



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 21, 2018

CASE NUMBER: 2017OPA-0899

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 (Unfounded) |
| # 2 | 8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis 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:

Named Employee #1 (NE#1) was off-duty when he was involved in a disturbance. This disturbance was reported by both the Named Employee and the other party, referred to herein as the subject, to the Kirkland Police Department (KPD). After the incident, the Named Employee also reported the incident to a SPD Assistant Chief who subsequently forwarded a complaint to OPA on behalf of the subject. The subject generally alleged that the Named Employee struck him with his vehicle and pointed his firearm at him. The Named Employee alleged that he never struck the subject with his vehicle or pointed a firearm at the subject. An independent witness and the report completed by KPD supported NE#1’s version of events.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The subject alleged that NE#1 pointed a firearm at him during an off-duty incident. Pointing a firearm at someone is reportable force under Department policy and, therefore, must be reasonable, necessary, and proportional to the threat perceived. Similarly, striking someone with a vehicle could, under certain circumstances, constitute a permissible use of force. However, this would likely be deadly force under SPD policy and it would need to be established that, at the time of the force, the threat of death or serious physical injury to the officer or others was imminent. (See SPD Policy 8.400-POL-4.)

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 several 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.*)



The allegation that an off-duty officer pointed a firearm at a subject as result of minor property damage absent some other cause would be disturbing if true. The KPD report documented that the subject provided two separate accounts of the alleged firearm pointing. One version was that NE#1 pointed the firearm at him and the other was that he flashed the gun. NE#1 admitted that he was wearing his firearm and badge on his waistband where it would have been visible. Moreover, I note that off-duty police officers are authorized by law and policy to be armed. It is also consistent with training that armed off-duty officers have their badge with them to identify themselves when necessary. It was likely that the subject saw the NE#1's firearm and badge. However, both NE#1 and an independent witness stated that NE#1 never un-holstered his firearm. The independent witness also reported that NE#1 never struck the subject with a vehicle and behaved professionally throughout the incident, as well as stated that the subject entered an intersection against the pedestrian signal.

Based upon OPA's investigation, the preponderance of evidence tends to show that NE#1 may have been the victim of a crime and suffered damage to his vehicle from the actions of the subject. The preponderance of the evidence, which includes most notably the independent witness's account and the KPD report, further indicates that NE#1 did not use reportable force during this incident. For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

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

It was alleged that, to the extent NE#1 used reportable force under Department policy, he may have failed to report that force as required.

Policy 8.100(1) requires that officers shall report all uses of force except de minimis force. The subject's allegation that NE#1 pointed a firearm at him and struck him with his vehicle would have been reportable force requiring a mandatory report to a supervisor.

However, as explained above, I do not find that NE#1 used reportable force. Therefore, he was not obligated to report force he did not engage in. I note that NE#1 did call KPD and also subsequently reported the incident to his chain of command.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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