



## CLOSED CASE SUMMARY

ISSUED DATE: JULY 23, 2019

CASE NUMBER: 2019OPA-0069

### 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)
# 2	6.180 - Searches-General e. Search Incident-to-Arrest/Custodial Search	Not Sustained (Management Action)

**Named Employee #3**

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

**Named Employee #4**

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)

**Named Employee #5**

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

**Named Employee #6**

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

**Named Employee #7**

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.***



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**EXECUTIVE SUMMARY:**

It was alleged that the Named Employees subjected the Complainants to excessive force. It was further alleged that Named Employee #4, who made the initial decision to use force, did not de-escalate prior to doing so. Lastly, it was alleged that Named Employee #2 may have conducted an improper cross-gender search of Complainant #1.

**ADMINISTRATIVE NOTE:**

This case was designated as a partial Expedited Investigation. This means that OPA, with the review and approval of the Office of Inspector General for Public Safety, believed that it could reach and issue recommended findings on the allegations against all of the Named Employees except for Named Employee #4 based solely on its intake investigation and without interviewing those Named Employees. As such, these Named Employees were not interviewed as part of this case. The allegations against Named Employee #4 were subject to a full investigation and he was interviewed.

**SUMMARY OF INVESTIGATION:**

Officers, including the Named Employees, were working at a demonstration in downtown Seattle. During the demonstration, a group of demonstrators blocked the intersection of 4<sup>th</sup> Avenue and Pine Street. After a period of time, a Department Lieutenant issued two dispersal orders over a patrol vehicle PA system. The Lieutenant directed the crowd to clear the intersection and informed the demonstrators that, if they did not do so, they could be arrested. Named Employee #4 (NE#4), the supervising Sergeant, set up a bicycle line behind the demonstrators. NE#4 asserted that this was consistent with Department training and tactics. NE#4 and other Named Employees gave the demonstrators verbal warnings to clear the intersection. While some of the demonstrators dispersed, others, including Complainant #1 and Complainant #2, did not do so. Complainant #1, who was holding a metal thermos in her hand, was standing facing away the officers and was pushing back towards them. Complainant #2 was standing next to Complainant #1. NE#4 described that Complainant #1 was yelling at the officers and that both Complainant #1 and Complainant #2 were deliberately refusing to comply with the lawful orders to disperse. While NE#4 did not necessarily perceive Complainant #1 to pose a significant physical threat, he stated that she was actively resisting the officers and that the thermos could potentially constitute a weapon.

At that point, NE#4 made the decision to take the Complainant into custody. He explained to OPA that he believed that, given what was going on around them, de-escalation was no longer safe or feasible. He reported that he pulled the Complainant backwards over the bicycle line and, at that time, Complainant #2 held onto Complainant #1 in an apparent attempt to prevent her from being arrested. Complainant #2 later confirmed that he did intentionally try to physically prevent the arrest of Complainant #1. NE#4 recounted that the combined weight of Complainant #1 and Complainant #2 caused them all to fall backwards and onto the ground. NE#4 stated that he held onto Complainant #1 while she was onto the ground and tried to secure Complainant #2 with his other hand. NE#4 stated that, at that point, he perceived Complainant #2 swinging his arm at him. The Body Worn Video (BWV) of this incident showed Complainant #2's arm moving in the direction of NE#4; however, OPA could not conclusively determine whether this was an attempted strike, as NE#4 believed, or an inadvertent movement on Complainant #2's part. While some of the Named Employees handcuffed Complainant #1, NE#4 focused on securing Complainant #2. This included holding Complainant #2 down to the ground by grabbing his body. NE#4 did not recall exactly what part of Complainant #2's body he grabbed. NE#4 stated that he did not see any officer knee Complainant #2 in the back. NE#4 told OPA that, once both Complainant #1 and Complainant #2 were secured in handcuffs, no further force was used on them. NE#4



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asserted that the entirety of the force used on the Complainants by the Named Employees was low level and was consistent with policy.

After she was taken into custody, Complainant #1 was pat frisked by Named Employee #2 (NE#2), a male officer. NE#2 patted Complainant #1's waistband and front jacket pocket while waiting for a female officer to arrive at their location. At that time, Complainant #1 alleged that she was being sexually abused. She further stated that a male officer was not permitted to search her. A female officer arrived at the scene and took custody of Complainant #1. Complainant #1's allegation of sexual abuse, as well as both Complainants' allegations of excessive force, were referred to OPA.

As part of its investigation, OPA interviewed Complainant #2, who reiterated his allegation of excessive force. Complainant #2 asserted that an officer injured him when he drove his knee into Complainant #2's back. He stated that he received medical treatment for these injuries. OPA attempted to speak with Complainant #1, but she refused to provide a statement. OPA also spoke to three civilian witnesses, all of whom denied observing seeing the Named Employees engage in excessive force. OPA additionally reviewed the documentation generated concerning this incident, including the General Offense Report and the use of force reports and review by the chain of command. Lastly, OPA reviewed the BWV, which fully captured the incident and the force.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegations #1**

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

For the same reasons as set forth below (see Named Employee #4, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #2 - Allegations #1**

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

For the same reasons as set forth below (see Named Employee #4, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #2 - Allegation #2**

***6.180 - Searches-General e. Search Incident-to-Arrest/Custodial Search***

Based on OPA's review of the video, the evidence conclusively disproved Complainant #1's allegation that she was sexually abused by NE#2. Indeed, OPA concludes that this allegation is frivolous.

However, this case raised the issue of whether it was appropriate under SPD Policy 6.180-POL-2(e) for NE#2 to conduct a search of the Complainant at the time of her arrest. This policy instructs that:



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- “Officers shall thoroughly search the persons of all arrestees who are taken into custody.”
  - “This search shall be conducted as soon as possible after the arrest and before transporting the prisoner(s). Evidence of any crime which is discovered in the course of a valid custodial search may be used to support whatever subsequent charge is appropriate.”
  - “Suspects will not be searched by officers of the opposite gender unless there is a reasonable likelihood that the suspect possesses a weapon or other object capable of causing injury or which could facilitate escape, or the officer believes that the suspect possesses objects which constitute evidence, which if not seized immediately could be destroyed, lost, or lose their value as evidence, and there is no officer of the same gender readily available to conduct the search.”

Here, several female officers were theoretically available and there was no evidence that NE#2 reasonably believed that Complainant #1 was armed or had evidence that she could readily destroy. As such, it appears that policy compelled the search to be completed by a female officer.

As discussed in several other cases (*see* 2018OPA-1107), OPA feels that this policy is too restrictive. For example, during an ongoing demonstration, it may not be feasible to have a female officer leave her post and come to where a detainee is in order to conduct the search. Moreover, it simply may not be safe to do so. However, based on the plain language of the policy, this would be required. For these reasons and for the reasons set forth in the other similar cases, OPA reiterates the below Management Action Recommendation.

- **Management Action Recommendation:** OPA recommends that the Department revise the language of SPD Policy 6.180-POL-2(e) to include an exception from the requirement of a cross-gender search where no officer that shares the arrestee’s gender will be able to respond to the scene within a reasonable amount of time or where it is otherwise unreasonable under the circumstances. In those cases, officers should be permitted to search the arrestee incident to arrest, regardless of whether there is a reasonable likelihood that the arrestee is armed or possesses evidence that could immediately be destroyed, lost, or could lose its evidentiary value.

Recommended Finding: **Not Sustained (Management Action)**

**Named Employee #3 - Allegations #1**

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

For the same reasons as set forth below (*see* Named Employee #4, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #4 - Allegations #1**

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

When NE#4 made the decision to use force, the Complainants were among a group of demonstrators that were refusing to vacate a City street. They had been ordered multiple times to do so but deliberately did not comply with those orders. Indeed, they actively pushed back against the officers, which constituted physical resistance. At that



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time, there was probable cause to arrest both of the Complainants for obstruction among other crimes. With that legal authority came the right to use force, if appropriate, to effectuate the arrests.

NE#4's intent was to pull Complainant #1 backwards over the bicycle line in order to safely secure her in handcuffs. This was consistent with Department tactics and training. However, at that time, Complainant #2 was holding onto Complainant #1, which caused them to all fall down over the bicycles. That he was doing so is not only established by the BWV but also Complainant #2's own admission. Once they were on the ground, NE#4 reported that Complainant #2 attempted to strike him. Whether or not Complainant #2 was trying to hit NE#4 or his arm inadvertently moved in NE#4's direction, NE#4 reasonably believed that he was in danger of being assaulted at the time. The Named Employees collectively used body weight and control holds to secure the Complainants and then handcuffed them. Based on OPA's review of the BWV, there is no indication that this force was excessive in any respect. Moreover, even if an officer did put his knee in Complainant #2's back as he contended, this would be consistent with Department training for prone handcuffing a resisting arrestee and would not constitute undue force.

Ultimately, and based on the totality of the evidence, OPA finds that the force used by the Named Employees during this incident was reasonable, necessary, and proportional. As such, OPA concludes that they collectively acted consistent with policy and recommends that this allegation be Not Sustained – Lawful and Proper as against all of the Named Employees.

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

**Named Employee #4 - Allegation #2**

***8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force***

"De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance." (SPD Policy 8.100-POL-1.)

The policy further instructs that: "When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution." (*Id.*) Officers are also required, "when time and circumstances permit," to "consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors" such as "mental impairment...drug interaction...[and/or] behavioral crisis." (*Id.*) These mental and behavioral factors should be balanced by the officer against the facts of the incident "when deciding which tactical options are the most appropriate to bring the situation to a safe resolution." (*Id.*)



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The policy gives several examples of de-escalation, which include: mitigating the immediacy of the threat to give officers time to use extra resources and to call more officers or specialty units; and increasing the number of officers on scene to thus increase the ability to use less force. (*Id.*) Other examples of de-escalation include, but are not limited to:

- Placing barriers between an uncooperative subject and officers;
- Containing the threat;
- Decreasing exposure to the potential threat by using distance, cover and concealment;
- Avoidance of physical confrontation unless immediately necessary to protect someone or stop dangerous behavior;
- Using verbal techniques, such as “Listen and Explain with Equity and Dignity” (LEED) to calm an agitated subject and promote rational decision making;
- Calling extra resources, including CIT officers and officers equipped with less-lethal tools; and
- Using “any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject.

(*Id.*) De-escalation is inarguably a crucial component of the Department’s obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department’s policy and expectations.

Prior to using force, NE#4 organized a bicycle line to control the demonstrators. This was consistent with Department tactics and, as NE#4 explained, was purposed to create distance and shielding from the demonstrators. The Named Employees gave the Complainants multiple directions to leave the street, including two dispersal orders. NE#4 explained that he was unable to apply the LEED model or to use his CIT training given the circumstances of this incident.

At the time force was used, no further de-escalation was safe or feasible. This was due to the fact that the officers were dealing with an ongoing demonstration with multiple individuals engaging in violations of law and not complying with lawful orders. When Complainant #1 pushed back on the officers, NE#4 was permitted to use force in order to take her into custody and no further de-escalation was required.

For these reasons, I find that NE#4 properly de-escalated prior to using force and, as such, he complied with the requirements of this policy. Accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #5 – Allegation #1**

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

For the same reasons as set forth below (*see* Named Employee #4, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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



**Named Employee #6 – Allegation #1**

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

For the same reasons as set forth below (see Named Employee #4, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #7 – Allegation #1**

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

For the same reasons as set forth below (see Named Employee #4, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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