

**Seattle Police Department
DISCIPLINARY ACTION REPORT**

FILE NUMBER
OPA 14-0216

RANK/TITLE
Officer

NAME
Adley Shepherd

SERIAL NUMBER
6849

UNIT
C020X

SUSTAINED ALLEGATIONS:

Violation of Seattle Police Department Policy & Procedure Manual Sections:

- **Using Force: Use-of-Force: When Authorized 8.100(1) Effective January 1, 2014**
- **Using Force: Use-of-Force: When Prohibited 8.100(2) Effective January 1, 2014**
- **Using Force: When Safe Under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force 8.100(3) Effective January 1, 2014**

SPECIFICATION:

On June 22, 2014, you were one of three officers to respond to a 911 call involving a report of threats. As you were interviewing the caller and her son, the female who had reportedly made the threats arrived on the scene. She denied making any threats. You believed her to be intoxicated. After two of the subjects began yelling at each other, you announced that "your patience was done," that someone was going to jail, and asked if you needed to do "eeny-meeny." You then arrested the female subject who was alleged to have made threats and placed her in handcuffs. The female continued to argue with you. You guided her to the car and pushed her into the back seat. While in the patrol car, the subject fell back, brought her leg up, and appeared to kick you. You moved backwards away from the kick and, while outside the car, stated "she kicked me." You then moved quickly back into the vehicle and struck the woman on the left side of her face with your right fist, causing serious and immediate injury including fracturing the woman's orbital socket. Your actions were recorded on ICV.

POLICY:

How and when officers use force is a central core of Department policy. Your conduct in punching the handcuffed subject was squarely outside of policy and contrary to the Department's mission to accomplish law enforcement objectives with minimal reliance on force.

Under Department policy (then section 8.100(1)), an officer is authorized to use physical force so long as it is reasonable, necessary, and proportional. Under the circumstances here, where the subject was handcuffed, inside a patrol car, and other officers were nearby, your use of force was in clear violation of this policy. Punching this subject in the face was neither reasonable nor necessary as there were ready alternatives to stabilizing the incident. For example, you easily could have:

- Expanded upon your initial reaction to step away from the subject's leg reach, rather than entering the patrol car to confront the subject, thereby escalating the situation.
- Utilized the other two officers on the scene. Indeed, in your OPA interview, you stated that you were aware of this tactical option.
- Attempted to secure the subject in the patrol car by simply closing the car door.
- Stepping back to reassess the situation, as there was no immediate threat.

Manual Section 8.100(2), as enumerated at the time, places great restriction on the use of force on a handcuffed individual. This section allows the use of force against handcuffed or otherwise restrained individuals only in

“exceptional circumstances.” Exceptional circumstances exist when the “subject’s actions must be immediately stopped to prevent injury, or escape, destruction of property.” Here, there were no such exceptional circumstances.

Manual Section 8.100(3), as then enumerated, required officers to use de-escalation tactics when safe and feasible under the totality of the circumstances. In this incident, the subject was handcuffed, in the back of your patrol vehicle, and appeared to be intoxicated. She was not armed, there was opportunity to create space between you and the subject, and two other officers were on scene to assist. The immediate use of force without an attempt to deescalate was a violation of this policy. You had time - and the responsibility - to assess the situation and consider options other than force, particularly in light of the vulnerability of this handcuffed subject. Your decision to use immediate, significant force when you could have readily availed yourself of time, distance, and the other officers on scene to your advantage to resolve the situation, was in violation of this policy.

EMPLOYEE RESPONSE:

During your interview with OPA, you maintained that your actions were appropriate, necessary, and consistent with policy. Despite having received extensive training on the Department’s Use of Force Policies and having in fact been trained to teach these policies to others as an Integrated Combat and Control Trainer, you claimed you had not received any Department training specific to a situation where a suspect is refusing to get into a patrol car. However, when asked in your OPA interview how you had dealt with similar situations in the past you noted that you would wait for another officer to go around to the opposite side of the patrol car and then move the subject into the patrol car while the other officer pulled the subject into the car from the opposite side. This is precisely what the Department training shows. You also noted in your OPA interview that although you had a prior contact with the subject, at the time of the incident at hand you did not recall encountering her before.

During your *Loudermill* hearing you reiterated your belief that your actions were appropriate. At no point did you recognize or consider that your actions may have violated policy. Indeed, you appeared to conflate lawfulness with policy, bringing in opinions of others to state that your conduct was lawful and constitutional. You focused on your prior contact with the subject, her character, and her history with law enforcement. You and your representatives asked that the Department review the opinions presented, your training history, and the FBI file in this matter before making a determination. You also noted that you believe you had been treated differently because of your race.

To ensure a full and fair investigation, I asked OPA to reopen its investigation to review the outside opinions presented at the *Loudermill*, your training history, and the FBI file. I also referred your concerns about unequal treatment to an EEO investigator for investigation. When OPA completed its additional investigation, you requested and were granted a second opportunity to meet with me. At this meeting you again denied that you had done anything wrong and again brought in others to re-state their previously-presented opinions regarding the constitutionality of your force during the incident. I recently received the findings of the EEO investigation, which found no violations of Department EEO policies.

DETERMINATION OF THE CHIEF:

In reaching my decision, I fully considered all of the information that was placed before me, including the statements and opinions you provided during your *Loudermill* and our second meeting. I am highly concerned by your apparent lack of understanding as to how your conduct was so starkly in contrast to the expectations set forth by Department policy and training. The fact that local and federal prosecuting authorities decided, after

review, not to bring criminal charges, is not material to whether your use of force was excessive under the substantially higher standard set forth under Department policy. I base my decision on Department policies and your actions in relation to those policies. In that regard, the opinions of others that you presented at the *Loudermill* hearing were unconvincing at best, concerning at worst, and certainly inconsistent with the expectations articulated in internal policies.

Despite reviewing the investigation and video evidence here, I am unable to find any exceptional circumstances that may have justified your use of force. At the heart of my decision is your failure to comply with restrictions on the use of force against a subject placed in handcuffs. I am unconvinced that your reaction was either a trained instinct or an unintentional response. Your instinctive movement away from the subject, and ability to process and formulate a verbal response prior to your physical response only reinforces this notion. Moreover, the level of force you used was not insignificant - quite the opposite, in fact. Your force seriously injured the subject and could have been lethal. Use of level III force is an aggravating factor under these circumstances. The subject was small, handcuffed, and supine in the back of your patrol car; common sense alone was sufficient to determine that the level of force used was not reasonable or necessary. You failed to use the various alternatives to force that were at your disposal, including backing officers, time, and distance.

You have received extensive training on the Department's Use of Force policies, as well as coaching on the use of force. You have, in fact, been trained to teach these policies to others and have acted as an Integrated Combat and Control trainer. Given all of this, your failure to acknowledge that your actions here were not consistent with Department policies is especially concerning.

I am deeply aware of the fact that officers are frequently charged with making difficult and often split second decisions in rapidly evolving circumstances, but this was not one of those occasions. Patience, and the ability to maintain control of emotions and actions, are paramount requirements for a police officer. This instance marks the second time you have displayed your inability to consistently exhibit these attributes, and the second time you have failed to take personal responsibility for the same. You previously received a ten day suspension in 2009 for violating a different SPD policy where your failure resulted in the death of a victim; as such, you should be acutely aware of the potentially dire consequences of disregarding policies created to protect the public. I cannot take the risk of affording you further opportunity to serve as a police officer for this City given your demonstrated lapses in judgment and restraint. Public safety and public trust remain at the forefront of my decisions as Chief, and this decision is not an exception. Your behavior toward and the decisions you made about the subject are deeply damaging to the Department's confidence in your ability to effectively function as a member of this police service. I do not have sufficient trust in your self-control or prudence to send you back into the field as a police officer.

For the reasons noted above and after full and fair consideration of your employment history and all of the facts before me, I have determined that your employment with the Department should be terminated. Your violation of Section 8.100(2) is serious enough that this violation, on its own, warrants termination.

Final Disposition

Termination of Employment

DATE

11/9/16

BY ORDER OF

CHIEF OF POLICE

Kevin M. Toule

APPEAL OF FINAL DISPOSITION

Appeals to a Commission:

SWORN EMPLOYEES : Public Safety Civil Service Commission

Employee must file written demand within ten (10) calendar days of a suspension, demotion or discharge for a hearing to determine whether the decision to suspend, demote or discharge was made in good faith for cause. SMC 4.08.100

CIVILIAN EMPLOYEES: Civil Service Commission

Before filing an appeal with the Civil Service Commission regarding suspension, demotion, or termination an employee must first go through the Employee Grievance Procedure provided by Personnel Rule 1.4. In order to comply with Rule 1.4, the employee must file the grievance within 20 calendar days of receiving the notice of the appointing authority's decision to impose discipline. After exhausting the Employee Grievance Procedure, if the employee is still dissatisfied, the employee must file his/her appeal with the Civil Service Commission within 20 calendar days of the delivery of the Step Three grievance response. See also SMC 4.04.240, 4.04.260, and Personnel Rules 1.4.

PROBATIONARY EMPLOYEES: Pursuant to SMC 4.04.030 and 4.04.290, employees who have been appointed to a position within the classified service but who has not completed a one (1) year period of probationary employment are "probationary employees" and are subject to dismissal without just cause. An employee dismissed during their probationary period shall not have the right to appeal the dismissal. SMC 4.04.290(c) and City of Seattle Personnel Rule 1.3.2E.

Alternative Appeal Options for Represented Employees:

SPOG Members: For employees represented by SPOG, the Disciplinary Review Board (DRB) may be an alternative appeal process for suspensions, demotions, terminations, or transfers, identified by the City as disciplinary in nature. Consult your collective bargaining agreement or SPOG representative to determine eligibility, notice periods, and details of the process. The DRB is available as an alternative only, and not in addition to an appeal to the Public Safety Civil Service Commission.

SPMA Members: For employees represented by SPMA, the grievance process may be an alternative appeal process for suspensions, demotions, or terminations. Consult your collective bargaining agreement or SPMA representative to determine eligibility, notice periods, and details of the process. The grievance process is available as an alternative only, and not in addition to an appeal to the Public Safety Civil Service Commission.

Represented Civilian Employees: Grievance and arbitration may be an alternative appeal process. Consult the applicable contract or a union representative to determine availability, notice periods, and details of process. Binding arbitration is available as an alternative only and not in addition to an appeal to the Civil Service Commission. SMC 4.04.260C