



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 24, 2020

CASE NUMBER: 2019OPA-0644

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)

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 the Named Employees used excessive force when they arrested him.

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.

SUMMARY OF INVESTIGATION:

On July 14, 2019, the South Precinct Anti-Crime Team (ACT) identified an individual—the Complainant in this case—as the driver of a vehicle suspected to be stolen. ACT further determined that the Complainant was the subject of an outstanding felony warrant for assault and unlawful possession of a firearm. ACT officers attempted to conduct a traffic stop of the Complainant's vehicle; however, the Complainant eluded them and drove away. Over the next several minutes, other officers, including the Named Employees, joined the pursuit of the Complainant's vehicle. The pursuit lasted for approximately 11 minutes and ended in Kent. During the pursuit, Named Employee #2 (NE#2), a K-9 officer, became the lead vehicle. NE#2 was driving a marked patrol vehicle equipped with emergency equipment and was in full SPD uniform.



An off-duty Kent police officer noticed the ongoing pursuit while driving in his personal vehicle. The off-duty officer positioned his vehicle to block the roadway. The Complainant collided with the off-duty officer's vehicle and fled on foot. NE#2 exited his patrol vehicle and pursued. NE#2's In-Car Video (ICV) and Body Worn Video (BWV) recorded the subsequent foot pursuit and the arrest of the Complainant. ICV appeared to show the Complainant running from his vehicle with his hand in the waistband area of his shorts. Immediately on exiting his vehicle, NE#2 made the decision to deploy his K-9 to apprehend the Complainant. The K-9 bit the Complainant on his shoulder, back, and buttocks, causing the Complainant to go down to the ground onto a concrete sidewalk. NE#2 ran up to the Complainant, who was on the ground, and started to remove the K-9 as other officers arrived. It took NE#2 approximately 20 seconds to remove the K-9.

In his use of force report, NE#2 detailed his reasons for deploying the K-9. He stated that he knew from SPD reports that the Complainant had used a firearm to commit a crime and that the firearm had not been recovered. Finally, he documented that he had just been involved in a foot pursuit of the Complainant, during which he observed the Complainant hiding his hand in his waistband. NE#2 wrote that, based on these facts and the other circumstances he was presented with, he believed that the Complainant posed a threat to himself members of the public and that the Complainant was behaving in a dangerous and reckless manner in order to avoid arrest.

Named Employee #1 (NE#1) and Named Employee #3 (NE#3) also arrived on scene and exited their vehicle. They saw NE#2 attempting to take the Complainant into custody. BWV recorded their contact with the Complainant. At that time, the Complainant was face down on the ground in a "semi-prone" position with his left arm bent and his hand concealed under his body. BWV showed that the Complainant did not comply with orders to place his hands behind his back and, at that time, had not been searched. NE#1 took control of the Complainant's right arm and hand, which were visible, and held it in place for cuffing. At the same time, NE#3 and an officer from an outside agency were attempting to pull the Complainant's arm and hand out from under his body without success. The Complaint continued to keep his hand by his waistband even after being ordered to remove it and even after the officers tried to use de minimis force to pull the hand out. NE#1 then delivered several knee strikes to the Complainant's torso in order to cause "transitory pain and bruising." NE#1 documented that his intent was to cause enough pain to distract the Complainant and to allow NE#2 to control the Complainant's right arm. Simultaneously, NE#3 pressed his baton against the Complainant's cheek bone to immobilize him. In his subsequent report, NE#3 stated that based on the position of the Complainant's hand, as well as his knowledge of the Complainant's prior involvement in a drive-by shooting, NE#3 believed he was about to be involved in a deadly force situation and that more force than de minimis was necessary to gain control of the Complainant's arms. He also punched the Complainant in the torso, which was not effective. NE#2, who, like the other Named Employees, was struggling to handcuff the Complainant, used four knee strikes to the Complainant's torso. The totality of this force allowed the officers to gain control of the Complainant's arm and to safely place him into handcuffs.

The officers called for a supervisor to screen the incident and subsequently reported the force that had been used, including the K-9 bite. The Seattle Fire Department responded to the scene to treat the Complainant's injuries and transported him to Harborview. The supervisor interviewed the Complainant at Harborview. During the interview, the supervisor asked the Complainant how each injury occurred, and the Complainant stated that he had been "roughed up." The supervisor photographed the Complainant's injuries and referred the Complainant's allegation of excessive force to OPA. This investigation ensued.



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.” (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.*)

NE#1 and NE#3 used the following force during this incident. NE#1 struck the Complainant an estimated three to six times with his knee while attempting to handcuff the Complainant. NE#3 pressed his baton against the Complainant’s face and punched the Complainant once in the torso.

Based on OPA’s review of the video and when considering the totality of the circumstances, OPA finds that the force used by NE#1 and NE#3 was consistent with policy.

As a starting point, the officers had probable cause to take the Complainant into custody and thus, a legal right to use the amount of force needed to overcome the Complainant’s resistance. The force used by NE#1 and NE#3 was reasonable because of their need to arrest the Complainant and their legitimate belief that the Complainant was armed, which was supported by the Complainant’s secreting of his hands and the Complainant’s documented past firearm crimes. The force was necessary because of the Complainant’s demonstrated unwillingness to show his hands or otherwise obey the officers’ lawful commands, as well as his active resistance to their attempts to secure him. Finally, the force used was proportional to the risk posed by the Complainant to bystanders and officers. Notably, the officers had just been involved in a dangerous pursuit initiated by the Complainant and the officers were unable to verify that the Complainant was not armed. These factors suggested a high risk of harm to the officers. Moreover, while the officers initially attempted to use de minimis force, this was insufficient to gain control of the Complainant’s arm and hand. Only when this force was ineffective did they begin to use a higher level of force and, once the Complainant was safely controlled and secured, they modulated that force.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#3.

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

Named Employee #2 - Allegation #1

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

NE#2 used force when he released his K-9 and caused it to bite the Complainant in an attempt to apprehend him. The K-9 bit the Complainant on his shoulder, lower back, and buttocks. NE#2 removed the K-9 from the bite approximately 20 seconds after contact was made and once NE#1 and NE#3 were hands on. NE#2 also used four



knee strikes to the Complainant's side while the officers were collectively attempting to handcuff him and he kept his hand under his body and by his waistband.

OPA finds that NE#2's decision to deploy his K-9 to bite the Complainant was reasonable, necessary, and proportional under the circumstances. The decision was reasonable because the Complainant was actively fleeing from the scene of a pursuit and crash and NE#2 had reason to believe that he was armed and might take violent action to escape. Use of the K-9 was necessary to stop the Complainant from fleeing and to gain control of the Complainant's person by taking him to the ground. Finally, this force was proportional to the risks posed by the Complainant, who was wanted for violent crimes and who, by engaging in a deliberately reckless car chase, had already posed a public safety threat. Moreover, NE#2 did not unnecessarily prolong the K-9 bite and began to remove the K-9 as soon as he caught up to the Complainant and other officers were hands-on. This was appropriate and consistent with policy and training.

Moreover, for the same reasons as discussed in the context of NE#1 and NE#3, the knee strikes used by NE#2 were also consistent with policy.

As such, 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

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

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