



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 5, 2018

CASE NUMBER: 2017OPA-1109

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 (Unfounded)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Sustained

Imposed Discipline

Oral Reprimand

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, a Department supervisor, referred to OPA the subject’s complaint that he was subjected to excessive force when the Named Employees “kneed” him in the head. After reviewing In-Car Video, it was also determined by the Complainant that Named Employee #1 may have made unprofessional statements to the subject.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The subject was observed walking in the vicinity of an unsanctioned unsheltered encampment referred to as the “Jungle.” The officers reported that he was technically trespassing at that time. The subject was holding a large sword. The officers, who were searching for a lost SPD bicycle, asked the subject to drop the sword and he complied. The officers patted the subject down and located a syringe. When they continued to pat him down, they located another knife (a butcher’s knife) in his back pocket. Named Employee #1 (NE#1) reported feeling afraid and stated that he was concerned that the subject was going to assault him or Named Employee #2 (NE#2). The officers made the decision to place the subject into handcuffs for their safety. When they attempted to do so, he pulled away from them. After trying to get the subject to comply and after telling him to relax without success, NE#2 made the decision to take the subject down to the ground.

NE#2 reported using a leg sweep to take the subject to the ground. When the subject was on the ground, they attempted to handcuff him; however, he continued to resist. NE#2 stated that he observed the subject grabbing NE#1. At that time, NE#2 reported placing his knee across the subject’s face in order to control his body. NE#2



reported this as being effective and they were able to handcuff the subject. The officers did not report using any other force. The officers further denied that they “kneed” the subject in the head.

The officers activated their In-Car Video (ICV); however, the force used occurred out of the view of the camera. The audio of their interaction was captured on ICV and it was consistent with the Named Employees’ account.

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.*)

Here, the subject alleged that he was subjected to excessive force by the Named Employees when they “kneed” him in the head. If this were the case, that force would likely have been out of policy. However, based on my review of the record, I find no evidence that this actually occurred. Notably, the subject had no injuries consistent with this level of force being utilized. Instead, I find it more likely that the force occurred as the Named Employees described. I find that the force they reported was reasonable, necessary, and proportional under the circumstances and, thus, consistent with policy.

Given that I find no evidence that the subject was “kneed” in the head or that he was subjected to excessive force, I recommend that this allegation be Not Sustained – Unfounded as against both 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 – Unfounded.

Recommended Finding: **Choose an item.**

Named Employee #2 - Allegation #2

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

A review of the Named Employees’ ICV revealed that, after the subject was handcuffed, NE#2 said to him: “Why you acting stupid man?” When the subject said that he was not doing so, NE#2 responded: “Yeah you are. Pretty fucking dumb dude.” NE#2 further told the subject: “You’re acting real fucking dumb.”

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.) This policy further states that: “Any time employees represent the



Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.”

It cannot be disputed that NE#2’s statements to the subject violated this section of the policy. Indeed, at his OPA interview, NE#2 recognized that these statements were not professional and indicated that he would try to avoid engaging in such behavior in the future. Had the statements been made in the heat of the moment during a physical fight, they might have been excusable. Here, however, NE#2’s profanity towards the subject occurred when the subject had already been handcuffed and after the officers were no longer involved in a struggle with him. For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**