



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 31, 2019

CASE NUMBER: 2019OPA-0480

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

Named Employee #2

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

Named Employee #3

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 Named Employee #1 (NE#1) assaulted her when he placed her in a van for transport to King County Jail. Additionally, the Complainant alleged that Named Employee #2 (NE#2) and Named Employee #3 (NE#3) used excessive force when they detained her.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the Office of the Inspector General's review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employees. As such, the Named Employees were not interviewed as part of this case.

During his initial review of Body Worn Video (BWV), a supervisor noted that NE#1 failed to secure the Complainant by a seatbelt while she was inside of the transport van. Because this issue was properly and comprehensively addressed with NE#1 by the supervisor and given that the Complainant did not suffer injury as the result of not being seat belted, OPA did not investigate it.

SUMMARY OF INVESTIGATION:

On July 4, 2019, at approximately 8:30 p.m., Seattle Police Department (SPD) dispatch received a call from a restaurant, stating that a female customer—the Complainant—was yelling and was refusing to leave. Over the course of the next half hour, SPD received additional calls stating that the female was threatening to fight the bartender and other customers. At approximately 9:30 p.m., NE#2 and NE#3 arrived at the restaurant. Staff informed them that the Complainant had been causing a disturbance and that they had tried to trespass her from the restaurant.



NE#2, a female officer, spoke with the Complainant while NE#3 stood by. Both officers' BWV recorded the interaction. NE#2 informed the Complainant that she had been trespassed and asked why she was refusing to leave. The Complainant stated that the bartender, who was then working nearby, had assaulted her. NE#2 asked the Complainant if she would step outside so that they could speak in private without the bartender overhearing, but the Complainant refused. NE#2 explained that SPD procedure generally involved separating victims of an alleged assault from the perpetrator, but the Complainant said she would not leave the bar area. The Complainant stated that the bartender had "ripped away" a plate of edamame and used profanity with her, which she asserted constituted assault. She attempted to demonstrate the alleged assault by moving her hand slowly toward NE#2's face. NE#2 blocked the Complainant's hand gently, but otherwise did not touch the Complainant.

NE#2 went to the other end of the bar to speak to the bartender. The bartender stated that the Complainant ordered sake. He said he delivered the sake, a variety called "Junmai," and that he told the Complainant the name of the variety of sake. He said that the Complainant became upset and replied: "did you just call me a Jew or something." The bartender said that he decided not to serve the Complainant alcohol because she was behaving erratically. He alleged that the Complainant "got up in [his] face" and tried to climb over the bar, made abusive statements, and tried to fight him. He stated that other employees and customers witnessed the Complainant's conduct, and that the conduct was captured on security footage. He denied touching the Complainant.

Two backing officers arrived. NE#2 asked the bartender to formally trespass the Complainant. However, the Complainant refused to leave, remaining seated at the bar. NE#2 and a backing officer then moved in to arrest the Complainant. NE#2 hooked her right hand under the Complainant's left arm. The Complainant's left hand came up to NE#2's face, and NE#2 used her right hand to hold the Complainant's wrist in order to prevent her hand from contacting NE#2's face. During this motion, BWV recorded NE#2's hand brushing the Complainant's jaw. The backing officer took substantially the same actions with the Complainant's right arm, although he did not touch her face. NE#2 and the backing officer placed the Complainant's arms behind her back and handcuffed her. The Complainant stated that NE#2 struck her in the face and complained of handcuff pain and discomfort caused by the officers' grip on her arms. BWV showed the officers holding the Complainant's upper arms securely, but not excessively tightly.

The Complainant asked what was going to happen and NE#2 said that she would be going in a patrol vehicle. The Complainant refused. The backing officers escorted the Complainant out of the restaurant, holding her by her upper arms. NE#2 and NE#3 conferred briefly before NE#2 went back to the Complainant. The Complainant told NE#2 to let go of her arm and stated that she had been assaulted by an officer in Olympia in the past. NE#2 asked the backing officers to walk the Complainant to her patrol vehicle. The backing officers spoke to the Complainant and she agreed to walk to the vehicle, where NE#2 was standing. NE#2 took custody of the Complainant's left arm while one of the backing officers made a radio call. NE#2, the only female officer present, stated that she would pat the Complainant down as part of a search incident to arrest. The Complainant objected, and NE#2 told the backing officers she would call a supervisor.

NE#3 exited the restaurant and spoke with NE#2. NE#3 and a backing officer took custody of the Complainant and walked her to the rear door of the patrol vehicle. The Complainant became escalated and demanded that they release her. She refused several times to sit in the patrol car. NE#3 placed his hand on the Complainant's head and pressed downward, causing her to bend her torso and sit partially in the patrol vehicle. The backing officer moved to the other side of the vehicle and attempted to pull the Complainant into the vehicle. The Complainant demanded to be released. NE#3 told her to swing her legs into the vehicle, but the Complainant refused. NE#3 asked the other officers to call the transport van rather than continue their attempts to put the Complainant in the vehicle, and NE#2 did.



During this time the Complainant, a backing officer, and NE#3 stood in the open door of the patrol vehicle. NE#3 and the backing officer held the Complainant by her upper arms. The Complainant told NE#3 to stop holding her shoulder and made a series of statements about NE#3's race and national origin. She accused him of assaulting her because she was White and Jewish and because NE#3 appeared to her to be Vietnamese.

NE#1, who was the officers' supervisor, arrived. NE#2 briefed NE#1 and he went to speak to the Complainant. The Complainant objected to NE#3's treatment of her. The Complainant said that she was unwilling to get in the patrol vehicle because of the prior incident with police in Olympia that triggered feelings of anxiety and PTSD. NE#1 stated that the Complainant had the option of either being transported in the patrol vehicle or the transport van. After requesting that she instead be released and being told this was not an option, the Complainant elected to ride with one of the backing officers who she felt safest with. That officer transported her to the West Precinct.

At the precinct, NE#1 screened the Complainant's use of force allegation. The Complainant stated that, during the handcuffing, NE#2 struck her in the face with a closed fist. She said that she felt no pain, but that NE#2's conduct constituted assault because the Complainant had not been resisting. The Complainant stated that she believed she had humiliated NE#3, and that this caused him to assault her. The Complainant stated that NE#3's use of downward pressure on her head and neck when attempting to seat her in the patrol vehicle placed her head near his groin area, which she found humiliating and unnecessary because she had not been refusing to sit in the patrol car.

After the arrest screening, the Complainant was transported to the King County Jail. The Complainant refused to be transported, stating that officers should allow her to go free instead. NE#1 explained to her that she could not be released because she was under arrest for trespassing. He attempted to convince her to voluntarily walk to the transport van. NE#1's BWV showed that, after the Complainant refused to walk to the van voluntarily, he took hold of her by her upper arm, using minimal force to guide her toward the van. Once NE#1 and the Complainant reached the van, she refused to enter, and NE#1 again grasped her by the upper arm to place her inside. BWV recorded a sound generally consistent with metal striking metal, and the complainant alleged that NE#1 intentionally "cracked her head" on the van door. She further alleged that NE#1 intentionally touched her breast. The transport van's rear In-Car Video (ICV) showed the Complainant recoiling or ducking as she entered the van. NE#1's BWV angle did not show the position of his hand at the time she alleged he touched her inappropriately. ICV showed NE#1's hand on the Complainant's right shoulder. It did not show NE#1's hand in the vicinity of the Complainant's chest, except for a brief lateral motion as he released her arm.

Another supervisor at the precinct was notified of the Complainant's allegations against NE#1 and the other officers. He screened the incident with OPA, and this investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

The Complainant alleged that while being placed in the van, NE#1 "cracked her head" on the van's doorway and intentionally touched her breast.

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer,



or other officers.” (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*)

The evidence fails to establish that NE#1 engaged in any unprofessional conduct. With respect to the Complainant’s allegation that NE#1 “cracked her head,” ICV recorded the Complainant ducking as she entered the vehicle, which could be consistent with her head bumping the van’s doorway or with moving to avoid it. However, from OPA’s review, the sound recorded on BWV – specifically, the metal on metal sound – does not seem to support the Complainant’s allegation that her head struck the van. Moreover, the ICV shows that NE#1 was trying to place the Complainant in the van while dealing with her ongoing resistance. This suggests that any incidental contact her head made with the van was not due to NE#1’s malicious conduct but was, instead, the result of the Complainant’s lack of compliance.

OPA further does not find that NE#1 intentionally touched the Complainant’s breast. The video did not conclusively show any contact made by NE#1 with the Complainant’s chest area. To the extent such contact did occur, it was clearly inadvertent.

Throughout the interaction with the Complainant, NE#1 remained calm and professional. While he did go hands-on with the Complainant, he only did so after offering her every opportunity to comply voluntarily and used the minimum amount of force needed to walk her to the transport van. Despite the fact that the Complainant was extremely uncooperative and made numerous insinuations about NE#1’s conduct and that of every officer she interacted with, he did not speak to her disrespectfully or even harshly. Rather, he attempted to reason with her and give her the maximum amount of autonomy and respect he could while still carrying out his duties. For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - 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.” (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.*)

The Complainant alleged that NE#2 struck her in the face with a closed fist while placing her in handcuffs in the bar. NE#2’s BWV showed that she took control of the Complainant’s wrist with an open hand while placing her under arrest, and, in so, doing brushed the Complainant’s jaw. As such, the BWV conclusively disproves this allegation.

With regard to the force NE#2 did use, it was consistent with policy. OPA’s analysis of BWV establishes that NE#2 used force in order to place the Complainant under arrest for trespassing. At the time NE#2 went hands-on with the Complainant, she had probable cause for an arrest and, thus, the legal right to use force if the Complainant resisted.



The de minimis force NE#2 used was reasonable and intended to place the Complainant's hand and wrist under control so that she could be handcuffed. The force was necessary to gain the Complainant's compliance with NE#2's lawful orders because the Complainant had many times refused to voluntarily depart the restaurant after being told she had to leave. Finally, the force used was proportional to the Complainant's physical resistance to being handcuffed, and her refusal to comply with NE#2 and other officers' lawful orders to cease her abusive behavior and leave the restaurant. OPA notes that NE#2 and the other officers did not strike the Complainant or use any more force than was required to direct her to the patrol vehicle. Indeed, they took additional steps to gain the Complainant's voluntary compliance without force, even though they were ultimately unsuccessful. For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #1

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

The Complainant also alleged that NE#3's use of force to try to place her in the rear of the patrol vehicle constituted an assault, as well as that this force was retaliatory.

For the same reasons discussed in the context of NE#2, OPA does not find that NE#3's use of force violated policy. At the time force was used, the Complainant was refusing transport to the King County Jail. NE#3 had a legal right to use force necessary to overcome the Complainant's resistance and to cause her to comply. The use of force was necessary because the Complainant refused under any circumstances to voluntarily enter the patrol vehicle for transport. Finally, NE#3's use of force was proportional to the Complainant's resistance, was calculated to gain her compliance, and was purposed to prevent her from being injured as officers seated her in the vehicle.

Additionally, while the Complainant targeted NE#3 (the only non-White officer present) with various statements concerning his ethnicity, OPA does not believe that NE#3's conduct was intended to retaliate against her for those comments. First, NE#3 and the other officers used force before the Complainant made her statements. Second, NE#3 used the minimum amount of force required to seat her in the patrol vehicle and, rather than use increased force which could have caused the Complainant pain, instead called a transport van and continued to attempt to reason with her. For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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