



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 14, 2018

CASE NUMBER: 2017OPA-0966

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	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)

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	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)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	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)

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 violated his civil rights when they arrested him without cause or a warrant and that they also used excessive force during the arrest.

ADMINISTRATIVE NOTE:

As the OPA Auditor noted in his certification memo, it was an oversight for OPA to not have classified for investigation the issue of whether there was reasonable suspicion to stop the Complainant in the first place. The Auditor is correct that, at this point, it is too late to add this allegation to this case based on contractually required deadlines.

In agreeing with the Auditor in these regards, I do not necessarily agree with his belief that there was no reasonable suspicion supporting the stop of the Complainant in the first place. Indeed, I believe that reasonable suspicion did, in fact, exist. Ultimately, however, I can only issue recommendations on the allegations that were classified.



STATEMENT OF FACTS:

The Named Employees responded to a call that a man was observed cutting a bicycle lock and stealing a bicycle. He was reported using a cordless grinder to do so. The witness (who was not the victim) described the bicycle as silver and black. He further described the Complainant as being a white male who was wearing a black hooded sweatshirt, dark hat and had a black backpack.

The officers located the Complainant, who matched the description provided by the witness. From my review of the In-Car Video (ICV) of this incident, the bicycle appeared to be silver with large black tires and a black seat. The officers contacted the Complainant and asked him whether the bicycle was his. He stated that he had borrowed it from a friend. They further asked the Complainant what was in the backpack and he stated that it was filled with his clothes. The officers asked several additional questions of the Complainant. The Complainant was informed that he was being detained based on the officers' investigation into a stolen bicycle. The officers continued to interact with the Complainant until he attempted to leave the scene, telling the officers that he did not want to be detained, that they did not have a warrant for his arrest, and that they were violating his constitutional rights. The officers tried to explain to the Complainant that he matched the description of the suspect and that he was the only person out at that time in that vicinity.

The officers told the Complainant several times that he was being detained and he was not free to leave. However, the Complainant continued to try to walk away. The Complainant was told that if he continued to do so, he would be arrested for obstruction. He began walking away and started to get on his bicycle to ride from the officers. They stopped him and informed him that he was under arrest.

The officers grabbed hold of the Complainant's arms and he tried to pull away from them. He held his arms to his side and continued to claim that he did not match any description (it was unclear how he knew this) and that he had not done anything wrong. The officers continued to struggle with the Complainant and he told them to get off of him. One of the officers pulled the Complainant's backpack off while two other officers struggled to take him down to the ground. They were ultimately able to pull him down and he appeared to fall onto his side during the takedown. The officers placed their body weight on the Complainant and instructed him to lay on his stomach and to put his hands behind his back. The Complainant did not comply. He refused to allow them to handcuff him. The officers told him to relax and put his hands behind his back. The officers were finally able to get the Complainant's hands behind his back. During this time, the Complainant said that he could not breathe and was having heart pain, the officers told him that he was okay and told him that they would roll him over once he allowed them to handcuff him. The officers rolled him over to his side and called for medical attention.

During a search incident to the Complainant's arrest, his backpack was searched. Items consistent with burglary tools were located in the backpack, as was an access card that had previously been reported stolen.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

All of the Named Employees used force on the Complainant. The force included: force to try to control the Complainant's body by holding his arms; force to take the Complainant down to the ground; and force to control the Complainant's body when he was on the ground and to place him into handcuffs. The Complainant alleged that this force was excessive. All of this force was captured on ICV.

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 evidence and most notably the ICV, I find that the force used by the Named Employees was reasonable, necessary and proportional and, thus, consistent with policy. First, as explained below, I believe that the officers had probable cause to arrest the Complainant when he attempted to leave the scene. As such, they were permitted to use force to effectuate that arrest. I find that the force used was reasonable to do so. Moreover, at the time the officers used the force, the Complainant was getting on his bicycle in an apparent attempt to ride away. As such, I find that the officers believed that there was no reasonable alternative to using force to stop him and, when he resisted, they believed that there was no reasonable alternative to using force to get him under control and to handcuff him. Lastly, I find that the level of force used was proportional to the resistance from the Complainant. I note that none of the officers struck the subject and that they only used that level of force needed to carry out their lawful objectives.

For the above reasons, I recommend that this allegation be Not Sustained – Lawful and Proper against all of the Named Employees.

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

Named Employee #1 - Allegation #2

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

As discussed above, the issue of whether there was reasonable suspicion supporting the initial detention of the Complainant was not classified for investigation in this case. While the Complainant alleged and the Auditor appeared to agree that there was not sufficient reasonable suspicion for the stop, the Named Employees contended that there was.



Based on my review of the ICV, I find that a reasonable officer could have believed that it was the bicycle described by the witness. It appeared to me to be silver with black tires and a black seat. Moreover, as explained by the officers on the ICV, the subject matched the physical description of the suspect and was the only person in the vicinity of the theft who matched that description and was riding a bicycle. As such, I believe that there was reasonable suspicion supporting the stop of the Complainant. Again, the officers were not required to have probable cause that the Complainant had definitively stolen the bicycle, but only a reasonable belief of such behavior. The officers were justified in detaining the Complainant to determine whether or not he was the perpetrator of the theft and was riding a stolen bicycle. I further note that the Complainant was riding his bicycle without a helmet, which would have provided another permissible basis for the officers to stop and detain him.

Regardless, it is undisputed that after the subject was stopped and detained, he was instructed that he was not free to leave. However, the Complainant attempted to leave the scene even after being told not to do so on multiple occasions. Once he attempted to leave the by riding away on his bicycle, the Named Employees had probable cause to place him under arrest for obstruction. Accordingly, I find that they acted consistent with policy in this instance and, as such, recommend that this allegation be Not Sustained – Lawful and Proper as against all of the Named Employees.

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

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 – Lawful and Proper.

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

Named Employee #2 - Allegation #2

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

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 #3 - 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 – Lawful and Proper.

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



Named Employee #3 - Allegation #2

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

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)**