



## CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 29, 2017

CASE NUMBER: 2017OPA-0004

### 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 (Inconclusive)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Inconclusive)

***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 the Named Employees used excessive force on him during his arrest, causing his tooth to break.

### ANALYSIS AND CONCLUSIONS:

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

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

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were dispatched to a report of a subject who had shoplifted clothing from a clothing store. When the Named Employees responded to the scene, they activated their In-Car Video (ICV) systems. While the ICV did not record video of the force used by the Named Employees, it did record the audio of their interaction with the subject.

When the officers responded to the store, the subject was identified as the perpetrator by a store employee. The store employee indicated his belief that the subject was possibly on drugs. At that time, the subject, who had been pointed out by the store employee, was standing in the middle of Sixth Avenue. NE#1 described that the subject was standing in the way of passing traffic while “dancing” and waving his arms around.

The officers approached the subject and tried to lead him to the sidewalk using modified escort holds. NE#1 recounted that the subject continually tried to pull his arms and hands away from her, and that she saw an object in the subject’s hand. She was concerned as to what that item was given the report that the subject was on drugs and the subject’s bizarre behavior (the item was later determined to be gum).

Once they got onto the sidewalk, the officers told the subject to get on his knees. The subject at first refused those commands, but then threw his body forward and went down to his knees in front of a planter. NE#2 recounted that he and NE#1 held the subject against the planter to secure his body. The officers still could not control the subject’s



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arms and they called for other units to assist them. The other units arrived and the officers were able to place handcuffs on the subject. At that time, the subject was on his knees leaning over the planter with his face by the rocks within the planter.

After being handcuffed, the subject complained that his tooth was broken. The officers observed that his tooth was, indeed, broken, but neither officer reported using any reportable force on the subject, let alone force that would have caused such an injury. NE#1 reported that she did not see any redness, bruising, or bleeding that would have been consistent with facial trauma. NE#2 also did not report seeing any such injuries.

Due to the broken tooth, this incident was screened with the Department's Force Investigation Team (FIT). FIT responded to the scene and observed the fragment of the broken tooth lying in the planter. The fragment was photographed. The subject's mouth and facial area was also photographed. These photograph did not indicate any trauma to his face or mouth.

FIT identified six civilian witnesses who observed portions of the subject's interaction with the Named Employees (FIT interviewed one other witness who did not observe the interaction). Witness #1 only reported observing the subject after he had been handcuffed, which based on the officers' accounts, presumably occurred after his tooth had already been broken. Witness #2 observed the officers pin the subject down onto the concrete planter. He stated that the male officer – NE#2 – was holding the subject down and did not report seeing the female officer – NE#1 – touching the subject. Witness #2 reported that the subject was not resisting at that time and that it did not appear that the officers were hurting the subject. Witness #3 only observed the subject sitting on the planter while officers were talking to him. Witness #4 reported seeing the officers walk the subject from the street to the sidewalk and then push the subject down and up against the planter. Morris stated that it did not appear to be "overly forceful" and that the subject was not slammed into the planter. This witness stated that he did not see any officers "take any swings or hit him in the back of the head." Witness #5 asserted that when he first observed the subject and the officers, the officers had him pinned down on the planter. He stated that the subject was struggling, but that the officers continued to pin him down. Lastly, witness #6 described observing the subject being walked from the street to the sidewalk and stated that he saw the subject sitting on the planter with the officers looking "deflated." Witness #6 did not offer any information concerning the officers' conduct when they were holding the subject against the planter.

The subject was interviewed by a lieutenant (then a sergeant) concerning his injury. The subject told the lieutenant that the Named Employees used "a little bit too much force." Based on this comment, the lieutenant initiated the instant OPA complaint.

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 several 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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Both of the Named Employees deny using force to cause the subject's tooth to break. Indeed, both of the Named Employees asserted that they only used control holds to escort the subject from the street to the sidewalk and then de minimis force to get the subject down to his knees. It appears that, once he was on his knees, the officers used force to push the subject's body against the concrete planter; however, it is unclear from my review of the record what the exact nature and extent of this force was. As the subject was on his knees, the planter was roughly at his chin level. Were the subject's face pushed against either the planter or the rocks inside the planter, it could have plausibly caused his tooth to break.

Based on the above, I cannot definitively determine whether the Named Employees used force that caused the subject's tooth to be broken and, even if they did, whether that force was consistent with policy. If the officers used force to purposefully push the subject's face into a concrete planter and sufficient enough force to cause the subject's tooth to break, that force certainly could have been outside of policy. If instead, the subject's tooth was inadvertently broken when he was being held down by the officers, while unfortunate, this would not necessarily constitute a policy violation. I note that based on the audio recorded by the ICV, there is no indication of any significant struggle or use of force, or any complaint of pain from the subject. However, this is not, in and of itself, determinative evidence as to what occurred during this incident. Lastly, while like the officers, none of the civilian witnesses recounted observing any significant force used by the officers, three of the six did not view the initial force. The other three civilian witnesses said that the subject was pushed or pinned against the concrete planter by the officers, but did not, in my opinion, shed any additional light on the question of the extent and nature of that force and whether it was within policy.

Given the above, while I tend to believe that no excessive force was used during this incident, I cannot find by a preponderance of the evidence what exact force was used and whether that force was consistent with policy. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

**Named Employee #2 - Allegation #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 – Inconclusive.

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