



OFFICE OF POLICE ACCOUNTABILITY

Closed Case Summary

Complaint Number 2017OPA-0241

Issued Date: 09/15/2017

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)
Final Discipline	N/A

Named Employee #2	
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 (Inconclusive)
Final Discipline	N/A

INCIDENT SYNOPSIS

The Named Employees, along with other officers, were dispatched to a call of unknown males attempting to access the back door of the caller's residence.

COMPLAINT

The complainant alleged that he was "brutally assaulted by officers" while being taken into custody by the two Named Employees.

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. Interviews of SPD employees

ANALYSIS AND CONCLUSION

On the date in question, police received a call from an individual, who stated that there were unknown males attempting to access the back door of her residence. The caller further stated that the males had also gone through her shed. The caller indicated that one of the males was wearing a black sweatshirt.

Officers, including Named Employee #1 and Named Employee #2, were dispatched to the scene and, upon arrival, activated their In-Car Video (ICV) systems. When they approached the residence, they observed a male wearing a black sweatshirt in the backyard. The officers identified themselves and contacted the male, who was later learned to be the complainant. The complainant began running north where he came into contact with an officer. The officer ordered the complainant multiple times at gunpoint to stop and get on the ground, but the complainant did not comply with those orders. Instead, the complainant began to run west. The officer holstered his firearm and ran after the complainant, who moved directly towards Named Employee #2. The complainant attempted to evade Named Employee #2, but Named Employee #2, with assistance from Named Employee #1, took the complainant down to the ground.

Named Employee #1 reported that when he first came into contact with the complainant, he grabbed his clothing but that the complainant began to struggle in order to get away. Named Employee #1 was able to maintain his grip and made the decision to try to take the complainant down to the ground. As he was trying to do so, Named Employee #2 arrived on scene to assist taking the complainant to the ground. Named Employee #1 held the complainant's midsection while Named Employee #2 cupped the back of the complainant's neck and "assist[ed] his forward momentum to the ground."

After he fell to the ground, the complainant turned on his side. At that point, the officers noticed what appeared to be a firearm in the complainant's waistband. The complainant struggled against the officers to avoid being placed into custody. The officer held the complainant's right arm against his side while Named Employee #1 and Named Employee #2 attempted to control the complainant's body. In his Type II Use of Force Report, Named Employee #2 indicated that the complainant was "throwing his arms back and forth" and that, while doing so, the complainant struck Named Employee #2 several times. Named Employee #2 was concerned that the complainant was reaching for the firearm- later determined to be a pellet gun- that

Named Employee #2 observed in the complainant's waistband. Another firearm- also later determined to be a pellet gun- was observed in the complainant's front waistband. In an attempt to control the complainant, Named Employee #1 applied pressure to the midsection of the complainant's back. Named Employee #2 was also situated on top of the complainant. The officers were ultimately able to control the complainant and recover the pellet gun from his front waistband. The officers then moved the complainant onto his stomach to allow them to remove the firearm from his rear waistband. In his report, Named Employee #2 stated that, at this time, he placed his knee on the back of the complainant's head in order to control the complainant's body. Named Employee #2 indicated that he did so based on his concern that the complainant could be in possession of other weapons. Named Employee #2 further stated that in placing his knee on the back of the complainant's head, he believed that he was acting consistent with his training. The complainant then ceased his resistance, the officers modulated their force, and Named Employee #1 and Named Employee #2 were able to place the complainant into handcuffs. Named Employee #1 double locked the handcuffs. The officers reported using no other force.

After the complainant was handcuffed, Named Employee #2 observed superficial scrapes to the right side of his face. Named Employee #2 speculated that these could have been caused from when he placed his knee on the back of the complainant's head, which pressed the complainant's face into the pavement. The complainant received medical treatment at the South Precinct.

The force was screened at the scene by a Sergeant. The Sergeant spoke with Named Employee #2 about what had occurred. The audio of their conversation was captured by both the Sergeant's and Named Employee #2's ICVs. In response to the Sergeant's questions concerning the incident, Named Employee #2 indicated the following: "I just got him down. Scruff of the neck and slammed him down. Knee into the face right away. We got him taken care of." The Sergeant accepted this description of the force and did not ask any follow up questions. The Sergeant then spoke with the complainant who stated he had been subjected to police brutality. In his arrest screening report, the Sergeant indicated that the subject had minor injuries to his face, chest, finger and toe; however, the injury to the toe was reportedly self-inflicted. While the complainant indicated to a nurse that he had a bump on his forehead, the nurse did not detect a bump. Moreover, per the Sergeant's report, the complainant stated to the Sergeant Burrows that he did not have any injuries.

In their Use of Force Reports, which were completed after the in-person screening by the Sergeant, both Named Employee #1 and Named Employee #2 reported that the takedown of the complainant was a soft takedown. Neither reported punching, kicking or otherwise striking the complainant at any time.

Manual 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." 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.

Here, the OPA Director found that the force used by Named Employee #1 was reasonable, necessary, and proportional, and thus consistent with policy.

First, with regard to reasonableness, Named Employee #1 had probable cause to believe that the complainant was involved in an active burglary. This justified taking the complainant into custody. When the complainant attempted to evade the lawful attempts to place him under arrest, it was reasonable for Named Employee #1 to use force to take him to the ground in order to get the complainant under control and to handcuff him. Notably, Named Employee #1 was unaware whether there was another suspect in the immediate vicinity. Indeed, the caller had initially reported two suspects. Moreover, Named Employee #1 viewed what appeared to be two firearms in the complainant’s waistband.

Second, with regard to whether the force was necessary, the OPA Director found that, at the time the force was used, Named Employee #1 believed that there was no reasonably effective alternative and that the degree of force was reasonable to effect the lawful purpose of placing the complainant under arrest and securing the scene.

Third, with regard to the proportionality of the force, Named Employee #1 used force commensurate with the threat facing him, and only that level of force needed to get the complainant on the ground and then to control the complainant’s body in order to take custody of the firearms and to handcuff him.

The analysis with regard to Named Employee #2’s force was complicated by the inconsistencies in Named Employee #2’s statements.

In both his Use of Force Report and his OPA interview, Named Employee #2 asserted that the takedown in question was a soft takedown. In his report, he stated that he performed the takedown by cupping the back of the complainant’s neck and then using the complainant’s momentum to take him to the ground. However, in his OPA interview, Named Employee #2 denied cupping the complainant’s neck. Instead, Named Employee #2 stated that he just grabbed the complainant’s arms/elbows because he could not get any control over the complainant’s body and then took him to the ground. These accounts were not only inconsistent with each other, but also with the description of the takedown initially given by Named Employee #2 to the Sergeant. In that screening conversation, the audio of which was captured by ICV, Named Employee #2 indicated that he grabbed the complainant by the scruff of his neck and slammed him to the ground. This would suggest a hard rather than soft takedown.

In his report and at his OPA interview, Named Employee #2 recounted placing his knee on back of the complainant’s head in order to control his body. However, Named Employee #2 stated to

the Sergeant that he put his “knee into the [complainant’s] face right away. We got him taken care of.” These two accounts again appeared to be inconsistent. Putting a knee “into” a subject’s face is different than placing a knee on the back of a subject’s head. Moreover, based on Named Employee #2’s terminology, it was unclear whether he was stating that he kneed the complainant in the face.

When asked about these inconsistencies at his OPA interview, Named Employee #2 cited his “excitement” in the moment that he had the screening conversation with the Sergeant.

The OPA Director found these inconsistencies to be concerning and they raised the possibility that Named Employee #2 did not accurately report what happened on that date.

Moreover, because of these inconsistencies, the OPA Director could not definitively know what force Named Employee #2 actually applied and could not conclusively determine whether it was consistent with policy. If the force used was what was represented in the Use of Force Report, it was within policy. If it was what Named Employee #2 contended using at his OPA interview, it was also within policy. If, however, Named Employee #2 slammed the complainant onto the pavement and then struck him in the face with his knee, without knowing more details, it was unclear whether it would have been consistent with policy. Notably, both Named Employee #1 and the Officer reported not observing the force used by Named Employee #2 while the complainant was on the ground.

Lastly, the OPA Director also find it concerning that no one in Named Employee #2’s chain of command appeared to have caught these inconsistencies and that they were not identified until this case was investigated by OPA. The chain of command is required to perform rigorous and thorough examinations of force. This includes comparing screening statements to reports and reviewing ICV and comparing that ICV to statements written by the involved and witness officers. Based on the fact that the inconsistencies were not flagged and examined by the chain of command, it did not appear as if a sufficient review was performed here.

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, and thus consistent with policy. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Authorized*.

Named Employee #2

Allegation #1

There was not a preponderance of the evidence either supporting or refuting the allegation.

Therefore a finding of **Not Sustained** (Unfounded) 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.