



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 30, 2018

CASE NUMBER: 2016OPA-0926

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	Force - Use - 8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	Stops, Detentions and Arrests - 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)

Named Employee #2

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

Named Employee #3

Allegation(s):		Director's Findings
# 1	Performance of Duty - 11.010 - Detainee Management in Department Facilities 2. Officers Will Assist Detainees with Reasonable Requests for Water and Restroom Access	Not Sustained (Unfounded)
# 2	Performance of Duty - 11.010 - Detainee Management in Department Facilities 19. Officers May Secure Detainees to a Fixed Object in the Holding Cell	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 forwarded a letter to OPA in which he alleged that Named Employee #1 and Named Employee #2 subjected the Complainant to excessive force. The Complainant further alleged that Named Employee #1 arrested him without probable cause. Lastly, the Complainant alleged that, while he was in the holding cell at the precinct, an Unknown Named Employee failed to allow him to use the restroom for over four hours and "maliciously" handcuffed him to the ground.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the OPA Auditor's review and approval, 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.



This case was not submitted to the OPA Auditor for review until after the 180-day deadline had expired. The Auditor then twice requested more investigation and that additional work was not completed due to heavy workloads. As such, the Director's Certification Memo in this case was not completed within the 180-day timeline set forth in the Collective Bargaining Agreement between the City of Seattle and SPOG.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant was arrested in connection with his threats to "shoot up" Rainier High School. He was alleged to be targeting his ex-girlfriend and his son. Officers were flagged down by high school students who told the officers that the Complainant had asked them whether the school had a metal detector. Named Employee #1 (NE#1) responded to the school and spoke with the school security officer, who gave NE#1 a photo of the Complainant. NE#1 then located the Complainant entering a nearby community center. NE#1 then made contact with the Complainant who, at the time, was wearing latex gloves. NE#1 reported his belief that this could be a potential active shooter situation. Named Employee #2 (NE#2), as well as another officer, came to the scene and assisted NE#1 in taking the subject into custody. The Complainant resisted the officers' attempts to do so and, at that time, NE#2 recovered a handgun from the Complainant's waistband. NE#1 and NE#2 then took the Complainant down to the ground. While on the ground, the Complainant punched and bit NE#1. NE#1 and NE#2 used force, including punches and baton strikes, to stop the Complainant's assaultive behavior and to get him under control. The baton strikes were to the Complainant's torso. Once the Complainant was in custody, the force ceased.

The Complainant later alleged that the Named Employees subjected him to excessive force during his arrest and then again when he was "maliciously" handcuffed to the ground while at the precinct.

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.*)

With regard to the force that was used at the outset, I find that it was consistent with policy. First, the force was reasonable. The officers believed that the Complainant was planning a school shooting, he was armed, and he physically fought the officers when they attempted to take him into custody, at one point assaulting NE#1. As such, it was appropriate to use force to place him under arrest and to eliminate the threat of further injury. Moreover, the force was also necessary as there was no reasonable alternative to the force at the time and because the force was needed to effectuate the officers' lawful purpose. Lastly, the force used, punches and baton strikes, was proportional to the threat posed by the Complainant. Indeed, NE#1 suffered multiple injuries from the incident and, had a sufficient level of force not been used, both he and the other involved officers could have been further harmed. Notably, after the Complaint was secured in custody, the officers modulated their force.



With regard to the Complainant's allegation that he was "maliciously" handcuffed to the floor of the holding cell, I find no evidence in the record supporting that this occurred.

For the above reasons, I recommend 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 #1 - Allegation #2

Stops, Detentions and Arrests - 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.

As discussed above, there was abundant probable cause for the arrest of the Complainant. The officers believed that he was a potential active shooter and, in fact, he was armed at the time he was detained. For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #1

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

For the same reasons as stated above (see Named Employee #2, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #1

Performance of Duty - 11.010 - Detainee Management in Department Facilities 2. Officers Will Assist Detainees with Reasonable Requests for Water and Restroom Access

SPD Policy 11.010-POL-2 concerns detainee management in Department facilities. Specifically, the policy states that officers will assist detainees with reasonable requests for water and restroom access.

The Complainant stated that he requested bathroom access but that an unknown officer refused to allow him to do so for four hours.

Based on OPA's review of the record, there was no evidence supporting that the Complainant was refused bathroom access. Moreover, OPA could not identify who, if anyone, was the Named Employee that allegedly did not allow him to use the bathroom. As such, I recommend that this allegation be Not Sustained – Unfounded.



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

Named Employee #3 - Allegation #2

Performance of Duty - 11.010 - Detainee Management in Department Facilities 19. Officers May Secure Detainees to a Fixed Object in the Holding Cell

SPD Policy 11.010-POL-19 concerns detainee management in Department facilities. Specifically, the policy states that officers may secure detainees to a fixed object in the holding cell.

The Complainant alleged that he was “maliciously” handcuffed to the floor while in the holding cell. As discussed above, there is no evidence that this ever occurred. As such, I recommend that this allegation be Not Sustained – Unfounded.

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