



## OFFICE OF PROFESSIONAL ACCOUNTABILITY

### Closed Case Summary

Complaint Number 2015OPA-1393

Issued Date: 08/28/2017

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 8.100 (1) De-Escalation: When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force (Policy that was issued September 1, 2015)
OPA Finding	<b>Sustained</b>
Allegation #2	<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>Sustained</b> (Training Referral)
Allegation #3	<u>Seattle Police Department Manual</u> 8.200 (2) Using Force: Use of Force: When Prohibited (Policy that was issued September 1, 2015)
OPA Finding	<b>Sustained</b>
Allegation #4	<u>Seattle Police Department Manual</u> 8.200 (6) Using Force: Following a Use-of-Force, Officers Shall Render or Request Medical Aid, if Needed or if Requested by Anyone, as Soon as Reasonably Possible (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Training Referral)

Allegation #5	<u>Seattle Police Department Manual</u> 11.010 (17) Detainee Management in Department Facilities: Officers Will Seek Medical Assistance for Detainees (Policy that was issued December 19, 2012)
OPA Finding	<b>Not Sustained</b> (Unfounded)
Allegation #6	<u>Seattle Police Department Manual</u> 11.050 (1) Detainee Property: Officers Secure Detainee Property (Policy that was issued October 1, 2014)
OPA Finding	<b>Not Sustained</b> (Unfounded)
Allegation #7	<u>Seattle Police Department Manual</u> 5.001 (9) Standards and Duties: Employees Shall Strive to be Professional at all Times (Policy that was issued April 1, 2015)
OPA Finding	<b>Not Sustained</b> (Training Referral)
Allegation #8	<u>Seattle Police Department Manual</u> 5.140 (2) Bias-Free Policing: Officers Will Not Engage in Bias-Based Policing (Policy that was issued August 1, 2015)
OPA Finding	<b>Not Sustained</b> (Unfounded)
Final Discipline	30 Day Suspension

<b>Named Employee #2</b>	
Allegation #1	<u>Seattle Police Department Manual</u> 8.100 (1) De-Escalation: When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Unfounded)
Allegation #2	<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 #3	<u>Seattle Police Department Manual</u> 8.200 (2) Using Force: Use of Force: When Prohibited (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)

Allegation #4	<u>Seattle Police Department Manual</u> 8.200 (6) Using Force: Following a Use-of-Force, Officers Shall Render or Request Medical Aid, if Needed or if Requested by Anyone, as Soon as Reasonably Possible (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Training Referral)
Allegation #5	<u>Seattle Police Department Manual</u> 11.010 (17) Detainee Management in Department Facilities: Officers Will Seek Medical Assistance for Detainees (Policy that was issued December 19, 2012)
OPA Finding	<b>Not Sustained</b> (Unfounded)
Allegation #6	<u>Seattle Police Department Manual</u> 11.050 (1) Detainee Property: Officers Secure Detainee Property (Policy that was issued October 1, 2014)
OPA Finding	<b>Not Sustained</b> (Inconclusive)
Final Discipline	N/A

<b>Named Employee #3</b>	
Allegation #1	<u>Seattle Police Department Manual</u> 8.200 (2) Using Force: Use of Force: When Prohibited (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Allegation #2	<u>Seattle Police Department Manual</u> 8.300-POL-10 Use of Force Tools: Use of Force – Neck and Carotid Restraints (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Unfounded)
Final Discipline	N/A

**INCIDENT SYNOPSIS**

Named Employees #1 and #2 were working a two-officer patrol unit and were dispatched to a report of an assault. Named Employees #1 and #2 arrested the subject and transported him to the precinct. All three Named Employees responded to the subject's complaints of handcuff pain in the precinct holding cell.

## **COMPLAINT**

It was alleged that:

1. Arresting officers failed to determine if the subject required medical aid after reports of pain or injury.
2. One of the arresting officers used a racial slur during the arrest and engaged in bias-based policing.
3. The first two officers in the holding cell failed to attempt de-escalation when reasonable and safe to do so and then used unreasonable force on a handcuffed prisoner.
4. The third officer in the holding cell used a neck hold in circumstances where deadly force was not justified and unreasonable force on a handcuffed prisoner.
5. One of the arresting officers acted unprofessionally by taunting the subject.
6. Two of the officers in the holding cell failed to take proper care of the subject's property

## **INVESTIGATION**

The OPA investigation included the following actions:

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

## **ANALYSIS AND CONCLUSION**

Named Employee #1 decided to remove a detainee's (the subject's) shoes in order to prevent the subject from continuing to kick the inside of the holding cell door. Named Employee #1 reported he was concerned the subject would injure himself and/or damage the door if the kicking continued. Named Employee #1 said he had experienced nearly 100% success in stopping detainees from kicking holding cell doors by removing their shoes. Named Employee #1 told Named Employee #2, who was his Student Officer at the time and had participated in the arrest of the subject, he was going to take away the subject's shoes. There was no further discussion between the two officers regarding how they would get the shoes or what tactics they would use in doing so. Named Employee #1 stood on the outside of the cell door and through the plexi-glass window motioned for the subject to come forward to the door. Named Employee #1 then opened the door and said something to the subject about his shoes. Named Employee #1 reached into the cell toward the subject and the subject stepped back. Named Employee #1 advanced into the cell and grabbed hold of the front of the subject's shirt. The subject attempted to move away from Named Employee #1 and, in response, Named Employee #1 pushed the subject to the wall of the cell and then onto the floor. As the subject resisted and kicked at Named Employee #1 and NE #2- who had also entered the cell behind Named Employee #1 once the subject began to resist and become aggressive- additional force was used by Named Employee #1 and Named Employee #2 to control the subject and remove his

shoes. It must be noted that the subject was handcuffed behind his back when placed into the holding cell and was still handcuffed in the same position when Named Employee #1 went into the holding cell to get the shoes approximately 30 seconds later. Prior to placing the subject in the cell, the subject had become agitated as he was being searched when Named Employee #1 attempted to take away the subject's eye glasses. Named Employee #2 completed this action. Once placed in the holding cell, the subject yelled and kicked at the cell door. Holding cell video indicated the subject kicked several times with his toe and one time with the bottom of his foot during these 30 seconds. Prior to opening the cell door in order to take away the subject's shoes, no officer, including Named Employee #1, asked the subject to take off his shoes or told him that his shoes were going to be removed. In particular, Named Employee #1 did not tell the subject what was going to happen before he opened the door and reached for the subject. Once the subject attempted to move back, Named Employee #1 did not explain what was happening, seek the subject's cooperation or otherwise verbally attempt to de-escalate the situation. Named Employee #1 responded to the subject's movement backward by closing the distance and beginning to use force by grabbing the subject's shirt. What followed was an escalation of resistance and aggression by the subject and use of force by Named Employee #1, Named Employee #2 and Named Employee #3 who came to the aid of the first two officers. It must be pointed out that the subject had been non-compliant and physically resistant when Named Employee #1 and Named Employee #2 arrested him in the field. Named Employee #1's opportunity to attempt de-escalation tactics in the holding cell area began when he tried to remove the handcuffed subject's glasses from his face. With the simple use of words to indicate what he was about to do and why, Named Employee #1 had the chance to attempt to gain the subject's cooperation. Instead, Named Employee #1 simply reached for the glasses, prompting the subject to become resistant again. This same approach, using verbal communication to ask the subject to stop kicking the door, inform him of what would happen if he did not stop and then, if the kicking did not stop, seeking the subject's cooperation in removing his shoes from the cell, was available to Named Employee #1 before he opened the cell door to go in and take the subject's shoes. However, Named Employee #1 made no such or similar attempt at de-escalation. Even after Named Employee #1 opened the cell door and the subject began to back away from him, Named Employee #1 had time and safe circumstances to attempt to de-escalate the situation. He could have moved back and attempted verbal de-escalation from the doorway of the cell or exited the cell, closed the door and attempt de-escalation from an even safer position. Team tactics and planning opportunities were available to Named Employee #1 as no emergency existed. Given the location and the fact that the subject was handcuffed and locked in a holding cell, Named Employee #1 had ample time and safe circumstances to attempt any number of different de-escalation strategies prior to following the subject deeper into the cell and using force. Yet, Named Employee #1 made no attempt at de-escalation.

Named Employee #1's use of force, both in the field at the time of the subject's arrest and at the precinct was a combination of de minimis and Type I level force. With one exception and apart from the force Named Employee #1 used in the holding cell prior to when the subject began to kick, the OPA Director found Named Employee #1's use of force to be reasonable, necessary and proportionate. The one exception was Named Employee #1's tactic of lifting the subject's arms, which at the time were restrained behind his back in handcuffs, high behind the subject's

back. As pointed out by the FIT Lieutenant in his review, this was not a trained tactic but was sometimes used in the field to overcome resistance. Given the potential for serious injury to a detainee, such a tactic should be used with great caution and only when potential danger from a subject's resistance outweighs the associated risk of injury. As discussed below in Allegation #3, Named Employee #1's use of force against the handcuffed subject inside the holding cell prior to when the subject was on the floor kicking at Named Employee #1 and Named Employee #2 was both unreasonable and unnecessary.

After only 30 seconds, several kicks of the holding cell door by the subject with the toe of his shoe and one kick with the bottom of it, Named Employee #1 opened the cell door and told the handcuffed subject to come forward toward the door. When the subject moved back instead, Named Employee #1 began to use force. His force was de minimis at first, but quickly escalated to shoving against a wall and then taking the subject to the ground as the subject escalated his own resistance and aggression. SPD Policy 8.200(2) prohibits the use of force against a handcuffed prisoner except, "in exceptional circumstances when the subject's actions must be immediately stopped to prevent injury, or escape, [sic] destruction of property. All such force shall be closely and critically reviewed." Named Employee #1 said he was concerned the subject would either injure himself or damage the holding cell door if he were permitted to continue kicking the door. The cell had no eye-bolt on the floor so the subject could not be secured out of kicking range. Removing the subject's shoes was the method Named Employee #1 chose to stop the kicking and prevent injury and property destruction. As discussed above in Allegation #1, Named Employee #1 had a number of options for approaching the subject and accomplishing the removal of his shoes. Named Employee #1 chose not to attempt any de-escalation options and instead entered the holding cell, almost immediately using force to accomplish his goal. This created a situation in which Named Employee #1 had to use force to keep the subject from kicking him or Named Employee #2. Minimal as Named Employee #1's initial grab and push of the handcuffed subject was, it led to him shoving the subject against the wall and taking him to the floor. None of this force was necessary to prevent injury or the destruction of property. It was avoidable, unnecessary and placed all parties at risk for injury. The OPA Director found that no exceptional circumstances existed at that time and this use of force by Named Employee #1 against a handcuffed person (the subject) violated SPD Policy 8.200(2).

Allegation #4 arose from a concern that neither Named Employee #1 nor Named Employee #2 took appropriate action in response to the subject's statements during and after his transport to the precinct that the handcuffs were too tight. While there was no evidence the subject specifically complained of pain or said he had been injured by the handcuffs, the video showed him visibly uncomfortable during his transport, likely because of the handcuffs. The preponderance of the evidence did not support a conclusion that either officer reasonably should have been aware of any injury to the subject as a result of their use of force such that medical aid should have been given or requested. Nonetheless, the evidence also suggested one or both of the officers could have acted more quickly to adjust the handcuffs once they arrived at the precinct.

The subject also complained in the holding cell about the discomfort he was experiencing from the handcuffs. There was no evidence to suggest the subject indicated he had been injured by the handcuffs. The preponderance of the evidence did not support the conclusion that Named Employee #1 or #2 knew or should have known the subject required medical assistance while in the precinct as a detainee.

Allegation #6 was related to the handling of the subject's glasses following their removal from the subject's face. The preponderance of the evidence showed Named Employee #1 was not the officer who removed and had care of the glasses.

During the transport of the subject to the precinct, the inside microphone of the ICV recorded an interaction in which the subject called one or both of the transporting officers "bitch" several times. The audio recording also captured Named Employee #1 responding, "Hey, that's Officer Bitch to you." Named Employee #1 told OPA his purpose in saying this was to try and de-escalate the situation by injecting some humor and trying to get the subject to laugh. Viewing this comment objectively, Named Employee #1's response could be taken as either a provocation or a misguided attempt at humor. Named Employee #1's use of the offensive term was not directed at the subject but could be seen as potentially mocking the subject. Based on the preponderance of the evidence the OPA Director found this comment did not rise to the level of a violation of SPD Policy 5.001(9). Nonetheless, the OPA Director believed it was ill-advised and could have been a factor in further provoking an already hostile subject.

During the FIT investigation of this incident, it was learned that one of the other detainees in the precinct holding area at the time alleged Named Employee #1 called the subject some form of racial epithet or otherwise derogatory term. The witness did not provide FIT with the specific language allegedly used and OPA was unable to locate this witness to obtain further information. In addition, no other witness, including the subject, reported hearing any such term used. Named Employee #1 denied saying anything of this nature to the subject.

Named Employee #2 was a Student Officer at the time of this incident and Named Employee #1 was his Field Training Officer (FTO). With respect to the entrance into the holding cell in an effort to take the subject's shoes away from him, Named Employee #1 took the lead and bore responsibility for any de-escalation required and not attempted. Named Employee #2 merely provided cover and backup as the situation required.

Named Employee #2 used force to arrest the subject in the field and overcome his resistance to being handcuffed, searched and placed in the police car. The OPA Director found all of this force to be reasonable, necessary and proportional as required by SPD Policy 8.200(1). Similarly, the OPA Director found Named Employee #2's use of force in the holding cell once the subject became assaultive and began kicking after Named Employee #1 took the subject to the floor to be reasonable, necessary and proportional as required by SPD Policy 8.200(1).

SPD Policy 8.200(2) prohibits the use of force against a handcuffed prisoner except, "in exceptional circumstances when the subject's actions must be immediately stopped to prevent

injury, or escape, [sic] destruction of property. All such force shall be closely and critically reviewed.” As Named Employee #1 entered the holding cell in an effort to take away the subject’s shoes, Named Employee #2 was behind him, acting as cover and holding the cell door open. Named Employee #2 only used force on the handcuffed subject after the subject was on the floor and kicking at Named Employee #1. The OPA Director found this to have been “exceptional circumstances” as defined in SPD Policy 8.200(2) since the subject was actively assaulting Named Employee #1. Once Named Employee #2 joined Named Employee #1 on the floor and began to help him control the subject, Named Employee #2 was kicked in the head and injured by the subject. Based on the preponderance of the evidence the OPA Director found Named Employee #2’s use of force on the handcuffed subject was reasonable, necessary and proportional to prevent injury to either Named Employee #1 or himself.

Allegation #6 was related to the handling of the subject’s glasses following their removal from the subject’s face. The preponderance of the evidence showed Named Employee #2 was the officer who removed and had care of the glasses. The evidence further showed that Named Employee #2 either intentionally or accidentally dropped the glasses to the cement floor. Given the subject’s movements and physical resistance at that time, it was possible that Named Employee #2 simply could not hold onto the glasses. The investigation was unable to verify whether or not the glasses were damaged as a result. No preponderance of the evidence could be found to either prove or disprove that Named Employee #2 failed to take reasonable steps to secure the subject’s glasses.

Named Employee #3 rushed into the holding cell to assist Named Employee #1 and Named Employee #2 who were locked inside the cell and attempting to gain control of a resistant and assaultive subject. The subject was handcuffed behind his back at this time. Named Employee #3 opened the cell door and held it open while the other two officers got up and backed out of the cell. The subject also got up and moved towards Named Employee #2, who used an open-handed palm to push him back. As the officers were exiting the cell Named Employee #3 was the last to leave and the subject moved forward again, this time towards Named Employee #3. In response, Named Employee #3 used an open hand to push the subject back. Named Employee #3’s hand struck the subject in the upper chest near the collar bone and/or the base of his throat. Given the situation observed by Named Employee #3, including the active aggression of the subject, it was reasonable for Named Employee #3 to believe the subject may assault him and/or escape from the cell through the open door if he (Named Employee #3) did not use some force to push him back further into the cell. Based on the preponderance of the evidence the OPA Director found Named Employee #3’s use of force on the handcuffed subject was reasonable, necessary and proportional to prevent injury to himself and/or the escape of the subject.

When Named Employee #3 used his open hand to push the subject back and away from the open cell door, it was possible that part of his hand came in contact with the base of the subject’s neck. The video was not clear enough to make such a determination based on the video alone. No other physical or testimonial evidence was found to support a conclusion that



Named Employee #3's hand made contact with or in any way restricted the subject's airflow or blood circulation at the neck.

## **FINDINGS**

### **Named Employee #1**

#### Allegation #1

A preponderance of the evidence showed that Named Employee #1 made no attempt at de-escalation. Therefore a **Sustained** finding was issued for *De-Escalation: When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force*.

#### Allegation #2

A preponderance of the evidence showed that Named Employee #1's use of force against the handcuffed subject was both unreasonable and unnecessary. Therefore a **Sustained** (Training Referral) finding was issued for *Using Force: Use of Force: When Authorized*.

**Required Training:** In order to avoid, when possible, lifting a handcuffed prisoner's arms high behind his or her back, Named Employee #1 should receive additional training in preferred tactics for controlling resistant subjects.

#### Allegation #3

A preponderance of the evidence showed that the use of force by Named Employee #1 against a handcuffed person violated SPD Policy. Therefore a **Sustained** finding was issued for *Using Force: Use of Force: When Prohibited*.

#### Allegation #4

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Using Force: Following a Use-of-Force, Officers Shall Render or Request Medical Aid, if Needed or if Requested by Anyone, as Soon as Reasonably Possible*.

**Required Training:** Named Employee #1 should receive training from his supervisor to remind him of the importance of checking and adjusting handcuffs on a prisoner as soon as reasonably and safely possible following a complaint that the handcuffs are uncomfortable or causing pain.

#### Allegation #5

A preponderance of the evidence did not support the conclusion that Named Employee #1 knew or should have known the subject required medical assistance while in the precinct as a detainee. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Detainee Management in Department Facilities: Officers Will Seek Medical Assistance for Detainees*.

#### Allegation #6

A preponderance of the evidence showed that Named Employee #1 was not the officer who removed and had care of the glasses. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Detainee Property: Officers Secure Detainee Property*.

#### Allegation #7

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Standards and Duties: Employees Shall Strive to be Professional at all Times*.

**Required Training:** Named Employee #1 should receive specific training from his supervisor reminding him of the need to be conscious of the impact his statements and words may have on people, especially those who are angry, in crisis or otherwise agitated. Refresher training regarding the use of words to calm and de-escalate people and situations should also be provided to Named Employee #1.

#### Allegation #8

There was no preponderance of evidence to support this allegation. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Bias-Free Policing: Officers Will Not Engage in Bias-Based Policing*.

**Discipline Imposed:** 30 Day Suspension

### Named Employee #2

#### Allegation #1

A preponderance of the evidence showed that Named Employee #2 did not bear responsibility for any de-escalation required and not attempted. Therefore a finding of **Not Sustained** (Unfounded) was issued for *De-Escalation: When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force*.

#### Allegation #2

A preponderance of the evidence showed that Named Employee #2's use of force was reasonable, necessary and proportional. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Authorized*.

#### Allegation #3

A preponderance of the evidence showed that Named Employee #2's use of force was reasonable, necessary and proportional. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Prohibited*.

#### Allegation #4

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Using Force: Following a Use-of-Force, Officers Shall Render or Request Medical Aid, if Needed or if Requested by Anyone, as Soon as Reasonably Possible.*

**Required Training:** Named Employee #2 should receive training from his supervisor to remind him of the importance of checking and adjusting handcuffs on a prisoner as soon as reasonably and safely possible following a complaint that the handcuffs are uncomfortable or causing pain.

#### Allegation #5

A preponderance of the evidence did not support the conclusion that Named Employee #2 knew or should have known the subject required medical assistance while in the precinct as a detainee. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Detainee Management in Department Facilities: Officers Will Seek Medical Assistance for Detainees.*

#### Allegation #6

There was not a preponderance of the evidence either supporting or refuting the allegation. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Detainee Property: Officers Secure Detainee Property.*

### Named Employee #3

#### Allegation #1

A preponderance of the evidence showed that Named Employee #3's use of force was reasonable, necessary and proportional. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Prohibited.*

#### Allegation #2

A preponderance of the evidence did not support the conclusion that Named Employee #3's hand made contact with or in any way restricted the subject's airflow or blood circulation at the neck. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Use of Force Tools: Use of Force – Neck and Carotid Restraints.*

*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.*