



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 28, 2020

CASE NUMBER: 2020OPA-0048

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 2. Officers Will Not Engage in Bias-Based Policing	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)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

Named Employee #3

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 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

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:

It was alleged that the Named Employees subjected the Complainant to excessive force and engaged in biased policing.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the review and approval of the Office of Inspector General for Public Safety, 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.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

Named Employee #2 (NE#2) was working in partnership with a DOC officer. Their collaboration was consistent with a Memorandum of Understanding (MOU) between SPD and DOC. The stated goal of that MOU is the following: "The team's mission combines fugitive apprehension, street interdiction, drug enforcement and anti-crime patrol with a focus on monitoring active DOC offenders in downtown Seattle metro area."

At that time, NE#2 and the DOC officer were contacted by Named Employee #3 (NE#3), who informed them that he saw the Complainant. NE#3 was aware that the Complainant had been previously arrested on an open DOC warrant. The Complainant was observed in a light rail tunnel. NE#2 and the DOC officer contacted the Complainant as he exited the light rail tunnel onto a public sidewalk. The DOC officer recognized the Complainant and confirmed that he was on active DOC supervision. Pursuant to his legal authority, the DOC officer attempted to detain the Complainant. The Complainant was uncooperative at that time and, based on OPA's review of the Body Worn Video (BWV), he appeared to be scanning his immediate vicinity for an avenue of escape. Given this, as well as furtive movements by the Complainant that concerned the officers, the decision was made to temporarily place the Complainant into handcuffs.

At that time, the Complainant pulled away from the officers and a physical altercation ensued. The officers went hands-on with the Complainant and they collectively fell to the ground. The Complainant continued to struggle against the officers once on the ground. NE#2 and the DOC officer were joined by Named Employee #1 (NE#1) and NE#3. The Complainant maintained one arm under his body, preventing the officers from controlling his person and handcuffing him. During the struggle, the DOC officer reported striking the Complainant in the face once and tasing him twice in the back in drive-stun mode. The officers were ultimately able to control and handcuff the Complainant. The Named Employees reported that they did not use any force other than body weight and control holds.

A crowd of people observed the arrest and the force used. One or more individuals in the crowd alleged that the force used by the officers was excessive and that the officers engaged in biased policing. A Department supervisor screened these allegations with OPA and OPA requested that a referral be made. After receiving this referral, OPA commenced its investigation.

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 analyzing this case, OPA offers no opinion on the propriety of the DOC officer's force and does not evaluate whether it would have been consistent with policy. Regardless of the status of the MOU, OPA does not have jurisdiction over employees of other law enforcement agencies.



With regard to the force used by the Named Employees, OPA finds that it was consistent with policy. First, the force was reasonable as there was a legal basis to stop the Complainant and the officers were permitted to physically detain him if needed. Second, the force was reasonable given the Complainant's resistance and his non-compliance with lawful orders, and there was no reasonably effective alternative. Third, the force used by the Named Employees was comprised solely of low-level force and was, thus, proportional under the circumstances. Notably, at the time of the force application, the Complainant was physically resisting and had his hand under his body. As such, he presented a threat of harm and the use of control holds and body weight was entirely appropriate.

For these reasons, and with regard to the specific force used by the Named Employees, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#1, NE#2, and NE#3.

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

Named Employee #1 - Allegation #2

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

As discussed above, OPA finds that the officers had a lawful basis to detain the Complainant. In addition, when he was non-compliant, they were permitted to place him into handcuffs. Lastly, when he physically resisted, they were permitted to use force to take him into custody. The video of this incident is clear that the Complainant's DOC status and his subsequent conduct were the basis for the law enforcement action taken towards him, not his race. As such, OPA recommends that this allegation be Not Sustained – Unfounded as against all of the Named Employees.

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

Named Employee #2 - Allegations #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)**

Named Employee #2 - Allegation #2

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Unfounded.

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



Named Employee #3 - Allegations #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)**

Named Employee #3 - Allegation #2

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Unfounded.

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