



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 15, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2019OPA-0865

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)

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 subjected her to excessive force during her arrest.

SUMMARY OF INVESTIGATION:

Officers, including the Named Employees, were dispatched to a disturbance call at an apartment building. They were notified that a woman – who was later identified as the Complainant – was refusing to leave a male's apartment, had slapped the male in the face, and had caused significant property damage within the apartment. The male, who was the 911 caller, also reported that the Complainant was both high and intoxicated.

The officers' response to this incident was fully recorded on Body Worn Video (BWV). When the officers arrived at the apartment building, they located the Complainant in the lobby. They detained her while they investigated what occurred. The officers instructed the Complainant to remain seated on a couch in the lobby; however, she continually attempted to get up. The Complainant appeared to be heavily intoxicated at the time and verbally acknowledged this. After telling the Complainant not to stand up several times and her failure to comply with those directions, the officers handcuffed her. The Complainant continued to try to stand up while handcuffed, and the Named Employees prevented her from doing so by holding onto her shoulders and arms.

With the Named Employees at the apartment building was a female officer – referred to here as Witness Officer #1 (WO#1). She went over the radio and indicated that the Complainant was in custody. At that time, the Complainant was loudly yelling at the officers to let her go. WO#1 walked over to where the Complainant was sitting and, at that point, the Complainant kicked out at WO#1, striking her in the face. Named Employee #1 (NE#1) grabbed and wrapped the Complainant's legs, while Named Employee #2 (NE#2) held her arms from behind. The Complainant continued to yell loudly and also stated that her arms hurt. The Named Employees stood her up and walked her



outside of the apartment building towards a patrol vehicle. At one point, the Complainant dropped to the ground on her own power while the officers tried to hold her up.

While the Complainant was being searched incident to arrest in front of the patrol vehicle, she again attempted to drop to the ground; however, the Named Employees propped her up. The Complainant continued to yell, including complaining of pain to her arms. The Named Employees were ultimately able to seat her in the rear of the patrol vehicle and shut the door.

A supervisor responded to the scene and spoke with the Complainant. During this time, she could be heard screaming from the rear of the patrol vehicle. In response to the supervisor's questions, she initially said that the officers hurt her. She then clarified that they "emotionally" hurt her and that she was not physically harmed. At the time of her screening conversation with the supervisor, the BWV did not show any indication of injuries to her person. However, In-Car Video (ICV) from the patrol vehicle later depicted the Complainant striking the front of her head several times against the partition. The Complainant was then transported to the King County Jail (KCJ).

During the process of being admitted into the KCJ, she was medically examined. Based on a review of those records, no visible injuries were noted. However, OPA reviewed medical notes from the KCJ that were issued on November 28, 2019 and November 30, 2019, one and three dates after the incident, respectively. The notes permitted the Complainant to use the bottom bunk and issued her a blanket to keep her arm elevated. There was no information concerning the nature or mechanism of any injury suffered by the Complainant. While the Complainant received several disciplinary infractions while in the KCJ, OPA did not find any records of force being used against her by KCJ staff. However, OPA could not conclusively foreclose that this occurred and the KCJ and its employees are not within OPA's jurisdiction.

The Complainant's mother later filed an OPA complaint. She asserted that SPD officers broke the Complainant's arm and her two front teeth. As part of its investigation, OPA attempted to interview her. She stated that she was consulting with an attorney and ultimately was not interviewed. OPA also attempted to contact the Complainant to obtain her account of what occurred, but she did not respond to OPA.

OPA reviewed the BWV and ICV, which fully captured the Complainant's time in SPD's custody. OPA further interviewed both of the Named Employees. NE#1 and NE#2 both denied using excessive force on the Complainant.

NE#1 described her as being difficult to deal with and belligerent. NE#1 said that, given her behavior, she was handcuffed. NE#1 recalled holding the Complainant down as she continually tried to get up. He said that, when WO#1 walked over to them, the Complainant kicked her in the face. At that time, they stood the Complainant up and walked her outside. NE#1 said that, on several occasions, the Complainant tried to drop down to the ground and the officers held her up by holding her arms. She was then placed into the rear of the patrol vehicle. NE#1 denied using any force that could have broken the Complainant's arm. He denied being aware of any such injury at the time, as well as denied seeing the Complainant suffer any broken teeth. He said that, had these injuries been present, she would not have been admitted to the KCJ.

NE#2 similarly described the Complainant as difficult to deal with and belligerent. He recalled the Complainant kick WO#1 and he said that he then hugged her legs to prevent her from further doing so. He and NE#1 then stood the Complainant up and walked her outside. NE#2 remembered the Complainant yelling repeatedly throughout her time in custody. He did not distinctly recall her asserting that she was injured. NE#2 said that the Complainant tried to



drop to the ground, but he and NE#1 held her up. They then placed her into the rear of the patrol vehicle. He stated that neither he nor NE#1 ever struck the Complainant. He said that they used only that force needed to keep her from engaging in assaultive behavior, to walk her out of the apartment building, and to seat her into the patrol vehicle. NE#2 did not see any indication that the Complainant suffered a broken arm or broken front teeth.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 Using Force 1. Use of Force: When Authorized

As discussed above, the Complainant's mother asserted that the Complainant was subjected to excessive force. It was further alleged that, as a result, the Complainant suffered a broken arm and two broken teeth.

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.*)

In evaluating this case, it is clear that the Named Employees were legally permitted to use force. First, they were allowed to use force to effectuate the initial detention. At that time, they had probable cause to believe that the Complainant had, at the very least, engaged in an assault. Shortly thereafter, they also developed probable cause for property damage. In addition, when the Complainant refused to remain seated, the officers were permitted to use force to prevent her from standing up. Again, she was a criminal suspect and was lawfully detained. Moreover, the video clearly established that she was inebriated and combative, which provided a further basis for preventing her from standing up. This similarly informed the need to handcuff her. Force was also acceptable in the immediate aftermath of the Complainant kicking WO#1 in the face to prevent her from engaging in further similar conduct, as well as to remove her from the building and place her in the rear of the patrol vehicle.

During each of these occasions, the extent of the force used was either pushing the Complainant down, pulling her back, or holding her up. The officers never appeared to jerk her arms, pull them in an inordinately hard manner, or maneuver them in a position that could have caused a broken arm. Moreover, the officers never struck the Complainant or caused her to fall to the ground. Again, this was all set forth on video. Ultimately, it is unclear to OPA what the cause of the Complainant's later reported injuries were. Certainly, there was no video evidence indicating a broken arm or broken teeth and those injuries were not identified when the Complainant was received at the KCJ.

While it is possible that the Complainant's arm was injured during this incident, this would be unfortunate but would not, standing alone, yield the force out of policy. The question here is whether the minimal force used was reasonable, necessary, and proportional under the circumstances of this case. Based on the video, OPA finds that it was and, as such, recommends that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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



Named Employee #2 - 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)**