



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 6, 2019

CASE NUMBER: 2018OPA-1201

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)

Named Employee #2

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 Complainant alleged that Named Employee #1 and another unknown officer subjected him to excessive force.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

Officers, including Named Employee #1 (NE#1), were working off-duty at a football game. At that time, they observed a physical altercation between a number of men in the stadium parking lot. The officers reported that, when they first viewed the fight, they could not tell who the primary aggressors were. The other officer with NE#1 at the time, who is referred to herein as Witness Officer #1 (WO#1), saw a male on the ground and two other males above him, the first at his legs and the second in the vicinity of his head. It looked to WO#1 that the second male was about to strike the male on the ground. WO#1 recounted grabbing the second male and pushing him backwards against a car. The second male told WO#1 that the male on the ground was the primary aggressor. WO#1 then made contact with the male on the ground, who is referred to here as the Subject. Simultaneously, NE#1 took hold of another male, who was later identified as the Complainant. The Complainant was in a kneeling position with his left hand on the ground. NE#1 recounted grabbing hold of the Complainant’s clothing and pushing him to the ground and onto his stomach. NE#1 stated that the push was controlled. He explained that the Complainant: “didn’t go flying or fall or anything of that nature.” NE#1 placed the Complainant into handcuffs.

When he stood the Complainant up, NE#1 noticed blood on the ground and blood running from the Complainant’s nose. NE#1 asked the Complainant what had happened, and the Complainant stated that the Suspect attacked them for no reason and started punching him and his friends. He told NE#1 that the Suspect punched his brother-in-law so he stepped in and intervened.



All three of the individuals, who were with the Complainant at the time of the assault, were interviewed. The witnesses stated that the Suspect called them racial slurs and then punched one of them. One of the witnesses described the Suspect punching the Complainant in the nose. Another witness stated that NE#1 tackled the Complainant to the ground and that the Complainant's nose injury occurred at an undefined time during the altercation. Multiple other individuals were interviewed, including one firefighter that stated that he saw blood on the ground prior to the officers intervening to break up the altercation.

The Force Investigation Team (FIT) responded to the incident. They took over the investigation, documented the scene, and conducted further interviews. As part of their investigation, FIT interviewed NE#1, WO#1, and a second witness officer. FIT also re-interviewed two of the Complainant's companions several days after the incident. At that time, both stated that the injury was caused to the Complainant's nose when NE#1 tackled him to the ground. However, both confirmed that they did not see this occur and that they only heard about it from others. The one witness who previously said that the injury was caused by the Suspect hitting the Complainant's nose recanted that statement and told FIT that he did not know this to be the case at the time.

FIT further interviewed the Complainant. He stated that he believed that his injury was caused by NE#1 when NE#1 took him down to the ground. The Complainant felt that NE#1 used "too much force" and he said that he "felt he was taken down harder than he should have been." FIT construed this statement to be an allegation of excessive force and this matter was referred to OPA. This investigation ensued.

OPA was provided with a copy of the Complainant's medical records stemming from this incident. The records reflected that the Complainant stated that he was injured stemming from an "assault" by SPD officers. The records indicated that the Complainant had a deviated nasal septum, but there was no diagnosis of a broken nose. The Complainant was referred to an ENT specialist. The records also indicated that the Complainant was suffering from shoulder pain.

OPA interviewed WO#1. He recounted his actions during this incident and provided a similar recounting to his FIT interview. WO#1 confirmed that he did not observe any officers strike the Complainant's nose with their extremities. He did not see the Complainant's face make contact with the ground.

OPA also interviewed NE#1. Like at his FIT interview, NE#1 stated that he grabbed the Complainant's clothing and pushed him away from the Subject and onto the ground. The Subject landed on his stomach and NE#1 stated that he took control of the Complainant's hands and handcuffed him. He described this force as "slow" and "controlled." He stated that it was not "aggressive." NE#1 told OPA that, at this point, he noticed blood near the Complainant's nose. NE#1 stated that his extremities and/or equipment would not have come into contact with the Complainant's nose as NE#1's body never got above the Complainant's waist. NE#1 believed that the force he did use – the takedown of the Complainant – was consistent with policy.

In addition, OPA interviewed the Complainant. He stated that he was tackled down to the ground and that there may have been two officers involved. He stated that an officer struck his nose with a knee causing it to break. He further asserted that another officer stepped on his wrist, causing him to suffer an injury. He believed that this force was excessive. He told OPA that he did not make this allegation at the time because he has a fear of the police.



Lastly, OPA reviewed the Body Worn Video (BWV) from this incident. NE#1's BWV did not begin recording until after the Complainant was already in custody and was sitting up. WO#1's BWV showed him and NE#1 running towards the fight; however, it captured only WO#1's actions after that point and did not reveal the force used by NE#1.

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.*)

When viewing the force using a reasonable officer standard, it is clear that it was consistent with policy. NE#1 observed a physical altercation and, at that moment, it appeared to him that the Complainant and another male were going to strike an individual who was on the ground. Accordingly, and in order to address what he perceived as an ongoing violent altercation, NE#1 took the Complainant down to the ground and WO#1 took control of the other male. The takedown was reasonable under the circumstances as NE#1 believed that the Complainant was actively engaging in an assault. The takedown was further necessary in order to prevent the assault and there were no other lesser alternatives to that force at the time. Moreover, the takedown was proportional to the apparent threat posed by the Complainant. Notably, there were numerous involved parties to this assault and it was essential for officer safety to end the conflict and to secure the participants. In addition, aside from the takedown, there is no evidence that NE#1 used any other force.

Based on OPA's review of the evidence, there is no proof that NE#1, or any other officer, intentionally struck the Complainant's nose with a knee as the Complainant asserted. NE#1 stated that his knee was never that high up on the Complainant's body and, given the lack of video evidence or witness accounts otherwise, this contention cannot be disputed. OPA believes it much more likely that the injury to the Complainant's nose occurred either when he was punched by the Subject or, inadvertently, when he was taken to the ground by NE#1. If the injury was caused in the latter manner, it was clearly an unintended result. Moreover, that the Complainant suffered an injury to his nose is unfortunate, but it does not, standing alone and based on the totality of the evidence in this case, yield the force out of policy.

Ultimately, for the reasons stated above, I find that the force was reasonable, necessary, and proportional, and, thus, was consistent with policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #2 - Allegations #1

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

OPA found no evidence in the record establishing that any officer other than NE#1 used force on the Complainant. OPA could not determine who, if anyone, stepped on the Complainant's hand. As such, I recommend that this allegation be Not Sustained – Unfounded.

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