



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 13, 2019

CASE NUMBER: 2019OPA-0427

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	11.010 - Detainee Management 20. The Use of the Spit Sock Hood Requires Special Application, Reporting and Screening	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)

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 Subject was subjected to excessive force. She further alleged that the use of a spit sock on the Subject was unnecessary and inappropriate.

SUMMARY OF INVESTIGATION:

Officers, including Named Employee #2 (NE#2), Named Employee #3 (NE#3), and Named Employee #4 (NE#4) were dispatched to a DESC facility in response to a call for service. While there, the officers were asked to deal with another individual who was trespassing – the Subject. The officers instructed the Subject that he had been trespassed from the location and told him that he needed to leave. The Subject walked to the front of the facility and attempted to speak with DESC staff; however, he was again told that he had to leave by DESC staff and officers. He was informed that, if he did not leave, he would be arrested for trespass. The Subject told the officers that he was “Doctor Benjamin” and that he worked in the facility. The officers followed the Subject down the stairs and outside. NE#2 used his right hand to guide the Subject away. The Subject quickly spun around and brushed NE#2’s hand off of him, saying “keep your hands up off me.” NE#2 responded “don’t touch me.” The officers again told the Subject to go but he remained in front of the facility and argued with them.

The Subject then turned around and told the officers that he was going back inside. The officers made the decision to take the Subject into custody and gripped his arms. The Subject pulled away from the officers and prevented them from controlling his body and handcuffing him. The officers collectively brought the Subject down to the ground. When



he was on the ground, the Complainant kept his hands underneath his body and kicked his legs. NE#2 held the Subject's legs in a figure-four lock in order to prevent him from kicking. Named Employee #4 (NE#4) used a cross-face in order to compel the Subject to release his hands. Named Employee #3 (NE#3) pulled the Subject's hands out. After a period of struggling with the Subject, the officers were able to get his hands out and handcuffed him. Even after he was handcuffed, the Subject continued to struggle on the ground and needed to be held down and his legs secured. While being secured on the ground, the Subject said, on multiple occasions: "deadly force" and "very deadly force."

A supervisor, Named Employee #1 (NE#1), arrived on scene, NE#1 screened the arrest and the force that had been used. While on scene, NE#4 placed a spit sock on the Subject's head. Up to that point, the Subject had not spit. The Subject was then placed onto a gurney, was secured, and was transported from the scene.

NE#1 later approved the arrest reports. In a supplemental report, NE#1 explained the use of a spit sock. He stated that, while screening the incident, he evaluated the risk of the Subject spitting on the officers. He determined that a spit sock was appropriate under the circumstances of this incident. He based this decision on the Subject initially resisting arrest and being assaultive with officers while awaiting the ambulance to arrive. He also stated that he was familiar with the Subject and knew him to suffer from mental illness and was aware that the Subject was assaultive to officers in the past. Lastly, NE#1 described his experience working in the area, the frequency of bloodborne pathogens, the unpredictable behavior of subjects due to drug abuse and mental illness, and the potential dangers posed to officers.

The Complainant later asserted to OPA that the force used on the Subject was excessive. She also claimed that the use of a spit sock was unnecessary under the circumstances. This investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

11.010 - Detainee Management 22. The Use of the Spit Sock Hood Requires Special Application, Reporting and Screening

SPD Policy 11.010-POL-22 provides guidance concerning the usage of a spit sock. The policy explains that: "Officers may use the spit sock hood if the detainee is actively spitting on officers, or the officers have a reasonable belief that the detainee will spit on them." (SPD Policy 11.010-POL-22.)

In his report, NE#1 articulated why he decided that a spit sock was appropriate in this case. At his OPA interview, he re-asserted that the use of the spit sock was proper. He further noted that, while he did not know the Subject's name at the time of the incident, he was familiar with him by sight and knew that he had engaged in resistive behavior in the past. Even though NE#1 acknowledged that the Subject did not spit prior to the spit sock being applied, he defended its use so as to prevent the spitting from occurring.

From a review of the Body Worn Video (BWV), it is unclear what level of familiarity NE#1 had with the Subject at the time the spit sock was applied. However, there is no evidence contradicting his assertion that the Subject's behavior before, during, and after his arrest warranted the use of the spit sock, as well as that the spit sock was justified by NE#1's experience dealing with similar situations. Moreover, there is no evidence undercutting NE#1's assertion that he was familiar with the Subject from prior incidents.



For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegations #1

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

As discussed above, the Complainant alleged that NE#2, NE#3, and NE#4 used excessive force on the Subject.

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.*)

Based on OPA’s review of the BWV, the force used by the officers was reasonable, necessary, and proportional. First, at the time the force was used, the officers had a lawful basis to take the Subject into custody. When the Subject refused to comply and turned to re-enter the DESC facility, the officers were permitted to use force to prevent him from doing so. As such, the force was reasonable. Second, the force was necessary as there was no reasonable alternative that could have prevented the Subject from re-entering the facility. Indeed, the Subject refused multiple lawful directions to walk away. Moreover, the force was of a degree that was reasonable to effectuate the officers’ lawful purpose. Third, and last, the force was proportional to the threat posed by the Subject and his ongoing non-compliance and assaultive behavior. Notably, the force, which consisted of a controlled takedown and then control tactics, was low level. The officers did not strike the Subject or use any significant force during this incident.

For the above reasons, OPA finds that the force was consistent with policy. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#2, NE#3, and NE#4.

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 #2, Allegation #1), OPA recommends 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 #2, Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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