



## CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 5, 2018

CASE NUMBER: 2018OPA-0334

### 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	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	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	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 3	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	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)
# 2	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)

#### Named Employee #4

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)

#### Named Employee #5

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 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	Not Sustained (Training Referral)



**Named Employee #6**

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 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)

**Named Employee #7**

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 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)

**Named Employee #8**

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	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 all of the Named Employees, except for Named Employee #5 (NE#5), beat her. She further alleged that she was sexually assaulted by Named Employee #7 (NE#7). It was also alleged that Named Employee #2 (NE#2) may have failed to de-escalate prior to using force. It was lastly alleged that NE#5 failed to document the Complainant’s allegations of potential misconduct and to refer those allegations to OPA as required by policy.

**STATEMENT OF FACTS:**

Officers, including the Named Employees, responded to a call concerning a woman who was trying to break into an apartment. She was reported as being in her bra and underwear and it was also reported that she was holding a fire extinguisher. While on their way to the call, the officers were advised that the woman – who was later identified as the Complainant – had set off the fire extinguisher.

When they arrived at the building, the fire alarm was going off. The officers helped residents of the building evacuate before heading upstairs. They went to the second floor where they located the Complainant. She was in her bra and underwear and was wearing sunglasses. She was further swinging the fire extinguisher around and the hallway was full of fire retardant. Shortly after the officers first saw her, she stepped towards them and sprayed the fire extinguisher.



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The officers ordered the Complainant to drop the fire extinguisher; however, she did not do so. Several of the Named Employees reported coughing and having difficulty breathing from the significant amount of fire retardant that was in the hallway.

NE#2 made the decision to use force on the Complainant in order to cause her to stop using the fire extinguisher and to take her into custody. He ran towards her and pushed her backwards with both arms extended. He pushed her chest and she struck the back wall and dropped the fire extinguisher. She then fell to the ground into a seated position.

The Complainant was secured by the officers. They made the decision to remove her from the hallway and to take her outside. This was based both on the need to quickly transport her from the scene and for the officers to remove themselves and the Complainant from the hallway and the fire retardant that was throughout. Given that she was aggressive and combative, several of the officers collectively decided to carry the Complainant downstairs.

Once they were downstairs, the Complainant was handcuffed and was loaded into an ambulance. It was determined that she had suffered an injury to her forehead. None of the officers were aware how that injury was caused or conclusively knew whether it was suffered during the incident or was preexisting. While inside of the ambulance, the Complainant was interviewed by NE#5, who was the Acting Sergeant. NE#5 asked the Complainant how she suffered the injury to her forehead and she stated: "you beat me." NE#5 responded, "Who did? Me personally?" The Complainant replied: "You and your officers and your paramedics. Especially [NE#7], [NE#7], fucked me unconscious." NE#5 again asked the Complainant about the source of her injury and she stated: "I don't know, you tell me." NE#5 responded: "I don't know either." The Complainant concluded the conversation by saying: "we're both in astonishment."

NE#5 initiated a Type II force investigation. He did not, however, document the Complainant's assertions of being beaten or her allegation of sexual misconduct against NE#7. NE#5 further did not report either of her statements to OPA as allegations of potential violations of policy.

During his review of this incident, a Department Administrative Lieutenant heard the Complainant's statements while watching Department video. He made an OPA referral to OPA based both on the content of the statements and on NE#5's failure to report them in the first place.

### **ANALYSIS AND CONCLUSIONS:**

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

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

The Complainant alleged that all of the Named Employees "beat" her. While not explicitly stated, OPA construes this to constitute an allegation of excessive force.

Named Employee #1 (NE#1), NE#2, Named Employee #3 (NE#3), Named Employee #4 (NE#4), and Named Employee #8 (NE#8) all used some force on the Complainant. All of these Named Employees used de minimis force when they lifted the Complainant off of the ground and carried her downstairs. NE#2 used additional force when he pushed the Complainant against the wall, causing her to drop the fire extinguisher and fall to the ground.



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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.*)

With regard to the force used by NE#2 to push the Complainant against the wall, I find that it was reasonable, necessary, and proportional. Prior to the force being used, the Complainant had threatened the officers with the fire extinguisher and had sprayed it several times, causing the officers to suffer adverse health effects. Moreover, she was clearly in crisis and was not responsive to officer commands. NE#2 expressed his concern that, if he did not act to incapacitate the Complainant and to take the extinguisher, both she and the officers could suffer significant harm. He made the decision to push her backwards, as he believed that it would cause her to drop the fire extinguisher and to fall to the ground so that she could be taken into custody. This was ultimately successful. Given the Complainant’s conduct, the harm she was causing to the officers and other residents of the building, and her refusal – whether intentional or due to crisis – to respond to lawful orders, I find that this force was reasonable under the circumstances. I further find that it was necessary to effectuate the NE#2’s lawful goals of securing the scene, taking the subject into custody, and preventing further harm. I also find that NE#2 rationally believed that there were no other reasonable alternatives to that force. Lastly, I conclude that the force was proportional to the threat facing the officers, both from the Complainant’s escalating conduct and from the fire retardant that had filled the hallway and was causing the officers to have trouble breathing. Notably, NE#2 did not strike her, tase her, or use any other significant force that could have plausibly been justified under the circumstances. As such, I find that NE#2’s push of the Complainant was consistent with policy.

I similarly find that the de minimis force used by the Named Employees to carry the Complainant downstairs was also reasonable, necessary, and proportional. The officers explained that, while they wanted to handcuff her upstairs, the Complainant was being resistive and they were having trouble breathing. They made the decision to get her downstairs and outside as fast as possible and, in order to do so, collectively carried her. The officers described working together to carry her to ensure that she did not suffer any injuries. I find that their decision to do so and the force they used to carry her were reasonable. I further find that the force was necessary under the circumstances given their need to get her out of the building and her lack of cooperation. Lastly, I find that the force was proportional to the potential harm facing the officers from further exposure to the fire retardant. As such, I also find that this force was consistent with policy.

For the above stated reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#1, NE#2, NE#3, NE#4, and NE#8.

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

**Named Employee #1 - Allegation #2**

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

SPD Policy 5.001-POL-2 requires employees to adhere to laws, City policy, and Department policy.



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The Complainant alleged that all of the Named Employees “beat” her. She further alleged that NE#7 sexually assaulted her. As discussed herein, the Department video that captured this incident confirms that the Named Employees did not engage in this conduct. The only force used on the Complainant was the push by NE#2 and the de minimis force used by NE#1, NE#2, NE#3, NE#4, and NE#8 to carry her downstairs. Moreover, the Department video conclusively established that neither NE#7 nor any other officer sexually assaulted the Complainant.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against all of the 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 #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

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

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

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

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

**Named Employee #2 - Allegation #3**

***8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force***

“De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.” (SPD Policy 8.100-POL-1.)

The policy further instructs that: “When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.” (*Id.*) Officers are also required, “when time and circumstances permit,” to “consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors” such as “mental impairment...drug interaction...[and/or] behavioral crisis.” (*Id.*) These mental and behavioral factors should be balanced by the officer against the facts of the incident “when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.” (*Id.*)



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The policy gives several examples of de-escalation, which include: mitigating the immediacy of the threat to give officers time to use extra resources and to call more officers or specialty units; and increasing the number of officers on scene to thus increase the ability to use less force. (*Id.*) Other examples of de-escalation include, but are not limited to:

- Placing barriers between an uncooperative subject and officers;
- Containing the threat;
- Decreasing exposure to the potential threat by using distance, cover and concealment;
- Avoidance of physical confrontation unless immediately necessary to protect someone or stop dangerous behavior;
- Using verbal techniques, such as “Listen and Explain with Equity and Dignity” (LEED) to calm an agitated subject and promote rational decision making;
- Calling extra resources, including CIT officers and officers equipped with less-lethal tools; and
- Using “any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject.

(*Id.*) De-escalation is inarguably a crucial component of the Department’s obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department’s policy and expectations.

When NE#2 used force to push the Complainant, she was waving a metal fire extinguisher around, had sprayed the fire extinguisher multiple times causing the officers to have trouble breathing, and was non-compliant with officers’ orders that she drop the fire extinguisher. NE#2 was concerned that she would further spray the fire extinguisher and that she would potentially use the fire extinguisher as a weapon to strike the officers.

Multiple officers told OPA that they were in the process of forming a less-lethal cover team with a Taser operator. However, they explained that the planning was abandoned and NE#2 was justified in acting when the Complainant continued to spray the fire extinguisher. NE#2 stated that not only was the fire retardant problematic for the officers health, but that it could also negatively affect the other residents of the building, some of whom had respiratory issues. Notably, the Taser officer, NE#1, told OPA that, under the circumstances of this case, he would not have been able to use his Taser effectively.

Ultimately, all of the officers stated that they did not believe that de-escalation was safe or feasible at that time and that it was appropriate for NE#2 to use the force that he did.

Based on my review of the Department video, the documentation concerning this case, and the Named Employees’ OPA interviews, I agree that, at the time he used force to push the Complainant, de-escalation was no longer safe or feasible. Important to OPA is the fact that the Complainant was actively causing physical harm to the officers by continuing to spray the fire extinguisher and she showed no indication that she would cease doing so and drop what was properly characterized by the Named Employees as a weapon. Moreover, at that moment, time, distance, and shielding was impractical given that the hallway was full of fire retardant. Further, additional conversation would not have been fruitful given that the Complainant appeared to be in crisis. While more advanced tactical planning may



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have been preferred, I think NE#2 acted appropriately and consistent with policy when he acted and eliminated the active and imminent threat posed by the Complainant.

For these reasons, 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 #3 - Allegation #2**

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

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

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

**Named Employee #4 - 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 #2**

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

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

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

**Named Employee #5 - Allegation #1**

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

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



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

**Named Employee #5 - 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 supervisors who become aware of a potential policy violation to investigate or refer the allegations depending on their severity. Minor allegations of misconduct may be investigated by a supervisor, while allegations of serious misconduct – such as the use of excessive force and sexual assault – must be referred to OPA. (SPD Policy 5.002-POL-5.)

As discussed above, the Complainant told NE#5 that the Named Employees “beat” her and that NE#7 sexually assaulted her. These allegations suggested that she was making claims of serious misconduct on the part of the Named Employees. However, NE#5 did not document or report any of these statements.

At his OPA interview, NE#5 asserted that he believed that the Complainant was “just saying stuff” and that there was no truth to her claims. However, NE#5 recognized that he violated policy when he failed to document and report the Complainant’s allegations to OPA. NE#5 explained that, on the date in question, he was an Acting Sergeant and that he had never been required to evaluate those types of claims while in that role. He told OPA that, were he to face that same situation today, he would handle it differently. He stated that he would confer with a Lieutenant or screen the allegations with the Department’s Force Investigation Team (FIT).

I agree with NE#5 that his conduct constituted a technical violation of policy. NE#5 should have screened these allegations with his supervisor, with FIT, and potentially with the Sexual Assault Unit and OPA. All of these individuals/entities could have, as NE#5 recognized, given him guidance on how to proceed. Moreover, at the very minimum, NE#5 should have documented the Complainant’s allegations in his use of force review and explained why they were not supported by the evidence.

While I find that NE#5 acted contrary to policy, I do not recommend that he receive a Sustained finding for two main reasons. First, NE#5 took responsibility for his failure to comply with policy at his OPA interview, demonstrated that he clearly learned from this incident, and articulated how he would appropriately handle a similar situation in the future. Second, NE#5 was an Acting Sergeant at the time of the incident and this was his first time encountering this type of scenario. Ultimately, the disciplinary system is purposed to correct mistakes and ensure that they do not occur in the future. Given NE#5’s statements at his OPA interview, I believe that this goal has been achieved and that discipline is unnecessary and would be counterproductive.

For these reasons, I instead issue NE#5 the below Training Referral.

- **Training Referral:** NE#5 should be retrained on the elements of SPD Policy 5.002-POL-5. Specifically, NE#5 should be reminded of his obligation, as an Acting Sergeant, to document allegations of serious misconduct and to refer those allegations to OPA. Where he does not do so, he acts contrary to policy. NE#5 should be commended for accepting responsibility for his failure to do so in this case and for learning from this incident. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.



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Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #6 - Allegation #1**

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

There is no evidence in the record suggesting that either NE#6 or NE#7 ever made any physical contact with the Complainant, let alone that they subjected her to excessive force.

As I find that neither NE#6 or NE#7 used force during this incident, I recommend that this allegation be Not Sustained – Unfounded as against them.

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

**Named Employee #6 - Allegation #2**

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

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

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

**Named Employee #7 - Allegation #1**

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

For the same reasons as stated above (see Named Employee #6, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #7 - Allegation #2**

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

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

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

**Named Employee #8 - 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)**



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**Named Employee #8 - Allegation #2**

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

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

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