



## CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 5, 2018

CASE NUMBER: 2017OPA-0805

### 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)
# 2	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Lawful and Proper)
# 3	8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force	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	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Lawful and Proper)
# 3	8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force	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)
# 2	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Lawful and Proper)
# 3	8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force	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	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Lawful and Proper)
# 3	8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force	Not Sustained (Lawful and Proper)



## CLOSE CASE SUMMARY

OPA CASE NUMBER: 2017OPA-0805

### Named Employee #5

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Lawful and Proper)
# 3	8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force	Not Sustained (Lawful and Proper)

### Named Employee #6

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:	Not Sustained (Training Referral)
# 2	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Lawful and Proper)
# 3	8.400 - Use of Force Reporting and Investigation 8.400-TSK-6 Use of Force -RESPONSIBILITIES OF THE SERGEANT DURING A TYPE II INVESTIGATION	Not Sustained (Training Referral)

### Named Employee #7

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Allegation Removed
# 2	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Unfounded)
# 3	8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of 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 the Named Employees used excessive force when they took him into custody for a shoplift incident. The Complainant alleged that his head was slammed into the ground. In addition, OPA's review revealed that the supervisor, Named Employee #6, may have failed to properly classify the level of force used, failed to ensure proper reporting, and failed to screen this incident with FIT, in potential violation of policy.

Other potential misconduct stemming from this matter that was identified by OPA is being investigation in two separate OPA cases – 2017OPA-0805 and 2017OPA-1218.



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**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #1**

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

Officers were dispatched to a Safeway store based on a report that a shoplifting suspect was involved in an altercation with three loss prevention officers. Named Employee #3 (NE#3) was the first to respond and observed the subject struggling with the loss prevention officers. NE#3 attempted to assist but stopped going hands on when he realized that it would take more than de minimis force at that time to get the subject under control. He disengaged and contacted back up units for assistance. The subject left the Safeway and went into a nearby parking lot. At that point, the subject was approached by multiple officers, including NE#3, Named Employee #4 (NE#4), Named Employee #5 (NE#5), and a witness officer. NE#3, NE#4 and NE#5 took hold of the subject's person in an attempt to place him under arrest. The subject physically resisted their attempts to do so.

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) then arrived at the scene. The In-Car Video (ICV) from their vehicle presents the best memorialization of what occurred next and the force that was used. The ICV shows that NE#1 and NE#2 got out of their patrol vehicle and approached the subject. NE#1 used what he later described as a control technique to hold the back of the subject's head and push his body down to the ground. NE#2 went behind the subject, took hold of the subject's feet, and lifted them off the ground in an apparent attempt to push the subject forward in tandem with NE#1. At this point, NE#3, NE#4, and NE#5 were holding on to the subject's arms and body but did not actively participate in the takedown with NE#1 and NE#2.

The takedown was controlled initially, but when the subject's body was in the air and his head pointing down to the ground, it appeared that the officers appeared to lose their grip on him. It further appeared, however, that they were able to reassert their control of him at the moment before his head hit the ground and to mitigate his fall. However, the subject's head did appear to make contact with the ground before his body, even though it was apparently not with significant force. The subject was then handcuffed while lying on the ground.

The subject later complained to the officers that his head was slammed into the ground and that he lost consciousness. None of the Named Employees reported observing the subject's head being slammed into the ground. While they ceded that his head may have made contact with the ground, the Named Employees asserted that the contact was minimal and non-intentional. The Named Employees further did not report observing the subject lose consciousness. At the moment that the subject was taken down to the ground, the officers were surrounding him. As such, I cannot tell whether he was moving at that instant or conclusively verify whether he lost consciousness. From my review of the video, he did stay motionless for a period of time after the takedown. I further note, however, that several of the Named Employees reported prior experiences with the subject and knew that he had faked unconsciousness or seizures in the past. However, I cannot say whether that is what happened here.

SPD 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." (8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary



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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, I find that the force used in this instance was reasonable, necessary and proportional.

The officers had probable cause to place the subject under arrest and, when he resisted their attempts to do so, they were lawfully permitted to use force to secure his person and place him into handcuffs. I note that NE#1 and NE#2 were the primary officers involved in the use of force. The force they applied, an attempted soft takedown using body control holds, was necessary to effectuate the lawful purpose of taking the subject down to the ground. That they lost their grip on the subject was unintentional and does not yield the force outside of policy, even if his head did make contact with the ground before the rest of his body. I note that the force used by NE#3, NE#4 and NE#5 – holding onto the subject’s body during the takedown – was also necessary. Lastly, the force used by all of the Named Employees was proportional to the threat of harm and escape posed by the subject’s conduct. I note that no officer struck or used any other significant force against the subject.

Again, while certainly unfortunate, the fact that the subject may have lost consciousness does not, in and of itself, cause the force to be contrary to policy. Based on my review of the ICV, and applying a preponderance of the evidence standard, I find that the force was consistent with the Department’s use of force policy and I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#1, NE#2, NE#3, NE#4 and NE#5.

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

#### **Named Employee #1 - Allegation #2**

##### ***8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force***

SPD Policy 8.400-POL-1 requires that officers report all uses of force except de minimis force. The policy further requires that “[o]fficers shall thoroughly document all reportable uses of force to the best of their ability, including a description of each force application.”

Here, NE#1 and NE#2 were directed to complete Type I use of force reports by their sergeant, NE#6. They did so. NE#3, NE#4 and NE#5 were told by NE#6 that they did not need to complete use of force reports and they did not do so.

Based on my review of the video, it does appear that NE#1 and NE#2 together were the primary officers that effectuated the take down; however, NE#3, NE#4 and NE#5 also had physical contact with the subject. I agree, however, that this force was de minimis and they were not required to complete reports.

Moreover, as discussed more fully below, while I believe the force was misclassified by the supervisor as Type I, once that decision was made, NE#3, NE#4 and NE#5 were not required to complete witness officer reports. Had the force been properly classified, they would have been required to do so.

That being said, their ultimate failure to report does not fall on the officers. It was instead the responsibility of the sergeant. Once they were told by a supervisor that they did not have to complete reports, NE#3, NE#4 and NE#5 were permitted follow that direction.



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As such, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#1, NE#2, NE#3, NE#4 and NE#5.

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

**Named Employee #1 - Allegation #3**

***8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force***

SPD Policy 8.400-POL-2 requires that “officers, including witness officers, will verbally notify a supervisor immediately, unless not practical, following any use of reportable force.”

Based on my review of the evidence, it appears that NE#1, NE#2, NE#4 and NE#5 informed NE#6 or another supervisor of the force that was used and/or the subject’s allegations that his head was slammed into the ground and that he lost consciousness. NE#3 stated that he believed that he would have “definitely” told NE#6 this information. I find no evidence in the record to the contrary.

As such, and applying a preponderance of the evidence standard, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#1, NE#2, NE#3, NE#4 and NE#5.

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), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

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

***8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force***

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 #2 - Allegation #3**

***8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force***

For the same reasons as stated above (see Named Employee #1, Allegation #3), 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***

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

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

**Named Employee #3 - Allegation #2**

***8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force***

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 #3**

***8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force***

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #4 - 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), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

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

***8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force***

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)**



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**Named Employee #4 - Allegation #3**

***8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force***

For the same reasons as stated above (see Named Employee #1, Allegation #3), 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 stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #5 – Allegation #2**

***8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force***

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 #5 – Allegation #3**

***8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force***

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #6 – Allegation #1**

***8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:***

SPD Policy 8.400-POL-3 sets forth the responsibilities of a sergeant when evaluating a use of force. The policy requires the sergeant to review the incident and classify the force used. (SPD Policy 8.400-POL-3.)

Named Employee #6 (NE#6), who was the supervisor on that date, screened the incident with the other Named Employees and spoke to the subject. The subject repeated his allegations that his head was slammed into the ground and that he lost consciousness. Based on the subject's allegation that his head was slammed into the ground



and his claim that he lost consciousness, NE#6 should have initially classified this incident as a potential Type III use of force and should have screened this matter with the Department's Force Investigation Team (FIT). This was the case even though the involved officers doubted whether the subject lost consciousness. Moreover, even were this incident not ultimately deemed to be a Type III use of force and rejected by FIT, it should have at least been investigated as a Type II given the circumstances and allegations.

Instead, however, NE#6 classified the incident as a Type I and ordered only NE#1 and NE#2 to complete reporting relating to the incident as he deemed these officers as the only ones who used reportable force. Based on his screening of the incident, he believed that NE#3, NE#4 and NE#5 only used de minimis force. Moreover, as it was a Type I investigation, no witness reports were required and NE#6 did not order these other officers to complete any such reports.

While I believe that NE#6 misclassified this incident, I do not believe he intended to violate policy. As well as interviewing the officers and the subject, he also observed the subject's person and head and did not observe any readily identifiable injuries. This is reflected in the photographs that he took of the subject's face and head. NE#6 further noted in his use of force review that, when he responded to the scene, he was informed that the Seattle Fire Department had evaluated the subject and found no injuries, but reported that the subject's behavior was consistent with drug usage. He also noted that the subject was originally treated for an anxiety attack. Lastly, NE#6 indicated that he had a prior interaction with the subject in which the subject pretended to be unconscious and was non-responsive and where the subject was not found to have any injuries. These facts apparently led NE#6 to believe that the subject was malingering and that a Type I investigation was appropriate.

While I do not find these conclusions to be necessarily unreasonable, I conclude that SPD policy required a higher level of investigation under the circumstances of this case and based on the subject's allegations. That being said, I recommend that the allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#6 should receive additional training concerning the requirements of SPD Policy 8.400-POL-3. Specifically, NE#6 should be instructed by his chain of command that where the subject's allegations are that his head was slammed into the ground and/or that he lost consciousness, he should screen the incident with FIT and, at the very least, classify the use of force as Type II and investigate it accordingly. This re-training and associated counseling should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**

#### **Named Employee #6 – Allegation #2**

#### ***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation***

SPD Policy 5.002-POL-5 instructs that supervisors will either investigate or refer to OPA policy violations depending on their severity. Minor violations of policy may be investigated by the supervisor while serious misconduct must be referred to OPA. (SPD Policy 5.002-POL-5.)





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Here, NE#6 made an OPA referral based on the subject's allegation of excessive force. While there was a two day delay in reporting this matter to OPA, I do not find that this violated policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #6 – Allegation #3**

***8.400 - Use of Force Reporting and Investigation 8.400-TSK-6 Use of Force -RESPONSIBILITIES OF THE SERGEANT DURING A TYPE II INVESTIGATION***

SPD Policy 8.400-TSK-6 sets forth a sergeant's responsibilities during a Type II use of force investigation. However, as discussed above, in this case, NE#6 classified the force as Type I not Type II. He ordered that a Type I investigation be conducted and, accordingly, did not ensure that the elements of a Type II investigation be performed. He did, however, properly carry out his responsibilities in a Type I investigation.

While, as explained in the context of Allegation #1, I believe that NE#6 should have classified the force in this case as Type II or Type III, I do not find his failure to do so to be a violation of policy. Similarly, I also find that, while he should have ensured that the elements of a Type II investigation were carried out, his failure to do so did not violate policy. I accordingly believe that a training referral is the appropriate disposition of this allegation and I refer to the training referral set forth above. (See Named Employee #6, Allegation #1.)

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #7 – Allegation #1**

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

From my review of the record, I do not find that any officer aside from NE#1, NE#2, NE#3, NE#4 or NE#5 used force in this matter. As such, I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #7 – Allegation #2**

***8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force***

From my review of the ICV, there appeared to be one additional officer present during the incident. OPA identified this officer to be the witness officer. I note that the witness officer was a witness to this incident and was not a named employee. As such, there are no allegations against him. Regardless, I find that he did not use force and would not have been affirmatively required to complete a use of force report. Moreover, there is no indication that he was asked to complete a use of force witness report.

As such, I recommend that this allegation be Not Sustained – Unfounded as against an unknown officer.

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

**Named Employee #7 – Allegation #3**



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***8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force***

As with the above (see Named Employee #7, Allegation #2), I recommend that this allegation be Not Sustained – Unfounded.

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