



## CLOSED CASE SUMMARY

ISSUED DATE: JUNE 5, 2019

CASE NUMBER: 2018OPA-0656

### 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	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint	Not Sustained (Lawful and Proper)
# 3	8.200 - Using Force 6. Following a Use-of-Force, Officers Shall Render or Request Medical Aid, if Needed or if Requested By Anyone, as Soon as Reasonably Possible	Not Sustained (Training Referral)
# 4	16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video	Not Sustained (Training Referral)

**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	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint	Not Sustained (Lawful and Proper)
# 3	8.200 - Using Force 6. Following a Use-of-Force, Officers Shall Render or Request Medical Aid, if Needed or if Requested By Anyone, as Soon as Reasonably Possible	Not Sustained (Training Referral)
# 4	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)
# 5	16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video	Not Sustained (Training Referral)

**Named Employee #3**

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 6. Following a Use-of-Force, Officers Shall Render or Request Medical Aid, if Needed or if Requested By Anyone, as Soon as Reasonably Possible	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 alleged that he was subjected to excessive force. It was further alleged that the Named Employees may not have timely provided the Complainant with medical treatment. It was also alleged that Named Employee #2 may have made an unprofessional statement towards the Complainant. Lastly, it was alleged that Named Employee



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#1 and Named Employee #2 failed to record Department video and did not document that failure to record as required by policy.

**ADMINISTRATIVE NOTE:**

SMC 3.29.260(G) states the following: "If the OIG has not advised OPA of concerns with the investigation within ten days after being notified that an investigation has been preliminarily completed the OPA Director may certify the case and issue findings. In these instances, OIG is precluded from requiring further investigation." OPA routed this case to the Office of Inspector General for Public Safety (OIG) for review and certification on May 15, 2019. At that time, OPA indicated that its investigation was complete. However, as of the date of this Director's Certification Memo and more than ten (10) days after the date of provision of the case to the OIG, the OIG has not responded to certify the case or to direct that additional investigation be completed. Accordingly, consistent with the SMC, I certify this investigation as thorough, objective, and timely and proceed to issue the recommended findings set forth herein.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegations #1**

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

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were working together on patrol when they drove past a Bartell's store. They observed a store employee pursuing someone carrying a red basket full of items. The officers reported that the store employee told them that the individual, who was later identified as the Complainant, was shoplifting. NE#1 and NE#2 told the Complainant to stop and, when he did not, they began chasing him. NE#1 and NE#2 reported that they took the Complainant down to the ground using a controlled takedown. NE#1 and NE#2 then placed the Complainant under arrest and handcuffed him.

The Complainant later alleged that NE#1 and NE#2 slammed him to the ground and that his head was "bounced off the concrete." If true, this allegation would potentially constitute excessive force on the officers' part.

The takedown was not captured on Department video. Both NE#1 and NE#2 late activated their Body Worn Video (BWV) and the force occurred out of view of their In-Car Video (ICV), which was timely activated. Moreover, while several civilian witnesses observed the foot pursuit, none saw the force.

OPA reviewed the force investigation conducted for this incident and, most notably, the photographs taken of the Complainant as part of that investigation. The photographs showed that the Complainant had a small laceration over his left eye, but no further injuries to his head and facial areas.

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.*)



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When applying a preponderance of the evidence standard, OPA credits the accounts of the force provided by NE#1 and NE#2. While there is no video of the incident or independent witness statements, the Complainant's injury is simply inconsistent with the force he described. Specifically, if the Complainant was slammed to the ground and his head was bounced off of the concrete, it follows that he would have suffered a more significant injury than a small laceration over his eye. That injury is more consistent with a controlled takedown and the Complainant's head scraping the concrete while he was being secured onto the ground.

The force used by NE#1 and NE#2 was reasonable. At the time they used force, they were aware that the Complainant had committed a burglary and that he was trying to flee. As such, the officers had probable cause to place the Complainant under arrest and, with that legal justification, came the right to use force, if necessary, to take the Complainant into custody. The force was also necessary as, at the time, there was no reasonable alternative to using a controlled takedown on the Complainant. Lastly, the force was proportional to the threat posed by the Complainant and the risk that he would escape. Notably, the evidence indicates that NE#1 and NE#2 ceased using force once the Complainant was in custody and that they only used that force needed to take him to the ground and to place him under arrest.

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**

***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint***

SPD Policy 5.002-POL-6 concerns the reporting of misconduct by Department employees. It specifies that minor misconduct must be reported by the employee to a supervisor, while potential serious misconduct must be reported to a supervisor or directly to OPA. (SPD Policy 5.002-POL-6.) The policy further states the following: "Employees who witness or learn of a violation of public trust or an allegation of a violation of public trust will take action to prevent aggravation of the incident or loss of evidence that could prove or disprove the allegation." (*Id.*)

After his arrest, the Complainant alleged to NE#2 that he was slammed onto the ground and that his head was "bounced off of the concrete." This information was conveyed to NE#2 after NE#2 had already called a supervisor, Named Employee #3 (NE#3), to the scene. When NE#3 arrived, NE#2 relayed the Complainant's allegations to him. At his OPA interview, NE#2 asserted that this satisfied policy. NE#1 also pointed to NE#2's reporting of the allegation as satisfying the requirements of policy on both of their behalves.

Based on my review of the evidence, including the BWV, I find that NE#1 and NE#2 complied with SPD Policy 5.002-POL-6 when NE#2 reported the Complainant's allegations to NE#3. As such, 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)**



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**Named Employee #1 - Allegation #3**

***8.200 - Using Force 6. Following a Use-of-Force, Officers Shall Render or Request Medical Aid, if Needed or if Requested By Anyone, as Soon as Reasonably Possible***

As discussed above, the Complainant suffered a laceration above his left eye during the incident. While in custody, the Complainant asked whether his face was bleeding. Neither NE#1 nor NE#2 responded. Three minutes later, the Complainant again asked about his bleeding face. NE#2 eventually responded to him that he had a "little cut." NE#1 called for a supervisor to come to the scene shortly thereafter. Around one minute later, the Complainant first mentioned to NE#2 that he was slammed to the ground and his head was "bounced off the pavement." Neither officer called for medical attention at that time. The Complainant repeated the statement concerning his head being bounced off of the pavement approximately 30 seconds later. Again, neither officer called for medical attention.

Approximately 12 minutes later, the Complainant asked if he could "go get [his] face looked at." He asked if he could go to the hospital and NE#1 initially said that he could not. He asked again and told NE#1: "My eye socket is like, fucked up man." At that point, nearly 17 minutes after the Complainant first referenced his injury and substantially longer after the injury was first suffered, NE#1 called for the Seattle Fire Department (SFD) to respond to the scene. SFD noted that the Complainant complained of a headache and diagnosed him with a small laceration. The Complainant was not transported to a hospital and was left in the custody of SPD.

SPD Policy 8.200-POL-6 states that: "Following a use of force, officers will request a medical aid response, if necessary, for suspects and others and will closely monitor suspects taken into custody." The policy further directs that officers "shall render or request medical aid, if needed or if requested by anyone, as soon as reasonably possible." (SPD Policy 8.200-POL-6.)

Based on OPA's review of the evidence and the plain language of the policy, OPA concludes that NE#1 and NE#2 did not timely request medical assistance for the Complainant. While the Complainant did not explicitly request medical attention, he repeatedly referenced the injury to his face and contended that it was caused when his face was struck with force against concrete. This should have been sufficient to trigger a request for medical aid by NE#1 and NE#2, if only to defend against a potential later allegation of misconduct.

The above being said, I do not believe that this warrants Sustained findings and, instead, recommend that NE#1 and NE#2 receive Training Referrals. I reach this conclusion based on the following: the fact that the Complainant's injury was minor; that the evidence suggests that his head was not struck against the concrete; and because the officers did, in fact, call for aid, even if belatedly.

- **Training Referral:** NE#1 and NE#2 should receive re-training concerning SPD Policy 8.200-POL-6 and, specifically, concerning the requirement that they request aid "as soon as reasonably possible." The officers should be counseled concerning their failure to do so here, especially given the Complainant's injury and his claims of excessive force. NE#1 and NE#2 should be encouraged to more closely comply with this policy moving forward. This re-training and associated counseling should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**



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**Named Employee #1 - Allegations #4**

***16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video***

SPD Policy 16.090-POL-1(7) requires that Department employees document the existence of video or the reason for the lack of video. Officers are required to note the failure to record in an update to the CAD Call Report, as well as to provide an explanation for the lack of a recording in an appropriate report. (SPD Policy 16.090-POL-1(7).)

Both NE#1 and NE#2 activated their BWV late. As such, they did not record their initial contact with the Complainant and the force they used. Moreover, neither NE#1 nor NE#2 documented their late activation.

At his OPA interview, NE#1 acknowledged that he did not document the late activation and stated that, at the time of this incident, he was not aware that he was required to do so by policy. He told OPA that he now understands this requirement. NE#2 asserted that he explained his late activation when he discussed exigency in his use of force report. However, NE#2's use of force reported stated "BWV activated," and provided no mention of the late activation, let alone the reason for why this occurred.

Given the above, I find that both NE#1 and NE#2 failed to comply with policy when they did not document the late activations of their BWV. However, I recommend that they receive Training Referrals rather than Sustained findings. Both officers should be on notice that future failures to document late or non-activations will likely result in recommended Sustained findings.

- **Training Referral:** NE#1 and NE#2 should be retrained as to the requirements of SPD Policy 16.090-POL-1(7). They should be reminded that, when they do not record video or experience a late activation, Department policy requires that they note this in an update to the CAD Call Log and explain the reason why it occurred in an appropriate report. Both officers should be informed that future failures to do so will likely result in recommended Sustained findings. This re-training and associated counseling should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #2 - Allegations #1**

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

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

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

**Named Employee #2 - Allegation #2**

***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint***



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

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

**Named Employee #2 - Allegation #3**

***8.200 - Using Force 6. Following a Use-of-Force, Officers Shall Render or Request Medical Aid, if Needed or if Requested By Anyone, as Soon as Reasonably Possible***

I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See Named Employee #1, Allegation #3.)

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #2 - Allegations #4**

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

After the Complainant was placed under arrest and while he was seated in the rear of the patrol vehicle, he complained of his injury to NE#2. In response, NE#2 engaged in a back-and-forth with the Complainant, during which NE#2 contended that the Complainant made a false accusation against him and NE#1. NE#2 further asserted that, had he actually slammed the Complainant to the ground and bounced his head off of the pavement, it would have caused a much more significant injury than a small laceration. Lastly, NE#2 told the Complainant to “stop acting like a freakin’ baby.”

NE#2’s chain of command identified that this interaction, and particularly his statement that the Complainant was acting like a baby, may have been unprofessional and referred this issue to OPA.

At his OPA interview, NE#2 explained that his reaction to the Complainant was based on his frustration with what he perceived to be a false accusation. He further explained to OPA that, after the incident had concluded, the Bartell’s employee did not even want to press charges, which he also found frustrating. When asked whether he thought that his statement concerning the Complainant acting like a baby was professional, NE#2 responded: “it was something that I probably could have went without saying.” NE#2 told OPA that he did not intend his statements to be derogatory, contemptuous, or disrespectful.

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 evidence, including NE#2’s OPA interview and the Department video of this incident, I do not believe that his statements to the Complainant rose to the level of a policy violation. However, I agree with NE#2



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that he should not have made them. OPA realizes that officers are not robots and they, like any other person, can get frustrated and lose their tempers. Officers cannot be held to a perfection standard but they are held to a higher standard than those they interact with. NE#2 appears to understand this and OPA hopes that he avoids engaging in similar interactions in the future.

Accordingly, and for the reasons set forth above, I recommend that NE#2 receive the below Training Referral.

- **Training Referral:** NE#2 should receive re-training concerning the Department's professionalism policy. NE#2 should be counseled concerning the statements he made to the Complainant. His chain of command should encourage him to avoid engaging in similar interactions in the future. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #2 - Allegation #5**

***16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video***

I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See Named Employee #1, Allegation #4.)

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #3 - Allegations #1**

***8.200 - Using Force 6. Following a Use-of-Force, Officers Shall Render or Request Medical Aid, if Needed or if Requested By Anyone, as Soon as Reasonably Possible***

Upon his arrival at the scene, NE#3 spoke with the Complainant. The Complainant, who had just been treated by SFD and medically cleared, said that he was dizzy and asked to be transported to the hospital. NE#3 did not arrange for the Complainant to be transported to the hospital at that time.

Given the totality of the circumstances, I do not believe that NE#3 violated policy when he did not transport the Complainant to the hospital. First, I find it compelling that the Complainant had just been medically evaluated and cleared by SFD and that SFD found no need to send the Complainant to the hospital for further treatment. Indeed, were I to decide the opposite, it would empower a subject to repeatedly receive treatment and ask for hospitalization until the subject received the desired result. Second, and as NE#3 noted, the Complainant received additional medical treatment from a nurse when he was booked into the King County Jail. I find it reasonable that NE#3 concluded that, to the extent the Complainant needed additional medical attention, he would receive it at that time.

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

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