



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 16, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0154

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)

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 the Named Employees subjected her daughter to excessive force.

SUMMARY OF INVESTIGATION:

The Complainant called 911 to report that her daughter had assaulted her and was damaging her apartment. Officers, including the Named Employees, were dispatched to the call. Information provided to the officers in advance of their response included that the daughter had a history of suicidality and that she was flagged as a threat to law enforcement. The latter flag was related to past assaultive behavior during previous police interactions with her.

When the officers arrived at the residence, they discussed a plan for entering and taking the daughter into custody. Body Worn Video (BWV) indicated that they set up team roles (less-lethal, hands-on, etc.) and that they made the decision to immediately take custody of the daughter after entering. The BWV showed that this decision was based primarily on the concern about the daughter's hazard flag and the worry that the daughter would try to fight them if given the chance to do so.

The BWV depicted the officers enter the apartment and ask the Complainant where the daughter was. The Complainant directed them to the daughter's bedroom. The officers knocked on the bedroom door and announced their presence. The officers then entered. Named Employee #1 (NE#1) immediately advanced towards the daughter, and she backed away. He took hold of her arm and she struggled against him. Other officers, including Named



Employee #2 (NE#2) and Named Employee #3 (NE#3), also took hold of her and tried to effectuate her arrest. Ultimately, the officers took the daughter down to the ground in a controlled manner and held her there as they attempted to handcuff her.

At this time, the daughter was extremely agitated. She continued to struggle against the officers, causing to suffer several minor scrapes and abrasions. She also bit NE#2's finger, breaking the skin with her teeth.

The officers were able to stand the daughter up and walk her to the elevator. She continued to physically resist, including kicking at officers. Once they entered the elevator, the officers pinned the daughter against the wall to prevent her from further kicking. As they got outside, the daughter spat at NE#3. The officers bent the daughter forward and again took her to the ground in a controlled manner. She was held there until an ambulance could arrive. When she was being secured to the gurney prior to transport from the scene, the daughter bit the forearm of another officer and told that officer that she would kill him.

A supervisor arrived on scene to screen the arrest and the force that had been used by the officers. The officers informed him that the daughter may have suffered an abrasion to one of her fingers. However, the Sergeant could not verify this. The Sergeant authorized the daughter to be transported to Harborview Medical Center for a medical evaluation, including a test to determine whether she had any bloodborne pathogens that could have been transmitted when she bit NE#2. After that, she was to be booked into juvenile detention.

The decision to take the daughter to Harborview upset the Complainant who wanted her daughter to go to Seattle Children's Hospital. The Complainant also complained to the Sergeant about the force used by the officers to take her daughter into custody.

The Complainant later filed an OPA complaint. She again raised concerns with her daughter being taken to Harborview and being subjected to a blood test. She also reiterated her belief that the force was excessive. With regard to the decision to take the daughter to Harborview, OPA found that this did not violate policy. Specifically, SPD policy only requires officers to take juveniles to Children's if they are being detained to facilitate an involuntary detention based on mental health concerns. That was not the case here where the daughter was being arrested for assault. As such, this decision was within the Sergeant's discretion to make. In addition, a blood test was permissible as the daughter bit NE#2, breaking the skin. OPA conducted an investigation into the excessive force claim.

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. Officers shall only use "objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective." 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 a number of 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.*)



Based on OPA's review of the BWV, the Named Employees used force to take hold of the Complainant, to prevent her from physically resisting, and then to twice take her down to the ground. The first time they took her down to the ground, she was actively resisting. On the second occasion, she had just spit at NE#3.

OPA finds that this force was reasonable to effectuate the arrest of the daughter for assault and to then prevent her from physically resisting. It was necessary as it was the least amount of force that could have been used to carry out the officers' lawful purposes and, given her conduct and past history, there were no other viable options available to the officers. To this end, OPA finds that the officers' plan to immediately go hands-on with the daughter was sound, particularly given the hazard flag. Moreover, it was borne out by the resistance that ensued. Lastly, OPA finds that the force, which was of a low-level and did not include any strikes, was proportional to the need to take the daughter into custody and then to the threat she posed. The officers repeatedly modulated their force and then ceased using force altogether when they could.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against all of the Named Employees.

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 #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)**