



CLOSED CASE SUMMARY

ISSUED DATE: JULY 16, 2019

CASE NUMBER: 2019OPA-0094

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 during his arrest.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General’s review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employee. As such, the Named Employee was 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 (NE#1) and other officers responded to a 911 trespass call involving the Complainant. The 911 caller stated that he was standing by and wanted the Complainant removed from the property. When the officers arrived on scene, they contacted the 911 caller who confirmed that the Complainant did not live on the property and that he wanted the Complainant removed. The officers then contacted the Complainant, who claimed that he lived there; however, the Complainant was unable to provide the officers with his address or apartment number. The Complainant further told the officers that they were not real police officers and that they did not belong at that location. The officers gave the Complainant multiple opportunities to leave the area on his own, but he refused to do so. Based on his non-compliance, the officers placed the Complainant under arrest.

After he was arrested, the Complainant refused to get into the rear of the patrol vehicle. The Complainant was warned that if he did not get enter on his own the officers would be required to use force to get him inside. After waiting for the Complainant to comply for approximately five minutes, NE#1 and the other officers used a trained tactic known as a tabletop maneuver in order get the Complainant inside of the patrol vehicle. At that time, the Complainant claimed that he was choked by NE#1 when he was forced inside.



NE#1 documented the force he used during this incident in a use of force report. In that report, NE#1 wrote that the Complainant declined to enter the patrol vehicle and that he made multiple attempts to de-escalate the situation and to gain the Complainant's voluntary compliance. After those attempts failed, NE#1 reported that he and other officers used a tabletop maneuver to get the Complainant inside of the patrol vehicle, which was, in NE#1's opinion, the least force necessary to effectuate the officers' lawful goals.

A Department Sergeant was on-scene at the time of the arrest and the force. In a report that he generated, the Sergeant wrote that neither NE#1 nor any other officers intentionally or unintentionally choked the Complainant. The Sergeant also screened the incident with the Captain of SPD's Force Investigation Team (FIT) who determined that there was no need for FIT to respond. Additionally, the use of force associated with this incident was reviewed and approved by NE#1's Chain of Command. Given the nature of the Complainant's allegation and after discussions with OPA, this matter was referred to OPA and this investigation ensued.

While the Complainant visited OPA's office regarding this incident, he did not provide a statement to OPA.

OPA reviewed the BWV associated with this incident and found that it was consistent with the reports generated by NE#1 and the other involved officers. There was no indication from the video that any of the officers used excessive force or acted inappropriately.

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.*) If, as the Complainant alleged, NE#1 used excessive force and choked him during this incident, it would have been a violation of this policy.

The Complainant's initial contact with NE#1 and other officers, along with his handcuffing, arrest, and the force used during this incident, were captured on BWV. While the BWV does not capture portions of the officers' contact with the Complainant, the totality of the video and audio evidence do not support his allegation. Ultimately, OPA concludes that there is insufficient evidence to determine that NE#1 or any other officer choked the Complainant. OPA further determines that the force that was used by NE#1 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)**