



## CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 5, 2019

CASE NUMBER: 2019OPA-0163

### 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)

*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.

### 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 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. When Authorized***

Officers responded to a report of a robbery. The victim contended that an individual took his car keys from his running vehicle and pushed him. The victim followed the suspect and, simultaneously, updated SPD as to the suspect’s location.

Named Employee #1 (NE#1) located the suspect, who is the Complainant in this case. NE#1 contacted the Complainant and told him to stop. When the Complainant refused to comply with NE#1’s orders, NE#1 reached out to take hold of his arm. The Complainant swung around and turned to face NE#1. The Complainant pushed NE#1 and NE#1, in response, pushed him back against his patrol vehicle. NE#1 and the Complainant continued to struggle and other officers, including, Named Employee #2 (NE#2) arrived at the scene in response to NE#1’s call for backup. The officers collectively pulled the Complainant down to the ground. The officers struggled with the Complainant, who continued to physically resist to prevent himself from being taken into custody.



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While on the ground, the Complainant bit NE#2 through his uniform shirt, breaking the skin on his left bicep. The Complainant also bit NE#1's left thigh, though that bite's impact was minimized by a backup weapon magazine that NE#1 had stored in the cargo pocket of his pants. The Complainant further threw punches at the officers and grabbed for one of their weapons.

In response to the Complainant's assaultive and resistive behavior, NE#2 punched him in the face with a closed fist in order to prevent him from continuing to bite. NE#1 reported using a head control technique, in which he held the back of the Complainant's neck. Eventually, when backup units arrived, the Complainant was taken into custody without further incident. NE#2 was later transported to the hospital to be treated for the bite injury.

A Department Sergeant screened the arrest and force, which included interviewing the Complainant. The Sergeant asked the Complainant how he sustained cuts on his forehead and the Complainant alleged that they were the result of being mistreated by officers. The Complainant told the Sergeant that he did not believe it had anything to do with his actions. The Complainant was construed to be alleging excessive force and this matter was referred to OPA.

During its investigation, OPA made multiple attempts to interview the Complainant but was unsuccessful in this regard. Thus, the Complainant was not interviewed as part of this case.

OPA reviewed the analyses of the force conducted by the Named Employees' chain of command and the Force Review Board (FRB). The chain of command and the FRB both found the force to be consistent with policy.

OPA also reviewed the Body Worn Video and In-Car Video associated with this incident. The video was consistent with the Named Employees' recounting of this incident. The video established that the Complainant resisted arrest and further that the Complainant was assaultive towards the officers.

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#1, I find that it was reasonable, necessary, and proportional. First, it was appropriate to use force to detain the Complainant when he did not initially comply with NE#1's orders to remain where he was. Second, it was also permissible to forcibly hold the Complainant against the patrol vehicle when he pushed away from NE#1. Third, it was within policy to use force to pull the Complainant down to the ground in order to take him into custody. Notably, at that time, the Complainant was fighting multiple officers and preventing himself from being controlled and handcuffed. Lastly, it was permissible for NE#1 to use force on the Complainant in the form of control holds when the Complainant was on the ground. As discussed above, the Complainant was actively assaulting officers at the time, including trying to bite NE#1.

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



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While not relevant to the OPA’s ultimate finding on this allegation, OPA also concurs with the FRB’s recommendation that NE#1’s chain of command review this incident with him. The FRB stated that NE#1’s supervisor should: “debrief and discuss this incident with him, and remind the officer that solo contacts are discouraged and to better articulate the reasons that existed that justified the contact.” The FRB further noted that: “In cases where a single officer contact would be appropriate, the officer must thoroughly document why it was appropriate.”

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

**Named Employee #2 - Allegations #1**

***8.200 - Using Force - 1. When Authorized***

As previously described above, during the struggle between officers and the Complainant, NE#2 sustained a substantial bite wound from the Complainant. In response to being bitten, NE#2 punched the Complainant once in the head. As described by NE#2, the purpose of this force was to stop the Complainant from biting him and other officers.

Based on OPA’s review of the evidence, OPA believes that this force was reasonable, necessary, and proportional under the circumstances. The force was reasonable as, at the time the force was used, the Complainant was assaulting officers, including biting both NE#1 and NE#2. The force was necessary given that the assaultive behavior was ongoing and needed to be stopped and there were no other similarly effective force options apparently available at the time. Lastly, the force was proportional to the harm threatened and caused by the Complainant.

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

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