



OFFICE OF PROFESSIONAL ACCOUNTABILITY

Closed Case Summary

Complaint Number OPA#2016-1395

Issued Date: 05/10/2017

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	Not Sustained (Lawful and Proper)
Allegation #2	<u>Seattle Police Department Manual</u> 8.300-POL-3 (4) Use of Force - CEW/CONDUCTED ELECTRICAL WEAPONS (TASER): Officers Shall Only Deploy CEW When Objectively Reasonable (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Lawful and Proper)
Final Discipline	N/A

INCIDENT SYNOPSIS

The Named Employee and another officer responded to two calls at the subject's residence.

COMPLAINT

The complainant alleged that the Named Employee may have violated Use-of-Force policy when trying to take a subject into custody by using a knee strike and then punching the subject's torso in order to overcome the subject's resistance. Subsequently, when the force used by the Named Employee was not sufficient, the Named Employee may have violated policy when he chose to utilize his Taser two times in a drive-stun capacity in order to cause pain and discomfort in order to disrupt his thought process.

INVESTIGATION

The OPA investigation included the following actions:

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

ANALYSIS AND CONCLUSION

The Named Employee used three different force options on the subject: a knee strike, a punch and two touch stun applications from a Taser. In all three instances, the purpose of the force was the same. The Named Employee was attempting to overcome the active resistance and aggressive behavior of the subject. The Named Employee and his cover officer had been called back to the subject's apartment for a second time the same night. In both cases, a neighbor called the police to report sounds coming from the subject's apartment that were consistent with a Domestic Violence (DV) incident. When the Named Employee and his partner arrived the first time, they were able to determine that no DV had taken place and made contact with the subject and his wife. When the two officers returned later the same shift, they encountered the subject who seemed angry and highly intoxicated. More concerning to the officers was that the subject's wife was not in the apartment in spite of the subject's claims she was. The officers could not locate the subject's wife and grew concerned the subject may have done something to harm her and hide her from the police. As the cover officer searched for the wife, the Named Employee had the subject sit in a chair. The subject made several attempts to get up and then charged at the cover officer. Both officers grabbed the subject and brought him to the floor where they attempted to control him and get the subject into handcuffs. The preponderance of the evidence from this investigation showed that the subject pulled his hands and legs under his body and grabbed onto the officers' hands as they tried to bring the subject's arms out for handcuffing. At the same time, the subject was moving and bucking in a way that made it difficult for either officer to gain control of the subject. The Named Employee grew concerned that a prolonged struggle with the large, strong and intoxicated subject might lead to a situation in which the officers might be overpowered or feel the need to resort to a higher level of force to prevent being overpowered. The Named Employee used progressively increasing levels of force in an effort to get the subject to stop actively grappling or fighting with the two officers. Both officers repeatedly told the subject to stop fighting and resisting. The first use of force by the Named Employee was a knee strike to the side of the subject's torso. This appeared to have no effect and the subject did not stop struggling and fighting with the officers. The Named Employee then delivered a "hammer fist" strike to the same side of the subject, but a little higher on his torso. This, too, did not result in stopping the the subject's actions. Finally, the Named Employee delivered two drive stun applications of his Taser to the subject, first on the subject's side and then on his hip. After the second Taser stun, the subject stopped his aggressive actions and fighting with the officers.

The subject was large, athletic, angry and intoxicated. He had already attempted to attack one of the officers and was struggling and grappling on the floor with the officers. The combined efforts of the officers were not sufficient to stop the subject from fighting them, nor did he comply with repeated commands from the officers. Given the totality of the circumstances, the OPA Director found that the subject posed a risk of injury to the officers if his aggressive physical resistance was not stopped quickly. For this reason, the OPA Director found the use of force by the Named Employee was reasonable, necessary and proportional.

FINDINGS

Named Employee #1

Allegation #1

A preponderance of the evidence showed that the force used by Named Employee #1 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 #2

A preponderance of the evidence showed that the force used by Named Employee #1 was reasonable, necessary and proportional. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *8.300-POL-3 (4) Use of Force - CEW/CONDUCTED ELECTRICAL WEAPONS (TASER): Officers Shall Only Deploy CEW When Objectively Reasonable*.

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.