



OFFICE OF POLICE ACCOUNTABILITY

Closed Case Summary

Complaint Number 2017OPA-0359

Issued Date: 10/09/2017

Named Employee #1	
Allegation #1	<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	Not Sustained (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	Not Sustained (Inconclusive)
Final Discipline	N/A

Named Employee #2	
Allegation #1	<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	Not Sustained (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	Not Sustained (Lawful and Proper)
Final Discipline	N/A

INCIDENT SYNOPSIS

The Named Employees contacted the complainant for trespassing. The complainant was determined to have a warrant and subsequently ran from the Named Employees. Force was used to take the complainant into custody.

COMPLAINT

The complainant reported to the responding supervisor that he was contacted and arrested because he was homeless, and alleged that the Named Employees assaulted him.

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 In-Car Video (ICV)
4. Interviews of SPD employees

ANALYSIS AND CONCLUSION

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” (Manual Policy 5.140.) This includes different treatment based on the race of the subject. (See id.)

Named Employee #1 stated that while he knew that the complainant was homeless, he did not take law enforcement for that reason. (NE#1 OPA Interview, at p. 6.) Instead, Named Employee #1 asserted that the complainant was arrested because he was committing a trespass and based on an open Seattle Municipal Court Warrant. (Id.)

During his interview with OPA, the complainant indicated that his arrest was based on bias because he was singled out for arrest while two other individuals who were also trespassing were allowed to leave. (See Complainant OPA Interview, at pp. 2-3.) Named Employee #1 indicated that there was only one other individual in the alley with the complainant (this appears to be supported by Named Employee #1’s ICV) and that this other individual was allowed to leave with a warning and without being arrested because he had no prior trespass offenses on his record or open warrants. (NE#1 OPA Interview, at pp. 2-3.) The complainant, on the other hand, had two other past trespass offenses and an open warrant and Named Employee #1 intended to arrest him for those reasons. (Id. at p. 3.) As such, the different treatment was based on past conduct, not housing status. Moreover, any allegation of disparate treatment was undercut by the complainant’s own assertion that the individuals allowed to leave were also homeless. (Complainant OPA Interview, at p. 3.)

The OPA Director found no evidence in the record indicating that Named Employee #1 engaged in biased policing. While the complainant was experiencing homelessness on the date in question, his arrest was not based on his housing status, but instead on the fact that he was trespassing in a clearly marked area and because he had an open warrant for his arrest.

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.” (8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (See *id.*) Most notable for the facts presented in this case are a consideration of: “the level of threat or resistance presented by the subject”; “whether the subject was posing an immediate threat to officers or a danger to the community”; “the potential of injury to officers, citizens or subjects”; “the risk or apparent attempt of the subject to escape”; and “the conduct of the subject being confronted.” (*Id.*) In addition, 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.*)

Whether or not the force used by Named Employee #1 was reasonable, necessary, and proportional, depended on whether Named Employee #1 truly and reasonably perceived that the complainant presented an active and immediate threat of harm to him and/or Named Employee #2. This, in turn, rises and falls on whether the complainant did, in fact, ball up his fists and appear, at least in Named Employee #1’s perception, that he was about to strike the Named Employees. Named Employee #1 claimed that the complainant balled up his fists at the point when he was bent over and resisting the officers. (See NE#1 OPA Interview, at p. 2; see also NE#2 Type II Use of Force Report.) In reviewing that portion of the ICV, however, the complainant’s hands were not visible. (See NE#1 ICV, at 10:06:06 – 10:06:09.) Thus, the OPA Director could not determine whether his hands were actually balled into fists.

If they were, the OPA Director would find the knee strikes to be within policy. While the complainant was arrested for only misdemeanor offenses, he almost immediately ran away from the officers and physically resisted their attempts to take him into custody. He continued to resist them, repeatedly twisting and pulling his body away. Even though he was subjected to three knee strikes, he was still able to again pull away from the Named Employees and run away. After he was tackled to the ground, he still resisted being handcuffed. The Named Employees had the legal authority to take the complainant into custody and the complainant physically prevented them from doing so. His physical resistance and the Named Employees’ inability to get him on the ground constituted a threat to the officers, as did, if Named Employee #1’s account was accepted, the complainant’s apparent readiness to strike the Named Employees. Named Employee #1’s knee strikes would have thus been reasonable to effectuate the arrest and to prevent the risk of harm, as well as both necessary and proportional.

If the complainant's hands were not balled into fists, however, the OPA Director would likely find that there was not a sufficient threat of harm presented to warrant the intermediate level of force used.

Ultimately, the lack of video evidence proving or disproving this fact made the OPA Director unable to conclusively determine whether the force was within policy.

Named Employee #2 stated that he did not know of the complainant's housing status prior to his arrest. (NE#2 OPA Interview, at p. 6.) Named Employee #2 further asserted that he did not take any law enforcement actions that were motivated by bias. (Id.)

As with Named Employee #1, the OPA Director found no evidence in the record indicating that Named Employee #2 engaged in biased policing.

Named Employee #2 reported using force to effectuate the complainant's arrest and handcuffing. Specifically, Named Employee #2 stated that when the complainant initially attempted to elude the officers, he grabbed his arm in order to try to control him. (See NE#2 Type I Use of Force Report.) Named Employee #2 stated that he did so repeatedly and attempted to take the complainant to the ground. (See id.) However, he was unable to do so. (See id.) Named Employee #2 further reported that once the complainant was on the ground, he trapped his right arm under his body. (See id.) Named Employee #2 used force to pull the complainant's right arm out in order to facilitate the handcuffing. (See id.) Named Employee #2 did not use any other force on the complainant. (See id.)

Here, the OPA Director found that the force used by Named Employee #2 was reasonable, necessary, and proportional, and thus consistent with policy.

First, with regard to reasonableness, it was undisputed that there was probable cause to arrest the complainant. When the complainant ran away, which was also undisputed, the officers were justified in using force to take him into custody. Moreover, the level of force used by Named Employee #2 – attempts to prevent the complainant from escaping and pulling his arm from under his body – was certainly reasonable given the circumstances.

Second, with regard to whether the force was necessary, the OPA Director found that, at the time the force was used, Named Employee #2 believed that there was no reasonably effective alternative and that the degree of force was reasonable to effect the lawful purpose of preventing the complainant from further fleeing, to place him under arrest, and to handcuff him.

Third, with regard to the proportionality of the force, Named Employee #2 used force commensurate with the complainant's conduct, and only that level of force needed to prevent the complainant from further fleeing, control his person, place him under arrest, and handcuff him.

FINDINGS

Named Employee #1

Allegation #1

A preponderance of the evidence showed that there was no evidence in the record indicating that Named Employee #1 engaged in biased policing. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Bias-Free Policing: Officers Will Not Engage in Bias Based Policing*.

Allegation #2

There was not a preponderance of the evidence either supporting or refuting the allegation. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Using Force: Use of Force: When Authorized*.

Named Employee #2

Allegation #1

A preponderance of the evidence showed that there was no evidence in the record indicating that Named Employee #1 engaged in biased policing. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Bias-Free Policing: Officers Will Not Engage in Bias Based Policing*.

Allegation #2

A preponderance of the evidence showed that the force used by Named Employee #2 was reasonable, necessary, and proportional. Therefore a finding of **Not Sustained** (Lawful and Proper) 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.