



# OFFICE OF PROFESSIONAL ACCOUNTABILITY

## Closed Case Summary

Complaint Number OPA#2016-1019

Issued Date: 03/17/2017

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 8.200 (1) Using Force: Use of Force: When Authorized (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Allegation #2	<u>Seattle Police Department Manual</u> 8.200 (1) Using Force: Use of Force: When Prohibited (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Final Discipline	N/A

### **INCIDENT SYNOPSIS**

The Named Employee arrested a subject.

### **COMPLAINT**

The complainant, the Office of Professional Accountability, alleged the Named Employee may have violated SPD Use of Force policies when striking a handcuffed subject in the back of a patrol vehicle.

## **INVESTIGATION**

The OPA investigation included the following actions:

1. Review of the complaint
2. Review of In-Car Videos (ICVs)
3. Search for and review of all relevant records and other evidence
4. Interviews of SPD employees

## **ANALYSIS AND CONCLUSION**

The particular force under review in this complaint was a fist strike by the Named Employee to the forehead of the subject. In the minutes leading up to this particular use of force, the subject had been both actively and passively resisting the efforts of the Named Employee and other officers to arrest the subject for a violent Domestic Battery charge based on probable cause. In the course of officers attempting to get the handcuffed subject into the back seat of a police car, the subject physically resisted getting into the car, kicked an officer on the shin and attempted to escape from custody. After the officers were able to get the subject inside the backseat area of the police car, one officer pulled the subject further into the back seat while the Named Employee attempted to control the subject's head and upper body. This is visible on the backseat In-Car Video. At this time the Named Employee had his forearm near the subject's face and the subject bit the Named Employee's arm. The Named Employee pulled his arm away from the subject's mouth and continued to attempt to control the subject. The subject opened his mouth wide and moved his head toward the Named Employee's arm in a motion that clearly suggested he was preparing to bite the Named Employee's arm again. The Named Employee shouted to the subject, "Hey, don't bite me," and delivered one quick closed fist strike to the top of the subject's forehead. Given the totality of the circumstances, e.g.

- the officers had probable cause to believe the subject had committed a violent act of domestic violence within the past four hours
- the subject had physically resisted officers' efforts to get him into the back of the police car
- the subject had kicked an officer and tried to escape
- the subject had bit the Named Employee's arm and appeared to be preparing to repeat this assault

The OPA Director found the Named Employee's single closed fist blow to the subject's forehead was reasonable, necessary and proportionate to stop any further assault and to gain control of the subject.

This policy specifically prohibits the use of force against handcuffed persons "except in exceptional circumstances when the subject's actions must be immediately stopped to prevent injury, or escape, destruction of property." In this particular case, because the subject was handcuffed, even though the force used had been determined to be reasonable, necessary and proportionate, it must also be examined to determine if this use of force on a handcuffed person was immediately necessary to prevent injury, escape or destruction of property.

The preponderance of the evidence in this investigation showed that the subject was willing and capable of assaulting police officers. He kicked one and bit another. He also tried to escape from the backseat of a police car just seconds before the Named Officer struck him. Immediately before the Named Employee struck the handcuffed subject on the forehead, the subject had his mouth wide open and was moving his head toward the Named Employee's arm in a motion that any reasonable person would interpret as preparatory to biting the Named Employee a second time. The Named Employee was nearly all the way in the back seat of the police car himself and could not easily get away from the subject without increasing the risk the subject might attack the other officer who was in the back seat with them and/or attempt to escape again. Given the totality of the circumstances, the OPA Director found the force used by the Named Employee on the handcuffed subject was necessary to immediately prevent injury to the Named Employee in the form of a bite and to prevent the subject from another attempt to escape.

## **FINDINGS**

### **Named Employee #1**

#### *Allegation #1*

A preponderance of the evidence showed that the force used by the Named Employee on the subject was reasonable, necessary and proportionate to stop any further assault and to gain control of the subject. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Authorized*

#### *Allegation #2*

A preponderance of the evidence showed that the force used by the Named Employee on the handcuffed subject was necessary to immediately prevent injury to the Named Employee and to prevent the subject from another escape attempt. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Prohibited*.

*NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.*