



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 17, 2018

CASE NUMBER: 2017OPA-0910

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	8.300-POL-2 Use of Force - CANINE DEPLOYMENT 4. Police Canines Shall be Deployed as a Force Tactic Only When Objectively Reasonable	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)

Named Employee #3

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 Complaint alleged that excessive force was used when a K9 dog bit and pulled him in one direction and the officers pulled him in the opposite direction.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Named Employees were tracking the Complainant after he fled the scene of a collision and hid in a heavily vegetated area. Guardian 1 (a Department helicopter) notified the Named Employees that there was a “hot spot” in the area where the Complainant was believed to be hiding. The Named Employees were aware that the Complainant had open warrants, but did not know whether he was armed.

Named Employee (NE#1) gave multiple orders to the Complainant to come out from hiding and warned that if he did not, NE#1’s K9 would be released and would bite him. After approximately 25 minutes trying to convince the Complainant to surrender, NE#1 made the decision to release the K9.

NE#1 released the K9 into the thick vegetation and the dog contacted the Complainant and bit him on the arm. The Named Employees were unable to see the contact but could hear it. The Named Employees began making their way



through the vegetation to try to locate both the K9 and the Complainant and to take the Complainant into custody. NE#1 continued to audibly encourage the K9 because he could no longer see or hear the K9, and the Complainant was saying that the K9 dog was hurt.

When the Named Employees could see the Complainant, the Complainant had the K9 in a head lock and had the dog pressed into the ground with his body. The K9 was biting the Complainant's arm. Named Employee #2 (NE#2) and Named Employee #3 (NE#3) were able to pull the Complainant out of the vegetation by his arm and NE#1 was able to lift the K9 and move the dog in the same direction (the K9 was still holding the Complainant's other arm). Once NE#2 and NE#3 had control of the Complainant, NE#1 gave the K9 the order to release the Complainant.

As discussed more fully below, I find that the use of the K9 as a force tool under these circumstances was consistent with policy. I also find that the officers were legitimately concerned with the K9's welfare, which justified a somewhat longer than normal engagement between the Complainant and K9 of approximately three minutes. Ultimately, the force utilized, a bite to the Complainant's arm that was released once he was secured and taken into custody was reasonable, necessary, and proportional, and, thus, consistent with policy.

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

8.300-POL-2 Use of Force - CANINE DEPLOYMENT 4. Police Canines Shall be Deployed as a Force Tactic Only When Objectively Reasonable

SPD Policy 8.300-POL-2 specifically governs the use of a K9 as a force tool. A K9 may be utilized to capture fleeing subjects, but the force applied by the K9 must still be objectively reasonable under the circumstances.

As stated above, NE#1 made considerable efforts to convince the Complainant to come out of hiding. A lower level of force was not available that could have reasonably been expected to control the Complainant or allow for the apprehension of the Complainant due to the heavy vegetation that the Complainant was hiding in and the potential threat he posed to them. While the Named Employees had no definitive evidence that the Complainant was armed, it was certainly plausible. Therefore, NE#1 deployed the K9 dog, after giving verbal warnings and that the Complainant may be bitten.

The K9 was on a thirty-foot leash, and the Named Employees attempted to pull the K9 back after contact was made with the Complainant. However, the Complainant had the dog in a headlock and would not release the dog. Because of his concern for the K9's welfare, NE#1 kept encouraging the dog. Once the Named Employees were able to reach the Complainant and the K9, the two were separated and the dog was given an order to release the Complainant.

I find that NE#1 properly deployed the K9, followed post-deployment procedures, and that he complied with the requirements of this portion of the policy. Moreover, as explained above, I find that the force used through the K9 was objectively reasonable.

As such, I recommend that this allegation be Not Sustained – Lawful and Proper.



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

Named Employee #2 - Allegation #1

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

NE#2 and NE#3 used force on the Complainant to pull him out of the vegetation in which he was hiding. This force, pulling the Complainant's arm, was de minimis force, which is the lowest level of force defined in SPD policy. When the officers pulled the Complainant out from the vegetation, NE#1's K9 was still holding on to the Complainant's other arm. The Complainant complained that this caused his pain as he was being pulled in two different directions.

The Complainant ran from the officers and hid from them. The officers, who were tracking the Complainant, had a lawful basis to place him under arrest. When he fled, they could further use force, where appropriate and reasonable, to take him into custody. This was initially force the applied by the K9, and then force by NE#2 and NE#3. The force used by NE#2 and NE#3 allowed them to remove the Complainant from his hiding place, to secure his person, and to place him into handcuffs. I believe that the force was necessary to do so. I further conclude that the force used was proportional to the potential threat posed by the Complainant, who had already attempted to escape.

That the force caused the Complainant to suffer injury does not, in and of itself, yield it out of policy. Based on the totality of the circumstances and applying a preponderance of the evidence standard, I find that the force used by NE#2 and NE#3 was reasonable, necessary and proportional, and, thus, consistent with policy.

As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #1

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

For the same reasons as stated above (see Named Employee #2, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

I further note, however, that at some point during his interaction with the Complainant NE#3 stated: "that's what you get from running from the police." This certainly raises the specter that NE#3, and perhaps the other officers, used more force than necessary based on the Complainant's actions and violence towards the K9. While, based on the totality of the circumstances, I do not believe this to be the case, I find NE#3's statement concerning. Had professionalism been classified for investigation against NE#3, which it was not, I would have strongly considered recommending that allegation be sustained.

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