



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 10, 2018

CASE NUMBER: 2018OPA-0248

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 (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 subjected him to excessive force.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the OPA Auditor’s review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employees. As such, the Named Employees were not interviewed as part of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Named Employees responded to a report that a woman had been threatened and her property damaged by her ex-husband. The ex-husband, who was later identified as the Complainant, had threatened to return to the property. When the officers arrived at the property, they made contact with the victim. She confirmed the Complainant’s conduct. The officers later responded to the Complainant’s home and interacted with him outside of his residence and on a public street. The officers reported that the Complainant appeared intoxicated.

The officers’ Department video captured their interaction with the Complainant before, during, and after his arrest. Notably, prior to his arrest, the Complainant was belligerent. He threatened the officers, used profanity towards them, and made other inappropriate comments. The officers directed the Complainant to sit on the ground and on the bumper of the patrol vehicle multiple times due to his conduct. Ultimately, the officers placed him under arrest



and handcuffed him. The force used to handcuff the Complainant was uneventful and there were no complaints of pain at that time.

The officers then attempted to seat the Complainant into the rear of a patrol vehicle. At that time, the Complainant was extremely agitated. He turned towards Named Employee #2 (NE#2) and NE#2 pushed him back towards the door. NE#2 articulated that he was concerned that the Complainant was going to spit on him. When the Complainant again turned his face towards NE#2, NE#2 pushed his face away with his hand. The Complainant complained of pain at that time; however, from OPA's review of the video, the force used was de minimis. Moreover, the force was consistent with the trained tactics for dealing with subjects who may be attempting to spit on officers.

The Complainant continued to act belligerently and inappropriately during his transport from the scene of arrest and while in the precinct. When he was in the holding cell, he complained of excessive force. Two supervisors tried to determine what the exact nature of his complaint was; however, they were unsuccessful. One of the supervisors referred this matter to OPA and this Expedited Investigation ensued.

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.*)

With regard to Named Employee #1 (NE#1), I find that he only used that force reasonable and necessary to handcuff the Complainant and to keep him under control. I do not find that NE#1 used anything other than de minimis force and that he certainly did not use excessive force in this instance. The force used by NE#2 is discussed more fully above. I also find that NE#2's force was reasonable and necessary to handcuff and then control the Complainant. The force was also a trained tactic used to prevent a subject from spitting. I find that this force was entirely appropriate.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against both 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)**