



## CLOSED CASE SUMMARY

ISSUED DATE:     JANUARY 19, 2018

CASE NUMBER:    2017OPA-0798

### 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            | 5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint   | Allegation Removed  |
| # 2            | 5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation | Sustained           |

***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:**

While reviewing In-Car Video (ICV) during a Type II use of force review, a Lieutenant observed that the Complainant made several statements that alleged the Named Employees might have use excessive force when taking her into custody. Specifically, the subject said: “I’m still spitting up blood; you pushed my head against the ground severely”; “You’re turning a blind eye that they brute...”; and “...get rid of the evidence that they brutality use force on me.” Furthermore, during OPA’s review of the complaint it was discovered that Named Employee #4 was aware of the allegations of “brutal” force, but did not report those allegations to OPA as required.



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**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #1**

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

On the date in question, Named Employee #1 (NE#1), Named Employee #2 (NE#2), and Named Employee #3 (NE#3) responded to a call for service at a woman's shelter. The caller claimed that the Complainant had assaulted another individual and left the scene. NE#1 was the first officer to arrive at the scene and he viewed the Complainant walking away. He ordered the Complainant to stop, but she continued to walk away. Instead of physically confronting her by himself, NE#1 waited for NE#2 to arrive prior to making contact. Once NE#2 was present, he and NE#1 approached the Complainant together from different directions and ordered her to stop. The Complainant did not do so and began moving towards an alley. As they were apprehensive that the Complainant, who was the suspect in an assault, was going to flee, the officers made physical contact with her.

NE#1 reported that he told the Complainant to put her arms behind her back, but she refused, pulled back and started swinging her arms with her elbows out. NE#3 then began to assist. NE#3 told the Complainant to relax, but she continued to scream and swing her arms. The officers attempted to physically pull the Complainant's arms behind her back but were unable to do so. At one point, NE#3 fell to the ground. The decision was made to then take the Complainant down to the ground in order to handcuff her and secure her body. After several failed attempts, the officers were able to get the Complainant on to the ground. NE#1 described the takedown as "slow and without impact." NE#2 described it as pulling the Complainant to the ground and as a "soft takedown." NE#3 described the takedown as all of them "falling" to the ground together. The officers reported that the Complainant continued to struggle and thrash around when on the ground. The officers were eventually able to get her on her stomach, get her hands behind her back, and to handcuff her.

Photographs of the Complainant taken after the incident show a cut to her lip, minor abrasions to her forehead and left side of her face, and dirt caked on the right side of her head. As discussed more fully below, the Complainant asserted that the officers used "brutal" force against her.

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.*)

The Complainant had been identified as the subject in an assault, a crime of violence. The officers had probable cause to place her under arrest. With the authority to do so came the right to use physical force if necessary. Here, the Complainant did not comply with the officers' orders that she stop. As such, the officers were permitted to physically compel her to do so. When she would not put her hands behind her back, the officers were permitted to use force to handcuff her. Lastly, when she was refusing to obey the officers' commands and placing them in danger of harm by swinging her arms and elbows, it was reasonable for the officers to take her down to the ground in order to secure her and eliminate the threat that she posed. Notably, there is no evidence that the officers punched,



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struck or kicked the Complainant. While the Complainant exclaimed that her head was pushed hard against the ground, she refused to provide more details in an interview with Named Employee #4 (NE#4) and OPA was ultimately unable to interview her.

Based on the evidence in the record and applying a preponderance of the evidence standard, I find that the force used by NE#1, NE#2 and NE#3 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 #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**

***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint***

SPD Policy 5.002-POL-2 requires that “employees will assist any person who wishes to file a complaint.” Presumably, this allegation was classified based on this policy’s provision that “employees will assist the complainant by taking the complainant and passing it on to a supervisor and/or OPA...” and NE#4’s failure to refer the Complainant’s allegations to OPA. NE#4’s failure to make an OPA referral is discussed below (see Named Employee #4, Allegation #2), and resulted in a finding that NE#4 violated the provisions of SPD Policy 5.002-POL-5. I deem it unnecessary to also sustain this allegation, which is based on the same conduct.

Recommended Finding: **Allegation Removed**



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**Named Employee #4 - Allegation #2**

***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation***

SPD Policy 5.002-POL-5 requires that “supervisors will investigate or refer allegations of policy violations depending on the severity of the violation.” As a general matter, allegations of minor misconduct may be investigated by the chain of command while allegations of serious misconduct must be referred to OPA. (SPD Policy 5.002-POL-5.)

At his OPA interview and in his use of force review, NE#4 stated that he heard the Complainant state that she had been subjected to “brute force” and “brutal force,” but that he did not deem this to be an allegation of excessive force that was required to be reported to OPA. Moreover, while not mentioned by NE#4, NE#3 recounted that she also informed NE#4 of the Complainant’s claim that she had been subjected to “brutal” force. NE#4’s chain of command disagreed with his determination that the Complainant was not making an allegation of excessive force and referred this matter to OPA.

Based on a preponderance of the evidence standard, I find that the Complainant’s statement that she was subjected to “brutal” force was an allegation of potential serious misconduct that should have been reported to OPA. This is particularly the case when taking into account her injuries. That the Complainant did not cooperate in an interview with NE#4 or explicitly use the magic words that the officers applied “excessive force” does not change this determination. I conclude that the Department, and for that matter the federal Monitor and the United States District Court, expects that its sergeants will make an OPA referral when an injured subject claims to have been subjected to brutal force. The failure of NE#4 to do so was contrary to these expectations and violated policy.

As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**