



OFFICE OF PROFESSIONAL ACCOUNTABILITY

Closed Case Summary

Complaint Number OPA#2015-1522

Issued Date: 07/08/2016

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 8.100 (1) Using Force: When Authorized (Policy that was issued 01/01/14)
OPA Finding	Sustained
Allegation #2	<u>Seattle Police Department Manual</u> 8.100 (2) Use-of-Force: When Prohibited (Policy that was issued 01/01/14)
OPA Finding	Sustained
Allegation #3	<u>Seattle Police Department Manual</u> 8.100 (3) Use-of-Force: 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 (Policy that was issued 01/01/14)
OPA Finding	Not Sustained (Unfounded)
Final Discipline	8 days suspension and Retraining on Policies 8.100 (1) - (2)

Named Employee #2	
Allegation #1	<u>Seattle Police Department Manual</u> 8.100 (1) Using Force: When Authorized (Policy that was issued 01/01/14)
OPA Finding	Not Sustained (Lawful and Proper)

Allegation #2	<u>Seattle Police Department Manual</u> 8.100 (3) Use-of-Force: 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 (Policy that was issued 01/01/14)
OPA Finding	Not Sustained (Unfounded)
Final Discipline	N/A

INCIDENT SYNOPSIS

The Named Employees were dispatched to a report of a disturbance involving a male and female in a parking lot. The anonymous caller to 911 reported that the female in the car appeared high and kept yelling “Don’t touch me.” The officers located the car in the parking lot. During the contact the officers discovered that the vehicle was reported stolen and identified other potential felony crime(s). Reportable force was used to arrest both the male and female subject.

COMPLAINT

The complainant, the Force Review Board, alleged that Named Employee #1 violated the de-escalation policy and used unnecessary force and that Named Employee #2 violated the de-escalation policy.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complaint memo
2. Review of In-Car Video (ICV)
3. Search for and review of all relevant records and other evidence
4. Interview of witnesses
5. Interviews of SPD employees

ANALYSIS AND CONCLUSION

With the exception of a portion of Named Employee #1’s use of a “C” hold on the back of the male subject’s neck, the preponderance of the evidence supports the conclusion that Named Employee #1’s use of force on both the male and the female subject was reasonable, necessary and proportional to control and arrest both subjects. At the time Named Employee #1 began to use force on each subject, probable cause existed to arrest them both for more than one felony crime. As each subject failed to comply with Named Employee #1’s lawful orders and then

escalated their behavior to include active resistance and attempts to escape, Named Employee #1 responded with proportional force to control their actions and get them into custody. However, sometime after the male subject had been handcuffed and following his repeated attempts to influence the actions of the female subject by shouting to her, Named Employee #1 used force that was not consistent with SPD Policy 8.100 (1). After Named Employee #1 and another officer had told the male subject to stop talking to the female subject and met with little success, the two officers took hold of the handcuffed and seated male subject by either arm and attempted to pull him farther away from the female subject. As they pulled him along the ground, the male subject began to stand up and Named Employee #1 used a leg sweep motion and downward pressure to put the subject back down into a seated position. Named Employee #1 then formed his hand into a "C" and placed it on the back of the male subject's neck, applying pressure to keep him from getting back up on his feet. This force, too, was reasonable, necessary and proportional to prevent the male subject from either escaping or assaulting someone. However, as Named Employee #1 continued to grip the back of the male subject's neck in a "C" hold and applying an increasing amount of downward pressure and pushing the male subject's face towards the ground, all the time demanding the male subject answer "yes or no," Named Employee #1's use of force ceased to be reasonable, necessary and proportional as required by policy. This was especially true in light of the fact that the subject verbally protested this force with an indication it was causing him discomfort. If Named Employee #1 reasonably believed it was necessary to do something to prevent the subject from getting back up (a legitimate law enforcement concern), other tactics were available that required less force, or none at all. The preponderance of the evidence supports the conclusion that Named Employee #1's main purpose in gripping the back of the subject's neck and pushing his head down toward the ground was to extract a verbal answer to Named Employee #1's repeated demands for an answer and/or to punish the subject for not giving him a reply. The use of force in this manner and for such a purpose was inconsistent with the requirements of 8.100 (1).

In evaluating Named Employee #1's use of force on a handcuffed person (the male subject in this case), the OPA Director looked at Named Employee #1's efforts to leg-sweep him back into a seated position, his initial use of a "C" style hold and pressure on the back of the subject's neck to keep the subject from standing back up, and then his continuing application of the "C" hold and an increasing amount of downward pressure pushing the subject's face toward the ground. SPD Policy 8.100 (2) prohibits the use of force on handcuffed prisoners, "except in exceptional circumstances when the subject's actions must be immediately stopped to prevent injury, escape or destruction of property." As Named Employee #1 was attempting to move the subject away from the other subject for a legitimate law enforcement purpose, the subject began to stand up and move forward. Given the subject's earlier attempt to escape, it was reasonable for Named Employee #1 to fear another escape attempt. The OPA Director believed this immediate circumstance met the "exceptional circumstances" requirement of the policy and reasonable, necessary and proportional force was permitted. While Named Employee #1 and another officer held either arm of the subject, Named Employee #1 swept the subject's leg which caused him to sit back down on the ground. There was little risk of pain or injury to the subject and this minor amount of force was reasonable, necessary and proportional given the circumstances. Similarly, once the subject was back on the ground in a seated position, he

made movements to suggest he might attempt to get back up on his feet. Named Employee #1 placed his hand in a "C" form on the back of the subject's neck and applied downward pressure. For the same reason stated above, this relatively minor amount of force was reasonable, necessary and proportional to prevent the subject from standing back up and either escaping or assaulting someone. However, as Named Employee #1 repeatedly demanded a "yes or no" answer from the subject while simultaneously using his "C" hold on the back of the subject's neck to push the subject's head so far forward that the subject's face was only inches from his own outstretched legs, Named Employee #1's use of force was no longer necessary under the "exceptional circumstances" outlined in 8.100 (2). Named Employee #1's demands the subject answer him and promise to stop talking to the other subject show Named Employee #1 was no longer using force on the handcuffed subject to prevent injury, escape or destruction of property as allowed by policy. In fact, toward the end of the approximate 38 second period in which Named Employee #1 was pushing downward on the back of the subject's neck, it appears the sole purpose of the use of force was to extract an answer from the subject and/or punish him for not answering. Such a purpose does not qualify as an "exceptional circumstance."

The initial tactics employed by Named Employee #1 to get both subjects to exit the vehicle and submit to arrest were not effective in preventing the need to use force. However, the mere fact that the tactics attempted were unsuccessful does not negate the fact that Named Employee #1 attempted to employ tactics aimed at de-escalating the situation. Notwithstanding the criticism of these tactics already registered by FIT, the FRB and Named Employee #1's chain of command, the preponderance of the evidence supports the conclusion that Named Employee #1 attempted to use a variety of tactics in an effort to keep both subjects calm and avoid escalating the situation unnecessarily.

Named Employee #2 used force on the male subject. At the time he used this force, there was probable cause to arrest the subject for more than one felony crime. In response to Named Employee #2's efforts to handcuff the male subject, he (the subject) physically resisted and attempted to escape. Named Employee #2 kept ahold of the subject and either took him to the ground or went with the subject to the ground as the subject tried to flee. Named Employee #1 then applied body weight and hand grabbing to keep the subject from getting up off the ground and complete the handcuffing procedure. All of the force used by Named Employee #2 was reasonable and necessary to arrest the subject, prevent his escape and overcome his resistance. It was also proportional to the amount of resistance and attempted escape from the male subject.

The initial tactics employed by Named Employee #2 to get the male subject to exit the vehicle and submit to arrest were not effective in preventing the need to use force. However, the mere fact that the tactics attempted were unsuccessful does not negate the fact that Named Employee #2 attempted to employ tactics aimed at de-escalating the situation. Notwithstanding the criticism of these tactics already registered by FIT, the FRB and Named Employee #2's chain of command, the preponderance of the evidence supports the conclusion that Named Employee #2 attempted to use a variety of tactics in an effort to keep the male subject calm and avoid escalating the situation unnecessarily.

FINDINGS

Named Employee #1

Allegation #1

The evidence showed that Named Employee #1 used force that was not consistent with SPD Policy. Therefore a **Sustained** finding was issued for *Using Force: When Authorized*.

Allegation #2

The evidence showed that Named Employee #1 used force that was not consistent with SPD Policy. Therefore a **Sustained** finding was issued for *Use-of-Force: When Prohibited*.

Allegation #3

The preponderance of the evidence supports the conclusion that Named Employee #1 attempted to use a variety of tactics in an effort to keep the male subject calm and avoid escalating the situation unnecessarily. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Use-of-Force: 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*.

Named Employee #2

Allegation #1

The weight of the evidence showed that Named Employee #2 used force that was reasonable and proportional to take the complainant into custody. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: When Authorized*.

Allegation #2

The preponderance of the evidence supports the conclusion that Named Employee #2 attempted to use a variety of tactics in an effort to keep the male subject calm and avoid escalating the situation unnecessarily. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Use-of-Force: 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*.

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.