



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 21, 2018

CASE NUMBER: 2018OPA-0396

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 7. No Supervisor Who Used, participated in, or Ordered Reportable Force	Not Sustained (Lawful and Proper)
# 2	8.300-POL-9 Use of Force – HOBBLE RESTRAINT 1. Officers May Use the Hobble Restraint to Temporarily Control Violently Combative Subjects	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)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 3	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)

Imposed Discipline

Oral Reprimand

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:

It was alleged that Named Employee #1 reviewed a use of force that he also ordered, which may have been inconsistent with policy. Moreover, it was further alleged that Named Employee #1 may have instructed Named Employee #2 to use a hobble restraint that was impermissible under the circumstances. Lastly, it was alleged that Named Employee #2 used excessive force and was unprofessional towards the Complainant.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

8.400 - Use of Force Reporting and Investigation 7. No Supervisor Who Used, Participated in, or Ordered Reportable Force

As discussed more fully below, officers attempted to take the Complainant into custody and, during that time, he was physically resistive. This included moving his legs and kicking the officers. Based on the Complainant’s conduct, Named Employee #1 (NE#1), who was the supervisor on scene, instructed Named Employee #2 (NE#2) to apply handcuffs to the Complainant’s ankles to restrain him. NE#2 did so and then put his body weight on the Complainant’s legs. At this time, the Complainant began to make multiple complaints of pain and injuries, including



that he had suffered broken bones. NE#1 ensured that the Complainant received medical assistance and, after examining the Complainant, found no evidence that he had suffered any injuries consistent with those he claimed. NE#1 classified the force as Type II and ordered that force reports be written. NE#1 also reviewed the force prior to submitting the reports and his review to his chain of command for their further review and approval.

SPD Policy 8.400-POL-7 states that no supervisor who used, participated in, or ordered reportable force may conduct the force investigation, unless impractical.

At his OPA interview, NE#1 explained that, while he instructed that handcuffs be applied to the Complainant's ankles, he did not believe this to be reportable force and, as such, he did not believe that he was precluded from reviewing this incident. NE#1 stated that his belief that this was not reportable force came from his review of policy and his discussions with his Lieutenant. OPA also interviewed the Lieutenant who confirmed his understanding that the use of handcuffs on ankles was not a hobble restraint and that, unless the handcuffing was accompanied by a complaint of pain or injury, he viewed it as a non-reportable use of force. The Lieutenant confirmed that he relayed this to NE#1.

In further explaining why he completed the force review in this case, NE#1 stated that he was the only Sergeant on shift at the time. The other First Watch Sergeant had left work early and was unavailable.

Based on my review of the record and the applicable policies, I agree that the use of the handcuffs did not constitute a hobble restraint. I further agree that, absent a complaint of pain or an injury, the use of the handcuffs on the Complainant's ankles was not reportable force and, thus, it did not preclude NE#1 from later reviewing the force. Lastly, even if it did, given that there were no other available Sergeants on shift, it would have been impractical for NE#1 to not have performed the review.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

8.300-POL-9 Use of Force – HOBBLE RESTRAINT 1. Officers May Use the Hobble Restraint to Temporarily Control Violently Combative Subjects

SPD Policy 8.300-POL-9 governs hobble restraints. The policy states that a hobble restraint may be used, under certain circumstances, to temporarily control violently combative subjects. (SPD Policy 8.300-POL-9(1).) The policy defines a hobble restraint as “a strap designed to restrain a subject's feet.” (*Id.*) The policy instructs how the hobble restraint is to be used (*see* SPD Policy 8.300-POL-9(2)), and that, once used, the subject must be closely monitored to ensure there are no adverse health effects. (*See* SPD Policy 8.300-POL-9(3).)

Based on a review of the record, NE#1 instructed NE#2 to handcuff the Complainant's ankles to restrain him and to prevent him from further kicking officers. A strap was not used to do so. As such, per the definition set forth in the policy, no hobble restraint was used. For this reason, this policy is inapplicable to this case and I recommend 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

The Complainant's cousin called 911 to report that the Complainant had been strangling his girlfriend, who was almost nine months pregnant. The Complainant had previous domestic violence incidents with his girlfriend, one that involved him threatening her with a firearm. When the officers arrived at the scene, the Complainant was no longer there. The girlfriend later called 911 to report that the Complainant had returned. The officers again came to the scene and located the Complainant.

Several officers attempted to arrest the Complainant and took him to the ground. NE#2 arrived on the scene and saw the other officers trying to take the Complainant into custody. NE#2 recounted that the Complainant was struggling against them and was preventing the officers from securing his person. This included kicking at the officers. NE#2 also stated that he observed the Complainant reaching to his pants and starting to roll over. NE#2 was worried that the he could be reaching for a firearm. NE#2 was instructed by NE#1 to handcuff the Complainant's ankles together to prevent him from further kicking. While doing so, he placed his knee on the Complainant's leg and put his body weight on the Complainant to prevent him from further kicking. Ultimately, the officers stopped using any force on the Complainant and placed him on a gurney. The Complainant asserted that his bones were broken. This was construed to be an allegation of excessive force and this matter was referred to OPA.

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 my review of the record, I find that the force used by NE#2 was reasonable, necessary, and proportional. The officers had a lawful basis to take the Complainant into custody. With that legal authority came the right to use force where necessary and appropriate. Here, the Complainant continually resisted against the officers, including kicking them. It was accordingly reasonable to use force to handcuff his ankles and to place body weight on the Complainant's legs and person to prevent him from further resisting. I also find that NE#2 modulated and then ceased his force once the Complainant was secured and under control.

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 #2

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional



During the arrest of the Complainant, NE#2 told him to “stop mething around.” This was apparently a joke made by NE#2 relating to the broken narcotics pipe that was found on his person. Moreover, at the time NE#2 was holding down the Complainant’s legs, the Complainant complained of pain and injuries. NE#2 called the Seattle Fire Department to request medical assistance for the Complainant and, when doing so, stated over the radio: “Can you send Fire for a 20-year-old, supposed male, that’s crying like a baby about his leg being broke.”

Both comments were alleged to have been unprofessional by the Complainant. The Complainant told OPA that he believed that NE#2 was making fun of him and that this caused him to feel disrespected and humiliated.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

Based on my review of the record, I find that NE#2’s statements to the Complainant were unprofessional and violated policy. The statements served no legitimate law enforcement purpose and, as such, were unnecessary. They were demeaning and contemptuous towards an individual who was already under arrest and posed no further threat to NE#2. These statements undermined public trust in NE#2, his fellow officers, and in the Department as a whole. For these reasons, I recommend that this allegation be Sustained.

I note that, at his OPA interview, NE#2 recognized that his comments were unnecessary. When asked whether he believed that they were professional, he stated: “I guess not.” He told OPA that he now understood that he was not “allowed” to make such statements and provided the following comment: “I will do my very best to behave as though I’m reading from a script at a pre-arranged event, or reading from a teleprompter, or that I’ve rehearsed everything that happens, because I believe that is the standard expected of Police Officers in this Department.”

This comment misses the point. There is no expectation that NE#2 should read from a script or act like a robot. There is an expectation, however, that NE#2 will not make contemptuous, disrespectful, and unnecessary statements to those he interacts with, including individuals he arrests. This is not an unreasonable expectation and is not complex to carry out. Moreover, I do not believe that NE#2, given that he is one of the most competent, ethical, and dedicated officers that I have met, cannot and does not understand this concept and why it is so important. I hope that he does not take as the lesson from this case that he should shut down. To the contrary, he should fully engage with those he interacts with, but strive to do so in a respectful and compassionate matter.

Recommended Finding: **Sustained**

Named Employee #3 - Allegation #3
8.200 - Using Force 2. Use of Force: When Prohibited



SPD Policy 8.200-POL-2 states that force is prohibited: “On restrained subjects (e.g. including handcuffed or contained in a police vehicle) except in exceptional circumstances when the subject’s actions must be immediately stopped to prevent injury, or escape, destruction of property. All such force shall be closely and critically reviewed.”

As discussed above, I conclude that the force used by NE#2 was appropriate and consistent with policy. Accordingly, I do not find that it was prohibited in any respect and I recommend that this allegation be Not Sustained – Unfounded.

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