



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 9, 2018

CASE NUMBER: 2017OPA-1127

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Lawful and Proper)
# 2	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	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 Complainant alleged that officers used excessive force when they arrested the subject and Named Employee #1 kept a knee on the subject’s back after he had been placed into handcuffs. A Department Administrative Lieutenant further alleged to OPA that Named Employee #1 may have violated SPD’s professionalism policy due to his back and forth with the Complainant.

ADMINISTRATIVE NOTE:

The sergeant who screened this incident and interviewed both the subject and the Complainant was, at the time, assigned to the North Precinct. He has since been re-assigned as a sergeant investigator at OPA. In order to avoid any conflict of interest or even the appearance of impropriety, this sergeant was walled off from this matter. Neither the nature and factual findings of OPA’s investigation nor OPA’s ultimate recommended findings were shared with him.

STATEMENT OF FACTS:

On the date in question, Named Employee #1 (NE#1) and another Bicycle Officer effectuated a stop of the subject based on the subject’s failure to wear a helmet while bicycling. They requested the subject’s identification and, upon review, determined that the identification did not actually belong to the subject. When the officers identified that fact, the subject ran from the scene. The subject ran to a nearby motel and tried to enter. He was located by the officers and the other Bicycle Officer took the subject down to the ground using a C-step maneuver. The subject landed on his rear end and was then taken down onto his back. Based on my review of the Body Worn Video (BWV), it was not a hard takedown. The subject began saying that he could not breathe; however, the officers were not placing any weight on him at that time.

NE#1 instructed the subject to roll over on his stomach so that NE#1 could handcuff him. NE#1 took hold of the subject and rolled the subject towards him while telling the subject to put his hands behind his back. NE#1 handcuffed the subject in the prone position, which included placing his knee on the subject’s back in order to stabilize the subject’s body. Once the handcuffs were applied, the subject began moving his body around. NE#1 told him to stop doing to and to allow NE#1 to put the handcuffs on. NE#1 maintained his knee on the subject’s back



until he was able to double lock the handcuffs (which ensures that they do not inadvertently tighten and cause pain to an arrestee).

The subject continued to move around. The subject stated that he could not breathe and NE#1 told him that if he could talk, he could breathe. NE#1 further appeared to grow frustrated with the subject based on the subject's conduct. NE#1 stated: "Stop! Stop resisting dude! I need to lock these so they don't get freaking tight on you." NE#1 continued to tell the subject to stop moving around and that his breathing was not impaired. At that point, a bystander – who I believe to have been the Complainant – could be heard talking at the officers with a raised voice. The Complainant could be heard referring to the officers' cameras and stated to them: "fuck you." The Complainant repeatedly asserted that the officers were engaging in harassment.

The officers then placed the subject on his side in the recovery position. NE#1 continued to tell him to stop and to relax. NE#1 was able to secure the subject and the subject stopped complaining that he could not breathe. They picked the subject off of the ground and walked him to a patrol vehicle. All throughout this process, the Complainant repeatedly yelled at the officers. The Complainant then referred to the officers as "crackers." NE#1 yelled back at him: "That's racist! You're a racist." The Complainant responded: "You're goddamned right it is." The Complainant kept on yelling at the officers, including using swear words towards them, but NE#1 did not further respond to him.

A sergeant responded to the scene to screen the arrest and force. As part of that process, the sergeant interviewed the Complainant. The Complainant reported that the force used by the officers was "excessive." The Complainant explained that NE#1 had his knee on the subject's back even after the subject had been placed into handcuffs. Based on this allegation, this matter was referred to OPA. This matter was also administratively reviewed by the officers' chain of command and, during that review, a Department Administrative Lieutenant reviewed the video. The Lieutenant further referred NE#1's back and forth with them Complainant to OPA as a possible violation of the Department's professionalism policy. This OPA investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

8.200 - Using Force 2. Use of Force: When Prohibited

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.*)

The officers' interaction with the subject and the force used was completely captured by BWV. The BWV established that the officers stopped and detained the subject for a valid reason, that the subject provided false identification, and that, when the officers asked about that investigation, the subject fled. At that point, the officers had probable cause to place the subject under arrest. With the right to do so, came the legal justification to use force if necessary.



Here, both officers used force that was reasonable, necessary, and proportional. While not at issue in this case, the force used to take the subject softly down to the ground was consistent with policy. Once the subject was on the ground, it was reasonable for NE#1 to use force to handcuff him. This reasonable force included using NE#1's knee to hold the subject's body still. The BWV conclusively established that the subject initially fled from the officers and then continuously moved around while on the ground, even after being repeatedly told not to do so by NE#1. As such, the force was necessary to prevent the subject from resisting NE#1's attempts to handcuff him and to ultimately secure the subject's person. Lastly, the force was proportional to the threat and resistance faced by the officers. I note that the officers never used any strikes or any other significant force. Moreover, once the subject was handcuffed and the handcuffs were double locked, NE#1 removed his knee from the subject's back and placed him into a recovery position on his side.

For these reasons, I find that the force used by NE#1 was consistent with policy and I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

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

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.) The policy lastly mandates that: “Employees will avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

This allegation was premised on NE#1's interaction with the Complainant, during which he responded to the Complainant calling him a cracker by saying that the Complainant was “racist.” At the outset, I note that it would have been optimal had NE#1 not engaged with the Complainant. The Complainant was clearly angry and, from my review of the BWV, was unreasonable. That should have been evident to NE#1 and the back and forth simply added fuel to the fire. That being said, the term “cracker” is a pejorative term when directed towards a Caucasian person. Accordingly, I do not fault NE#1 from getting upset at being called a racist term. NE#1 responded by saying that the term and the Complainant were racist, which the Complainant admitted was true. NE#1 did not yell at him or curse at him. As such, I do not find that this interaction, even if inadvisable, violated policy.

I note that, near the end of the incident, NE#1's BWV captured him discussing the force he used and the injuries suffered by the subject. NE#1 recounted that the subject “cut his wrist” and, when describing his level of force, sarcastically stated to fellow officers: “I used Seattle force.” I believe that NE#1 was referring disparagingly to the reporting requirements under Seattle policy. This attitude towards SPD policy is disappointing and it reflects poorly both on NE#1, his fellow officers, and the Department. NE#1 should consider re-evaluating his approach to this issue and being more careful as to what he says while being recorded on video.

That being said, and despite the comment discussed above, I do not believe that this allegation should be sustained. With regard to NE#1's interaction with the Complainant, in my opinion, NE#1 did not violate the Department's professionalism policy and I recommend that this allegation be Not Sustained – Unfounded.



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