



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 3, 2019

CASE NUMBER: 2019OPA-0161

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)

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 used excessive force against him during May Day 2012.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General’s review and approval, 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 was 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

On March 3, 2019, the Complainant filed this complaint with OPA in which he alleged that he was subjected to excessive force by Named Employee #1 (NE#1). The Complainant asserted that this occurred on May Day in 2012, almost seven years earlier.

As part of its investigation, OPA interviewed the Complainant, who declined to have the interview recorded. The Complainant told OPA that the best way to explain his complaint is for OPA to review a video of what took place. The Complainant acknowledged that he was arrested on May 1, 2012 but said that the incident with NE#1 took place hours before his arrest. The Complainant alleged that NE#1 “pushed” him without notice and told him to get off the street. The Complainant stated that, once they were on the sidewalk, NE#1 pushed him and he fell over an officer’s bike, landing on his back. The Complainant further alleged that NE#1 “kept coming after [him],” and the Complainant now believes that he was assaulted by NE#1. OPA asked the Complainant about his delay in reporting this incident, and the Complainant stated that he had no explanation. The Complainant explained that he submitted the video of the alleged assault to the City Attorney in 2012 as part of a complaint, but never heard anything in response. The Complainant asserted that he should have taken the matter to court, but he did not. The Complainant alleged that he has lost everything since that incident and he attributed this to what NE#1 allegedly did.



OPA reviewed the videos that were provided by the Complainant. In the videos, the Complainant could be seen walking in the street after officers had moved demonstrators back. The Complainant was walking behind the bicycle line and appeared to engage in some sort of argument with a bicycle officer. The Complainant was then seen facing officers, who were walking on foot. One of the officers was NE#1, who was ordering the Complainant to move back. NE#1 was holding his baton horizontally with both hands and pushed straight out with both of his arms at about chest height. The baton contacted the Complainant and he fell over backwards over a bicycle and onto the sidewalk. The Complainant was not detained and appeared to move back into the crowd. There was no indication from the video that the Complainant was injured during this encounter.

OPA reviewed documentation concerning this incident and other information pertaining to the Complainant's arrest that took place later that same day. According to the relevant materials, the Complainant was arrested for pedestrian interference for refusing to get out of the street after he was warned more than three times to leave the area. No force was reported to have been used against the Complainant during his arrest. OPA located a photograph of the Complainant that was taken at the scene in connection with his arrest. In that photograph, the Complainant was smiling broadly as he posed with the Sergeant who arrested him.

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 videos of this seven-year old incident showed the Complainant behind police officers who were moving forward using crowd control tactics. At that time, demonstrators had been ordered to leave the area and, as confirmed by the video, the Complainant had not complied with that order. As noted above, NE#1 was seen holding his baton horizontally with both hands and pushing straight out with both of his arms at approximately chest height. In this respect, the actions taken by NE#1 were consistent with SPD approved crowd control tactics during demonstrations. Moreover, based on an evaluation of the totality of the evidence, the force was not excessive or violative of SPD policy. While OPA is sympathetic to the Complainant's recitation of unfortunate events that he claimed occurred after this incident, this does not cause the force to have been inappropriate.

Lastly, OPA notes that, even had the force been excessive, the Complainant filed this complaint well beyond the statute of limitations. As such, no Sustained finding could have been issued even if warranted under the circumstances.

For the above reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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