



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 24, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0770

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	8.400 - Use of Force Reporting and Investigation POL 1 (3) Officers, Including Witness Officers, Will Verbally Notify a Supervisor Following Any Use of Reportable Force	Not Sustained (Training Referral)
# 3	11.010 - Detainee Management 9. Officers Will Seek Medical Assistance for Detainees	Not Sustained (Training Referral)

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	8.400 - Use of Force Reporting and Investigation POL 1 (3) Officers, Including Witness Officers, Will Verbally Notify a Supervisor Following Any Use of Reportable Force	Sustained
# 3	11.010 - Detainee Management 9. Officers Will Seek Medical Assistance for Detainees	Sustained

Imposed Discipline

Written Reprimand

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	8.200 – Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)
# 3	8.400 - Use of Force Reporting and Investigation POL 1 (3) Officers, Including Witness Officers, Will Verbally Notify a Supervisor Following Any Use of Reportable Force	Sustained
# 4	11.010 - Detainee Management 9. Officers Will Seek Medical Assistance for Detainees	Sustained

Imposed Discipline

Written Reprimand

Named Employee #4

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation POL 1 (4) The Sergeant Will Review the Incident and Do One of the Following	Not Sustained (Training Referral)



# 2	11.010 - Detainee Management 9. Officers Will Seek Medical Assistance for Detainees	Not Sustained (Training Referral)
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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 Named Employee #1, Named Employee #2, and Named Employee #3 may have used excessive force on the Subject. It was also alleged that Named Employee #3 may have used prohibited force. It was further alleged that these officers did not report force when required and that they did not secure medical attention for the Subject. Lastly, it was alleged that Named Employee #4 also failed to secure medical attention for the Subject and did not properly investigate force.

ADMINISTRATIVE NOTE:

During its investigation, OPA identified a number of paperwork and investigative issues on the part of Named Employee #1. Given that Named Employee #1 was a student officer at the time, OPA determined that these allegations were best sent back to the chain of command to be handled as a Supervisor Action.

SUMMARY OF INVESTIGATION:

Officers, including Named Employee #1 (NE#1), Named Employee #2 (NE#2), and Named Employee #3 (NE#3), were dispatched to a call concerning an ongoing assault occurring on a City street. At the time, NE#1 was a student officer in his field training rotation. NE#2 was his field training officer. The officers determined that one of the individuals involved in the fight – referred to here as the Subject – was the primary aggressor. At first the Subject was cooperative and got down on his knees with his hands up; however, while in this position, he tossed a knife away from him. After the officers made the decision to arrest the Subject for assault, his demeanor changed. When NE#1 and NE#3 attempted take him into custody, the Subject was uncooperative and physically resistive, including pulling away from the officers. NE#2 then stepped in to assist. The officers collectively pulled the Subject down to the ground and held him there until he could be physically controlled. During this time, he continued to resist; however, the officers were ultimately able to handcuff him. None of the officers used any strikes. NE#3 also held the Subject on the ground with his knee for a period of time.

Both during and after his arrest, the Subject claimed that his hand was broken. He also had abrasions to his face. Neither the claim of a broken hand nor the abrasions were screened with a supervisor. Moreover, the supervisor for this incident – Named Employee #4 (NE#4) – did not cause the force to be properly classified or investigated. This was the case even though NE#4 observed the abrasions on the Subject's face. Ultimately, none of the Named Employees called for medical assistance or provided any medical care for the Subject's injuries.

The Subject was later booked into King County Jail and, at that time, it was determined that his hand was, in fact, broken. The Department's Force Investigation Team (FIT) was advised and then took over the investigation. FIT identified the Named Employees' initial failure to report, document, and investigate the force. OPA subsequently commenced this investigation to examine those issues.



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 officers developed clear probable cause to arrest the Subject for assault. While he was initially compliant, the Subject began resisting as soon as the officers started to take him into custody. Given this, the officers made the decision to take the Subject down to the ground where they could better control him. The officers then used their body weight and control holds to prevent the Subject from further resisting. They were subsequently able to handcuff him. None of the officers struck the Subject or used anything other than low-level force.

While the force resulted in injuries to the Subject, this does not make it excessive. To the contrary, the officers used only that force needed to safely take the Subject into custody and to stop him from resisting so that he could be handcuffed. Once the Subject was handcuffed, the officers ceased using force. Indeed, it appears likely from the video that the injuries suffered by the Subject were a result of his resistance and were not due to any misconduct on the part of the officers.

As OPA finds that this force was reasonable, necessary, and proportional under the circumstances, 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

8.400 - Use of Force Reporting and Investigation POL 1 (3) Officers, Including Witness Officers, Will Verbally Notify a Supervisor Following Any Use of Reportable Force

As discussed below, OPA finds that NE#1, NE#2, and NE#3 acted contrary to SPD Policies 8.400-POL-1(3) and 11.010-POL-9. While OPA recommends Sustained findings against NE#2 and NE#3, OPA believes that a Training Referral is a more appropriate result for NE#1 as he was a student officer at the time. However, OPA wants to make clear that any future violations of either policies by NE#1 will result in Sustained findings and the imposition of discipline.

- **Training Referral:** NE#1 should receive retraining and counseling concerning his failure to report force when required and to seek medical attention for an injured detainee. NE#1 should be instructed to more closely comply with these policies in the future and should be informed that the failure to do so will result in discipline. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.



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

Named Employee #1 - Allegation #3

11.010 - Detainee Management 9. Officers Will Seek Medical Assistance for Detainees

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #1 – Allegation #2).

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

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

8.400 - Use of Force Reporting and Investigation POL 1 (3) Officers, Including Witness Officers, Will Verbally Notify a Supervisor Following Any Use of Reportable Force

SPD Policy 8.400-POL-1(3) places an obligation on officers to inform a supervisor when reportable force has been used. This ensures that the sergeant is able to properly classify the force and to cause it to be investigated at an appropriate level.

Here, the Subject complained of a broken hand after force was used on him to take him into custody. Moreover, as a result of the force, he suffered abrasions to his face. This complaint of injury coupled with the abrasions caused the force used by the officers to be Type III.

However, none of the involved officers fully described the force used to NE#4. None of them informed NE#4 that the abrasions were caused during the arrest. Moreover, none of them informed NE#4 of the Subject's allegation that his hand was broken. As such, NE#4 did not immediately notify FIT as required or, at the very minimum, conduct any of the steps required for a Type II investigation.

NE#2 later told OPA that he heard the Subject make a statement of pain concerning his hand, but he did not recall the Subject saying that it was broken. NE#2 did remember seeing the abrasion to the Subject's face. He acknowledged that he should have stepped in to make sure that the force was reported. NE#3 also said that he was aware of the abrasions. He stated that he believed that NE#1 was going to handle the reporting of the force and he discussed this to some extent with NE#2.

In past cases, OPA has found that all of the officers involved in an incident have a responsibility to ensure that force is properly reported. It is not just the obligation of the primary officer. This is particularly the case where the primary officer is a student. Moreover, this was not a situation where only NE#1 used reportable force. All of the officers



took part in securing the Subject and, thus, all of them would have been required to report force and later document it.

Properly reporting, documenting, and investigating force is a fundamental requirement of the Consent Decree and a priority of the Department. The failure of NE#2 and NE#3 to take the steps required here violated policy. Accordingly, OPA recommends that this allegation be Sustained as against both NE#2 and NE#3.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #3

11.010 - Detainee Management 9. Officers Will Seek Medical Assistance for Detainees

SPD Policy 11.010-POL-9 states that: "Officers will seek medical assistance for detainees." The policy further instructs that: "Officers will request Seattle Fire Department respond when a detainee has an obvious injury or illness, or when the detainee makes a complaint of injury or illness."

The BWV clearly established that none of the involved officers called for medical attention for the subject. This was the case even though he complained of a broken hand (which he, in fact, suffered) and though he had abrasions on his face that were not present prior to his arrest.

NE#2 and NE#3 had a clear obligation to seek medical attention for the Subject as he had obvious injuries. As discussed in the context of Allegation #2, above, this was the case even though NE#1 was the primary officer. The failure to do so was contrary to policy.

Accordingly, OPA recommends that this allegation be Sustained as against NE#2 and NE#3.

Recommended Finding: **Sustained**

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)**

Named Employee #3 - Allegation #2

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

SPD Policy 8.200-POL-2 governs when force is prohibited. During a preliminary review of the BWV, OPA identified that the Complainant stated that he could not breathe while lying on the ground and while NE#2's knee was pressing into him. OPA classified this allegation for investigation to evaluate whether the placement of NE#2's knee impaired the Subject's breathing, including whether it was positioned on the Subject's neck at any time.



After further analyzing the BWV, OPA determined that there was insufficient evidence establishing that this was the case. To the contrary, the BWV showed that NE#2's knee was positioned on the Subject's back and that the knee was removed once the Subject was fully handcuffed and secured. At that time, NE#2 rolled the Subject onto his side and into the recovery position.

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

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

Named Employee #3 - Allegation #3

8.400 - Use of Force Reporting and Investigation POL 1 (3) Officers, Including Witness Officers, Will Verbally Notify a Supervisor Following Any Use of Reportable Force

For the same reasons as stated above (see Named Employee #2 – Allegation #2), OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #3 - Allegation #4

11.010 - Detainee Management 9. Officers Will Seek Medical Assistance for Detainees

For the same reasons as stated above (see Named Employee #2 – Allegation #3), OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #4 - Allegation #1

8.400 - Use of Force Reporting and Investigation POL 1 (4) The Sergeant Will Review the Incident and Do One of the Following

SPD Policy 8.400-POL-1(3) requires that a sergeant review a force incident and classify the force as either Type I, Type II, or Type III for investigation. Inherent in this is the expectation that the sergeant will ask probing questions of both involved and witness officers, as well as of the subject of the force. This includes querying the mechanism of the force and exploring any injuries suffered by the subject.

Here, NE#4's preliminary investigation into the force was cursory and inadequate. He did not ask probing questions, he did not fully explore what force was used and by whom, and he did not address the injuries suffered by the Subject.

At his OPA interview, NE#4 recognized that, in hindsight, he should have been significantly more comprehensive in his handling of this incident. He stated that, while not an excuse, the Subject did not reference a broken hand to him, and the officers did not tell him that the abrasions were the result of force. Given this, NE#4 thought that the abrasions could have been the result of the fight the Subject had been in. NE#4 also noted that, while he was an acting sergeant during this incident, he had not gone through sergeants training. He said that, since sitting through



that training, he had a substantially better understanding of what was expected of him as a supervisor. He noted that, given this, he would not revisit these mistakes in the future.

OPA credits NE#4's account and deems it significant that none of the officers actually informed him that they had used reportable force and that he was not a fully trained supervisor at the time. OPA expects, as NE#4 contended, that he has learned from this incident and will not revisit these mistakes again. Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#4 should receive retraining and counseling concerning his failure to adequately assess the force used during this incident and to ensure that it was investigated at the proper level, as well as his failure to ensure that the Subject received medical attention for his injuries. NE#1 should be instructed to more closely comply with this policy in the future and should be informed that the failure to do so will likely result in discipline. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #4 - Allegation #2

11.010 - Detainee Management 9. Officers Will Seek Medical Assistance for Detainees

As with Allegation #1, above, OPA also finds that NE#4's failure to ensure that the Subject received medical attention was due to his lack of understanding that the abrasions were caused by officer force and his inexperience as a supervisor. NE#4 has represented that he will handle similar situations differently in the future and OPA has no reason to doubt that this is the case.

Accordingly, OPA recommends that NE#4 receive retraining rather than discipline and refers to the above Training Referral (see Named Employee #4 – Allegation #1).

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