



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 9, 2018

CASE NUMBER: 2017OPA-0807

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	6.010 – Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	Not Sustained (Lawful and Proper)
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Lawful and Proper)
# 5	6.220 - Voluntary Contacts, Terry Stops & Detentions 8. Officers May Conduct a Frisk or Pat-Down of Stopped Subject(s) Only if They Reasonably Suspect That [...]	Not Sustained (Unfounded)
# 6	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement d. Pat-Down Frisk	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	6.010 – Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	Not Sustained (Lawful and Proper)
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Lawful and Proper)
# 5	6.220 - Voluntary Contacts, Terry Stops & Detentions 8. Officers May Conduct a Frisk or Pat-Down of Stopped Subject(s) Only if They Reasonably Suspect That [...]	Not Sustained (Unfounded)
# 6	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement d. Pat-Down Frisk	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:

While effectuating an arrest on the Complainant for obstruction, the Complainant made allegations to the sergeant that the Named Employees used excessive force on him, and searched and seized him without any lawful reason.

STATEMENT OF FACTS:

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) responded to the scene of a potential domestic violence incident. The caller, who reported the incident, gave a description of the possible male suspect. When the officers arrived at the scene, they observed the Complainant, who matched the general description provided by the caller, in the near vicinity. The officers reported that when the Complainant observed them approach, he “appeared to duck into the driveway, as if to hide.” However, the Complainant then began walking towards the officers. The officers contacted him and began asking him questions. Based on the Complainant’s evasive answers and behavior, as well as the fact that he matched the general description of the suspect, the officers made the decision to detain him.

Even after being told repeatedly that he was being detained based on his suspected involvement in a domestic violence incident and being informed that he was not free to leave, the Complainant tried to walk away. The Complainant was wearing a backpack and the officers asked him to remove it. He refused. The Complainant then held his arms out. The officers asked him to put his arms by his side so that they could remove his backpack. When the Complainant did not do so, the officers took hold of his arms.

The Complainant began to raise his voice. He flexed his arms in an apparent attempt to pull them away from the officers. The officers asked him to stop doing so and informed him that, if he did not, they would take him down to the ground. The Complainant continued to resist and NE#1 reported sweeping the Complainant’s leg while holding onto his arm, which caused the Complainant to fall backwards onto a grassy median.

Once the Complainant was on the ground, the officers ordered him to get onto his stomach. NE#1 reported grabbing the Complainant’s left arm and controlling the Complainant’s head with his right hand to prevent the Complainant from rolling over onto his back. The force used allowed the officers to place the Complainant into handcuffs and to secure his person.

During this physical interaction, the Complainant asserted that the officers had bloodied his nose and that he was being assaulted by the police. However, there were no signs of any injuries to his person. When he was being searched incident to arrest, the Complainant also asserted that he was being “raped” by the officers.

Based on the Complainant’s allegations, the officers reported this incident to their supervisor, a sergeant. The sergeant interviewed the Complainant; however, the Complainant ultimately refused to provide a statement. The sergeant documented the scene and attempted to document the Complainant’s physical condition.

The force was classified as a Type II use of force and was reviewed and approved by the officers’ chain of command. However, based on the Complainant’s allegations of excessive force and rape, the sergeant properly forwarded this matter to OPA.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

NE#1 used force to sweep the Complainant's leg and take him down to the ground. He used additional force during the handcuffing of the Complainant, when he grabbed the Complainant's arm and pushed his head into the grassy median to control the Complainant's body. NE#2 used force to also grab the Complainant's arm in order to effectuate the handcuffing.

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.*)

I find that the force used by the officers was reasonable, necessary, and proportional, and thus consistent with policy. When the Complainant resisted the officers' attempts to detain him, refused to comply with the officers, and did not remove his backpack when he was ordered to do so, the officers were warranted in taking him down to the ground. I find no evidence in the record suggesting that the takedown was excessive or unwarranted.

Moreover, once the Complainant was on the ground, the officers were permitted to use force to handcuff him. Here the officers grabbed his arms and NE#1 used a trained technique to push the Complainant's head down to control his body. I conclude that this force was consistent with policy.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #2

6.010 – Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

At the time that he was initially stopped, the officers had reasonable suspicion to detain the Complainant to determine whether he was the suspect in a domestic violence incident. When he refused to comply with their orders to stop walking away, even when he was told that he was not free to leave, the officers had probable cause to place him under arrest for obstruction.

As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**



Named Employee #1 - Allegation #3

6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful

As indicated above, when the officers stopped the Complainant, they did so because they reasonably believed that he was the suspect in a reported domestic violence incident. The Complainant initially ducked into a driveway in an apparent attempt to avoid the officers and, when the officers contacted him, his answers were evasive and suspicious. Moreover, the Complainant matched the general description that the caller had provided of the suspect.

For these reasons, I find that there was sufficient reasonable suspicion to effectuate the stop and detention of the Complainant. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #4

6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope

SPD Policy 6.220-POL-3 requires that, “during a Terry stop, officers will limit the seizure to a reasonable scope.” The policy sets forth certain conduct that, if engaged in by officers, must have additional justification.

Here, I do not find that the detention went beyond a reasonable scope. The officers repeatedly requested that the Complainant remain where he was and informed him that he was not free to leave. However, the Complainant did not comply with that direction. Once the subject repeatedly tried to leave the location and refused to abide by the officers’ orders, the officers were warranted in taking hold of his arms. When he further refused to comply, the officers were warranted in taking him down to the ground.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #5

6.220 - Voluntary Contacts, Terry Stops & Detentions 8. Officers May Conduct a Frisk or Pat-Down of Stopped Subject(s) Only if They Reasonably Suspect That [...]

Here, the officers did not frisk the subject as part of the Terry stop. Instead, they searched him incident to arrest. Even had this been a frisk, the officers identified bulges in the Complainant’s front pockets that, when taking the Complainant’s conduct into consideration, they reasonably believed could be weapons.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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



Named Employee #1 - Allegation #6

6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement d. Pat-Down Frisk

SPD Policy 6.180-POL-2(d) concerns pat down and frisks. As detailed above, I find that the search conducted in this case was performed incident to arrest, which would be covered by SPD Policy 6.180-POL-2(e).

For the same reasons as indicated above (see Named Employee #1, Allegation #5), I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded) Error! Reference source not found.**

Named Employee #2 - Allegation #1

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

For the same reasons as indicated 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 #2 - Allegation #2

6.010 – Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

For the same reasons as indicated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #2 - Allegation #3

6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful

For the same reasons as indicated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #2 - Allegation #4

6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope

For the same reasons as indicated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained – Lawful and Proper.



Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #2 - Allegation #5

6.220 - Voluntary Contacts, Terry Stops & Detentions 8. Officers May Conduct a Frisk or Pat-Down of Stopped Subject(s) Only if They Reasonably Suspect That [...]

For the same reasons as indicated above (see Named Employee #1, Allegation #5), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #6

6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement d. Pat-Down Frisk

For the same reasons as indicated above (see Named Employee #1, Allegation #5), I recommend that this allegation be Not Sustained – Unfounded.

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