



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 16, 2019

CASE NUMBER: 2019OPA-0266

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	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained

Imposed Discipline

Suspension without Pay – 1 Day

Named Employee #2

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 Employees subjected him to excessive force. The Complainant also alleged that Named Employee #1 was unprofessional towards him.

ADMINISTRATIVE NOTE:

The excessive force allegations against the Named Employees were classified for expedited investigation. This means that OPA, with the review and agreement of the Office of Inspector General for Public Safety, believed that it could issue findings on this allegation without interviewing the Named Employees. As such, the Named Employees were not interviewed concerning the allegations of excessive force. The professionalism allegation against Named Employee #1 was subject to a full investigation, which included his participation in an OPA interview.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Named Employees responded to a call of an assault with a weapon. The Named Employees observed the suspect, who was later identified as the Complainant. They approached her and each took control of one of the Complainant's arms. They placed her hands behind her back and handcuffed her. Once she was secured, Named Employee #2 (NE#2) held onto her arm with one hand and, with the other hand, pat-frisked the outer areas of her clothing. The Complainant objected to that pat-frisk and pulled her body away.



As a result, Named Employee #1 (NE#1) again took hold of the Complainant's arm and both Named Employees sat the Complainant down onto a concrete wall. At that time, the Complainant complained of pain and referenced a broken rib. No further force was used on the Complainant by either of the Named Employees.

A supervisor responded to the scene to screen the incident. During the supervisor's conversation with the Complainant, she alleged that the officers subjected her to excessive force during this incident. The supervisor referred the Complainant's allegation to OPA, and this investigation ensued.

The Named Employees' interaction with the Complainant, including the force used on her, was fully captured on Body Worn Video (BWV). The BWV supported the accounts provided by the Named Employees and showed no indication that either of the Named Employees used excessive force during this incident.

The totality of the evidence, including the BWV, conclusively disproves the Complainant's claim that she was subjected to excessive force. Instead, it establishes that the force used by the Named Employees was reasonable, necessary, and proportional. Specifically, the officers had a lawful basis to detain the Complainant and, based on her demeanor and their belief that she was potentially armed, were permitted to use force to handcuff her and then to place her into a seated position. As such, the force used here was appropriate and consistent with policy.

For the above reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

During its intake investigation, OPA reviewed BWV for the Named Employees and witness officers. Based on that review, OPA believed that NE#1 may have made several unprofessional statements to the Complainant. As such, OPA added a professionalism allegation against NE#1 for investigation.

The specific statements that concerned OPA were the following:

- NE#1 referred several times to the Complainant as a "jackass" or stated that she was acting like a "jackass";
- NE#1 called the Complainant a "ding dong";
- NE#1 stated that the Complainant was "a real peach";
- NE#1 told the Complainant "you don't know anything about me, except bupkis, nothing, you wish you did, but you didn't"; and
- NE#1 referred to the Complainant as "that crazy ass" to another officer on camera but while outside of the presence of the Complainant.

OPA interviewed NE#1, who denied that his statements were unprofessional or that they undermined public trust and confidence in him and the Department. In response to questions regarding why he believed what he said was appropriate, he told OPA that he was dealing with someone who was being continually belligerent, and that his statements were purposed to get her to stop that behavior.



He did not believe that his comments escalated the situation because the Complainant was already in handcuffs and no further force was going to be used. NE#1 told OPA that he would not have done anything differently in this case. NE#1 further noted that, in the immediate aftermath of the incident, his supervisor raised concerns with him concerning the professionalism of his statements. NE#1 noted that he disagreed with his supervisor's interpretation of his professionalism and he was not aware whether he received a PAS entry concerning this matter (no PAS was located by OPA during its investigation).

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-10.) The policy further states the following: "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person." (*Id.*) Lastly, the policy instructs Department employees to "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." (*Id.*)

I recognize that the Complainant was belligerent during this incident and was rude to the Named Employees. I further recognize that NE#1, who is a capable and hard-working officer, is a human being who was rightfully frustrated by the Complainant's statements. However, even if unfair, officers are held to a higher standard than those they interact with. This is a function of the authority and responsibility that they hold as police officers and, particularly, sworn SPD employees. NE#1's statements fell below this high standard, were unnecessary, and, in OPA's opinion, served no law enforcement purpose. I find that the collective nature and substance of NE#1's statements yield the conclusion that he acted contrary to the Department's professionalism policy during this incident. In reaching this finding, and while not determinative on its own, I note that NE#1 has previously been disciplined for similar unprofessional statements in a past case. This is relevant to show that NE#1 is (and was at the time of this incident) on notice of the Department's expectations of his conduct and demeanor. OPA hopes that this second investigation and the resulting findings serve to convince NE#1 to approach these types of situations differently in the future and to be more careful concerning the statements he makes and the language he uses.

For the above reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

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)**