



## **CLOSED CASE SUMMARY**

ISSUED DATE: JULY 27, 2018

CASE NUMBER: 2018OPA-0127

### **Allegations of Misconduct & Director’s Findings**

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Inconclusive)
# 2	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Training Referral)

***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 Employee subjected him to excessive force during his arrest and while he was handcuffed.

#### **ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #1**

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

Officers, including Named Employee #1 (NE#1), were dispatched to a possible burglary at a supermarket. When they arrived, they learned that the Complainant had been previously trespassed twice from that supermarket and, on this date, had tried to shoplift. The officers had probable cause to arrest the Complainant and they took him into custody and applied handcuffs. The officers then walked him to a patrol vehicle in order to transport him to the precinct. While they were standing by the vehicle with the Complainant is when the force at issue in this case occurred.

The force, as well as what led up to it and transpired thereafter, was captured by Department video. The video depicted NE#1 holding the Complainant by his arms. At that time the Complainant, who was handcuffed, appeared unsteady on his feet and his weight was, at times, being propped up by NE#1. The Complainant began to lose his balance, falling backwards and NE#1 caught him and pushed him forward. At that time, part of the Complainant’s face hit the top of the passenger door side of the patrol vehicle. After the force was used, NE#1 was captured stating to the Complainant: “Look I’m not going to deal with you pushing on me. Now I’m done with it. You understand.” In a review completed by NE#1’s Lieutenant, it was identified that, prior to the force being used, NE#1 stated to the Complainant in a frustrated tone that he was “done” messing around with him. The force apparently caused acne on the Complainant’s face to burst, resulting in bleeding. No other injuries were apparent from photographs taken after the incident (which are included in OPA’s case file) and none were identified by the Seattle Fire Department when it provided medical treatment to the Complainant.

The force was reviewed by NE#1’s chain of command. The force was approved but, as discussed more fully below, not without some concerns being raised. Due to the fact that the Complainant told a supervisor who responded to



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the scene that he was “roughed up” and that officers “kicked” his “ass,” this matter was referred to OPA and this investigation ensued.

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.*) These three factors and my conclusions as to each are outlined below.

In his use of force report, NE#1 stated the following:

[The Complainant] tried to turn toward me, I stopped him from doing that then he lost his balance and started to fall backward. I stopped [the Complainant] from falling and as I did that I could feel him pushing against me to the point I could feel myself starting to lose balance. At that point I pushed [the Complainant] up against the patrol car to control his movement and to give me a barrier to hold him up against so I could hold him up easier until we could get him in the car.

NE#1 provided similar information to OPA during his interview. He additionally stated his belief that, had he not pushed the Complainant up against the patrol vehicle, both him and the Complainant would have fallen to the ground, each of them potentially suffering injuries. NE#1 told OPA that he did not believe that he had any reasonable alternatives to the force he used. NE#1 denied that his statement made after the fact suggested that he used force to retaliate against the Complainant. He contended that he was simply trying to tell the Complainant “why [NE#1] did what [he] did” and that he was not going to let the Complainant push back against him anymore.

I am concerned by what I observed on the video. It does not appear, at least from my review, that NE#1 lost his balance and was trying to stabilize himself and the Complainant by pushing the Complainant into the patrol vehicle. Instead, it looks like NE#1 purposefully, and with force, pushed the Complainant into the vehicle causing him injury. This conclusion is buttressed by NE#1’s statements after the fact, which arguably suggest an improper motive. NE#1 denied that he engaged in such behavior and contended that he acted out of a sense of self-preservation due to an imminent possible threat of harm to his person. NE#1’s explanations are reasonable on their face, but they do not necessarily dovetail with either the video or his statements to the Complainant after the fact. At the time that NE#1 pushed the Complainant up against the vehicle, his feet appeared to be stable and did not seem to be at any risk of falling backwards. Moreover, at the time he pushed the Complainant into the patrol vehicle, he had already shifted the Complainant’s weight forward. Lastly, the Complainant was handcuffed at the time the force was used, which makes this incident even more problematic. That being said, I note that the other witnesses to this incident – all fellow officers – indicated that they observed the Complainant fall backwards towards NE#1 and saw NE#1 push or brace the Complainant against the patrol vehicle. None believed that NE#1’s force was excessive or otherwise outside of policy.

As stated by NE#1’s captain in his force review, whether NE#1’s conduct and the force he used was consistent with policy is a “close call.” While I am inclined to believe that it is likely not based on the video and his statements after



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the fact, NE#1, the other officers at the scene, and NE#1's chain of command thought that it was. Ultimately, while I am troubled by this incident, I recommend that this allegation be Not Sustained – Inconclusive.

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

**Named Employee #1 - Allegation #2**

***8.200 - Using Force 2. Use of Force: When Prohibited***

While SPD Policy 8.200(1) provides for when force is authorized, SPD Policy 8.200(2) sets forth those scenarios in which force is prohibited. Among those scenarios are: when force is used to retaliate against or punish a subject; and when force is used against a restrained subject, "except in exceptional circumstances when the subject's actions must be immediately stopped to prevent injury, [ ] escape, [or] destruction of property." (SPD Policy 8.200(2).)

As discussed above, NE#1's statement after the force was used is one of the primary factors that cause me to reach an inconclusive finding. When coupled with the video, NE#1's comments raise the question of whether the force was used by NE#1 to punish or retaliate against the Complainant. As explained by NE#1's Captain in his use of force review: "While it is a close question, I ultimately approve of the force used by [NE#1] in this incident...However, a statement made by [NE#1] and captured on ICV leaves a nagging doubt in my mind about whether Jones was also attempting to 'punish' the [Complainant], in violation of Department policy." I agree with the Captain. I further note that NE#1's Lieutenant counseled him concerning this matter, raising the same concerns as the Captain. In the context in which it was made, NE#1's comment was inappropriate. Even if it cannot be proved that NE#1 intended to use force to punish or retaliate against the Complainant, this comment raised the appearance of impropriety and reflected poorly both on NE#1 and the Department as a whole. Indeed, had professionalism been classified in this matter, I would have recommended it be Sustained.

Lastly, I note that NE#1 is an instructor on defensive tactics in the Department's Training Unit. It is worrisome that someone tasked with teaching the entirety of the Department how to use force that is consistent with policy and the constitutional would act and speak in the manner that NE#1 did in this case.

For the above reasons, and while I cannot prove by a preponderance of the evidence that NE#1 intended to use force to punish or retaliate against the Complainant, I recommend that he receive a Training Referral.

- **Training Referral:** NE#1 should receive retraining concerning SPD Policies 8.200(1) and 8.200(2). He should be counseled concerning how his comment in this matter reflected negatively on both himself and the Department. He should further be reminded of his obligations under the professionalism policy and be informed that future conduct such as this will likely result in a recommended Sustained finding. This retraining and counseling should be documented and this documentation should be maintained in an appropriate database.

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