



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 24, 2019

CASE NUMBER: 2018OPA-0709

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)

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 (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 used excessive force when they slapped him hard across the face and hit his head into the concrete during the course of his arrest.

ADMINISTRATIVE NOTE:

During its review of this case, OPA discovered that multiple spit socks were placed over the Complainant’s head. When the Complainant was positioned on the gurney and was about to be moved into an ambulance, Named Employee #1 stated the following to the officers in his near vicinity: “you want to double up or triple up that spit hood.” NE#1 appeared to make that recommendation after the Complainant began spitting again. At that point, an EMT seemed to react to NE#1’s statement by taking a second spit sock and placing it over the spit sock that was already on the Complainant.



In his supervisory review, the Sergeant noted that the Complainant had two spit socks on and that the second one was applied by an EMT. The Sergeant did not provide a justification for why the second spit sock was used or evaluate whether that was appropriate under the circumstances.

SPD Policy 11.010-POL-20 pertains to the use of a spit sock and 11.010-PRO-2 provides guidance concerning the practical application of the spit sock. The policy appears to be written with the understanding that only one spit sock will be used at a time on an individual, but it does not explicitly say that. The Department may want to consider amending this policy or its training to discuss the use of multiple spit socks and to provide guidance as to when that is appropriate, if ever.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

On July 21, 2018 at about 12:40 p.m., officers were dispatched to a service call at a Starbucks on Pike Street. The Call included information that a male suspect shoplifted items, repeatedly and forcefully hit head into the store's plate-glass window, and spat at individuals. After arriving at the Starbucks, Named Employee #4 (NE#4) and his partner obtained details about what allegedly took place from a Starbucks manager, which included that the suspect assaulted her by spitting in her face when she confronted him about the five newspapers he removed from the store without paying for them. The manager gave a detailed description of the suspect and informed NE#4 and his partner that he fled by means of boarding a nearby public transportation vehicle. After transmission of the suspect's description and flight direction went out over the police radio, Named Employees #1, #2, #3, and #5 (NE#1, NE#2, NE#3, and NE#5) located an individual matching the suspect's description – referred to here as the Complainant – and initiated contact with him regarding his involvement in the alleged theft and assault. NE#1, NE#2, NE#3 and NE#5 initially detained the Complainant in order to conduct further investigation. However, the officers took the Complainant into custody after he attempted to spit at them. At that point, the officers reported that the Complainant began to struggle with them.

After the Complainant was secured and prepared for transport, he claimed that the Named Employees used excessive force when they slapped him hard across the face and hit his head into the concrete during the course of his arrest. The Complainant made this allegation to the Sergeant who spoke to the Complainant during the arrest screening process. Based on the nature of the Complainant's allegation, SPD referred this matter to OPA and this investigation ensued.

During its investigation, OPA made repeated attempts to interview the Complainant; however, those efforts were unsuccessful as the Complainant was non-responsive. Thus, the Complainant was not interviewed as part of this investigation.

OPA obtained and analyzed the Body Worn Video (BWV) recordings of the Named Employees and their Sergeant, as well as the In-Car Video recordings from two patrol vehicles that were positioned with a view of a portion of the incident. In its review of those videos, OPA found no evidence of any officers slapping the Complainant or hitting his head into the concrete. OPA identified one interaction that showed NE#1 placing a spit sock (a mesh fabric hood purposed to prevent saliva from escaping) over the head of the Complainant after the Complainant attempted to



spit at the Named Employees. When he did so, NE#1 appeared to initially fail to properly place the spit sock over the Complainant's head. NE#1 then made another movement in the direction of the Complainant's head, which was difficult to discern in the videos. However, NE#1's movement did not appear to result in an intended or unintended slap to the Complainant's face and there was no support for such a finding in any of the audio recordings. Additionally, OPA did not hear the Complainant make any noises or comments to suggest that he may have just been slapped. It appears, instead, that NE#1 was attempting to reposition the spit sock over the Complainant's head.

Notably, throughout his interaction with the Named Employees, the Complainant continually resisted, including kicking the officers. Also, the Complainant spat multiple times. Though not visible in any of the videos, the Named Employees discussed that they were scratched by the Complainant's fingernails and they cautioned each other to be mindful of further similar injuries as they positioned themselves around the Complainant in their efforts to control his movements.

OPA interviewed all five of the Named Employees. All five of them denied using excessive force. Their accounts detailed what led to their involvement in this incident, the role they played in the arrest, and their justification for their use of force. Four of them explained how they sustained injuries as a result of the Complainant's active resistance and assaultive actions. NE#1 was specifically asked about his placement of the spit sock over the Complainant's head and to explain what happened during that process. NE#1 stated that he was wearing gloves throughout his encounter with the Complainant. NE#1 explained that his glove got caught on the mesh fabric of the spit sock and that his actions in returning to the area of the Complainant's head were movements to separate his hand from the fabric that was sticking to the rubber coating of the glove. NE#1 stated that he never made any contact with the Complainant's face or head.

OPA reviewed the photos associated with the injuries of NE#1, NE#2, NE#3 and NE#5. NE#4 was not listed as a victim in the police reports and did not claim to have sustained any injuries during this incident. The photos of the officers' injuries included images of red markings on the surface of their skin. There were also images of the Complainant. The Complainant's head was still covered by a spit sock in the photos, which were taken by the Sergeant during his screening of the arrest.

OPA lastly reviewed the following SPD reports: General Offense Report; Computer-Aided Dispatch; the officers' use of force statements; and the use of force reviews conducted by the chain of command. These reports appeared to be thorough, complete, and consistent.

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.*) If, as the Complainant alleged, the Named Employees used excessive force against him, it would have been a violation of this policy.



As identified above, most of what transpired during the Named Employees' encounter with the Complainant was captured on BWV and ICV. Those videos clearly depicted the Named Employees' treatment of the Complainant from the point that they initially detained him to when they established probable cause to effectuate the Complainant's arrest, as well as the force used against him. Based on my review of the evidence, I find that the force used by the Named Employees was reasonable, necessary and proportional, and there was nothing identified during OPA's review of this incident that supported any of the Complainant's allegations. For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against all of the Named Employees.

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

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 #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 #4 - 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 #5 - 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)**