



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 16, 2018

CASE NUMBER: 2018OPA-0512

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	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint	Not Sustained (Training Referral)

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 Named Employee #1 and Named Employee #2 subjected her to excessive force. It was further alleged that Named Employee #3 failed to refer the Complainant’s allegation of excessive force to OPA.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) developed probable cause to arrest the Complainant for criminal trespass. At that time, the Complainant was inside of someone else’s tent and refused to exit. NE#1 and NE#2 decided not to seek a warrant and left the scene. NE#1 and NE#2 were later notified that the Complainant had exited the tent. NE#1 and NE#2 located the Complainant and attempted to place her under arrest. The Complainant resisted the officers by pulling away from them and kicking at NE#1. The officers rolled the Complainant onto her stomach. NE#1 held her right arm and handcuffed her in the prone position. NE#2 also held onto the Complainant’s arm and placed his knee on the Complainant’s “mid-section” in order to secure her person and prevent her from further kicking.



As discussed more fully below, the Complainant alleged that she was slammed to the ground, that the officers kned her in the stomach, and that she was otherwise “manhandled.”

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.*)

Based on OPA’s review of the Body Worn Video (BWV), the Complainant’s allegation of excessive force is unsubstantiated. There is no indication that she was ever slammed to the ground, jumped on, or kned in the stomach.

Indeed, the BWV shows the contrary – that the force used by NE#1 and NE#2 was reasonable, necessary, and proportional. The officers had probable cause to arrest the Complainant. With that legal authority came the right to use force if necessary under the circumstances. Here, the Complainant resisted the officers’ attempts to arrest her, including kicking at them. As such, the officers were permitted to use force to take her into custody and to prevent her from harming them. The force they used was appropriate and they modulated that force once the Complainant was handcuffed and fully secured.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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

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

During the arrest screening, the Complainant told Named Employee #3 (NE#3) that she was pregnant, that her unborn child was “aborting,” and that she had been kned in the stomach. She further stated that the officers slammed her on the ground for no reason and jumped on her while manhandling her.



NE#3 did not refer the Complainant's allegations to OPA. However, the Acting Captain who later reviewed the use of force interpreted the Complainant to be claiming excessive force. The Acting Captain made an OPA referral even though he noted that the BWV clearly indicated that the Complainant's allegations were meritless.

SPD Policy 5.002-POL-2 instructs that Department employees will assist any person who wishes to file a complaint. The policy instructs that Department employees "will assist the complainant by taking the complaint and passing it on to a supervisor or OPA." (SPD Policy 5.002-POL-2.) SPD Policy 5.002-POL-5 further 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 – must be referred to OPA. (SPD Policy 5.002-POL-5.)

I agree with the Acting Captain that the Complainant's allegations constituted an excessive force complaint. As such, NE#3 was required to make an OPA referral and the failure to do so was technically contrary to policy. That being said, I do not believe that a Sustained finding is warranted for several reasons. First, the allegation of excessive force was demonstrably false based on the evidence. Second, had this matter been screened with OPA, it would have identified as unsubstantiated and a chain of command review would have been recommended rather than an OPA referral. However, NE#3 should have screened this matter with OPA rather than taking no action other than completing his chain of command investigation. For these reasons, I recommend that NE#3 receive the below Training Referral.

- **Training Referral:** NE#3 should receive training concerning SPD 5.002-POL-2 and 5.002-POL-5. He should further be reminded that, when he is confronted with what he believes is an unfounded allegation of excessive force, he can screen that force with OPA. To the extent he does not avail himself of that screening, however, he is obligated to make an OPA referral. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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