



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 8, 2019

CASE NUMBER: 2018OPA-0936

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)

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.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the OPA Auditor’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. Use of Force: When Authorized

Named Employee #1 (NE#1) reported that he was searching for the Complainant, who NE#1 knew had an open felony warrant. NE#1 located the Complainant lying partially under a building and called for a backing unit. When NE#1 returned to the building, he confirmed the Complainant’s identity. NE#1 temporarily lost sight of the Complainant and, thinking that the Complainant may have fled the scene, he walked back to his patrol vehicle. At that point, the Complainant walked around the building and directly towards NE#1. NE#1 engaged him in conversation and instructed the Complainant to sit on the bumper of his patrol vehicle. As the Complainant approached NE#1, he briefly made motions towards his pockets. This caused NE#1 to order the Complainant to put his hands where NE#1 could see them. After a brief back and forth, the Complainant began to walk towards the front of NE#1’s patrol vehicle. While he was doing so, he again reached his right hand towards his waistband. While the Complainant’s hand was somewhat blocked from sight by the positioning of his body, the movement was unmistakable from a review of the Body Worn Video (BWV).

NE#1 rushed towards the Complainant, again stating that he told the Complainant to keep his hands where NE#1 could see them. He grabbed the Complainant’s left arm and positioned the Complainant’s body against the side of the patrol vehicle. NE#1 gave the Complainant multiple directions to put his right arm behind his back but the Complainant did not immediately comply, even though he stated that he was doing so. The Complainant then pulled away from NE#1 and turned to face him. They engaged in an active struggle. The Complainant kept stating that he



wanted to get something from his pocket. NE#1 told him that he could not do so. NE#1 and the Complainant eventually went down to the ground. NE#1 placed him on his stomach. NE#1 continued to order the Complainant to put his hands behind his back. Ultimately, the Complainant complied and was handcuffed.

Once the Complainant his handcuffed, NE#1's supervisor arrived on scene. NE#1 relayed what occurred to his supervisor. When the supervisor discussed the incident with the Complainant, the Complainant made allegations suggesting that he had been subjected to excessive force by NE#1. The supervisor referred this matter to OPA and this investigation ensued.

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.*)

NE#1 indicated both on the BWV and in his use of force report that the Complainant's movements cause him to believe that the Complainant was potentially reaching for a weapon. NE#1 asserted that, due to this, force was needed to prevent the Complainant from doing so and to take him into custody.

From OPA's review of the BWV, it was reasonable for NE#1 to believe that the Complainant could have been reaching for a weapon. As such, the force used by NE#1 was necessary and proportional to prevent this from occurring and to eliminate the potential threat to his safety. While the Complainant did not actually have a weapon on his person, NE#1 did not know that at the time and this does not, in and of itself, serve to yield the force outside of policy. Ultimately, the force used was consistent with policy and was appropriate to effectuate NE#1's lawful purposes.

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

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