



## CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 13, 2018

CASE NUMBER: 2018OPA-0447

### 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)

**Named Employee #3**

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

**Named Employee #4**

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

**Named Employee #5**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	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 he was subjected to excessive force during his arrest. He further claimed that Named Employee #5 told him that if he did not make a formal statement concerning the force, Named Employee #5 would make his arrest “disappear.”

**ADMINISTRATIVE NOTE:**

This case was designated as a partial Expedited Investigation with regard to the allegation against Named Employee #5. This means that OPA, with the OPA Auditor’s review and approval, believed that it could reach and issue recommended findings for this allegation based solely on its intake investigation and without interviewing Named Employee #5. As such, Named Employee #5 was not interviewed as part of this case. The allegations against the remaining Named Employees were classified for full investigation.



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**ANALYSIS AND CONCLUSIONS:**

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

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

Officers, including the Named Employees, were engaging in a narcotics enforcement operation. The officers determined that the Complainant had multiple open warrants and that there was probable cause for his arrest. The Named Employees involved in the arrest approached the Complainant. Named Employee #1 (NE#1) and Named Employee #2 (NE#2) each grabbed one of the Complainant's arms. Named Employee #3 (NE#3) set up her bike in front of the officers to form a protective barrier.

While the Complainant was initially compliant, all of the officers reported observing him abruptly pull away from the officers, bend over, and reach towards his waist. All of the officers articulated their concern that he was reaching for a weapon.

NE#1, NE#2, and NE#3 reported taking the Complainant to the ground together. Named Employee #4 (NE#4), who was also in the near vicinity, stated that he held the Complainant's legs to prevent him from kicking. During the takedown, the Complainant suffered an abrasion to his forehead. He contended that this constituted excessive force and claimed that he lost consciousness. Named Employee #5 (NE#5), was the involved Named Employees' supervisor. He responded to the scene and spoke with the Complainant. Based on the Complainant's allegations, NE#5 screened the incident with the Department's Force Investigation Team (FIT) and made an OPA referral.

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 involved Named Employees had probable cause to arrest the Complainant for open warrants, With the authority to effectuate that arrest came the justification to use force if warranted under the circumstances. During his arrest, the Complainant was reported to have reached for his waistband. When he did so, it was reasonable for the involved Named Employees to have believed that he was reaching for a weapon. As such, they were permitted to use force to take him to the ground, as well as to hold his legs, in order to ensure their safety and to effectuate the Complainant's arrest. The force they used to do so was reasonable, necessary, and proportional and was, thus, consistent with policy.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#1, NE#2, NE#3, and NE#4.

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



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

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

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

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

**Named Employee #3 - Allegations #1**

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

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

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

**Named Employee #4 - Allegations #1**

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

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

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

**Named Employee #5 – Allegation #1**

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

The Complainant alleged that NE#5 told him that if he did not make a formal statement concerning his excessive force allegation, NE#5 would make his criminal charge “disappear.”

During its investigation, OPA reviewed the BWV of the Complainant’s arrest, as well as the video that captured the Complainant’s interactions with NE#5. This video contradicts the Complainant’s allegations concerning NE#5.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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