



## **CLOSED CASE SUMMARY**

ISSUED DATE: JUNE 3, 2019

CASE NUMBER: 2019OPA-0020

### **Allegations of Misconduct & Director’s Findings**

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.200 – Use of Force 1. Using Force: When Authorized	Not Sustained (Unfounded)
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures Based Upon Reasonable Suspicion in Order to be Lawful	Not Sustained (Lawful and Proper)

***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:**

On December 18, 2018, at approximately 0220 hours, Named Employee #1 (NE#1) and other officers responded to an occupied burglary call. The victim reported discovering an unknown male in his house. This unknown male, who was later identified as the Complainant in this case, fled with the victim's keys and bicycle. The Complainant was later located, detained, and arrested by NE#1. After he was arrested, the Complainant alleged that NE#1 used excessive force when NE#1 allegedly tacked the Complainant off of his bicycle. The Complainant further alleged that NE#1 did not have a legal basis for stopping him in the first place.

#### **ADMINISTRATIVE NOTE:**

This case was designated as an Expedited Investigation. This means that OPA, with the review and approval of the Office of Inspector General for Public Safety, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employee. As such, the Named Employee were not interviewed as part of this case.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegations #1**

##### ***8.200 - Using Force: When Authorized***

On the date in question, NE#1 and his partner were dispatched to a burglary. The call included the following details: an unknown male walked into the victim’s residence and, nearly one minute later, left through the alley with a gray Cannondale bicycle. The officers arrived approximately one minute after they were dispatched and conducted an unsuccessful area search for the suspect. After returning to the location of the incident, the officers learned from the victim that the suspect was a bald, Caucasian male, approximately 5'9" tall, wearing a black jacket with no shirt underneath. The victim said that the suspect entered the residence and left with a bicycle and several of the victim’s



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other belongings. At this time, other officers not in the residence announced over the radio that they may have located a possible suspect.

The suspect, who is the Complainant in this case, was reported to match the updated description and was riding a gray bicycle. The Complainant was approached by officers. The Complainant refused commands to stop. He was ultimately taken into custody by NE#1 and other officers when he rode the bicycle into NE#1, which resulted in a collision. The Complainant was then positively identified by the victim.

While at the West Precinct following his arrest, the Complainant alleged to the Sergeant who screened the arrest that he believed that NE#1 used excessive force against him. Specifically, the Complainant contended that NE#1 tackled him off of the bicycle. The Complainant further alleged to the Sergeant that NE#1 did not have reasonable suspicion for stopping him in the first place. The Complainant requested that the Sergeant submit his complaint to OPA. The Sergeant made the referral and this investigation ensued.

During its investigation, OPA made multiple attempts to speak with the Complainant; however, those attempts were unsuccessful. As a result, the Complainant was not interviewed as part of this investigation.

NE#1 documented this incident in a report. In that report, NE#1 wrote that, immediately before the Complainant's arrest, NE#1 was facing the Complainant, who was riding the bicycle at the time, and told him to stop. However, the Complainant began to pedal the bicycle faster and took no action to slow down or stop as he rode towards NE#1. NE#1 reported that the Complainant made aggressive statements as he approached NE#1, which indicated to NE#1 that the Complainant intended to crash into NE#1 and continue to flee. NE#1 reported that the Complainant intentionally ran the bicycle into him, striking him in the left leg with the front tire. After colliding into NE#1, the Complainant struggled to get free. NE#1 reported that he gained control of the Complainant's left arm and held it behind his back. At that time, the Complainant was lying on his stomach. When NE#1 saw that another officer had control of the Complainant's right arm, NE#1 handcuffed him.

NE#1's force used to take the Complainant down to the ground and to subdue him was investigated by SPD as Type II. The chain of command conducted a review of the force and deemed it reasonable, necessary, and proportional. The chain of command also deemed NE#1's actions to be consistent with policy and training.

The collision between NE#1 and the Complainant, as well as the force ultimately used, were captured on Body Worn Video (BWV). The video indicated that the force was consistent with that reported by NE#1. Moreover, the video contradicted the Complainant's allegation that he was tackled from the bicycle.

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.*)



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As discussed above, the video disproves the Complainant's allegation that he was tackled from the bicycle. Instead, the video corroborates the force that was reported by NE#1. From OPA's review of the video, there is no evidence that NE#1 used excessive force during this incident. To the contrary, the force used by NE#1 appears to have been reasonable, necessary, and proportional under the circumstances. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

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

***6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures Based Upon Reasonable Suspicion in Order to be Lawful***

The Complainant alleged that he was improperly detained by NE#1 and other officers.

SPD Policy 6.220-POL-1 governs Terry stops and stands for the proposition that Terry stops are seizures of an individual and, as such, must be based on reasonable suspicion in order to be lawful. SPD Policy defines a Terry stop as: "A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion in order to investigate possible criminal activity." (SPD Policy 6.220-POL-2(b).) SPD Policy further defines reasonable suspicion as: "Specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging or is about to engage in criminal conduct." (*Id.*) Whether a Terry stop is reasonable is determined by looking at "the totality of the circumstances, the officer's training and experience, and what the officer knew before the stop." (*Id.*) While "[i]nformation learned during the stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, it "cannot provide the justification for the original stop." (*Id.*)

As is detailed more fully above, NE#1 was aware that a burglary was committed and had a description of the perpetrator and the bicycle he had reported stolen. The Complainant, who was located shortly after the burglary, matched the description of the perpetrator and was riding a bicycle that matched the description of the stolen bicycle. Accordingly, at that time, NE#1 had reasonable suspicion to stop the Complainant. Moreover, when the Complainant refused to stop and collided with NE#1, the reasonable suspicion evolved into probable cause to arrest.

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

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