



## CLOSED CASE SUMMARY

ISSUED DATE: MARCH 8, 2019

CASE NUMBER: 2018OPA-0930

### **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	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Training Referral)
# 3	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Not Sustained (Training Referral)

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:	Not Sustained (Training Referral)

#### **Named Employee #3**

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

#### **Named Employee #4**

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:**

The Complainant alleged that excessive force was used against the Subject – his wife. It was further alleged that Named Employee #1 failed to report the Subject's claim of bias to a supervisor and failed to complete a thorough and complete General Offense Report. It was also alleged that Named Employee #2 failed to ensure that a Type I force investigation was completed.

### **ADMINISTRATIVE NOTE:**

OPA initially recommended that Named Employee #1 receive a Sustained finding for the failure to report an allegation of biased policing. After further consideration and based on discussions with the chain of command at the discipline meeting in this matter, OPA believes it appropriate to reverse this finding. OPA now recommends that Named Employee receive a Training Referral rather than a Sustained finding.



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**ANALYSIS AND CONCLUSIONS:**

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

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

Officers, including Named Employees #1 (NE#1), Named Employee #3 (NE#3), and Named Employee #4 (NE#4), responded to a fight at a bus stop in West Seattle. As a result of their investigation, the officers determined that there was probable cause to arrest the Complainant. When the officers approached the Complainant in order to place her under arrest, she began crying and dropped to the ground. The officers rolled the Complainant over onto her stomach. The officers then handcuffed her using two sets of handcuffs. The officers lifted the Complainant up into a standing position and walked her to the patrol vehicle. She was searched incident to arrest and placed into the rear of the vehicle.

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.*)

Based on OPA’s review of the video, the force used by the Named Employees was de minimis. This is the case even though the Complainant later made an allegation of pain. The force that was used was reasonable, necessary, and proportional. At the time the force was used, the officers had probable cause to arrest the Complainant. In order to do so, the officers were permitted to use force, if needed. The force used – which included rolling her onto her stomach, handcuffing her, and then lifting her up and walking her to the patrol vehicle – was necessary in order to take the Complainant into custody. Lastly, the force was proportional. Notably, only that force required to effectuate the officers’ lawful goals was used.

For the above reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#1, NE#3, and NE#4.

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

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

***5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing***

SPD Policy 5.140-POL-5 requires employees to call a supervisor in response to allegations of biased policing. This includes providing sufficient information to the supervisor to allow a determination as to what occurred and what the nature of the bias allegation is. (SPD Policy 5.140-POL-5.)

In the aftermath of her arrest, the Subject made three separate complaints of biased policing. First, the Subject, who is a person of color, alleged that her arrest was based on a “white man’s word.” Second, while NE#1 was transporting the Subject from the scene in the patrol vehicle, the Subject stated: “you just said, oh I need to meet my quota, right? I need my quota, let me arrest this Black woman. Let me arrest this Black working woman, right?”



Third, she repeated the quota comment again approximately three minutes later. NE#1 did not report any of these statements to a supervisor.

At her OPA interview, NE#1 indicated that she did not hear the first statement made by the Subject. She further contended that, even had she heard the statement, it was not an actual complaint of bias that was required to be reported. NE#1 acknowledged that she heard the statements concerning quotas; however, she stated that the comments did not “register” with her and, thus, she did not report them to a supervisor. NE#1 further referenced the Subject’s conduct and her repeated yelling.

The BWV is clear that, during the pendency of her time in custody, the Complainant was repeatedly yelling and was being extremely difficult. OPA recognizes that, in such situations, officers may tune out what a person says, sometimes out of necessity. Based on the circumstances that NE#1’s was faced with here, while she should have reported what the Complainant said, it is understandable that she did not perceive that a bias complaint had been made and did not do so. OPA further notes that NE#1 is a high-performing officer who has not previously received any Sustained findings for failing to report bias or other misconduct. As such, OPA does not believe that her failure to report a bias allegation here was intentional and finds that it was, instead, a mistake. Accordingly, OPA concludes that training is the appropriate result and recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1 should be retrained as to the requirement of reporting bias allegations. She should be counseled to make sure that she does so in the future. 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 #1 - Allegation #3**

#### ***15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report***

SPD Policy 15.180-POL-5 requires that officers document all primary investigations using a General Offense Report. This policy further requires that such reports be complete, thorough, and accurate. (SPD Policy 15.180-POL-5.) The policy instructs that: “If a General Offense Number already exists and there are no new charges, officers shall use the existing number. If there are new charges, officers shall obtain a new number.” (*Id.*) Lastly, the policy states that: “Officers shall document whether victims of non-custody incidents want to pursue charges, as feasible.” (*Id.*)

Here, NE#1 failed to include in her General Offense Report the name and contact information of a witness to the incident. This was the case even though this information was relayed to her by another officer.

At her OPA interview, NE#1 recognized that this information should be been part of the General Offense Report, even though she did not believe that it was necessarily relevant at the time.

When NE#1 did not include this information, her General Offense Report was not thorough and complete and, thus, was inconsistent with policy. However, given that this is only a minor violation of policy and because her report was otherwise comprehensive, I recommend that she receive a Training Referral rather than a Sustained finding.

- **Training Referral:** NE#1’s chain of command should counsel her concerning her incomplete report for this incident and should encourage her to more closely comply with this policy in the future.



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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 #2 - Allegations #1**

***8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:***

As discussed above, while in the patrol vehicle, the Subject asserted that she was in pain. Named Employee #2 (NE#2) was the on-scene supervisor. NE#2 screened the Subject's arrest with NE#1 and she described to him what had occurred. NE#1 did not tell NE#2 at that time that the Subject had complained of pain. NE#2 asked NE#3 whether anything other than de minimis force was used and NE#3 shook his head to indicate no. He was then informed by NE#4 that the Subject made a complaint of pain. Specifically, NE#4 stated the following: "you may want to ask them a little more, I'm pretty sure that she's been yelling that she's in pain from us trying to put her in there, I don't know." However, despite this statement, he did not initiate a Type I force investigation.

NE#2 told OPA that he did not do so because it was unclear to him whether the Subject was alleging that she was in pain from the actions of an officer or from the previous altercation that she had been involved in. He noted that when he asked the Subject whether she was injured, she responded that she had been hit in the face. When NE#2 tried to clarify who punched her, she identified the other community member involved in the altercation.

OPA played NE#2 the video of the Subject's complaint of pain for him at his OPA interview. After watching the video, NE#2 stated that, had the exact statement made by the Subject and the context of that statement been relayed to him by NE#4, he would have investigated the incident as a Type I use of force.

SPD Policy 8.400-POL-1(3) provides that, upon responding to a use of force, the Sergeant reviews the incident and classifies the force by type. The policy explains that force should be classified as Type I where, as here, an individual makes a complaint of transient pain. (SPD Policy 8.400-POL-1(3).)

Based on OPA's review of the evidence, the Subject complained of pain while in police custody and that complaint stemmed actions taken towards her by the officers. Given this, the complaint of pain constituted a Type I use of force and NE#2 should have ensured that it was investigated as such. At the very least, he should have confirmed with all of the involved officers that they did not use anything other than de minimis force and that the Subject did not make her complaint of pain in connection with the law enforcement action taken towards her. Had he done so here, he would have properly caused the force to be investigated.

The above being said, and under the circumstances of this case, I recommend that NE#2 receive a Training Referral instead of a Sustained finding. I reach this decision for two main reasons. First, NE#2 was told by one of the officers that only de minimis force was used and, when he spoke to the Subject about her injuries, she made no mention of any force by officers or that she had been caused any injury by them. Second, NE#2 recognized that he should have investigated the force as Type I at his interview and, from his statements to OPA, it appears that he would handle a similar situation more appropriately in the future.



- **Training Referral:** NE#2 should be counseled concerning his failure to investigate the force used as Type I. Specifically, his chain of command should discuss his decision to not interview the other involved officers, especially after what he was told by NE#4. He should be encouraged to conduct more thorough force investigations in the future. 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 - Allegations #1**

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

For the same reason as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #4 - Allegations #1**

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

For the same reason as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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