



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 1, 2018

CASE NUMBER: 2017OPA-0842

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	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)

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	8.200 - Using Force 2. Use of Force: When Prohibited	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 the Named Employees used excessive force when they arrested her. During intake, OPA determined that the alleged force may have occurred while the Complainant was handcuffed.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged that the Named Employees used excessive force against her. From my review of the In-Car Video (ICV) associated with this case, Named Employee #1 (NE#1) appeared to use force on the Complainant on only one occasion. While walking the Complainant around his patrol vehicle with Named Employee #2 (NE#2), the Complainant kicked NE#1, striking him in the genitals. NE#1, with NE#2’s assistance, took the Complainant to the ground using a controlled takedown. The Complainant did not hit the ground with any force and did not appear to suffer or complain of any injuries.

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.” (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.*)



I find that the force used by NE#1 to take the Complainant down to the ground using a controlled takedown was reasonable, necessary and proportional, and thus 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 #1 - Allegation #2

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

While SPD Policy 8.200(1) provides for when force is authorized, SPD Policy 8.200(2) sets forth those scenarios in which force is prohibited. Among those scenarios are: when force is used to retaliate against or punish a subject; and when force is used against a restrained subject, “except in exceptional circumstances when the subject’s actions must be immediately stopped to prevent injury, [] escape, [or] destruction of property.” (SPD Policy 8.200(2).)

Here, the nature and circumstances of the allegations raised the possibility that the Named Employees may have used force against the Complainant to retaliate and/or punish her for her assaults on NE#1 and that this force was used when she was handcuffed.

First, I find no evidence that NE#1 used any reportable force against the Complainant, let alone force to retaliate against or punish her. This was the case even though she shoved him and then kicked him in the genitals. At the time she kicked and injured NE#1, he and NE#2 took the Complainant to the ground in a slow and controlled takedown. As indicated above, she appeared to suffer no injuries from this force.

Second, based on the fact that she had just kicked and injured NE#1 and posed a threat of additional harm to the officers, it was reasonable to use force on the Complainant while she was handcuffed. The force used was de minimis and was only the force needed to get the Complainant onto the ground and to eliminate any active threat.

For these reasons, I find no evidence supporting a conclusion that the force used by NE#1 was inappropriate and I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #1

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

NE#2 assisted NE#1 in taking the Complainant down to the ground in a slow controlled takedown after she kicked NE#1. In addition, after the Complainant was taken to the ground and the instant threat was eliminated, NE#2 raised the Complainant onto her feet and attempted to seat her in the patrol vehicle. The Complainant kicked against the side of the car to prevent being placed inside. Ultimately, NE#2 was able to push her into the vehicle and close the door. He pushed onto the seat and, while she loudly complained about the officers’ actions, she did not appear to be injured or complain of pain. NE#2’s force was fully captured by his front ICV and NE#1’s rear ICV.



I find that the force used by NE#2 to take the Complainant down to the ground and then to push her into the patrol vehicle when she physically resisted being placed inside was reasonable, necessary, and proportional, and thus 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 - Allegation #2

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

As with NE#1, I find that the force NE#2 used against the Complainant was not purposed to punish or retaliate against her. It was instead purposed to prevent her from further assaulting officers and to ensure that she was secured in the patrol vehicle. I note that NE#2 appeared, in my opinion, to have been very restrained in his actions. Indeed, after he pushed her in the vehicle, NE#2 told the Complainant to “watch your legs” before closing the door.

Moreover, as stated above, even though the Complainant was handcuffed at the time of the force, I find that it was appropriate and necessary.

As such, I recommend that this allegation be Not Sustained – Unfounded.

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