



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 10, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0457

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	8.300 – POL -3 Use of Force - Firearms 9. Pointing a Firearm at a Person is Type I Reportable Force	Not Sustained (Unfounded)

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 Complainant alleged that Named Employee #3 improperly aimed his handgun at the Complainant and his friends while tracking a vehicle. Additionally, the Complainant alleged that officers, including Named Employee #1 and Named Employee #2, subjected an individual to excessive force.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

Officers, including the Named Employees, responded to a burglary in progress/looting call in Downtown Seattle. As Officers arrived, a vehicle fled the scene by driving on the sidewalk at a high rate of speed, nearly striking pedestrians and Named Employee #3 (NE#3). NE#3 ran after the vehicle and followed it as it turned the corner, but the vehicle drove away without stopping.

Immediately after the vehicle fled, multiple individuals began to run out of the previously boarded up window of a nearby business. Named Employee #1 (NE#1) apprehended one of these individuals – referred to here as the subject – and used force to take him down to the ground and then place him into custody with other officers, including Named Employee #2 (NE#2). The subject resisted handcuffing by twisting and turning his body. The Body Worn Video (BWV) showed that NE#2 had his knee on the subject’s back, adjacent to his neck area. BWV also shows that



NE#1 also had his knee on the subject's back as the subject was handcuffed. The BWV clearly confirmed that, on neither occasion, did the officers' knees make contact with the subject's neck. The subject was then transferred to the custody of a nearby King County Sheriff's Deputy. The subject broke free from the Deputy and had to be apprehended again. The Seattle Fire Department (SFD) was requested and examined the subject. No injuries to the subject were noted by SFD. Ultimately, the subject was booked into King County Jail for investigation of burglary.

The Complainant witnessed the arrest and force, and filmed portions of the incident on his phone. The Complainant later filed this complaint in which he alleged: (1) that NE#3 pointed his firearm at the Complainant and his friend; and (2) that either NE#2 or NE#3 applied his knee to the arrested subject's neck. This investigation ensued.

As part of its investigation, OPA reviewed the video provided by the Complainant, as well as BWV recorded by the involved officers. OPA also reviewed the written documentation of the incident, including use of force and arrest reports. OPA further reviewed training for how SPD teaches combative handcuffing. Lastly, OPA interviewed the Complainant and his friend who was with him during the incident. OPA did not interview the subject as he could not be located. The subject was interviewed at the scene by a patrol supervisor and, at that time, stated that officers slammed him to the ground. He indicated, however, that he did not think that the officers were trying to hurt him. The subject did complain of shortness of breath and stated that he had asthma, but he never alleged that his airway was restricted or reported any other injuries that would have been consistent with a neck restraint.

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.*)

As discussed above, the BWV confirmed that neither NE#1 nor NE#2 placed their knee on the subject's neck at any time. With regard to the force they did use, OPA finds that it was consistent with policy. This force included pulling the subject down to the ground, controlling his body, and handcuffing him. Given the subject's active physical resistance, both NE#1 and NE#2 placed their knees on the top of the subject's back in order to secure him to the ground. This was reasonable, necessary, and proportional and effectively ensured that the subject did not harm the officers and that no higher-level force would need to be used.

Moreover, this force was consistent with the training received by NE#1 and NE#2 concerning handcuffing combative subjects. In that training, officers are instructed to place their knees across a subject's shoulder blades/back area, adjacent to the neck. The BWV shows that this is exactly what NE#1 and NE#2 did.

Given the above, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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 #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #1

8.300 – POL -3 Use of Force - Firearms 9. Pointing a Firearm at a Person is Type I Reportable Force

SPD Policy 8.300-POL-3 governs the pointing of a firearm by an officer. Doing so is reportable force. The policy does not, however, dictate exactly those circumstances in which the firearm may be pointed.

The Complainant asserted that NE#1 pointed a firearm at himself and his friend. However, the BWV establishes that this did not occur. What the BWV revealed was that NE#3 drew his firearm once he viewed the vehicle speeding away on the sidewalk and he held it in the “low ready” position, pointing down. He ran behind the vehicle as it sped around the corner and drove away. Even at that point, he did not raise his firearm. Ultimately, at no point did NE#3 point his firearm at a person.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**