



## CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 1, 2018

CASE NUMBER: 2018OPA-0174

### 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)

*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 Employee subjected him to excessive force while he was in handcuffs.

#### ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the OPA Auditor’s review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employees. As such, the Named Employees were not interviewed as part of this case.

#### ANALYSIS AND CONCLUSIONS:

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

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

Named Employee #1 (NE#1) was driving to a shots-fired call when he observed an individual – later identified as the Complainant – spray painting a fence. NE#1 believed that the graffiti appeared to be gang related. NE#1 activated his patrol vehicle’s lights and siren, and pulled the vehicle in front of the Complainant. The Complainant began walking away and NE#1 ordered him to stop. When the Complainant did not obey that lawful order, NE#1 grabbed hold of his backpack to prevent him from walking away. The Complainant attempted to break free, but NE#1 held on to his backpack. The Complainant again tried to run away and he fell to the ground, with NE#1 falling on top of him. NE#1 used his body weight to hold the Complainant on the ground and called for a backing unit. NE#1 told the Complainant to put his hands behind his back and the Complainant initially said that he could not do so because NE#1 was putting too much weight on his back. NE#1 shifted his weight and was able to handcuff the Complainant.

NE#1 lifted the Complainant off the ground and, when he did so, the Complainant started to fall back down. NE#1 prevented him from doing so and then saw that a backing unit had arrived on the scene. The other officer ran over to where they were standing and helped walk the Complainant over to the patrol vehicle. NE#1 asked the other officer to watch the Complainant while NE#1 recovered his Body Worn Camera, which had fallen off. When NE#1



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turned around, he saw the Complainant continuing to struggle with the other officer. The Complainant tried to break away from the other officer, and the other officer took the Complainant down to the ground. NE#1 then came over to assist. Once they were able to get the Complainant off of the ground, it was determined that the other officer had suffered a cut to his hand consistent, in the other officer's opinion, with an injury caused by a knife. An opened knife was found lying next to the Complainant. At that time, a third officer responded and assisted NE#1, while the other officer sought medical attention.

The Complainant was searched in front of the patrol vehicle. At that time, he raised his body off of the hood of the vehicle and refused the officers' commands that he face the car. At one point, NE#1 lifted the Complainant's handcuffed arms upwards in order to cause the Complainant's body to move flush against the hood of the car. This allowed NE#1 to search the Complainant's pockets. When the force was used (and prior to that point), NE#1 and the Complainant engaged in a heated back and forth and NE#1 was clearly irritated with the Complainant. Moreover, at the time NE#1 lifted the Complainant's handcuffed arms up, the Complainant alleged that the force used was excessive.

Given his refusal to comply with commands and the escalating situation, the Lieutenant at the scene told the officers to lay the Complainant on the grass and search him in the prone position (lying on his stomach). The officers did so and the search was completed. NE#1 had no further interaction with the Complainant and the Complainant was transported from the scene. During a later force review, a Department Lieutenant identified the allegation of excessive force. The Lieutenant referred this matter to OPA and this investigation ensued. As discussed above, this case was classified as an Expedited Investigation and NE#1 was not interviewed. The Complainant did not respond to OPA's requests for his interview.

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 force at issue in this case is that used by NE#1 to pull the Complainant's handcuffed arms up in order to force his body down on to the hood of the patrol vehicle. From my review of the video, I find no evidence that this force was excessive. Instead, and given the Complainant's continued physical resistance towards the officers, I conclude that this force was reasonable, necessary, and proportional. As I find that the force was consistent with policy, I recommend that this allegation be Not Sustained – Lawful and Proper.

While not germane to my finding on the permissibility of the force, I have some concerns with statements made by NE#1 and the third officer that arrived on the scene. For example, NE#1 told the Complainant: "you're lucky you're not in the hospital right now." The officers also used expletives directed towards the Complainant, told him to shut his mouth, and said that they did not care where his phone was when he referenced it. Professionalism was not classified for investigation in this case and, as such, I do not reach a finding in this regard. However, NE#1 and the third officer should be mindful of how they speak to community members, even those that are under arrest and are



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resistive, and should also be cognizant that everything they say and do is recorded on camera and is available for public review.

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).)

This allegation was classified against NE#1 because, at the time the force in question was used, the Complainant was in handcuffs. However, given as I find that the force was consistent with policy, I similarly find that it was not prohibited. As such, I recommend that this allegation be Not Sustained – Unfounded.

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