



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 11, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0275

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)
# 2	5.001 Standards and Duties 10. Employees Strive to be Professional	Not Sustained (Training Referral)

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 and Named Employee #2 used excessive force while arresting the Complainant for domestic violence assault. It was also alleged that Named Employee #2 may have been unprofessional during this incident.

ADMINISTRATIVE NOTE:

This case was designated as an Expediated 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.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

On May 15, 2020, Named Employee #1 (NE#1) and Named Employee #2 (NE#2) responded to a domestic violence (DV) assault call at a residence in South Seattle. The officers developed probable cause to arrest the Complainant. When NE#1 and NE#2 attempted to place the Complainant into custody, he stated that he did not want to go to jail and pulled away from them. The officers twice attempted to take the Complainant down to the ground so as to better control him and effectuate the arrest; however, both attempts failed. NE#1 and NE#2 then grabbed the Complainant's arms and attempted to place them behind his back; however, his continued non-compliance



prevented this from occurring. The Complainant then sat down on the couch with NE#1 and NE#2 in front of him on either side. The Complainant did not respond to any of the instructions given to him by the officers at that time. NE#1 made several attempts to execute a seated handcuffing but was unsuccessful. There was no evidence indicating that the officers struck or kneed the Complainant while he was on the couch.

Two other officers came into the residence. The Complainant stood up and the officers collectively tried to force the Complainant down to the ground. They were ultimately able to do a team takedown. Once the Complainant was on the ground, he attempted to tuck his left arm under his body. NE#2 ordered the Complainant to give officers his left hand and he complied. NE#2 then moved to the Complainant's left side and placed his left knee on Complainant's back and assisted NE#1 with handcuffing Complainant. No further force was used.

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 circumstance" 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 Police 8.200(1)). The policy lists several factors that should be considered when evaluating reasonableness (See *id.*). Force is necessary where "no reasonable 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 totality of the evidence – including Body Worn Video (BWV) from multiple officers, OPA concludes that the force used by NE#1 and NE#2 was consistent with policy.

After being told that he was under arrest for DV assault, the Complainant refused to comply and prevented officers from handcuffing him by pulling away from them. The Complainant continually stated that he did not want to go to jail. Given this, NE#1 and NE#2 were permitted to use physical force to garner compliance with their lawful orders and the low-level force they used to do so was reasonable.

The force was also necessary under the circumstances. Although NE#1 and NE#2 repeatedly attempted to use verbal commands to gain Complainant's compliance so that they could place him under arrest, Complainant did not comply. As such, the use of force was necessary at that time. Moreover, the force appeared to be of a reasonable degree and did not appear to be more expansive than what was necessary.

OPA additionally finds that the force was proportional given the need to effectuate Complainant's arrest and the threat his continued resistance posed. Prior to the incident, NE#1 and NE#2 had determined that probable cause existed for Complainant's arrest for DV assault, that he had engaged in actions purposed to injure his wife, and that he was in the kitchen, where many items that could be used as weapons were located. Further, the officers were aware that there was a small child in the home. The Complainant thus posed a potential threat to anyone in the home, including NE#1 and NE#2. This threat increased when Complainant refused to comply with repeated attempts by the Named Employees and other officers to take him into custody. While it is unfortunate that their use of force caused the Complainant to suffer minor injuries to his lip; however, this does not make the force improper.

Lastly, contrary to the Complainant's assertions, there is no evidence that he was intentionally kneed in the face by officers. In addition, no officers struck him or appeared to use any high-level force to take him into custody.



Given the totality of the circumstances and due to the controlled application of force by the Named Employees, OPA concludes that the Complainant's allegation of excessive force is unsupported by the evidence. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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)**

Named Employee #2 - Allegation #2

5.001 – Standards and Duties 10: Employees Shall Strive to be Professional

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 officers, 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 direct as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person” (*Id.*).

During its review of the BWV, the chain of command identified that NE#2 may have made unprofessional statements to the Complainant. More specifically, the chain of command believed that these statements could have escalated the incident and may have been unnecessary. OPA's review of the BWV identified four potentially problematic statements: (1) NE#1 stating to the Complainant that the officers “don't need proof”; (2) NE#2 telling the Complainant that the officers had “friends coming” and that the Complainant's “ass is going to jail”; (3) NE#2 continuing to yell at the Complainant that he was “going to jail”; and (4) NE#2 telling the Complainant the officers had “20 friends” who were going to come to the residence. The chain of command counseled NE#2 concerning these statements.

OPA concurs with the chain of command that these statements were not optimal and could have served to escalate the situation. Indeed, in OPA's opinion, whether the statements individually or collectively rose to the level of a violation of the Department's professionalism policy is a very close call. However, for two main reasons, OPA determines that retraining rather than discipline is the appropriate result. First, NE#2's Sergeant already provided thorough and thoughtful review and counseling performed by NE#2's and he was receptive to this. Second, NE#2 has not received prior discipline or counseling for unprofessional behavior and this incident may have been an outlier. This being said, NE#2 is now on notice that future similar behavior may result in a Sustained finding and the imposition of discipline.

For the above reasons, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2's chain of command should inform him that future unprofessional statements and behavior will result in OPA investigations and the potential imposition of discipline. Given that the chain of



command already counseled and retrained NE#2 regarding his statements, no additional action needs to be taken unless the chain of command deems it necessary. Any retraining or counseling that is completed should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**