



## OFFICE OF POLICE ACCOUNTABILITY

### Closed Case Summary

Complaint Number 2017OPA-0161

Issued Date: 09/29/2017

<b>Named Employee #1</b>	
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> (Inconclusive)
Final Discipline	N/A

#### **INCIDENT SYNOPSIS**

The Named Employee and another officer responded to a call. While at that location, they on-viewed a disturbance between a group of individuals, which primarily involved the complainant and another woman.

#### **COMPLAINT**

The complainant alleged that the Named Employee used force on her by pushing her on the upper arm and away from him unprovoked.

#### **INVESTIGATION**

The OPA investigation included the following actions:

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

## **ANALYSIS AND CONCLUSION**

On the date in question, Named Employee #1 and a student officer responded to a trespass. While at that location, they on-viewed a disturbance between a group of individuals, which primarily involved the complainant and another woman. The complainant and the other woman were engaged in a loud verbal altercation. A third officer also responded to the scene.

The officers directed the complainant and the woman involved in the dispute to “break it up” and disperse. The officers told them to walk away in different directions. The complainant, however, indicated that she first wanted to get her possessions, which were near the other woman and in the opposite direction of where she was instructed to move. The complainant then began walking towards her belongings and through where Named Employee #1 was standing.

There was a dispute as to what happened next and, specifically, as to whether the complainant made initial physical contact with Named Employee #1.

The complainant, who did not follow through with her appointment to be interviewed by OPA, asserted that she did not actually touch Named Employee #1. However, both Named Employee #1 and the third officer indicated that she did. Two civilian witnesses to the incident provided accounts as to what they generally observed. Witness #1 did not provide any information indicating whether the complainant made initial physical contact with Named Employee #1. Witness #2 stated that he did not believe that the complainant made physical contact with any officer.

Named Employee #1 claimed that after the complainant bumped into him, he pushed her away with his hands open. He asserted that he did so in order to get her away from the immediate area of his person; specifically, because she had just physically bumped into him, was angry, and had been verbally aggressive. At around the time that the physical contact occurred, Named Employee #1 was heard on the third officer’s ICV saying, “don’t push me.” Named Employee #1 stated that once he pushed her away from him, the complainant quickly turned around to face him and raised her hand as if she was going to strike him. Named Employee #1 then again pushed the complainant away around her elbows and indicated that if she maintained that conduct, she would be placed under arrest. At around this time, Named Employee #1 was heard on the third officer’s ICV saying something along the lines of, “don’t swing your hand.” The third officer then engaged with the complainant and there was no further physical contact between the complainant and any of the officers.

The complainant, to the contrary, denied pushing Named Employee #1. She stated that she was pushed in the back for no apparent reason and her arm was grabbed. She also stated that an officer put his hands on her 4-5 times and twisted her arm behind her back.

Witness #1 did not respond to OPA’s request for an interview. However, her account of the incident was documented on a Sergeant’s ICV. She said that she saw Named Employee #1

push the complainant in the arm and harder than the other woman originally involved in the argument had pushed the complainant. From a review of the ICV, Witness #1 appeared to be intoxicated, and was angry and profane. For these reasons, the OPA Director did not place great weight on her account.

Witness #2 spoke to the Sergeant at the scene and agreed to be interviewed telephonically by OPA. He said that he witnessed the incident from his second floor window. Witness #2 heard some women arguing for a period of time. He heard officers tell the women to go their separate ways, but observed one woman walk closely to an officer and saw the officer push her. Witness #2 did not believe that the woman made physical contact with the officer. Witness #2 did not hear the officer say anything before or during the push. He then viewed the woman turn around suddenly as if she “wanted to do something,” but reported that she did not strike the officer. Witness #2 stated that he did not see the woman raise her hands into fists. He stated that the officer then “grabbed” the woman as if he was going to put her in handcuffs, but did not ultimately do so. Witness #2 did not create a video or audio recording of the incident.

After she was pushed by Named Employee #1, the complainant was angry and requested that a supervisor be called to the scene. Both the Sergeant and a Lieutenant responded to the scene and screened the incident. Neither reported any complaint of pain from the complainant and both believed that the force used was de minimis.

Manual Policy 8.200 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.” The policy lists a number of factors that should be weighed when evaluating reasonableness. 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.” Lastly, the force used must be proportional to the threat posed to the officer.

There was a dispute between Named Employee #1 and the complainant as to whether she made initial physical contact and as to the nature and extent of the force used. If the incident unfolded as Named Employee #1 described and as the third officer’s account supported, the OPA Director found that the force used was reasonable, necessary, and proportional to ensure officer safety. If the complainant’s version was correct and she did not make contact with Named Employee #1 and was, thus, pushed for no reason, the OPA Director’s conclusion would be different.

The incident was not visually captured on ICV. The audio of the incident was captured, however, and tended to support Named Employee #1’s version of the events. Specifically, Named Employee #1’s recorded statements to the complainant to not push him and to not swing her hand were consistent with her alleged conduct as reported by Named Employee #1. While the OPA Director found Witness #2 to be credible and that his account supported the complainant’s version, it did not alone serve to overcome the other evidence.

Ultimately, given the factual disputes in this case and the lack of conclusive video evidence, the OPA Director could not determine by a preponderance of the evidence that the force used was contrary to policy.

## **FINDINGS**

### **Named Employee #1**

#### Allegation #1

There was not a preponderance of the evidence either supporting or refuting the allegation. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Using Force: Use of Force: When Authorized*.

*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.*