



## CLOSED CASE SUMMARY

ISSUED DATE: MARCH 14, 2018

CASE NUMBER: 2017OPA-0851

### 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)
# 2	8.100 - De-Escalation 1. 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	Not Sustained (Lawful and Proper)
# 3	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	Not Sustained (Lawful and Proper)
# 5	6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Lawful and Proper)
# 6	6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop	Not Sustained (Lawful and Proper)
# 7	5.001 - Standards and Duties 5. Employees May Use Discretion	Not Sustained (Unfounded)
# 8	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Inconclusive)
# 9	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Inconclusive)

**Named Employee #2**

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

**Named Employee #3**

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

**Named Employee #4**

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

**Named Employee #5**

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



**Named Employee #6**

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

***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 Named Employees were all alleged to have used excessive force against the subject during his arrest for trespass. Additionally, Named Employee #1 was alleged to have engaged in other potential misconduct concerning: the detention and arrest of the subject; the purported failure to de-escalate; the potential failure to exercise discretion and the lack of professionalism; and possible dishonesty based on a statement that was purportedly overheard by the subject while he was being held in the precinct.

**STATEMENT OF FACTS:**

The interaction between the Named Employees and the subject, as well as the force used against him, was largely captured by video.

The Named Employees contacted the subject and other individuals in an alley behind a building. Initially, the officers were primarily interacting with another person, who had been reportedly hitting a tree with a stick, but the subject, based on Named Employee #1's (NE#1) recounting, began yelling and distracting that individual with insults. NE#1 recalled that, at one point, the individual they were speaking with asked if the officers could "shut up" the subject. NE#1 stated that they could not and that the subject had a right to talk. However, this individual began to grow more agitated. This prevented the officers from conducting their investigation.

NE#1 noted that due to SPD conditions of entry, all of the individuals in the vicinity of the building were trespassing at that time. The officers asked those individuals to leave the off-limits area and all did so except for the subject. The subject remained even after being informed that he was trespassing. The subject argued that he was not trespassing.

NE#1 explained that he again tried to discuss with the subject that he was trespassing and directed the subject as to where he could stand so that he was not trespassing (on the other side of the property line). Ultimately, NE#1 followed the subject until he walked to an area where he was no longer trespassing. NE#1 believed that their interaction was over at that time. However, the subject turned around and walked back towards the area he was told to leave, stating that he needed to get his belongings. The subject leaned over as if pick something up and walked towards NE#1 pantomiming as if he was holding something in his hand. Even though he was holding nothing, he asked NE#1 if he could hold his property. At that point, NE#1 asked the subject for his identification and initiated a detention.

The subject, instead of providing his identification, tried to walk past NE#1. When he did so, NE#1 grabbed his right shoulder and right arm to prevent the subject from doing so. The subject then pushed NE#1 to try to get by him. At this point, Named Employee #2 (NE#2), Named Employee #3 (NE#3), and Named Employee #4 (NE#4) assisted NE#1 in controlling the subject's person. The officers collectively took the subject down to the ground where he was handcuffed. NE#1 recounted holding onto the subject's wrist and then taking his leg out in order to get him to the ground. NE#1 told OPA that, at one point, he held the subject's shoulder. NE#2 stated that he had the subject in a



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body hold and head wrap during the takedown. NE#3 stated that he also assisted with the takedown and, when the subject was on the ground, NE#3 reported that he placed his knee on the subject's back in order to prevent him from moving around or getting up. NE#4 stated that he only used force when the subject was on the ground and he took hold of the subject's hand and helped handcuff him. None other officers reported using force. At the time force was used against him, the subject claimed that NE#1 had grabbed his throat. NE#1 denied doing so.

The subject was transported to the precinct. While at the precinct, the subject claimed that he overheard a conversation between NE#1 and another officer during which NE#1 was asked whether he had choked the subject and NE#1 said that he did. The subject reported that the other officer stated "good job" and began laughing with NE#1.

Due to the allegation that NE#1 had choked the subject, this matter was investigated by the Department's Force Investigation Team (FIT). FIT conducted a comprehensive investigation, including interviewing the involved and witness officers and other civilian witnesses. FIT referred the allegation concerning the choking to OPA and this investigation was initiated.

**ANALYSIS AND CONCLUSIONS:**

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

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

The subject alleged that NE#1 used excessive force against him. The gravamen of the subject's allegation against NE#1 was that NE#1 grabbed his throat. NE#1 reported using force to stop the subject from walking away and then force to take the subject to the ground and to handcuff him. NE#1 denied grabbing the subject's throat. None of the other Named Employees reported witnessing NE#1 grab the subject's throat. Moreover, while one civilian witness recalled that the subject complained that his throat was grabbed, from OPA's review, no civilian witness recounted observing NE#1 grab the subject's throat.

With regard to the force that NE#1 reported using, I find that it was reasonable, necessary, and proportional. At the time the force was used, NE#1 had probable cause to arrest the subject for trespass. Moreover, when he tried to do so, the subject resisted those attempts and made physical contact with NE#1. As such, at that time, it was reasonable to use force to stop the subject from making any further contact with NE#1 and to place the subject into custody. The takedown was further necessary to achieve the lawful goal of effectuating the arrest. Based on the circumstances of this case, I do not believe that NE#1 thought that there was any other reasonable alternative to that force. Lastly, I find that the force reported by NE#1 was proportional to the subject's resistance and the fact that the subject had just made physical contact with NE#1.

Were the force reported by NE#1 the only force alleged, I would have recommended that this allegation be Not Sustained – Lawful and Proper. However, as discussed above, the subject also complained that NE#1 grabbed his throat and choked him. Had NE#1 done so, that force would have been out of policy under these circumstances. I note that not only did NE#1 deny doing so, but that no other witness reported viewing such actions. That being said, at the time that force was used by NE#1, the subject complained of his throat being grabbed by NE#1 and he consistently reiterated this allegation, identifying NE#1 as the perpetrator. Unfortunately, the video of the force and



particularly the instant of when NE#1 was alleged to have choked the subject is of low evidentiary value and does not clearly show what exactly happened.

As such, and considering that I cannot conclusively determine that NE#1 did not grab the subject's throat, I recommend that this allegation be Not Sustained – Inconclusive.

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

**Named Employee #1 - Allegation #2**

***8.100 - De-Escalation 1. 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***

"De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance." (SPD Policy 8.100-POL-1.)

The policy further instructs that: "When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution." (*Id.*) Officers are also required, "when time and circumstances permit," to "consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors" such as "mental impairment...drug interaction...[and/or] behavioral crisis." (*Id.*)

Here, I find that NE#1 properly de-escalated this incident prior to using force. At the outset of the incident, NE#1 tried to speak to the individuals who were trespassing and directed them to leave the area. While nearly all of them left, the subject did not. NE#1 tried to reason with the subject, but the subject was extremely difficult. Notably, during his interview concerning this matter, the subject admitted trying to give NE#1 a "hard time." Once the subject came back to the scene and was again trespassing, NE#1 told him that he was no longer free to go. When the subject tried to then leave and pushed past NE#1, de-escalation was no longer feasible and it was appropriate to use force to place the subject under arrest.

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 #3**

***6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest***

Under SPD policy, as well as under the law, arrests must be supported by probable cause. Here, it cannot be disputed that the subject was in a location that he was not legally permitted to be in and, thus, he was trespassing. Not only was this established by the video evidence, but the subject, himself, admitted doing so.

At the time that NE#1 first observed the subject in the off-limits location, he had probable cause to arrest the subject, in his discretion, for trespassing. He chose not to do so and, instead, instructed the subject to leave that



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area. When the subject returned, that same probable cause existed to arrest him. As such, the arrest of the subject was legally justified.

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

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

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

***6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful***

Terry stops must be supported by reasonable suspicion to be permissible under SPD policy and the law. As discussed above, even at the time of the initial contact with the subject, NE#1 had probable cause to arrest him for trespass. This probable cause was maintained, if not strengthened, after the subject was told to leave, did so, and then returned to the off-limits area. Given that NE#1 had probable cause, he indisputably also had reasonable suspicion, which is a lower standard. Accordingly, any detention of the subject was justified.

As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #1 - Allegation #5**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope***

Again, as discussed in the context of Allegations #3 and #4, there was probable cause to arrest the subject for trespass. Accordingly, the officers were not required to comply with this section of the policy and to limit the seizure to a reasonable scope. Instead, they were permitted to arrest the subject and fully seize his person.

As such, I find that this allegation is Not Sustained – Lawful and Proper.

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

**Named Employee #1 - Allegation #6**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop***

Similar to my analysis above, given that NE#1 had probable cause to arrest the subject and did, in fact, place him under arrest, he was permitted to require the subject to identify himself. Accordingly, I find that NE#1 acted in compliance with this policy and recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper) Error! Reference source not found.**



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**Named Employee #1 - Allegations #7**

***5.001 - Standards and Duties 5. Employees May Use Discretion***

SPD Policy 5.001-POL-5 states that: “Employees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the Department and duties of their office and assignment.”

Here, NE#1 made the decision to arrest the subject for trespassing. He did so only after the subject left and then returned to the off-limits area after being told not to do so. Moreover, this was the case even though NE#1 had the legal authority to arrest the subject at the outset. I find that NE#1 had probable cause to arrest the subject and his decision to do so, and to use force when the subject resisted this law enforcement action, was not an abuse of his discretion. Accordingly, I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #1 - Allegations #8**

***5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times***

It was alleged that NE#1 was unprofessional in his interactions with the subject. Specifically, the subject claimed that NE#1 and other officers laughed at him. The subject further claimed that, at one point, an unidentified officer asked NE#1 if he had choked the subject and NE#1 stated that he had. The other officer was alleged to have said: “good job.” The subject recounted that both NE#1 and the other officer then laughed about it.

NE#1 generally denied laughing at or demeaning the subject during their interaction. With regard to the conversation concerning the choking described by the subject, NE#1 stated that he did not recall engaging in such a conversation. He stated that, if he had done so, it would have been “extreme sarcasm.”

SPD Policy 5.001-POL-9 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-9.)

If it could be proved that NE#1 and the unknown officer engaged in a conversation during which they discussed choking the subject, I would have recommended that this allegation be Sustained. This would have been the case regardless of whether these statements were sarcastic or were made in jest. However, given the fact that there is no video or audio evidence memorializing this conversation and no other identified witnesses who heard the alleged statements, I am left with a dispute of fact between the parties on this matter. As such, I recommend that this allegation be Not Sustained – Inconclusive.

As referenced by the FIT Captain in his review, I note that, at one point, NE#1 stated to the individual who had been hitting a tree with a stick if he was “from the United States of America where we don’t break other people’s property.” I agree with the FIT Captain that this statement easily could have been viewed as insensitive and unprofessional, even if NE#1 did not mean it to be offensive. I counsel NE#1 to be more careful with his word choices in the future, but do not think that this statement warrants a Sustained finding.

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



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**Named Employee #1 - Allegations #9**

***5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication***

SPD Policy 5001-POL-10 requires that SPD employees be truthful and complete in all communications.

This allegation was classified here based on the fact that, if NE#1 admitted to another officer that he choked the subject, this statement would have been materially contrary to both his FIT interview and use of force statement. As such, it could have constituted dishonesty in violation of policy.

As explained above, however, I cannot conclusively prove or disprove whether NE#1 made this statement. Moreover, even if he did make this statement, I cannot know whether it was a serious assertion or, as NE#1 posited, a possible sarcastic comment. For these reasons, 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***

When interviewed by OPA (see Case Summary), the subject alleged that he was making a complaint of excessive force against all of the Named Employees, not just NE#1.

As discussed above, NE#2 and NE#3 used force to assist NE#1 in preventing the subject from walking away, taking him down to the ground, and getting him handcuffed. NE#2 stated that he had the subject in a body hold and head wrap during the takedown. NE#3 stated that he also assisted with the takedown and, when the subject was on the ground, NE#3 reported that he placed his knee on the subject's back in order to prevent him from moving around or getting up. NE#4 used force when the subject was already on the ground and simply described grabbing the subject's hand in order to assist putting handcuffs on him.

With regard to the force that these officers reported using, I find that it was reasonable, necessary, and proportional. At the time the force was used, these officers had probable cause to arrest the subject for trespass. Moreover, during the arrest, the subject resisted those attempts and made physical contact with NE#1. As such, at that time, it was reasonable to use force to stop the subject from making any further contact with NE#1 and to place the subject into custody. The takedown was further necessary to achieve the lawful goal of effectuating the arrest. I do not find it unreasonable that NE#2 grabbed the subject's body and controlled his head. As his Field Training Officer noted, this was consistent with training. Moreover, I do not find it unreasonable that, after the takedown, NE#3 placed his body weight on the subject's upper back via his knee. This is also a trained technique when handcuffing a resistant subject in the prone position. Based on the circumstances of this case, I do not believe that these officers thought that there was any other reasonable alternative to the force used. Lastly, I find that the force used by these officers was proportional to the subject's resistance and the fact that the subject had just made physical contact with NE#1. Notably, none of these officers struck the subject or used anything other than low level force on him.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#2, NE#3, and NE#4.



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

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

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

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

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

**Named Employee #4 - Allegation #1**

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

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

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

**Named Employee #5 – Allegation #1**

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

Based on my review of the evidence and their statements, I find that neither Named Employee #5 nor Named Employee #6 used any force against the subject. As such, I recommend that this allegation be Not Sustained – Unfounded as against them.

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

**Named Employee #6 – Allegation #1**

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

For the same reasons as stated above (see Named Employee #5, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

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