himself.

Lastly, the force was proportional to the threat facing the officers. Force was only used when the subject was actively trying to prevent officers from taking him into custody and, even then, only the least force necessary was used. Notably, NE#1 did not strike the subject or use anything other than a low level of force. Moreover, contrary to the allegations in this case, there is no evidence that he was kned, kicked, struck or otherwise assaulted by officers.

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

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



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**Named Employee #1 - Allegation #2**

***8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force***

It was alleged that NE#1 failed to adequately de-escalate the situation as required by SPD policy.

NE#1 described to OPA several different steps he took to attempt to de-escalate the subject, which included verbal de-escalation, tactical de-escalation, and waiting for additional officers to arrive on the scene. Ultimately, however, NE#1 approached and attempted to arrest the subject, and was required to use force to do so.

While de-escalation is inarguably a crucial component of the Department's obligations under the Consent Decree, it is not purposed to act as a bar to enforcing the law when necessary. Moreover, SPD policy does not require officers to exhaust each de-escalation tactic outlined in the policy prior to taking law enforcement action.

Here, NE#1 did take steps, even if unsuccessful, to de-escalate the incident. Notably, he was heard on video speaking calmly to the subject while waiting for back up officers and trying to convince the subject to comply. There is nothing on video that suggested that NE#1 escalated the situation through words or actions. Force was only used as an apparent last resort when the subject began to physically resist the Named Employees' attempts to make a lawful arrest.

For these reasons, I recommend the allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #1 - Allegation #3**

***5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

The subject alleged that NE#1 took law enforcement action because of his bias against people who are homeless and in his economic situation. The subject asserted that NE#1 was targeting him and not others engaged in the same behavior.

NE#1, for his part, denied taking action against the subject based on his housing or economic status. Based on NE#1's account, he took action against the subject based on the fact that he believed the subject was violating the law, as well as on the fact that the subject's property was in an improper location.

Ultimately, there is insufficient evidence to establish that NE#1 engaged in biased policing. While the subject asserted that NE#1's reference to him as an "aggressive panhandler" was evidence of bias, as discussed below, there is no evidence that NE#1 used this term in this case. Moreover, even if he did, as indicated herein, I do not find this to have necessarily been a biased statement. NE#1's conduct was instead based on the fact that the location in which he was conducting enforcement was an area of emphasis defined by his Precinct Commander and he observed the subject engaged in what he reasonably believed was unlawful conduct.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.



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Recommended Finding: **Not Sustained (Unfounded)**

**Named Employee #1 - Allegation #4**

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

It was alleged that NE#1 did not have probable cause to arrest the subject.

On the date in question, NE#1 was removing the subject's clothing from the side of the road because NE#1 believed that it was causing a hazard to passing motorists. Moreover, the clothing was situated in a place where pedestrians were not permitted to be (based on a marked sign). The subject grew upset, walked into the street and confronted the officer. NE#1 was heard on ICV giving several commands to the subject for him to move out of the street and to therefore allow traffic to move unobstructed.

Whether or not I ultimately think the decision to arrest the Complainant was the best course of action (*see* Allegation #6, below), there was probable cause to arrest him for impeding traffic. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #1 - Allegation #5**

***5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times***

It was alleged that NE#1 was unprofessional during the arrest by calling the subject an "aggressive panhandler." While the subject alleged that this statement was made, OPA could not hear the statement when reviewing the ICV of the incident. I note, however, that NE#1 used this term on multiple occasions during his OPA interview.

When asked about this term, NE#1 stated that he did not believe it was a demeaning term given that it was contained in the SMC. OPA determined that the term panhandling was at one time contained in Seattle Municipal Code 12.12.015, but had since been removed. The term "aggressive panhandler" was still included, however, in documents contained on the Seattle.gov webpage.

While I understand the subject's frustration at being referred to by what he believed was a demeaning term, I do not think that NE#1 understood the term to be demeaning or intended to insult the Complainant by referring to him as an "aggressive panhandler." This was expressly supported by the fact that this term is still used by the City on its webpage and was once included in ordinance.

For these reasons I recommend a finding of Not Sustained – Unfounded

Recommended Finding: **Not Sustained (Unfounded)**



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**Named Employee #1 - Allegation #6**

***5.001 - Standards and Duties 5. Employees May Use Discretion***

It was alleged that NE#1 abused his discretion by arresting the subject for a relatively minor offense and thus acted contrary to policy.

NE#1 was working the area of the Denny Triangle in response to community complaints of disorder. The Precinct Commander identified that location as a micro community project for patrol to focus attention on. NE#1, along with other officers, reported warning the subject on numerous times without success to not remain in locations forbidden to pedestrians and where he was impeding traffic.

That being said, reasonable minds could differ on whether the conduct engaged in by NE#1 on this date, which resulted in the need to use force and played a part in an attempt by the subject to self-harm by jumping from an overpass, were necessarily the best course of action. Even taking this into consideration, and applying a preponderance of the evidence standard, I do not conclude that the discretion exercised by NE#1 violated policy.

I recommend a finding of Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

**Named Employee #2 - Allegation #1**

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

The Complainant alleged that NE#2 used excessive force while assisting NE#1 in the arrest of the subject. For the reasons set forth above (see Named Employee #1, Allegation #1), I recommend a finding of Not Sustained – Lawful and Proper.

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