



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 9, 2018

CASE NUMBER: 2018OPA-0007

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)

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:

During an interview with the Department’s Force Investigation Team, the Complainant alleged that the Named Employee used excessive force during an arrest incident.

STATEMENT OF FACTS:

Officers, including Named Employee #1 (NE#1), responded to a call of a physical assault and a victim that had potentially been stabbed. When the officers responded to the location, they observed the subject, whose clothing was covered with blood and who was bleeding from facial injuries. The officers approached him in order to provide him with medical assistance; however, the subject was initially non-responsive. The subject then attempted to place his blood-covered arm around NE#1 and NE#1 asked him not to do that. NE#1 reported that he was concerned with blood-borne pathogens. NE#1 recounted that he heard bystanders saying that the subject could be HIV positive or have hepatitis.

The subject tried again to put his arm on NE#1 and turned to face NE#1 and lunged at him. NE#1 and the subject became involved in a physical altercation. Another officer and a King County Deputy tried to pull the subject off NE#1 and to take him down to the ground. They were able to do so. At one point, the subject, who was balled up on the ground, grabbed NE#1’s leg and bit his ankle. NE#1 exclaimed in pain. Both the other officer and the Deputy tried to pull the subject away but were unsuccessful. The subject was about to bite NE#1 again when NE#1 punched the subject twice in the facial/head area. The two strikes caused the subject to release NE#1’s leg. The officers were then able to subdue the subject and to prevent him from engaging in any further assaultive behavior.

Due to the subject’s injuries – which were virtually all suffered prior to the officers’ arrival at the scene – the Department’s Force Investigation Team (FIT) was notified. FIT responded to the scene and conducted an investigation into the force. As part of that investigation, FIT interviewed NE#1, other witness officers, and a number of civilian witnesses. One of those civilian witnesses – the Complainant in this case – told a FIT Detective that the officers used excessive force. She specifically stated that the officers “really overstepped their bounds.” The Complainant indicated to the FIT Detective that she wanted to file a complaint with OPA. When FIT attempted a follow-up interview with her, however, the Complainant alleged that she was having physiological problems due to drug withdrawal and she could no longer remember the incident. FIT interviewed a number of additional civilian witnesses, none of whom alleged



that the officers used excessive force. The accounts of these witnesses largely supported that conveyed by the officers. The subject refused to provide a statement to FIT.

The initial interaction between the subject and the officers, as well as the takedown of the subject to the ground, was not recorded on In-Car Video (ICV). However, the aftermath of the interaction, including a number of additional officers arriving at the scene to subdue the subject, was captured.

During its investigation, OPA reviewed the entirety of the FIT file, including the interviews conducted. OPA further interviewed NE#1. OPA endeavored to interview the Complainant, but she did not respond to OPA's attempts to contact her.

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.*)

Here, NE#1 punched the subject twice in the facial/head area after the subject bit him and as the subject was attempting to do so again. I find that this force was consistent with policy under the circumstances of this case.

First, the force used was reasonable to prevent the subject from biting NE#1. As NE#1 explained, he was concerned with the blood-borne pathogens on the subject's body. It follows that he was even more concerned when the subject bit his leg and attempted to do so again. As such, the force used, two strikes to the subject's facial/head area, was reasonable to prevent NE#1 from being bitten. The force was further necessary as I find that no reasonably effective alternative appeared to exist to NE#1 and that the degree of force was reasonable to effect the lawful purpose of preventing an ongoing assault and taking the subject into custody. Lastly, I find that the force used was proportional to the threat posed by the subject. Not only was NE#1 subjected to physical harm from multiple bites, but he was also subjected to the transmission of potentially life threatening medical conditions. Once the threat was eliminated after the strikes, NE#1 used no further force.

For these reasons, I find that the force used by NE#1 was reasonable, necessary, and proportional, and, thus, consistent with policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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