



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 23, 2018

CASE NUMBER: 2016OPA-0997

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	8.200 - Using Force 2. Use of Force: When Prohibited	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 Employee subjected him to excessive force after his arrest.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Complainant alleged that Named Employee #1 (NE#1) pushed him into the patrol car and injured his leg. He further alleged that NE#1 “choked [him] out” while he was in the back of the patrol car.

The entire interaction between NE#1 and the Complainant was captured on the rear facing In-Car Video (ICV) in NE#1’s patrol vehicle. The Complainant was arrested for a DUI hit and run. He was taken into custody without any use of force. As NE#1 was putting him the back of the vehicle, the subject became angry and insisted that officers were arresting the wrong person.

The ICV showed that NE#1 held the subject’s arm and assisted him into the car. At one point, while buckling the Complainant’s seatbelt and closing the door, NE#1 pushed the subject’s head away from him. NE#1 explained that he did so based on the Complainant’s level of intoxication and belligerent and aggressive demeanor coupled with NE#1’s fear of being bitten or spit on by the subject. At the time of the push, NE#1’s arm made incidental contact with the Complainant’s neck. The Complainant subsequently alleged that he was being “choked out.” However, there was no evidence indicating that anything other than de minimis force was used by NE#1 during his interaction with the Complainant.

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 my review of the evidence, I find that the only force used in this case – the pushing of the Complainant’s face away from NE#1 – was reasonable, necessary, and proportional, and thus consistent with policy. The Complainant was intoxicated and aggressive as demonstrated by the ICV. It was not unreasonable for NE#1 to have the concern that the Complainant could spit on or bite him. As such, he pushed the Complainant’s face away to ensure that this did not occur. While NE#1’s arm made contact with the Complainant’s neck during the push, I do not believe that it was an intentional action and it certainly was not a neck or carotid hold. Again, the video undercuts any allegation that the Complainant was “choked out.”

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

Force - Use - 8.200 - Using Force 2. Use of Force: When Prohibited

The Complainant alleged that NE#1 choked him out while in the back of the patrol car. As indicated above, I find that the contact with the Complainant’s neck by NE#1 was incidental. Moreover, the video conclusively establishes that the Complainant was not “choked out” by NE#1.

As such, I recommend that this allegation be Not Sustained - Unfounded.

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