



OFFICE OF POLICE ACCOUNTABILITY

Closed Case Summary

Complaint Number 2017OPA-0483

Issued Date: 10/30/2017

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

INCIDENT SYNOPSIS

The Named Employee arrested the subject.

COMPLAINT

While reviewing In-Car Video as part of a Type II Use of Force review, the complainant, a supervisor within the Department, found that the subject complained about force used to arrest him by Named Employee #1. This matter was referred by the complainant to OPA.

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. Review of external videos
5. Interviews of SPD employees

ANALYSIS AND CONCLUSION

Named Employee #1 and a sergeant responded to a shelter based on a report of an individual who was trespassing. The individual, later identified as the subject, had previously been trespassed from the shelter for throwing a mug against a wall. The officers were asked to assist if the subject refused to leave the premises. The officers arrived at the scene and spoke with shelter employees and the subject. Named Employee #1 asked the subject to walk outside with him and walked him over to a concrete wall. Named Employee #1 reported that the subject was still very animated due to his interaction with shelter staff. Named Employee #1 spoke to the subject for a period of time and heard his frustrations about the shelter. Named Employee #1 informed the subject that, regardless of these frustrations, he had been trespassing. The subject then asked if he was being arrested. Named Employee #1 told the subject that he was not being physically arrested at that time, but that Named Employee #1 needed his identification for reporting purposes. The subject provided some identification information, but it did not return any results. Named Employee #1 became concerned that the subject was providing a false identification. After a continuing back-and-forth, the subject abruptly stood up and stated that Named Employee #1 had no right to keep him there and he was walking away.

The subject walked towards Named Employee #1 and pushed him in his chest to move Named Employee #1 out of the way. Named Employee #1 then grabbed the subject's left arm. The subject began screaming that Named Employee #1 had no right to touch him and pulled away. Named Employee #1 decided at that point that further de-escalation was not possible.

In order to prevent the subject from leaving the scene and place him under arrest, Named Employee #1 moved the subject against the wall and told him to sit down. The subject did not do so and tried to push past Named Employee #1. Named Employee #1 informed the subject that he was under arrest for obstruction and was eventually able to take him down to the ground. Named Employee #1 held the subject down on his left side until the sergeant came over to assist. Together with the sergeant, Named Employee #1 was able to place the subject into handcuffs. During the entirety of this incident, the subject continued to resist the officers. As a result of the force, the subject suffered minor scrapes to his arm and knee.

The force used was captured, in part, by surveillance video. The video showed the subject being taken to the ground, but the interaction was then largely blocked by a parked vehicle. Based on the OPA Director's review, the video did not show any of the officers striking the subject or using any force inconsistent with what they reported.

When interviewed by an acting sergeant at the precinct, the subject claimed that the officers' force was unjustified and that he was thrown to the ground. The subject did not allege that he was struck or that any additional force was used against him. The subject did not cooperate with OPA's attempts to interview him. OPA was able to reach him by phone prior to the conclusion of its investigation and, as reported by the assigned OPA investigator, the subject "said he did not want to be interviewed by OPA unless he could benefit financially from the complaint."

The acting sergeant also interviewed the subject's girlfriend who was upset by the officers' actions, but admitted that the subject was resisting. The force she described was in line with that recounted by both Named Employee #1 and the subject.

The acting sergeant lastly interviewed a security guard employed by the shelter. He stated that the officers' actions were largely defensive in nature and asserted his belief that the officers' conduct was "appropriate."

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.)

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, the OPA Director believed it clear that there was probable cause to arrest the subject for both criminal trespass and obstruction. When the subject tried to push past the Named Employee #1, which was undisputed, Named Employee #1 was justified in using force to prevent him from doing so and to take him into custody. Moreover, the level of force used by Named Employee #1 – grabbing the subject's arm, taking him down to the ground, holding him down, and then placing him into handcuffs – 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 #1 believed that there was no reasonably effective alternative and that the degree of force was reasonable to effect the lawful purpose of preventing the subject from leaving the scene, to place him under arrest, and to handcuff him.

Third, with regard to the proportionality of the force, Named Employee #1 used force commensurate with the subject's conduct, and only that level of force needed to prevent the subject from leaving the scene, to control his person, to place him under arrest, and to handcuff him. Notably, at the time the force was used, the subject was actively resisting the officers' attempts to take him into custody.

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*.

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.