



## OFFICE OF POLICE ACCOUNTABILITY

### Closed Case Summary

Complaint Number 2017OPA-0536

Issued Date: 01/26/2018

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	<b>Not Sustained</b> (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	<b>Not Sustained</b> (Lawful and Proper)
Final Discipline	N/A

#### **INCIDENT SYNOPSIS**

The Named Employees arrested the complainant.

#### **COMPLAINT**

The complainant alleged that the Named Employees used unnecessary force while placing him into custody for robbery. The complainant alleged that this force caused him to suffer a dislocated shoulder.

## **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**

An Uber driver recovered a wallet that was left in the back of his vehicle. In the wallet was a driver's license, and the driver went to the address listed on the license. When he arrived at the address, which was an apartment, he was informed by the current resident that the person he was looking for no longer lived there. The current resident told the driver that another tenant in the building knew the former resident's new address. When contacted by the current resident and the driver, this resident, who was later identified as the complainant, demanded the return of the wallet and did not provide contact information for the former resident. When the driver refused to give him the wallet, the complainant shoved the driver against a wall and pushed his fist against the driver's throat. He also threatened to pepper spray and sic his dog on to the driver. Fearful of further physical harm, the driver threw the wallet towards the complainant and fled the scene. He then contacted the police and reported that he had been assaulted by the complainant.

The Named Employees were dispatched to the scene. Upon arrival, they met with the driver and the current resident. The driver reported that he had been assaulted and detailed the specifics of what had occurred. The current tenant corroborated the driver's statement. At that point, the officers believed that they had probable cause to arrest the complainant for the assault of the driver and they approached his apartment.

Upon first contact with the complainant, he refused to exit his apartment to speak with the officers, even though he was asked to do so a number of times. The officers, who observed the complainant's dog in his apartment, asked the complainant to come into the hallway to ensure that his dog could remain inside the apartment and did not represent a threat. After a back-and-forth, Named Employee #2 informed the complainant that he was under arrest. However, the complainant stated that he did not do anything and he then closed the door on the officers. He reopened his door and interacted with the officers again, but only because Named Employee #2 – purportedly as a ruse – threatened to kick his door down if he did not do so. During that time, he again refused to leave his apartment to speak with the officers, even after being informed additional times that he was under arrest. At one point, the complainant reached his hand into a dresser drawer. This concerned the officers, given the driver's report that he had been threatened with pepper spray. The officers thought it possible that the complainant was getting the pepper spray or another more dangerous weapon. For this reason, the officers then pulled the complainant outside of his apartment and into the hallway.

The Named Employees pulled the complainant towards them. The complainant resisted their attempts to do so. Named Employee #1 grabbed onto the complainant's left arm, while Named Employee #2 was holding his right arm. The Named Employees told the complainant repeatedly to stop fighting and resisting. At one point, Named Employee #2 told him that if he did not stop doing so he would be tased. After repeated physical resistance from the complainant, the Named Employees made the decision to perform a soft takedown on the complainant in order to get him onto the ground.

While he was on the ground, Named Employee #1 continued to hold on to his left arm and the complainant continued to try to pull it away. Named Employee #2 had the complainant's right arm and had moved it behind his back. The complainant complained of pain to his left arm and told Named Employee #1 to let go. While Named Employee #1 relieved some of the pressure on his arm, he told the complainant that he could not let his arm go as the officers needed to place him into handcuffs. The complainant indicated that his arm was in pain and that he could not put his arm behind his back. The officers, who had already called for backing units, continued to hold onto the complainant's arms but made the decision to front cuff him. The officers did so when the complainant was on his side. Once the complainant was handcuffed, the officers used no further force.

The complainant was frisked and the pepper spray was located in his pocket. He was transported to a medical center for treatment where he was diagnosed with a dislocated left shoulder. Due to the injury suffered, SPD's Force Investigation Team (FIT) was notified. FIT did an investigation into the incident, which included interviewing the Named Employees and the complainant.

In his FIT interview, the complainant stated that the officers pulled him out of his apartment, slammed him down to the floor, pushed his face into the ground, and pulled his left arm behind his back causing him to suffer an injury. At the time of the force, the complainant told the officers that they were causing him pain, but they would not stop. The complainant noted that he was 69 years old at the time of the incident, and that he was 5'3" and only around 129 pounds. The complainant also asserted that he was complying with the officers' commands at the time that the force was used. For these reasons and based on the injury that he suffered to his shoulder, the complainant asserted that the force used against him was excessive.

During its investigation, OPA contacted the complainant to request that he consent to an interview. The complainant indicated to OPA that he was still in pain from the incident and that he had not found an attorney yet. He further stated that he did not want to engage in a recorded interview with OPA until he both felt better and had retained an attorney. OPA was ultimately unable to interview the complainant.

The Named Employees' FIT interviews were consistent with their later interviews conducted by OPA. The officers reported using de minimis force during the incident; namely, control holds, a soft takedown, and the forcible manipulation of the complainant's arms in order to place him into

handcuffs. Although it was undisputed that the complainant was diagnosed with a dislocated shoulder, Named Employee #1 asserted that it was “hard to say” whether the force he used caused this injury. Named Employee #2 stated that she did not believe that her force caused the injury.

While there was no video of the incident, the audio of the Named Employees’ interaction with the complainant was captured on In-Car Video. This audio was largely similar to the officers’ recounting of the incident.

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.*)

SPD policy recognizes that whether force is reasonable needs to be “judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” (SPD Policy 8.000(4).) The policy also stresses that: “The calculus of reasonableness must allow for the fact that police officers are often forced to make split-second decisions—in circumstances that are tense, uncertain, dynamic and rapidly evolving—about the amount of force that is necessary in a particular situation.” (*Id.*)

Based on the OPA Director’s review of the evidence, it was found that the force used by Named Employee #1 was reasonable, necessary and proportional, and thus consistent with policy.

The OPA Director concluded that, at the time the force was used, the Named Employees had probable cause to believe that the complainant had assaulted the driver. As such, they had the legal authority to place him under arrest, handcuff him, and, if necessary, to use force to do so. Given the threat presented by the complainant’s dog, his refusal to comply with the officers’ orders that he leave his apartment, and his reaching into the dresser drawer, the Named Employees were entitled to use force to immediately take him into custody. The force used was minimal, consisting of control holds, the gripping of the complainant’s arms, and a soft takedown to the ground. Moreover, the officers were permitted to continue to use force when the complainant kept struggling against them and resisting their attempts to handcuff him. Once the complainant was on the ground and stopped resisting, the force was moderated and Named Employee #1 stopped trying to pull the complainant’s right arm behind his back. While the advanced age and small stature of the victim weighed against a finding of reasonableness, the vast majority of the factors supported a determination that the force was reasonable. Lastly, that the force very likely caused the injury to the complainant’s shoulder did not make it per se unreasonable. Indeed, the level of injury was not a factor under the reasonableness analysis.

For these reasons, the OPA Director found the force used by the Named Employees to have been reasonable.

The OPA Director also concluded that the force used to remove the complainant from his apartment, place him under arrest and handcuff him, and prevent him from further resisting was necessary to effectuate the officers' lawful purpose. Prior to using the force in question, the officers unsuccessfully attempted to get the complainant to comply with their requests to exit his apartment in order to place him under arrest. Had the complainant done so, it was likely that no force would have been used.

Lastly, the OPA Director concluded that the force used was proportional to the threat perceived by the officers and to the resistance from the complainant. Again, that the force resulted in injury was certainly unfortunate, but it appeared to have been an inadvertent result. Moreover, that an injury occurred did not necessarily compel a finding that the force be deemed not proportional and, thus, outside of policy.

For the same reasons as above, the OPA Director found that the force used by Named Employee #2, which largely mirrored that used by Named Employee #1, was also reasonable, necessary and proportional.

## **FINDINGS**

### **Named Employees #1 and #2**

#### Allegation #1

The preponderance of the evidence showed that the force used by the Named Employees 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.*