



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 3, 2023

FROM: DIRECTOR GINO BETTS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0210

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 (Expedited)

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper (Expedited)
# 2	15.180 - Primary Investigations 15.180-POL 5. Officers Shall Document all Primary Investigations on a Report	Not Sustained - Unfounded (Expedited)
# 3	6.010 - Arrests 6.010-POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained - Lawful and Proper (Expedited)

Named Employee #3

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper (Expedited)

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 Named Employee #1 (NE#1), Named Employee #2 (NE#2), and Named Employee #3 (NE#3) used unauthorized force. The Complainant further alleged NE#2 failed to document all primary investigations on a report and arrested the Complainant without probable cause.

ADMINISTRATIVE NOTE:

This case was designated an Expedited Investigation. That means OPA, with the Office of Inspector General's review and approval, believed it could reach and issue recommended findings based solely on its intake investigation without interviewing the involved employees. As such, OPA did not interview the involved employees.



SUMMARY OF INVESTIGATION:

NE#2 allegedly failed to thoroughly and accurately report the Complainant's account. Further, NE#1, NE#2, and NE#3 allegedly "manhandled" the Complainant. Last, NE#2 allegedly arrested the Complainant without probable cause.

During its investigation, OPA reviewed the original web complaint, CAD records, BWV¹, and incident and supplemental reports.

On July 7, 2022, SPD officers, including the Named Employees, were dispatched to a fight between two groups. BWV showed, upon the officers' arrival, the Complainant appeared escalated. As officers, including the Named Employees, attempted to interview witnesses, the Complainant was loud and disruptive. Officers, including NE#2 and NE#3, repeatedly instructed the Complainant to not yell over the witnesses. However, the Complainant was noncompliant. NE#2 and a witness officer (WO#1) attempted to interview and obtain a statement from the Complainant. However, the Complainant remained uncooperative and ultimately walked away.

The Complainant continued to interrupt officer interviews. BWV showed NE#2 use his hand to separate the Complainant from a witness he was interviewing. NE#3 ordered the Complainant to leave due to his behavior. NE#1 and NE#3 physically moved the uncooperative Complainant from the scene. NE#3 warned the Complainant he would be arrested if he returned to the scene. Despite instructions from multiple officers, the Complainant repeatedly returned to the scene and ignore orders. NE#2 arrested the Complainant for obstruction of justice.² After his arrest, the Complainant remained uncooperative and verbally disruptive. The Complainant was transported to the East Precinct. At the precinct, BWV showed NE#2 guide the Complainant into a holding cell. The Complainant was subsequently released due to booking restrictions for misdemeanor charges.

ANALYSIS AND CONCLUSIONS:

Named Employee #1- Allegation #1

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

The Complainant alleged the Named Employees "manhandled" him.

Officers' use of force must be reasonable, necessary, and proportional. SPD Policy 8.200(1). 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 officer when the force is applied and must be balanced against "the rights of the subject, in light of the circumstances surrounding the event." SPD Policy 8.050. There are several factors to weigh 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.* Last, force must be proportional to the threat facing the officer. *Id.* *De minimis* force is "[p]hysical interaction meant to separate, guide, and/or control without the use of control techniques that are intended to or are reasonably likely to cause any pain or injury." SPD Policy 8.050

¹ The Named Employees' entire response to this incident was recorded on BWV.

² "A person is guilty of obstructing a public officer if, with knowledge that the person obstructed is a public officer, he or she . . . [i]ntentionally refuses to leave the scene of an investigation of a crime while an investigation is in progress after being requested to leave by a public officer." SMC 12A.16.010(A)(5).



During its intake investigation, OPA reviewed CAD records, BWV, and incident and supplemental reports. BWV showed the Complainant was loud, disruptive, and uncooperative throughout the officers' response. Several officers, including the Named Employees, repeatedly ordered the Complainant to stop interfering with the investigation. BWV showed NE#2 use *de minimis* force to move the Complainant from a witness he was interviewing. Similarly, following the Complainant's arrest, NE#2 used *de minimis* force to guide him into a holding cell. Further, NE#1 and NE#3 used *de minimis* force to move the Complainant from the scene due to persistent interference with the investigation. Given the Complainant's lack of cooperation and relentless disruption, the Named Employees' applications of *de minimis* force were objectively "reasonable, necessary, and proportional."

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

Named Employee #2 - Allegation #1

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

For the reasons set forth above at Named Employee #1 – Allegation #1, OPA recommends this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #2

15.180 - Primary Investigations 15.180-POL 5. Officers Shall Document all Primary Investigations on a Report

The Complainant alleged NE#2 did not thoroughly and accurately report the Complainant's account.

SPD Policy 15.180-POL-5 requires officers document all primary investigations on a report. All reports must be complete, thorough, and accurate. See SPD Policy 15.180-POL-5.

During its intake investigation, OPA reviewed CAD records, BWV, and incident and supplemental reports. Here, as noted above, BWV showed the Complainant was loud, disruptive, and uncooperative as officers attempted to interview witnesses. NE#2 and WO#1 attempted to interview the Complainant. However, the Complainant remained uncooperative, irate, and ultimately left rather than participate in an interview. Overall, OPA found the incident and supplemental reports consistent with BWV footage.

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

Named Employee #2 - Allegation #3

6.010 - Arrests 6.010-POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

The Complainant alleged NE#2 arrested him without probable cause.

Officers must have probable cause to believe a suspect committed a crime when effectuating an arrest. SPD Policy 6.010-POL-1. An arrest unsupported by probable cause violates law and Department policy. Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient to support a reasonable belief that an



offense was or is being committed. See *State v. Fricks*, 91 Wash.2d 391, 588 P.2d 1328 (1979); *State v. Gluck*, 83 Wash.2d 424, 426–27, 518 P.2d 703 (1974).

Here, as previously noted, BWV showed the Complainant was loud, disruptive, and uncooperative as officers attempted to interview witnesses. Several officers, including the Named Employees, repeatedly instructed the Complainant to stop interfering with the investigation. NE#3 warned the Complainant he would be arrested if he returned to the scene. Despite several orders, the Complainant repeatedly returned to the scene and ignored commands. NE#2 arrested the Complainant for obstruction of justice. Seattle Municipal Code 12A.16.010 reads, “a person is guilty of obstructing a public officer if, with knowledge that the person obstructed is a public officer, he or she . . . Intentionally refuses to leave the scene of an investigation of a crime while an investigation is in progress after being requested to leave by a public officer.” The overwhelming evidence suggests NE#2 had probable cause to believe the Complainant committed obstruction of justice.

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

Named Employee #3- Allegation #1

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

For the reasons set forth above at Named Employee #1 – Allegation #1, OPA recommends this allegation be Not Sustained – Lawful and Proper.

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