



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 28, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0669

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 (Unfounded)
# 2	13.080 - Use of Department Vehicles 11. Prohibited Activities During Use of Department Vehicles	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director's Findings
# 1	13.080 - Use of Department Vehicles 11. Prohibited Activities During Use of Department Vehicles	Not Sustained (Lawful and Proper)
# 2	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations	Not Sustained (Training Referral)
# 3	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

Named Employee #3

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	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:

The Complainant alleged that Named Employee #1 and Named Employee #3 subjected him to excessive force. The Complainant further alleged that Named Employee #1 and Named Employee #2 drove their patrol vehicles unsafely. The Complainant also alleged that Named Employee #2 engaged in unprofessional conduct. Lastly, OPA alleged that Named Employee #2 may not have properly handled the Complainant's excessive force claims against the other Named Employees.

SUMMARY OF INVESTIGATION:

Officers, including Named Employee #1 (NE#1) and named Employee #3 (NE#3), arrested the Complainant for domestic violence assault. The officers handcuffed the Complainant and walked him to a patrol vehicle. He was seated inside of the patrol vehicle and was seat belted by NE#3. At that time, the Complainant alleged that NE#3



“assaulted” him by placing on the seat belt and scratching his chest. Named Employee #2 (NE#2), a Sergeant, was on scene and was notified of the assault claim by NE#3. NE#2 asked the Complainant whether he wanted medical attention for the scratches. The Complainant declined this offer. The Complainant then said that he wanted medical treatment for “anxiety”; however, when NE#2 tried to clarify whether the Complainant wanted the Seattle Fire Department (SFD) to respond to the scene, the Complainant was non-responsive.

The Complainant was then transported from the scene to the King County Jail by NE#1. During the transport, the Complainant requested that SFD inspect his hand. NE#1 stopped the patrol vehicle and waited for SFD to respond and treat the Complainant. NE#1 then continued to drive to the KCJ. During that time, both NE#1 and NE#2, who also drove to the jail, operated their patrol vehicles in excess of the posted speed limit. In addition, NE#1 rolled through a red light without fully stopping.

When they arrived at the KCJ the Complainant alleged that he suffered a bloody lip and scratches from the officers’ conduct. NE#2 photographed the Complainant. The photographs did not reveal any injuries consistent with those claimed by the Complainant. NE#2 further ordered NE#3 to complete a Type I use of force report. NE#2 completed the supervisor’s review of that force. In that review NE#2 did not note that the Complainant alleged that he was “assaulted” by NE#3. NE#2 further did not make an OPA referral concerning the “assault” allegation or screen it with OPA as unsubstantiated.

While at the KCJ, the Complainant further contended that NE#1 drove unsafely when he was in the rear of the patrol vehicle. NE#2 referred that allegation to OPA.

Another Sergeant was later dispatched to the KCJ regarding a complaint against NE#2 by the Complainant. At that time, the Complainant alleged that NE#2 “gave him threatening vibes” and “told him that if he didn’t stop asking questions, they will take care of him.” The Complainant also contended that NE#2 was upset at him because he wanted to file a complaint against NE#3 and that NE#2 tried to cover up NE#1’s actions. The Sergeant notified the Precinct Captain about this allegation and it was referred to OPA.

OPA’s investigation included reviewing the Body Worn Video (BWV) and In-Car Video (ICV) concerning this incident. OPA also reviewed the use of force reports and reviews that were completed. Lastly, OPA interviewed the Complainant. He alleged that both NE#1 and NE#3 subjected him to excessive force. He said that they did so when they twisted his arms when they walked him to the patrol vehicle. He further alleged that NE#3 used excessive force when he seat belted him. He asserted that NE#3 was wearing a watch that scraped him. He again stated that NE#1 operated his patrol vehicle dangerously and that NE#2 threatened him at the KCJ and did not objectively handle the Complainant’s allegation against NE#1.

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.*)

As discussed above, the Complainant alleged that both NE#1 and NE#3 subjected him to excessive force. From a review of both the BWV and ICV, OPA finds these claims to be unsubstantiated. First, there was no evidentiary support on the video that either officer roughly handled the Complainant after he was handcuffed or twisted his arms/wrists prior to placing him into the patrol vehicle. Second, the seat belting of the Complainant by NE#3 was without incident and did not appear to cause any injury. Moreover, there was no indication from the video that NE#3 was wearing a watch at the time or had anything else on his wrist that could have scraped the Complainant’s face or chest. Lastly, when photographed at the KCJ, the Complainant had no indication of any injuries consistent with what he alleged to have suffered.

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

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

Named Employee #1 - Allegation #2

13.080 - Use of Department Vehicles 11. Prohibited Activities During Use of Department Vehicles

SPD Policy 13.080-POL-11 governs those activities that are prohibited during the use of Department vehicles. This includes: “Driving in a manner that is discourteous or aggressive, unless necessary to effect a recognized law enforcement purpose.”

As captured on BWV, NE#2 expressed his concerns to SFD about the Complainant harming himself in the rear of the patrol vehicle. This appeared to be corroborated by the fact that the Complainant was, at one point, kicking the doors and was behaving erratically. Both NE#1 and NE#2 accordingly drove in excess of the posted speed limit to get him to the KCJ in an expeditious fashion.

From a review of both the BWV and ICV, OPA finds no basis to conclude that the officers operated their patrol vehicles in an unsafe manner. Both officers’ driving was controlled and did not appear to place themselves, the Complainant, or others at risk of harm. Moreover, as discussed above, OPA finds that their driving, even if outside of normal traffic patterns, was geared to effect a recognized law enforcement purpose as contemplated by policy.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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

Named Employee #2 - Allegation #1

13.080 - Use of Department Vehicles 11. Prohibited Activities During Use of Department Vehicles

For the same reasons as stated above (see Named Employee #1 – Allegation #2), 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

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.)

While NE#2 properly referred the Complainant's claims about NE#1's driving to OPA, he did not address the Complainant's allegation that he was "assaulted." This allegation, even if believed to be meritless, rose to the level of an allegation of excessive force. SPD policy provided NE#2 with two options: first, he could have made an OPA referral; second, he could have screened the allegation with OPA as potentially unsubstantiated. Unfortunately, he did not do either.

The above being said, OPA finds that retraining rather than discipline is appropriate her for three main reasons. First, NE#2 has not acted contrary to this policy before and, to the contrary, has consistently referred or screened cases when appropriate. Second, the entirety of this incident was, in fact, referred to OPA by another supervisor. As such and though NE#2 did not handle the Complainant's allegation, OPA was made aware of it. Third, the Complainant's allegations were clearly meritless.

- **Training Referral:** NE#2 should be reminded to ensure that he properly handles potential allegations of misconduct, particularly allegations of excessive force. This training and counseling should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #2 - Allegation #3

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 officer, or other officers." (SPD Policy 5.001-POL-10.)

The Complainant alleged that NE#2 was unprofessional in three respects. First, the Complainant asserted that NE#2 failed to provide him with medical attention. Second, the Complainant contended that NE#2 did not properly address his complaint against NE#1. Third, the Complainant claimed that NE#2 spoke to him in a threatening manner.

The first two allegations are easily disposed. The video clearly indicated that NE#2 asked the Complainant on multiple occasions whether he wanted medical assistance and that he was ultimately provided that assistance. Moreover, NE#2 also filed a complaint on the Complainant's behalf concerning NE#1's driving.



With regard to the third allegation, there is no video evidence of NE#2 threatening the Complainant or speaking to him in a threatening manner. While OPA cannot foreclose the possibility that this occurred at some point when the recording was not on, OPA finds this unlikely. Moreover, given the factual inaccuracies with all of the Complainant's other claims, OPA simply does not find his allegation in this regard to be credible.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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

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 – Unfounded.

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