



## CLOSED CASE SUMMARY

ISSUED DATE:      JANUARY 23, 2019

CASE NUMBER:      2018OPA-0760

### 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	11.020 - Transportation of Detainees 1. Employees Will Take Reasonable Steps to Ensure the Safety of a Detainee in Their Custody and for the Safekeeping of Detainee’s Property	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	11.020 - Transportation of Detainees 1. Employees Will Take Reasonable Steps to Ensure the Safety of a Detainee in Their Custody and for the Safekeeping of Detainee’s Property	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 Employees subjected him to excessive force and damaged his property.

**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 - Allegations #1**

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

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were dispatched to remove a person sleeping on a street car. The Named Employees contacted the driver of the street car, who stated that he had been trying to wake the individual up and remove him but was unable to do so. NE#1 and NE#2 contacted the individual – referred to herein as the Complainant – who was still asleep. The Complainant was awakened by NE#1 and asked to get off the street car. In response, the Complainant shook his head no. NE#1 asked the Complainant if he would like to go to Detox or the hospital. The Complainant again shook his head no and attempted to lay back down in the seat. The Named Employees repeatedly tried to convince the Complainant not to go back to sleep and to get off the street car. The Named Employees further advised the Complainant that, if he did not get off the street car, he would be arrested for trespassing. The Complainant told the Named Employees to arrest him. The Complainant was then



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arrested and escorted to a patrol vehicle. At that time, the Complainant began yelling that the Named Employees were rough-housing him and beating him up. As a result of the Complainant's allegation, this matter was referred to OPA and this investigation ensued.

The Named Employees' interaction with the Complainant was captured on Body Worn Video (BWV). From a review of the BWV, it appears that the Named Employees used de minimis force to handcuff the Complainant and then to escort him to the patrol vehicle. Moreover, the BWV revealed that, at the time of the Complainant's allegation of force, the officers were simply holding his arm while standing still.

There is no evidence that the Named Employees subjected the Complainant to excessive force. With regard to the force that the Named Employees did use, I find that it was reasonable, necessary, and proportional, and, thus, consistent with policy. For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

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

***11.020 - Transportation of Detainees 1. Employees Will Take Reasonable Steps to Ensure the Safety of a Detainee in Their Custody and for the Safekeeping of Detainee's Property***

The Complainant alleged that NE#1 and NE#2 damaged his cell phone when he was searched after his arrest.

The BWV captured the Named Employees' search of the Complainant. The video showed the Named Employees removing items, including the Complainant's cell phone, from his person and placing those items on the hood of the officers' patrol vehicle. The BWV specifically showed NE#1 placing the Complainant's cell phone on the hood of the patrol vehicle. Based on the manner in which the cell phone was placed on the hood, which was with very little force, it is virtually impossible that it could have caused the amount of damage to the phone that the Complainant later reported to OPA.

SPD Policy 11.020-POL-1 requires that Department employees take reasonable steps to ensure the safety of a detainee in their custody and to ensure the safekeeping of the detainee's property. Had the Named Employees significantly damaged the Complainant's cell phone, they would likely have violated this policy. However, when applying a preponderance of the evidence standard, the evidence is insufficient to establish that they did so.

As such, I recommend that this allegation be Not Sustained – Unfounded as against both Named Employees.

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

**Named Employee #2 - Allegations #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.



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

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

***11.020 - Transportation of Detainees 1. Employees Will Take Reasonable Steps to Ensure the Safety of a Detainee in Their Custody and for the Safekeeping of Detainee's Property***

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)**