



CLOSED CASE SUMMARY

ISSUED DATE: MAY 27, 2020

CASE NUMBER: 2019OPA-0906

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	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 3	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

Named Employee #2

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.

EXECUTIVE SUMMARY:

The Complainant alleges that he was falsely arrested by Named Employee #1 and that Named Employee #1 used excessive force during the arrest. The Complainant's father additionally alleged that he was subjected to excessive force by Named Employee #2.

ADMINISTRATIVE NOTE:

This case was designated as an 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 based solely on its intake investigation and without interviewing the Named Employees. As such, the Named Employees were not interviewed as part of this case.

SUMMARY OF INVESTIGATION:

On December 13, 2019, at approximately 6:00 p.m., Named Employee #1 (NE#1) was working a robbery emphasis shift with his partner at a Safeway grocery store near Rainier and Andover in South Seattle. While at the Safeway, NE#1 was approached by the Complainant, who indicated that he was searching for a check that he had misplaced. The Complainant made a request to speak with the Safeway manager, prompting NE#1 to direct the Complainant to the store manager. The store manager had a conversation with the Complainant, during which the Complainant asked to view store surveillance footage. The manager informed the Complainant that the computer system was not currently working, and that he would have to wait for another manager or return the next day.

After this discussion with the manager, the Complainant returned to NE#1, requesting that NE#1 help him search for the check. NE#1 advised the Complainant that he was unable to assist with a search but told the Complainant that



he might be able to procure a replacement check. When the Complainant requested NE#1's name and badge number, NE#1 attempted to provide the Complainant with a business card. The Complainant refused to accept the card. At that time, both NE#1 and the Complainant exited the Safeway. Shortly thereafter, the Complainant returned to the store, and again asked the store manager for access to security footage. In response, NE#1 reentered the store and escorted the Complainant outside by placing his hands on the Complainant's back and pushing him forward. The Complainant reentered the store at least two more times and, on each occasion, was escorted outside by NE#1.

OPA reviewed the Body Worn Video (BWV) associated with this incident. The BWV showed that, while NE#1 and the Complainant were outside of the Safeway, the Complainant spoke on his phone with a 911 operator. The 911 operator informed the Complainant that a sergeant would be sent to the scene. The Complainant eventually walked away from NE#1. The Complainant also began talking with an older man, who was later identified as the Complainant's father. After about two and a half minutes, the Complainant and his father returned to where NE#1 was standing, and, approximately two minutes thereafter, Named Employee #2 (NE#2) arrived on scene.

While NE#2 was on-scene, the Complainant approached NE#2. NE#1 walked over and informed NE#2 that the Complainant would have to be arrested because he had repeatedly failed to vacate the premises. Throughout the course of the arrest, the Complainant's father, who still had not revealed his familial relationship to the police, was asked by officers to step back, but he continued to move towards the Complainant. As the officers worked to place the Complainant under arrest and to handcuff him, the father again approached them, causing NE#2 to push him back with one open hand. After the arrest was effectuated, the Complainant's mother and another woman arrived at the Safeway. They both raised objections to the decision to arrest the Complainant.

Later at the South Precinct, the mother and father spoke to a sergeant to seek clarity regarding their son's arrest. Near the end of this discussion, the mother noted that the arrest took place on the south side of Seattle and that her son is a Black male. The father further stated that he did not appreciate being pushed by NE#2. Despite this statement, the father did not indicate that he was injured and there was no evidence that this was the case. On December 18, 2019, a complaint was filed with OPA and this investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

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.*)

Based on OPA's review of the totality of the evidence, OPA finds that the force used by NE#1 did not violate policy.

First, the force used to remove the Complainant from the Safeway was reasonable as it was purposed to effectuate a lawful order issued by NE#1.



Second, the force was also necessary under the circumstances as the Complainant did not comply with numerous verbal directions to leave the store and to not reenter it. As such, there was no other option available to NE#1 other than using force to physically remove the Complainant.

Third, the force was proportional as it was only that amount of force needed to ensure compliance with NE#1's lawful orders. The force appeared to be of a reasonable degree and did not appear to be any more expansive than necessary for the very limited purpose of removing the Complainant from the store. Notably, NE#1 used only low-level force. He did not strike the Complainant and there was no evidence that the Complainant suffered any injuries as a result of this incident.

Given the above, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy.

Based on OPA's review of the BWV, there appeared to be sufficient evidence to arrest the Complainant for criminal trespass. The Complainant had been repeatedly told by store staff that he could not access the security cameras at the store, and that he needed to return in the morning to do so. He was further believed by both NE#1 and store staff to be disruptive and impaired by alcohol. When he refused to leave the Safeway when told to do so and then returned after being specifically warned that this was not alleged, there was probable cause for his arrest.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #3

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

SPD policy prohibits biased policing, which it defines as "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal and local laws as well as other discernible personal characteristics of an individual." (SPD Policy 5.140). This includes different treatment based on the race of an individual. (See *id.*)

There is no support in the record for the assertion that the Complainant's arrest was based on bias. Indeed, the BWV establishes that the Complainant was arrested because he refused to leave the Safeway and then returned after being told not to do so. As such, his arrest was based on his conduct, not his race.

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



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

Named Employee #2 - Allegations #1

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

Based on OPA's review of the totality of the evidence, OPA finds that the force used by NE#2 was consistent with policy.

At the time that NE#2 pushed the father back, he was trying to arrest the Complainant and the father kept approaching towards him. NE#2 was permitted to use force to create distance between himself and the father in order to maintain scene safety. As such, the force was reasonable.

The force was also necessary given that the father did not comply with the initial directions for him to step back and he instead continued to advance towards the Complainant. The force was the primary means available to NE#2 to ensure that the father stayed back.

Lastly, the force was proportional under the circumstances. The push was not unduly hard and was meant only to create separation between the parties. Indeed, under SPD policy, NE#2 used the lowest level of force possible. Further, there was no indication that the force caused the father to suffer any physical discomfort or injury.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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