



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 19, 2019

CASE NUMBER: 2018OPA-0235

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)
# 2	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 3	8.300-POL-8 Use of Force – HOBBLE RESTRAINT 2. Officers Must Place Subjects in the Hobble Restraint Either in an Upright, Seated Position or on Their Side and Not Face Down, Including During Transport	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)
# 2	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 3	8.300-POL-8 Use of Force – HOBBLE RESTRAINT 2. Officers Must Place Subjects in the Hobble Restraint Either in an Upright, Seated Position or on Their Side and Not Face Down, Including During Transport	Not Sustained (Lawful and Proper)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Allegation Removed

Named Employee #4

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 3	8.300-POL-8 Use of Force – HOBBLE RESTRAINT 2. Officers Must Place Subjects in the Hobble Restraint Either in an Upright, Seated Position or on Their Side and Not Face Down, Including During Transport	Not Sustained (Lawful and Proper)

Named Employee #5



Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 3	8.300-POL-8 Use of Force – HOBBLE RESTRAINT 2. Officers Must Place Subjects in the Hobble Restraint Either in an Upright, Seated Position or on Their Side and Not Face Down, Including During Transport	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 used excessive force and inappropriately touched him during his arrest. It was further alleged that the Named Employees improperly applied a hobble restraint on the Complainant. It was also alleged that the Named Employees' Supervisor failed to refer the Complainant's excessive force and inappropriate touching allegations to OPA.

ADMINISTRATIVE NOTE:

This case was submitted to the OPA Auditor for review seven days prior to the expiration of the 180-day deadline. The Auditor was unable to complete his review in time because: he was unavailable during that time; the case was not submitted to him with sufficient advanced notice; and he was unaware of the impending deadline. As such, the Director's Certification Memo is being issued after the expiration of the 180-day timeline set forth in the Collective Bargaining Agreement between the City of Seattle and SPOG.

SUMMARY OF INVESTIGATION:

According to the General Offense (GO) Report, the Named Employees responded to multiple 911 calls of a male suspect who was damaging civilian vehicles by scratching them with a sharp instrument while walking by them. A detailed description of the suspect was broadcasted to officers, which read: "BM, 30s 5'7, 150, No Shirt, Gry Hiking Pants, Carrying Backpack." Other officers located the Complainant, who matched that description, and detained him in handcuffs while they waited for a victim to arrive for a possible identification. The Complainant was placed in handcuffs because he matched the description of another disturbance where the Complainant had thrown a folded knife at Named Employee #5 (NE#5) and another officer who stopped to do a welfare check on him earlier that evening. After the Complainant was positively identified as the perpetrator in both incidents, he began resisting NE#5, as well as Named Employee #1 (NE#1), Named Employee #2 (NE#2) and Named Employee #4 (NE#4). The Complainant also began kicking NE#1. In response, the Named Employees sat the Complainant down on the ground and put him on his side. They then began searching the Complainant following his arrest.

At this time, the Complainant started resisting by "thrashing" around on the ground and kicking at the Named Employees. The Named Employees rolled the Complainant onto his stomach to gain better control and employed



the use of a hobble restraint on his legs to keep him from kicking them. NE#5 noted in his GO that the Complainant complained that he was unable to breathe and that his knee was injured. NE#5 also reported that the Complainant spit at NE#1, which prompted another officer to place a spit sock over the Complainant's head. Following this action, the Complainant reportedly threatened to put a bullet in the back of the head of NE#5, NE#4 and Named Employee #3 (NE#3). While in custody, it was reported that the Complainant made several statements concerning the conduct of the Named Employees including that they: were raping him; he could not breath; his right knee hurt; and the handcuffs were hurting his hands. The Complainant was subsequently transported and booked into King County Jail for Investigation of Malicious Mischief; Assault (assaulting officers); investigation of harassment; and obstruction. It was noted in the General Offense Report that NE#3 was the supervising Sergeant who was on scene and screened this incident and reviewed the use of force paperwork.

NE#3 attempted to interview the Complainant while still at the scene. NE#3 reported that the Complainant was generally uncooperative and threatened violence to NE#3's wife. NE#3 reported that the only substantive remark the Complainant made was that he could not feel his fingers. NE#3 told the Complainant that SPD would assist with that issue once it was safe to do so.

Based on the Complainant's statements, this matter was referred to OPA and this investigation ensued.

As part of its investigation, OPA reviewed Body Worn Video (BWV). The BWV show that the Complainant was initially calm and compliant when he was first approached and placed into handcuffs by officers. However, thereafter, the Complainant forcefully resisted NE#1, NE#2, NE#4, and NE#5. The Complainant was seen pulling away from and kicking at officers before he was taken to the ground. The officers were seen moving the Complainant to a recovery position shortly after they took him to the ground. The BWV showed the Complainant continually kicking and spiting at the officers while they issued him commands to stop resisting. The officers worked with their arms to control the Complainant's actions. The Complainant was also seen attempting to head-butt officers and was heard making assorted claims of being inappropriately touched and unable to breathe. The officers were seen moving the Complainant to the prone position in response to his resistance. The BWVs showed the placing of the hobble restraint around the legs of the Complainant while he was in the prone position. The officers were seen on BWV turning the Complainant onto his side just prior to their lifting him onto a gurney. Once on the gurney, the Complainant was seen making additional attempts to head-butt officers.

OPA attempted to interview the Complainant through his attorney, but that effort proved unsuccessful. Thus, the Complainant was not interviewed as part of this investigation.

The Named Employees were interviewed by OPA. NE#1 told OPA that he and NE#4 placed the Complainant in handcuffs without incident. After they walked him over to the front of their police vehicle, the Complainant started yelling that NE#1 and NE#4 were beating him, and then tried to slam his head into a Department of Corrections vehicle multiple times. NE#1 stated that he and NE#4 responded by moving him away so that the Complainant could not do further harm to himself. At that point, NE#1 stated that the Complainant started kicking him, so they took him to the ground using de minimis force. Once on the ground, the Complainant was moved onto his side in the recovery position. NE#1 explained that the Complainant spat at him and tried to head-butt the officers. NE#1 stated that he and NE#4 responded by placing the Complainant on his stomach. NE#1 noted that the Complainant was still trying to spit at him. In response, NE#1 recalled that one of the responding officers placed a spit sock over the Complainant's head. NE#1 stated that he and NE#4 continued to try to control the Complainant's head area while



NE#2 and NE#5 were trying to maintain control of his legs. NE#1 recalled that the Complainant continued to kick at the officers so someone called for a hobble restraint. NE#1 stated that he maintained control of the Complainant's head area by bracing the Complainant's right shoulder with his knee. NE#4 maintained control of the Complainant's left shoulder. NE#1 stated that the focus was to keep the Complainant from thrashing around so that he did not cause injury to himself. NE#1 recalled hearing the Complainant talking about how his neck was about to break, but noted that no one was holding the Complainant's neck and that he could move his head. NE#1 recalled the Complainant making comments that the officers were touching him inappropriately, but NE#1 denied that allegation and said that they only thing they did was remove a wallet from his back pocket. NE#1 was not involved in the placement of the hobble restraint on the Complainant. NE#1 remained positioned at the Complainant's right shoulder. NE#1 stated that he did not turn the Complainant on his side after the hobble restraint was in place because the Complainant continued to thrash around and was a danger to himself and others. NE#1 noted that the officers monitored the subject's breathing and overall well-being during the period of time that he remained in the prone position.

NE#2, NE#4, and NE#5 provided similar accounts of what transpired in their separate interviews with OPA. All three of the Named Employees denied that they ever placed their hands on or near the Complainant's neck or otherwise restricted his breathing. They also denied touching him inappropriately. They confirmed that the hobble restraint was placed on the Complainant by a Sergeant. All three stated that they did not turn the Complainant onto his side following the application of the hobble restraint because they feared he would continue to take steps to injure himself or others.

NE#1, NE#2, NE#4, and NE#5 completed use of force reports pertaining to this incident. All four reports were consistent with the information reported in the General Offense Report and with what was captured on BWV.

NE#3, the Sergeant who screened the arrest, was interviewed regarding his reasons for not reporting the Complainant's allegations to OPA. NE#3 stated that he believed that the Complainant made those comments to get the officers to release hold of him, and not as actual allegations of misconduct. NE#3 also stated that when he attempted to interview the Complainant afterwards, he was not compliant and threatened to shoot NE#3's wife.

SPD's Force Review Board found that the Named Employees' use of force, tactics, and decision-making were all consistent with policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #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. 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.*)



The evidence establishes that the officers had probable cause to arrest the Complainant for felony level property damage to multiple vehicles parked in the area. Prior to contacting the Complainant, officers formulated a plan of action and assigned roles. Though the Complainant was initially compliant, there was an immediate change in his demeanor once he was placed in handcuffs. The Complainant began resisting arrest and the efforts of the Named Employees to control his movements by pulling away and kicking at them. The Complainant also attempted to purposefully slam his head into a vehicle. In response, the Named Employees attempted to take the Complainant down to the ground to control his actions and to prevent him from harming himself.

Once on the ground, the Complainant continued kicking at the Named Employees. He also made attempts to head-butt NE#1 and NE#4, as well as to spit at NE#1. Throughout this incident, the officers used their body weight to maintain control of the Complainant. Despite those efforts, the Complainant continued to kick at the officers. NE#3 ultimately ordered the use of a hobble restraint, which was applied over the Complainant's legs. The Complainant was heard throughout this incident making allegations that the Named Employees were beating him up and touching him inappropriately. However, OPA found nothing in the evidence to suggest that any of the Named Employees used excessive force or otherwise violated the Complainant. In fact, the BWV establishes that the conduct alleged by the Complainant did not occur. Moreover, the BWV conclusively disproves that the Named Employees' did not use excessive force and establishes that the force they did use was reasonable, necessary, and proportional.

As such, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#1, NE#2, NE#4, and NE#5.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

The Complainant alleged that the Named Employees touched him inappropriately or otherwise violated him in a sexual manner.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. If the allegation against the Named Employees were true, it would constitute, at a minimum, a violation of Washington State law.

BWV captured virtually the entirety of the Named Employees' interactions with the Complainant. This evidence clearly establishes that the conduct alleged by the Complainant did not occur and that his claims are frivolous in this respect. As such, I recommend that this allegation be Not Sustained – Unfounded against as against NE#1, NE#2, NE#4, and NE#5.

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

Named Employee #1 - Allegation #3

8.300-POL-8 Use of Force – HOBBLE RESTRAINT 2. Officers Must Place Subjects in the Hobble Restraint Either in an Upright, Seated Position or on Their Side and Not Face Down, Including During Transport



It is alleged that the Named Employees failed to properly position the Complainant after using a hobble restraint to control his legs.

SPD Policy 8.300-POL-8 (2) states that officers must place subjects in the hobble restraint either in an upright, seated position or on their side and not face down, including during transport.

A hobble restraint was placed on the Complainant's legs to overcome his constant kicking. Following its application, the Named Employees still had to work to control the Complainant as he continued to thrash around and kick at the officers. Based on the evidence, including the BWV, it appeared that the Named Employees' decision to leave the Complainant in the prone position following the placement of the hobble restraint was specifically designed as a temporary means of preventing the Complainant from harming himself, which is something he attempted to do at various point during this incident.

Though the Named Employees failed to move the Complainant to a seated position or onto his side as required by policy, OPA acknowledges that the policy does not contemplate situations where doing so may not be the best decision for the safety of the officers and the subject. When evaluating the totality of the circumstances facing the Named Employees at the time, I cannot say that their decision to not immediately place the Complainant into a recovery or seated position was unreasonable or violated policy. I further note that the Named Employees continued to monitor the Complainant's breathing and, shortly after placing him in the hobble restraint, secured him on a gurney in an appropriate position. Lastly, the officers' actions were ordered and monitored by a supervisor, NE#3. As such, even had I concluded that they violated policy during this incident, I would have found that NE#3, not the officers, was ultimately responsible for their conduct.

For these reasons and the unique facts presented by this case, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#1, NE#2, NE#4, and NE#5.

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

Named Employee #2 - Allegations #1

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

Based on the reasoning above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #2

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

Based on the reasoning above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Unfounded.

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



Named Employee #2 - Allegation #3

8.300-POL-9 Use of Force – HOBBLE RESTRAINT 2. Officers Must Place Subjects in the Hobble Restraint Either in an Upright, Seated Position or on Their Side and Not Face Down, Including During Transport

Based on the reasoning above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegations #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

SPD Policy 5.002-POL-5 requires supervisors who become aware of a potential policy violation to investigate or refer the allegations depending on their severity. Minor allegations of misconduct may be investigated by a supervisor, while allegations of serious misconduct – such as the use of excessive force – must be referred to OPA. (SPD Policy 5.002-POL-5.)

NE#3 told OPA that he did not refer the allegations made in this case by the Complainant to OPA because NE#3 did not perceive the Complainant's statements to rise to the level of claims of excessive force. NE#3 further justified his perception by stating that the Complainant's remarks about being touched inappropriately stemmed from his being held down and searched by officers. NE#3 contended that he viewed them as attempts to get officers to release him from their hold. NE#3 also explained that he did not view the Complainant to be making an excessive force claim because sexual assault is not a trained or reasonable force tactic.

OPA recognizes that there may be situations when Complainants make serious allegations of misconduct that are clearly unsubstantiated by the evidence, but the determination by a supervisor to take no action should only be made after direct consultation with OPA or by referring to OPA for review. Ultimately, however, given that the allegations made by the Complainant lacked any merit and given that NE#3 appeared to have good intentions, even if ultimately inconsistent with policy, OPA does not believe that a Sustained finding is necessary.

NE#3 no longer works for SPD. Were he still employed by the Department, OPA would have recommended that he receive a Training Referral; however, given his current status, that cannot be effectuated. Instead, OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #4 - Allegations #1

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



Based on the reasoning above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #4 - Allegation #2

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

Based on the reasoning above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #4 - Allegation #3

8.300-POL-9 Use of Force – HOBBLE RESTRAINT 2. Officers Must Place Subjects in the Hobble Restraint Either in an Upright, Seated Position or on Their Side and Not Face Down, Including During Transport

Based on the reasoning above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #5 – Allegation #1

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

Based on the reasoning above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #5 - Allegation #2

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

Based on the reasoning above (Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #5 - Allegation #3

8.300-POL-9 Use of Force – HOBBLE RESTRAINT 2. Officers Must Place Subjects in the Hobble Restraint Either in an Upright, Seated Position or on Their Side and Not Face Down, Including During Transport

Based on the reasoning above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.



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