



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 18, 2017

CASE NUMBER: 2016OPA-1269

NAMED EMPLOYEE (S) & ALLEGATIONS:

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

EXECUTIVE SUMMARY:

The Complainant, the Department's Force Review Board, referred to OPA an allegation that the subject had been subjected to excessive force by the Named Employee.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

Officers, including Named Employee #1, stopped the subject based on the belief that she had just stolen a cellular phone. After being contacted, the subject tried to walk away and had to be prevented from doing so by officers. The subject was uncooperative and refused the officers' commands to remove her hands from her pockets. The officers attempted to place the subject into handcuffs, but she resisted their attempts to do so. She further started trying to spit on the officers. Named Employee #1 also reported that the subject began to kick him. At that point, the officers made the decision to get the subject onto the ground in order to prevent her from further physically resisting and spitting, as well as to handcuff her. The officers performed what they described as a controlled "team takedown" in order to get the subject onto the ground. Once she was on the ground, the officers were able to handcuff her. During the handcuffing, Named Employee #1, at one point, placed his weight on the subject's body in order to stop her from further resisting. Named Employee #1 recalled that the subject claimed that she could not breathe. He stated that this could have occurred both when she was standing and when she was on the ground. Named Employee #1 did not believe that her breathing was actually impaired, as she was continually talking. Named Employee #1 also stated that, at one point, the subject stopped moving. He did not know whether she lost consciousness and stated that he could see that she was still breathing.

Once the subject was handcuffed, she complained of injury. The Sergeant responded the scene to screen the incident. Several civilian witnesses were interviewed. The Witness did not see the takedown, but relayed observing the officers' interaction with the subject when she was on the ground. The Witness did not report observing any apparently excessive force. The Witness further stated that the subject was moving around and resisting the officers while on the ground, undercutting the subject's claim that she lost consciousness. A second Witness, who was the victim of the theft perpetrated by the subject, reported viewing the entirety of the officers' force. The second Witness recalled the subject spitting at and resisting the officers. The second Witness denied seeing the subject get slammed to the ground and stated that: "there was no police violence, they were just trying to do what they, they were just trying to see if she had my phone on her."



During his investigation of the force, the Sergeant interviewed the subject. She told him that Named Employee #1 slammed her into the ground and that she hit her head and lost consciousness. She further stated that Named Employee #1 put his knee against her neck and back making it difficult for her to breathe. Given the allegation of a possible head injury and the claimed loss of consciousness, the force was screened with the Department's Force Investigation Team (FIT). While notifying FIT, the Sergeant did not refer the subject's allegations to OPA. The officers activated their In-Car Video systems; however, the force occurred outside of the view of the camera and was not recorded. The officers' later interaction with the Complainant, including the Sergeant's interview of her, were recorded.

The Sergeant was one of the assigned FIT investigators. He interviewed the subject concerning the force. During that interview, the subject, while indicating that she did not want to speak with him, told the Sergeant that she had been assaulted by officers. The Sergeant did not report this allegation to OPA as was required by policy. (See SPD Policy 5.002-POL-5.)

This matter was later administratively reviewed by the Department's Force Review Board (FRB). After reviewing the subject's statements to the two Sergeants, however, the FRB opined that this matter should have been referred to OPA to investigate the allegation of excessive force. The FRB thus sent this matter to OPA and the instant investigation was commenced.

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 affect a lawful purpose." (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

Based my review of the totality of the evidence, I find that the force used by Named Employee #1 was reasonable, necessary, and proportional, and thus consistent with policy.

The Complainant was belligerent and unreasonable and was actively trying to spit on and kick officers. The involved officers, including Named Employee #1, had the lawful authority to place her under arrest. When she tried to resist, the officers attempt to do so, the officers further had the lawful authority to use force. As such, I believe that the force was reasonable.

The force was further necessary to ensure that the Complainant was properly secured and to prevent her from causing physical harm to officers.

Lastly, the force was proportional to the threat facing the officers. Force was only used when the Complainant was actively trying to spit on and kick officers and, even then, only the least force necessary was used. Notably, NE#1 did not strike the Complainant or use anything other than a low level of force. Moreover, contrary to the Complainant's allegation, there is no evidence that she was "assaulted and battered" by officers or that any officer, let alone NE#1, caused her to lose consciousness or impaired her breathing.



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

While I find the force to have been within policy, I share the interim OPA Auditor’s concern that even though both Sergeants failed to report the subject’s allegation of excessive force, these failures to report were not investigated by OPA. I agree with the Auditor that they should have been. Moreover, based on the evidence in the record, had these allegations been part of this case I would have recommended sustained findings against both individuals.

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