



CLOSED CASE SUMMARY

ISSUED DATE: MAY 8, 2018

CASE NUMBER: 2017OPA-1208

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	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity b. When Employees Record Activity	Sustained
# 3	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)

Imposed Discipline

Oral Reprimand

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.200 – Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)
# 3	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)

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 Named Employee #1 and Named Employee #2 used excessive force while placing him into custody. After its intake investigation, OPA further alleged that Named Employee #1 may have failed to activate his ICV as required by policy. OPA also alleged that Named Employee #3 potentially used force inconsistent with policy and failed to report that force to a supervisor.

STATEMENT OF FACTS:

SPD officers responded to a traffic accident involving a vehicle and a pedestrian that resulted in a fatality. While officers were at the scene, an individual – later identified as the Complainant in this case, called 911. The Complainant, who was standing in the near vicinity of the accident, told the 911 operator that officers had shot someone. Based on the call, the 911 operator identified that the Complainant was possibly in crisis. This call, which was initially made at



10:28:00 hours, was disconnected after approximately 32 seconds. The Complainant called back shortly thereafter (at 10:29:59 hours) and his call was characterized by the 911 operator as “rambling.” The 911 operator indicated that the Complainant sounded “paranoid.” The 911 operator reported that the Complainant may have already been interacting with officers who were at the scene.

While investigating the collision, officers, including employees of the King County Sheriff’s Office (KCSO), were notified of a man down on the sidewalk. An unidentified civilian informed them that this individual had possibly overdosed. Named Employee #1, who was the sergeant at the scene, went with the unidentified civilian to where the possibly overdosed male was lying. At that time, NE#1 observed both the man and the Complainant, who was kneeling on the sidewalk next to him. NE#1 asked the Complainant what had occurred. The Complainant stated that someone had put a bag of fentanyl over the man’s head and later conveyed that the man had been shot by KCSO deputies. Based on this conversation, NE#1 reported that he quickly determined that the Complainant was in crisis. It is unclear whether NE#1 knew of the Complainant’s previous 911 calls when he made this determination.

The vast majority of this incident, including NE#1’s initial contact with the Complainant, the force used against the Complainant, and the Complainant’s eventual arrest were captured by third party video, as well as by the officers’ In-Car Video (ICV) and Body Worn Video (BWV).

Based on a review of the video, NE#1 attempted to determine the man’s condition. He told OPA that he concluded that the man either had acute alcohol poisoning or had overdosed on either heroin or methadone. NE#1 relayed that while he was trying to investigate this matter, the Complainant continued to stand over and place his hands on the man. This was confirmed by a review of the third-party video. NE#1 indicated that this prevented him from conducting his lawful duties and from evaluating the man’s condition. NE#1 then engaged in a conversation with the Complainant and asked him to step away from the man so that NE#1 could help him. NE#1 explained why he needed the Complainant to move back and detailed what he wanted to do to assist the man. This interaction lasted for approximately three minutes; however, NE#1 was not successful in convincing the Complainant to disengage. This conversation was recorded on NE#1’s BWV and the video was consistent with NE#1’s recounting.

At that time, NE#1 told the Complainant that he was going to be placed into handcuffs. NE#1 explained that he made this decision based on his unsuccessful efforts to engage with the Complainant and the Complainant’s failure to comply with his directions, as well as the Complainant’s conduct and irrational statements. NE#1 believed that he had probable cause to arrest the Complainant for obstruction. NE#1 requested a backing unit to come to his location and assist him with the Complainant. Both Named Employee #2 (NE#2) and Named Employee #3 (NE#3) responded. NE#1 was crouched behind the Complainant and was holding the Complainant’s elbow with his hand. NE#1 told OPA that he believed it possible that the Complainant could try to elbow him. NE#1 stated that he did, in fact, begin to feel the Complainant push back against him and “flex” up. NE#1 pushed back against the Complainant and the other officers provided assistance. They all stood up and the Complainant continued to struggle. NE#1 and NE#2 took the Complainant down to the ground in what NE#1 described was a “team takedown.”

The Complainant continued to struggle against the officers while on the ground. NE#1 described that the Complainant tried to get away from him and was moving his arms. NE#1 also recounted that the Complainant “was grabbing, pushing...and kicked off on the wall possibly.” NE#1 stated that these actions made it difficult for the officers to “do anything.” NE#1 recalled that he may have been saying “stop resisting” and indicated that the Complainant was screaming and said “excessive force.”



NE#1 stated that he used Type II force when he took the Complainant to the ground with NE#2. He believed this to be the case as he thought the takedown caused the Complainant to suffer an injury to his facial area. NE#1 recounted that the Complainant did have some bleeding from his face. NE#1 stated that, while he used other de minimis force to hold the Complainant's body down and place him into handcuffs, he did not utilize any punches, kicks, or strikes. The force reported by NE#1 was consistent with the video.

NE#2 stated that he helped NE#1 take the Complainant down to the ground. While on the ground, the Complainant continued to resist the officers' attempts to control his body and place him into handcuffs. At one point, the Complainant grabbed onto NE#2's legs and pulled them. NE#2 then used two to three strikes with a closed fist to the Complainant's right flank in order to prevent him from further resisting. These strikes were successful and NE#2 was able, with the assistance of the other officers, to place the Complainant into handcuffs. NE#2 continued to hold the Complainant down until an ambulance arrived and he was transported from the scene. NE#2 did not use any further force on the Complainant. The force that NE#2 reported using was consistent with what appeared on the video.

NE#3 told OPA that he also used de minimis force to hold the Complainant's body down and to assist NE#1 and NE#2 in taking the Complainant into custody and handcuffing him. NE#3 denied using any other force, including punches, kicks, or strikes. Third party video appeared to show a potential strike by NE#3 to the Complainant; however, NE#3 did not report that force and told OPA that he did not strike the Complainant. Moreover, as discussed more fully below, BWV revealed that no strike occurred.

After the Complainant was handcuffed, Miranda warnings were read to him twice; however, he did not respond verbally to either reading. This was confirmed by the video. He was held on the ground for an extended period of time until an ambulance came to the scene. While he was being held down, the Complainant made a number of confusing and apparently irrational statements. Included among these were: that he was "god," the "architect," or the "pantheon"; repeating 5:03 a.m. and referring to reading the 5:03 email; "there are 60 people around me"; "there are 600 grams of fentanyl"; and "the secret service are right over there." At one point, another supervisor asked the Complainant what was going on and he told the supervisor to ask "Kayla." When the supervisor asked who Kayla was, the Complainant stated that she was "watching" them. The supervisor informed the Complainant that he appeared to be in crisis and asked whether he had a mental health diagnosis or was under the influence of a narcotic. During the incident, the Complainant further stated: "what the fuck are you doing to my ass" and "you cannot inject me with something." These comments were all captured on video.

I note that there is no allegation in this case that the Named Employees inappropriately touched the Complainant or that they injected him with any substance. This is due to the fact that these allegations were unsupported by any evidence and were directly contradicted by the video.

An ambulance then arrived and the officers coordinated with the medics to place the Complainant on a gurney. Prior to doing so, they placed a spit sock on his head. During this time, the Complainant continued to yell and make nonsensical statements. He was then secured on the gurney and was transported from the scene in the ambulance. Documentation by the medics indicated that the Complainant had "controlled" bleeding to his face. No other injuries were noted. Moreover, no other injuries were readily apparent from a review of the video. After he was transported from the scene, the Named Employees had no further interaction with the Complainant.



The Complainant was eventually taken to the King County Jail (KCJ). The Complainant's booking photographs did not indicate any facial injuries. However, the photographs were taken of the Complainant's right side and of him looking straight on. No booking photograph was apparently taken of the left side of his face. While at the KCJ, the Complainant was reportedly not compliant and force was used against him by KCJ staff on at least two separate occasions. This force included strikes by KCJ staff, four Taser applications, and two bursts of pepper spray. Photographs from the KCJ showed fresh lacerations and bleeding to the Complainant's wrists, as well as lacerations to the left side of the Complainant's face head, and wounds from the Taser prongs.

After his release from the KCJ, the Complainant posted about this incident on Facebook. The entirety of the posting is contained in the OPA file; however, in summary, the Complainant contended that he was trying to assist a homeless man when five to six officers: "beat me down, wrapped my head in a plastic bag, strapped me down, defiled me in the ambulance and again at King County jail..." He stated that he had been subjected to "excessive force" and "what felt like attempted murder." He lastly alleged that he had asked to be read Miranda warnings but that the officers did not do so. He stated that the officers told him that "Miranda rights are only in the movies" and refused to allow him to make a telephone call. Notably, as discussed below, most of the Complainant's allegations were conclusively disproved by the video evidence. Moreover, he failed to make any reference to his confusing, nonsensical, and irrational statements on the date in question or the possibility that he was, at least momentarily, either in crisis or impaired by narcotics.

One of the Complainant's friends reported this matter to SPD via twitter and SPD then forwarded this case to OPA. A Department Lieutenant also independently referred this case to OPA based on his review of the video and the fact that the Complainant made an allegation of excessive force. OPA subsequently initiated an investigation.

During its investigation, OPA obtained the SPD documents relating to this incident, as well as the Ambulance Call Report completed by the medics who responded to the scene. OPA also obtained documents from the KCJ concerning the force used on the Complainant while he was in custody. OPA interviewed the Named Employees. OPA attempted to interview the Complainant, but he did not consent to an interview.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #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." (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.*) These three factors and my conclusions as to each are outlined below.

Based on my review of the record and, specifically, the video, I conclude that the force used by NE#1 was reasonable. NE#1 was legally permitted to request that the Complainant move away from the male who NE#1 believed could be overdosing. As he explained at his OPA interview, NE#1 had previous experience with overdosing



individuals and was concerned that if he did not get the man assistance quickly, the man could suffer brain injuries or die. When the Complainant, who presented as being in crisis, refused to move away from the man, NE#1 was justified in using force to ensure that he did so. Here, NE#1 first attempted to use de minimis force to place the Complainant into handcuffs. However, when the Complainant stood up and physically resisted those attempts, NE#1 used a higher level of force to take the Complainant down to the ground. NE#1 then used additional de minimis force when he placed weight on the Complainant's body and put him into handcuffs. The Complainant continued to struggle at this time, even when there were three officers trying to subdue him. While the Complainant suffered a laceration to his face, I find that the force was reasonable to move the Complainant away from the man, stop him from resisting, control his person, and handcuff him.

I further find that the force was necessary to carry out NE#1's lawful purpose and that no reasonable alternative appeared to exist at the time to NE#1. Lastly, I find that the force used was proportional under the circumstances. As discussed above, NE#1 was greatly concerned about the welfare of the potentially overdosing man. He was further concerned by the Complainant's irrational behavior and physical resistance. As such, the force was proportional to the risk of harm presented by the Complainant and the need to timely treat the man. Notably, NE#1 used only that force required to effectuate his lawful goals. He used no punches, kicks, or strikes.

For these reasons, I find that the force used by NE#1 in this case was consistent with policy and I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity b. When Employees Record Activity

During its intake investigation, OPA determined that NE#1 may have failed to activate his ICV system and record video. Under the circumstances of this case, SPD Policy 16.090-POL-5 required ICV to be recorded. As such, if NE#1 failed to do so, it would have been in violation of policy.

At his OPA interview, NE#1 stated that he turned off his ICV when he was at the scene of the traffic accident but that he believed that he activated it again prior to when he interacted with the Complainant. He stated that he activated his ICV by pushing his wireless microphone. NE#1 told OPA that he was a fair distance from his vehicle at the time. NE#1 confirmed to OPA that his ICV system had been working that day.

NE#1 told OPA that he did not intentionally fail to record. This contention is supported by the fact that he did, in fact, activate his BWV.

NE#1 did not report his failure to record ICV to a supervisor. He further did not report any malfunctions of his system on the date in question to a supervisor or to SPD IT. Lastly, he did not document the failure to record in an appropriate report.

OPA contacted SPD IT to verify whether NE#1, in fact, activated his ICV on the date in question. SPD IT verified that there were no malfunctions with NE#1's system. SPD IT further verified that NE#1 only initiated two recordings on that date – one when he activated his patrol vehicle's light bar and the other when he pressed his wireless



microphone. Neither correlated to this incident. There was no evidence of any attempt by NE#1 to activate his ICV at the time of his interaction with the Complainant. Lastly, SPD IT verified that the voltage of NE#1's wireless microphone was at an appropriate level at that time, which ruled out a failure to record based on NE#1's distance from his patrol vehicle.

As indicated by the above, NE#1 failed to activate his ICV and record his law enforcement activity as required by policy. Accordingly, and even if NE#1 did not act with ill intent – which I believe, this conduct violated policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

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

“De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.” (SPD Policy 8.100-POL-1.)

The policy further instructs that: “When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.” (*Id.*) Officers are also required, “when time and circumstances permit,” to “consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors” such as “mental impairment...drug interaction...[and/or] behavioral crisis.” (*Id.*) These mental and behavioral factors should be balanced by the officer against the facts of the incident “when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.” (*Id.*)

The policy gives several examples of de-escalation, which include: mitigating the immediacy of the threat to give officers time to use extra resources and to call more officers or specialty units; and increasing the number of officers on scene to thus increase the ability to use less force. (*Id.*) Other examples of de-escalation include, but are not limited to:

- Placing barriers between an uncooperative subject and officers;
- Containing the threat;
- Decreasing exposure to the potential threat by using distance, cover and concealment;
- Avoidance of physical confrontation unless immediately necessary to protect someone or stop dangerous behavior;
- Using verbal techniques, such as “Listen and Explain with Equity and Dignity” (LEED) to calm an agitated subject and promote rational decision making;
- Calling extra resources, including CIT officers and officers equipped with less-lethal tools; and
- Using “any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject.



(*Id.*) De-escalation is inarguably a crucial component of the Department's obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department's policy and expectations.

Based on my review of the evidence, NE#1 engaged in sufficient de-escalation consistent with the requirements of SPD's policy. Notably, even though NE#1 was concerned for the safety of the potentially overdosing man, he still tried to reason with the Complainant to get him to move away. NE#1 tried to rationalize with the Complainant, but this was unsuccessful because the Complainant was apparently in crisis. NE#1 did so for over approximately three minutes. This was crucial time during which the man's health could have been failing. Only after repeatedly trying to gain voluntary compliance and after calling for additional officers, did NE#1 go hands on with the Complainant.

While there were additional de-escalation efforts that NE#1 could possibly have taken, I find that he acted appropriately under the circumstances of this case. Moreover, he was not required to use every de-escalation tool itemized in the policy prior to taking action. Here, he acted with exigency to ensure that the man got the medical treatment that he needed and I find that, at the time he did so, further de-escalation was no longer safe or feasible.

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

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

Named Employee #2 - Allegation #1

8.200 - Using Force 2. Use of Force: When Prohibited

As discussed above, NE#2 reported using force with NE#1 to take the Complainant down to the ground. When they were on the ground, NE#2 used a cross-face technique (using an arm bar across the Complainant's face) in order to gain compliance from the Complainant. This was unsuccessful and the Complainant continued to struggle with the officers. When the Complainant began grabbing his leg, NE#2 stated that he punched the Complainant in the right flank area with a closed fist two to three times. NE#2 then used additional de minimis force to control the Complainant's body and handcuff him.

While SPD Policy 8.200(1) provides for when force is authorized, SPD Policy 8.200(2) sets forth those scenarios in which force is prohibited. Among those scenarios are: when force is used to retaliate against or punish a subject; and when force is used against a restrained subject, "except in exceptional circumstances when the subject's actions must be immediately stopped to prevent injury, [] escape, [or] destruction of property." (SPD Policy 8.200(2).)

I presume that this allegation was classified based on the fact that there were multiple officers trying to control the Complainant at the time the strikes were used. Even though this is the case, it does not prohibit the force that was used. Indeed, I find that, under the circumstances, the force was reasonable, necessary, and proportional. SPD officers are trained that when a subject actively physically resists, including grabbing the legs or arms of the officer, intermediate force – such as strikes – may be used. These were exactly the circumstances facing NE#2 during this incident. Accordingly, I find that the force used by NE#2 was consistent with this training. I further find that it was reasonable to prevent the Complainant from further resisting, harming officers or himself, and to place him into custody. I find that it was necessary to effectuate these lawful purposes and that, at the time the force was used,



there did not appear to be any reasonable alternatives to NE#2. Lastly, I find that the force was proportional to the threat of harm presented by the Complainant. Moreover, once the force was used and the threat lessened, NE#2 moderated his force and used no further strikes.

I note that the Complainant was not handcuffed at the time the strikes were used and the force did not appear to have been used to retaliate against or punish the Complainant.

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

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

Named Employee #3 - Allegation #1

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

During its intake investigation and after reviewing third party video, it appeared possible to OPA that NE#3 had struck the Complainant and had not reported that strike. As such, allegations concerning the purported force and failure to report were investigated by OPA.

OPA reviewed BWV during its investigation that indicated that no strike occurred. NE#3 also denied striking the Complainant during his OPA interview. He stated that he only used de minimis force on the Complainant in order to control his body and place him into handcuffs.

Based on my review of the third party video, as well as of BWV, I agree with NE#3 that he did not strike the Complainant. It appeared to me, as NE#3 indicated, that he pulled his hand away from the Complainant but did not hit the Complainant. As he did not participate in the takedown of the Complainant with NE#1 and NE#2, the only force he actually used was de minimis. For the same reasons as explained in the context of NE#1 and NE#2, I find that this force was reasonable, necessary, and proportional under the circumstance and, thus, consistent with policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #2

8.200 - Using Force 2. Use of Force: When Prohibited

This allegation was included in this case based on the possibility that NE#3 had struck the Complainant while he was on the ground and was in the process of being subdued by two other officers. However, as discussed above, I find that no strike occurred. As such, I recommend that this allegation be Not Sustained – Unfounded.

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



Named Employee #3 - Allegation #3

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 sets forth the general requirements for the reporting of force used by officers. The policy sets forth four levels of force – de minimis; Type I; Type II; Type III. All categories of force must be reported, documented and investigated to varying extents, except for de minimis force. De minimis force need not be reported or investigated. De minimis force, which is defined as “[p]hysical interaction meant to separate, guide, and/or control that does not cause pain or injury” (SPD Policy 8.400-POL-1), does not need to be reported or investigated.

As explained above, the BWV and NE#3’s OPA interview established that he did not strike the Complainant. The force that he did utilize was de minimis force that, pursuant to policy, was not required to be reported. He properly completed a use of force witness report and was not obligated to generate any other documentation.

For these reasons, I find that NE#3’s reporting of the force he used was consistent with policy and I recommend that this allegation be Not Sustained – Lawful and Proper.

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