



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 16, 2018

CASE NUMBER: 2017OPA-0865

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Named Employees in this case responded to a domestic violence incident involving a known suspect. That suspect – the Complainant in this case – fled the scene as officers were arriving in the area. A foot pursuit ensued, and a K9 was utilized. The suspect was subsequently apprehended and, during that apprehension, force was utilized. The use of force was reported and documented. During the screening of his arrest, the Complainant alleged the Named Employees violated SPD’s use of force policy when they took him into custody. The Complainant specifically alleged that he was subjected to a bite from the K9 that was outside of policy and constituted excessive force.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) responded to this call together as a two-officer car. NE#1 reported that he knew prior to contacting the Complainant that there was probable cause to arrest the Complainant for an outstanding arrest warrant for assault and that the Complainant may have been armed with a small knife. Upon arrival, NE#1 identified the Complainant as the wanted subject and attempted to take him into control and custody using verbal commands. The Complainant fled from NE#1 and continued to ignore verbal commands until NE#2 had cut off the Complainant’s escape route. NE#1 then used the threat of force, a Taser, to order the Complainant to the ground. Once the Complainant was prone on the ground and NE#1 had a cover officer in place, he moved into a position to assist NE#2 with the handcuffing procedure. NE#1 used a prone handcuffing technique consistent with training to assist NE#2 in taking the Complainant into custody.



The Complainant alleged that, during the prone handcuffing, his fingers were hurt and that an officer placed his knee on his back, causing him discomfort.

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 multiple 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.*)

When a subject flees from an attempted lawful arrest, an officer is justified in using reasonable force to take the subject into custody. It is consistent with Department training to order a non-compliant and resistive subject into the prone handcuffing position with a threat of force, even after they have apparently started to comply with police commands. The force that was reported and documented in the use of force investigation, namely prone handcuffing, was consistent with Department training and amounted to a use of a low level of physical force. It was further within policy given that the subject was wanted for a crime of violence, had fled the scene, ignored multiple lawful commands, and only appeared to discontinue his flight after being cut off from an escape route.

As such, I find that the force utilized by NE#1 and NE#2 was reasonable, necessary, and proportional, and thus consistent with policy. Accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #2 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #3 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

On the date in question, Named Employee #3 (NE#3) was a K9 handler who responded to assist officers in locating, controlling and taking into custody the Complainant. NE#3 was aware that the Complainant was being sought for a suspected crime of violence and had fled the police.

Typically, Seattle Police K9s track using a lead so that they may maintain control of the dog. However, here, NE#3 released the lead for her K9 as NE#3 made the decision to use the K9 as a force tool to take the fleeing Complainant into custody. In such a force application, it is likely that the K9 unit will bite the fleeing subject.

SPD Policy 8.300-POL-2(4) permits K9 handlers to release their dogs to physically engage or bite a subject if, among other factors, the subject is “engaging in active aggression or escaping.” Even in such situations, where a subject is not



armed, “the handler shall order the canine immediately to release the bite.” (SPD Policy 8.300-POL-2(4).) The application of force must still be reasonable under the totality of the circumstances. (Id.)

Here, the subject was engaging in active aggression and was attempting to escape and, accordingly, it was permissible for NE#3 to release her K9. Prior to doing so, NE#3 informed the subject to stop or else she would release her K9 and the subject did not do so. The K9 appeared to take hold of some of the Complainant’s hair with its mouth, but there is no evidence that the K9 actually bit the Complainant and it did not break the Complainant’s flesh as indicated in photographs taken of the Complainant after the incident. All in all, NE#3 estimated that the K9’s physical interaction with the Complainant lasted less than two seconds.

Given these factors, I find the force used by NE#3 through her K9 was reasonable, necessary, and proportional under the circumstances. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**