



## CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 25, 2019

CASE NUMBER: 2019OPA-0186

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Management Action)
# 2	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Unfounded)
# 3	5.100 - Operations Bureau Individual Responsibilities	Not Sustained (Training Referral)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	5.100 - Operations Bureau Individual Responsibilities	Not Sustained (Training Referral)

**Named Employee #3**

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Training Referral)
# 2	5.100 - Operations Bureau Individual Responsibilities	Not Sustained (Training Referral)

***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:**

It was alleged that the Named Employees failed to properly investigate and document this incident. It was further alleged that Named Employee #1 and Named Employee #3 failed to properly report and document force. Lastly, it was alleged that Named Employee #1 abused his discretion when he did not secure the Subject in handcuffs and the Subject then fled and damaged a community member’s vehicle.

**SUMMARY OF INVESTIGATION:**

The Named Employees were dispatched to a possible crisis call involving an individual armed with a crowbar who was running in and out of the street. The call was updated to reflect that the individual – who is the Subject in this case – had threatened the 911 caller with the crowbar and was inside of a grocery store causing damage. The Named Employees arrived on scene and were informed that the Subject was inside of the grocery store. The officers located the Subject who was crouched behind a counter. Named Employee #1 (NE#1) told the Subject to come out and drop the crowbar. The Subject did so and NE#1 walked him out of the store without first securing him in handcuffs. The Subject made some statements concerning being robbed by “Vinnie” and, after being asked to sit down, said that he would be more comfortable in the patrol vehicle. However, NE#1 told the Subject that he could not go into the patrol vehicle without being searched first. After the Subject was walked to the front of the patrol vehicle, Named Employee #2 (NE#2) and Named Employee #3 (NE#3) began to come towards the Subject and NE#1.



---

Prior to NE#2 and NE#3 reaching the patrol vehicle, the Subject ran. He fled towards a car driven by a community member. He ripped one of the windshield wipers off of the car before being grabbed by NE#2 and NE#3.

NE#1 got to where they were, and the officers then handcuffed the Subject and walked him back to the patrol vehicle. They began to search the Subject and NE#1 told him that he was going to be arrested for property damage. At that time, NE#3 noted blood on the Subject's arm and wrist and he and NE#1 agreed that it was there when they first observed the Subject. While standing in front of the patrol vehicle, the Subject began pulling away from the officer, yelling, and moving his body around. As he was doing so, he banged his head against the push bar on the patrol vehicle at least once. The Subject continued yelling and the officers tried to seat the Subject in the rear of NE#3's patrol vehicle. The Subject resisted the officers' attempts to do so. Ultimately, the officers pushed him onto the backseat, face forward. The Subject screamed out and asked the officers if they "wanted to hurt [him] some more." NE#1, who had injured his back, moved to the other side of the patrol vehicle and he grabbed on the Subject's arms and pulled him forward. NE#1 and NE#3 tried to lift the Subject up into a seated position with NE#3 grabbing his arm and pulling him backwards and NE#1 pushing the Subject's face up with his hand. The Subject yelled out when the officers did that. Ultimately, the officers were unable to sit the Subject up and left him lying on his front across the seat. The Subject continued to moan and to make other statements. At one point, NE#3 began talking to the Subject again and stated that SFD was coming to treat him. The Subject responded to NE#3 by saying: "it hurts"; "it hurts like a motherfucker"; and "you hurt me..." When NE#3 later opened the door of the patrol vehicle, the Subject said: "please, no more."

The Subject was ultimately arrested for misdemeanor property damage based on his destruction of the windshield wiper. However, he was transported from the scene to the hospital and was not booked into the King County Jail. After the Subject's arrest, the Named Employees discussed what had occurred. NE#2 told NE#3 that no drugs were found on the Subject and that he had a clean record. NE#2 overlooked the fact that the Subject was active DOC. NE#2 also referenced to NE#3 that the store manager disclosed that the Subject had threatened to kill him. None of the officers conducted any follow up investigation into this incident. NE#2, who became the primary officer given NE#1's injury, did not interview any of the store employees, obtain store security video, or follow up on the allegations that the Subject threatened people with a crowbar, trespassed, and destroyed property.

The officers screened the incident with an Acting Sergeant. NE#2 screened the arrest as a misdemeanor, even though there were facts suggesting that the Subject had committed a felony. None of the officers told the Acting Sergeant about the Subject's threats to kill that were reported by the store manager or about the property damage that the Subject caused in the store. NE#1 and NE#3 also screened the force with the Acting Sergeant. NE#1 said that he and the other officers wrestled the Subject into the car but stated that the force used was de minimis. NE#1 disclosed that, when they brought he Subject back to the vehicle, the Subject struck his own head once on the cross bar. NE#3 also told the Acting Sergeant that the Subject struck his head on the push bar. NE#3 did not report the Subject's complaints of pain to the Acting Sergeant.

The Complainant, who is the husband of the store manager, later filed this complaint. This investigation ensued.



---

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegations #1**

***8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force***

When the Subject struck his head on the patrol vehicle, he was in the custody of NE#1 and NE#3 and was being held by them. The officers discussed whether this constituted a use of force and they determined that it did not because no force was actually used by them. NE#1 and NE#3 also used de minimis force to push the Subject into the rear of the patrol vehicle. At that time, the Subject yelled several times; however, it did not appear from OPA's review that he exclaimed in pain. The Subject did make several complaints of pain after he was forced into the patrol vehicle. These complaints were audible and were made in the presence of NE#3.

NE#1 and NE#3 both informed the Acting Sergeant of the Subject striking his head on the patrol vehicle. They also told the Acting Sergeant that the Subject did not appear to have suffered an injury and that he did not complain of pain at the time. Based on a review of the video, these statements were accurate. Moreover, both officers told the Acting Sergeant that they only used de minimis force. The Acting Sergeant, for his part, did not ask particularly probing questions and did not explore the Subject's striking of his own head or ask whether the officers were hands-on at that time.

The Acting Sergeant, who did not have experience conducting force investigation, ran the force past another Sergeant. That Sergeant later told OPA that, in his experience, if the officers were holding the Subject when he was striking his own head against the push bar, it would be reportable force that would need to be documented and investigated.

The Acting Sergeant was also interviewed by OPA. He stated that, given his experience since this incident, he now would have investigated the incident more thoroughly and he would have looked at the force as reportable.

SPD Policy 8.400-POL-1 states that: "[O]fficers must clearly and reliably report and thoroughly document each time they use force defined as Type I, II, or III." The policy further explains that: "All uses of force are reportable except de minimis force." (SPD Policy 8.400-POL-1.) The policy also provides examples of force that falls into each type. Relevant to this incident, the policy defines Type I force as: "Force that causes transitory pain or the complaint of transitory pain." (*Id.*)

When interviewed by OPA, both officers believed that the Subject striking his own head on the patrol vehicle while they were holding him was not reportable force. For his part, NE#3 expressed confusion as to whether this was reportable force. This is not the first time OPA has heard officers expressing confusion on this question. OPA also finds that, based on the plain language of the policy, it is unclear whether there was an obligation to report this force. First, the Subject's striking of his own head was not due to any force used by NE#1 and NE#3. While they were holding him at the time, he struck the push bar under his own power and without being compelled to do so by the officers. As such, it is odd to be required to report force, even had the Subject complained of pain, when the officers did not actually do anything to cause that complaint.

However, OPA understands, as both the Acting Sergeant and Sergeant explained during their interviews, that best practice is to investigate such occurrences as a reportable use of force. That being said, while this is best practice,



---

that does not mean that it should continue to be done if it does not make sense. As such, OPA issues a Management Action Recommendation to request that the Department consider whether such incidents should continue to be investigated as reportable force.

- **Management Action Recommendation:** OPA requests that the Department consider whether to continue requiring officers to report force in situations such as that which occurred in this case. OPA requests that the Department evaluate this question under two common scenarios. First, if subjects harm themselves or inadvertently suffer an injury while in police custody and while officers are not hands-on with them, does that require a force investigation and, if so, at what level? Second, and relevant to this case, does the Department want officers to continue to report force when subjects injure themselves while officers are hands-on but where those officers do not cause the harm?

Recommended Finding: **Not Sustained (Management Action)**

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

***5.001 - Standards and Duties 6. Employees May Use Discretion***

As indicated in SPD Policy 5.001-POL-6, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-6.)

This allegation was classified against NE#1 based on his failure, as the senior officer, to ensure that a complete and thorough investigation was completed. It was also alleged that NE#1 abused his discretion when he walked the Subject – who had been armed, threatened people, and damaged store property – out of the store without first handcuffing him. This decision resulted, at least in part, with the Subject being able to flee and then rip the windshield wiper off of a community members car.

With regard to the inadequate investigation, that issue is discussed in Allegation #3 and will not also be addressed here.

With regard to the failure to handcuff the Subject, NE#1 stated that he did not perceive the Subject to present a threat at the time and that he made the decision to not handcuff the Subject because he was concerned that the Subject could be suffering from excited delirium.

Given the crimes the Subject was alleged to have committed, OPA believes that it would have been advisable to have handcuffed him. However, there was no policy requiring him to do so, particularly as he was not under arrest at the time. Moreover, OPA finds that, while it was extremely unfortunate that the unsecured Subject caused damage to a community member’s car, it would be unreasonable and unfair to hold NE#1 responsible for the Subject’s actions and the damage he caused, especially since the Subject appeared to be in crisis at the time.



---

As such, OPA finds that NE#1 did not abuse his discretion when he failed to secure the Subject in handcuffs and recommends that this allegation be Not Sustained – Unfounded.

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

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

***5.100 - Operations Bureau Individual Responsibilities***

SPD Policy 5.100 sets forth the responsibilities of patrol officers. These include the requirements to: “Monitor and take appropriate action regarding criminal activity in assigned area”; and “Complete reports accurately.” (SPD Policy 5.100.)

There were significant problems with the investigation conducted by the Named Employees in this case. First, the officers were aware that the store manager alleged that the Subject threatened to kill him. However, this was not followed up on by the officers and the Subject was not arrested for felony harassment. Second, the officers did not investigate the alleged property damage within the store. Third, the officers did not complete any substantive interviews of the store employees or any witnesses inside of the store. Fourth, the officers did not look for evidence within the store, such as security video. Fifth, neither NE#1, who was the most senior officer on scene, nor NE#3 assisted NE#2 with determining what crimes to investigate or helped her with that investigation. This was the case even though NE#1 was aware that the Subject had chased the store manager with a crowbar, was trespassing in the store, and had caused property damage, and NE#3 knew about the threats to kill. Sixth, NE#2, who became the primary officer once NE#1 was injured, made a number of mistakes. She categorized her report as “property damage” and decided to charge-by-officer; however, a charge-by-officer is only appropriate for misdemeanors and the Subject here committed a felony. NE#2 also failed to include the fact that the Subject had a criminal history and was under DOC supervision in her report. She also improperly screened this incident as a misdemeanor with her supervisor instead of as a potential felony. To her credit, NE#2 recognized that she “messed up” during this incident and appeared committed to avoid such mistakes moving forward.

Given the above, I find that all of the Named Employees acted contrary to policy during this incident as they failed to appropriately investigate and document this matter. However, OPA recognizes that this was a complex incident with a lot of moving parts. Moreover, the incident became more complicated given the Subject’s condition and conduct, as well as because of NE#1’s injury that removed him from the investigation. For these reasons, OPA recommends that the Named Employees receive Training Referrals rather than Sustained findings.

- **Training Referrals:** The Named Employees’ chain of command should debrief this incident with them. The Named Employees should be reminded to conduct more thorough investigations in the future, to explore all potential crimes that may have occurred – especially felonies, and to appropriately document such incidents. This retraining and associated counseling should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**



---

**Named Employee #2 - Allegations #1**

***5.100 - Operations Bureau Individual Responsibilities***

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral. (See Named Employee #1, Allegation #3.)

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #3 - Allegations #1**

***8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force***

NE#3 was present when the Subject made several complaints of pain. At his OPA interview, NE#3 stated that he did not hear those statements and, had he heard them, he would have reported them to a supervisor and completed the appropriate paperwork.

Based on OPA's review of the video, the statements were made when the Subject was lying in the back of the patrol vehicle and NE#3 was at or around the rear window. While perhaps NE#3 should have heard the statements, OPA cannot disprove his assertion that he did not. That being said, NE#3 should be more careful to comprehend and report such statements in the future, particularly when they are audibly made in his immediate vicinity. As such, OPA issues NE#3 the below Training Referral.

- **Training Referral:** NE#3 should be reminded that the Department's expectation is that he will comprehend and report complaints of pain that are audibly made in his immediate vicinity. NE#3 should be counseled concerning his failure to do so here. This counseling and any associated retraining should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #3 - Allegation #2**

***5.100 - Operations Bureau Individual Responsibilities***

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral. (See Named Employee #1, Allegation #3.)

Recommended Finding: **Not Sustained (Training Referral)**