



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 7, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0520

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	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation 2. The Sergeant Will Conduct the Investigation as an Impartial Fact-Finder and Shall Not Reach Findings....	Not Sustained (Lawful and Proper)
# 2	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations	Not Sustained (Training Referral)

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 directed unprofessional commentary towards the Complainant, and that both Named Employee #1 and Named Employee #3 used excessive force on the Complainant. The Complainant also alleged that Named Employee #2 failed to conduct an independent evaluation of the use of force.

ADMINISTRATIVE NOTE:

Based on an oversight, the initial DCM did not include an analysis of the force allegation against Named Employee #3. It is included here.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

On May 21, 2020, an individual called into 911 to report a disturbance at an apartment complex, wherein two parties were screaming at one another. According to the 911 caller, one party could be heard shouting “you choked me.” In response to this call, SPD officers traveled to the apartment complex, where they encountered a witness who indicated that a female was being beaten. A male individual – the Complainant – then approached the officers. He informed the officers that his girlfriend had assaulted him. The Complainant asked whether he could go to his father’s residence, but the officers instructed the Complainant to remain on scene to allow them to conduct an investigation. At this point, the Complainant permitted the officers to enter his residence, which they found to be in a state of disarray.

Inside the residence, the officers encountered the girlfriend. She informed the officers that the Complainant had just punched and choked her. According to the girlfriend, the Complainant choked her from behind, causing her to temporarily lose consciousness. Officers observed vertical scratches along the girlfriend’s neck, and hemorrhages in her eyes, prompting them to call the Seattle Fire Department to the scene. The girlfriend acknowledged that she hit the Complainant but stated that she did so to stop the Complainant from choking her. Officers then spoke to the Complainant, who indicated that his girlfriend had thrown him down a set of stairs and slammed him against a wall; however, officers observed no signs of injury to the Complainant. In addition, although the Complainant gave officers permission to feel his head for bumps, no bumps were found.

Once this evidence arose, the Complainant made the decision to run away from officers. A foot pursuit ensued, and the officers engaged in the foot pursuit – Named Employee #1 (NE#1) and Named Employee #3 (NE#3) – directed him to stop. The Complainant did not do so, but NE#1 and NE#3 eventually caught up to the Complainant and brought him down to the ground. The Complainant was instructed to roll over. NE#1 assisted in rolling the Complainant onto his stomach and, while doing so, NE#1’s knee bumped against the Complainant’s head. Once the Complainant was on his stomach, NE#1 placed the Complainant in handcuffs and brought the Complainant to his feet.

After the handcuffing, the Complainant stated that an officer kneed him in the head and that his knees hurt. Abrasions were observed on the Complainant’s knees, but no injury was seen on the Complainant’s head. On August 7, 2020, the Complainant’s attorney filed a complaint with OPA, stating that NE#1 used excessive force while arresting the Complainant. This investigation ensued.

“An officer shall use only the force objectively reasonable, necessary, and proportional to effectively bring an incident or person under control, while protecting the life and safety of all persons.” (SPD Policy 8.200-POL-11). 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 8.050). The policy lists several factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

Here, the Complainant fled the scene of an investigation and failed to obey officers’ orders to stop, making it reasonable for NE#1 and NE#3 to use force to gain compliance and to take the Complainant, a DV assault suspect, into custody. The force they used to do so – NE#1 and NE#3 taking the Complainant down to the ground and then NE#1



using body weight to turn the Complainant over and handcuffing him was appropriate under the circumstances. This is the case even though the Complainant may have scraped his knees during the arrest.

With regard to NE#1's knee bumping the Complainant in the head, the evidence indicated that it was an inadvertent act. As such, this does not constitute excessive force.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

8.200 - Using Force 2. Use of Force: When Prohibited

Under SPD Policy, "[o]fficers are prohibited from using neck and carotid restraints in all circumstances [and] will not use force to punish or retaliate." (SPD Policy 8.200-POL-2).

As indicated above, NE#1 applied reasonable force to gain the compliance of the Complainant. OPA further finds that the knee making contact with the Complainant's head was inadvertent. No evidence was gathered during this investigation to suggest that NE#1's use of force was purposed to retaliate or punish.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #3

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

The Complainant alleged that NE#1 told the Complainant that the Complainant likes beating women.

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers" whether on or off duty. (SPD Policy 5.001-POL-10). The policy further states: "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.*) Lastly, the policy instructs Department employees to "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." (*Id.*)

During the investigation, OPA reviewed the BWV of the officers on scene, including that of NE#1. During NE#1's use of force to place the Complainant in handcuffs, NE#1's BWV turned off for approximately one minute, which appears to have been incidental to the struggle to gain compliance of the Complainant. Nevertheless, the BWV of other officers continued to record ensuring a complete audio record. This video established that none of the officers on scene were heard saying anything remotely similar to what the Complainant alleged.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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



Named Employee #2 - Allegation #1

8.400 - Use of Force Reporting and Investigation POL-4 Use of Force – Tyle II Investigations 2. The Sergeant Will Conduct the Investigation as an Impartial Fact-Finder and Shall Not Reach Findings About Whether the Force was Within Policy or Law

The Complainant alleged that NE#2 “did not do an independent evaluation of use of force.” Under SPD Policy, a Sergeant will respond to the scene of a use of force and will “conduct the [use of force] investigation as an impartial fact-finder and shall not reaching findings about whether the force was within policy or law.” (SPD Policy 8.400 POL-4(2).)

As described above, NE#1 applied force to gain the compliance of the Complainant. NE#3, who was the on-scene Sergeant, assisted NE#1 with the take-down and handcuffing of the Complainant. Given NE#3’s involvement, an Acting Sergeant – Named Employee #2 (NE#2) – was called to the scene to perform the force investigation.

When he arrived, NE#2 advised NE#3 that he had never conducted a use of force investigation and NE#3 indicated that he would assist with the process. NE#3 then ordered himself and NE#1 to provide NE#2 with use of force reports. NE#3 subsequently advised NE#2 that he had taken photos of the Complainant’s injuries. At this time, NE#3 reminded NE#2 that he, not NE#3, was responsible for investigating the use of force. NE#3 further began explaining the investigation procedure to NE#2. Near the end of their time on scene, NE#3 advised NE#2 that his role was to be a factfinder, not to come up with conclusions concerning whether the force was consistent with policy.

The Complainant subsequently alleged that NE#2 “did not do an independent evaluation of use of force.”

Under SPD Policy, a Sergeant will respond to the scene of a use of force and will “conduct the [use of force] investigation as an impartial fact-finder and shall not reaching findings about whether the force was within policy or law.” (SPD Policy 8.400 POL-4(2).)

From a review of the BWV, OPA disagrees with the Complainant’s characterization of the force investigation. While NE#2 took guidance from NE#3, this was expected as it was his first force investigation. Moreover, NE#3 made it abundantly clear that he was not involved in the force investigation, and that it was solely NE#2’s responsibility. In addition, NE#3 advised NE#2 that he needed to be a factfinder and to conduct an appropriate force investigation pursuant to policy.

Again, from a review of the video, coupled with an analysis of the documentation generated by NE#2, there was no indication that NE#2 conducted an inadequate, biased, or non-independent force investigation. To the contrary, NE#2 appeared to do a commendable job based on his inexperience with conducting such investigations.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #2

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

SPD Policy 5.002-POL-5 requires supervisors who become aware of a potential policy violation to investigate or refer the allegations depending on their severity. Minor allegations of misconduct may be investigated by a supervisor,



while allegations of serious misconduct – such as the use of excessive force – must be referred to OPA. (SPD Policy 5.002-POL-5.)

The Complainant told NE#2 that, during his arrest, NE#1 kned him in the head. The Complainant asserted that this was intentional. NE#2 did not screen this claim with FIT. He further did not identify the allegation as a potential claim of excessive force for which either an OPA referral or OPA screening needed to be made.

OPA concludes that NE#2 should have screened this matter with FIT. OPA further believes that NE#2 should have screened this matter with OPA as a potential unsubstantiated allegation of misconduct. This being said, and as discussed above, it was NE#2's first force investigation. As such, mistakes were inevitable and do not warrant a Sustained finding. Instead, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2 should receive training concerning force investigations. Specifically, he should receive training concerning when he should screen incidents with FIT and when he should either screen an incident with OPA or make an OPA referral. This retraining and any associated counseling should be documented, and this documentation should be maintained in an appropriate database.

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

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)**