



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 21, 2020

CASE NUMBER: 2019OPA-0627

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	8.300 – POL- 9 Use of Force – Neck Holds and Carotid Restraints	Not Sustained (Lawful and Proper)
# 3	8.400-POL-1 Use of Force Reporting and Investigation 3. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Following Any Use of Reportable Force, As Soon As Feasible	Not Sustained (Training Referral)

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:

It was alleged that the Named Employee may have acted contrary to policy when he used his knee on the side of the Subject's neck. It was also alleged that the Named Employee may not have properly reported force.

SUMMARY OF INVESTIGATION:

Named Employee #1 (NE#1) and other officers responded to a call of an intoxicated man who was possibly armed with a "dagger." When they arrived at the scene, the man – who was later identified as the Subject – began walking towards the officers. NE#1 told him to stop where he was and to take his hands out of his pocket. The Subject asked "why" and NE#1 again provided him with the same directions. The Subject stated: "Why I got to take my hand out of my pocket?" NE#1 moved behind his patrol vehicle while drawing his firearm. From a position of cover, NE#1 told the Subject to move to the front of NE#1's patrol vehicle. The Subject did not comply with this order and, instead, began walking towards NE#1 with both of his hands exposed. NE#1 holstered his firearm, moved from behind his patrol vehicle, and grabbed the Subject. The Subject physically resisted against NE#1 and NE#1 subsequently took him to the ground using a controlled takedown. While the Subject was on the ground, NE#1 knelt on the Subject and secured the subject with his body weight. At that time, the Subject stated: "get your fucking knee of my neck" and "get your hand off my throat." The Subject was handcuffed, and no further force was used.

A supervisor came to the scene to screen the incident. NE#1 informed his supervisor of the takedown. He did not make any mention at that time of the Subject's statements concerning his neck or disclose that he made contact with the Subject's neck. The supervisor and NE#1 discussed what level NE#1's force was. They made the decision that it was appropriate for NE#1 to complete a force report. NE#1 documented the takedown. He further noted that, while the Subject was on the ground, he "placed [his] left knee across the right side of [the Subject's] neck, and [his] right knee on [the Subject's] body just under [the Subject's] armpit." NE#1 articulated that his use of a "knee shield" prevented the Subject from being able to rotate his body towards NE#1 and stopped him from potentially spitting on him. NE#1 indicated that, at no point, did his knee cross to the front of the Subject's throat or restrict the



Subject's breathing. NE#1 asserted that this force was "consistent" with the training he was provided by the Department. He further indicated that it was also consistent with the training that he, as a defensive tactics instructor, provided to other officers.

The force was reviewed by a Sergeant and was then reviewed and approved by an Acting Lieutenant. The Acting Captain conducted the final review of the force. The Acting Captain, who is the Complainant in this case, believed that the contact with the Subject's neck potentially constituted out of policy force. She also conferred with the Training Unit and was informed by a Training Unit Sergeant that the force used by NE#1 did not constitute a trained tactic. The Complainant made an OPA referral and this investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

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 asserted that his use of his knee to restrain the Subject's head was reasonable, necessary, and proportional. He felt the force was reasonable because of the threat the Subject posed – most notably, his continued non-compliance and the possibility that he was armed. NE#1 concluded that he needed to use force to secure the Subject and to prevent him from posing a threat to officers and others. For many of these same reasons, NE#1 contended that the force was reasonable. He explained that he did not believe that he had any other reasonable alternatives to the force. Lastly, NE#1 asserted that the force was proportional because of the Subject's behavior, his non-compliance, and the risk he posed to the officers' safety.

As explained more fully in the context of Allegation #2, were OPA to apply the previous version of this policy, OPA would conclude that NE#1's force was improper. However, the current policy is more expansive as to the use of the knee as a restraint and particularly permits the force used by NE#1. This informs OPA's decision that the force here was appropriate. OPA agrees with NE#1 that the Subject posed a risk of harm to the officers and that the force NE#1 used was reasonable, necessary, and proportional to mitigate that threat and to take the Subject into custody.

In reaching this finding, OPA notes that, as indicated by the Training Sergeant, a knee shield where the knee makes contact with the neck is not a trained tactic. While this fact certainly causes OPA to more closely scrutinize the force, it does not, standing alone, yield the force out of policy. Indeed, though the Department's goal is that officers will closely adhere to their defensive tactics training, real world situations are far more fluid and complex than the scenarios practiced in a classroom. As such, OPA recognizes that officers will, at times, modify tactics when needed and appropriate.



Ultimately, NE#1's force purposed to control the Subject and to prevent him from causing harm. There is no indication that the force caused injury to the Subject or in any way impaired his breathing. Indeed, the video of this incident suggests the opposite. As such, and under the specific circumstances of this case and when applying the current versions of SPD's use of force directive, OPA finds NE#1's force to be consistent with policy and, thus, recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

8.300 – POL- 9 Use of Force – Neck Holds and Carotid Restraints

Under the version of this policy in effect at the time of this incident, the force used by NE#1 would have constituted a carotid restraint. In addition, the previous policy made clear that such force was “strongly disfavored” by the Department due to the “high risk of injury or death when improperly applied.” Such force would further have been categorized as Type III and required a FIT callout and investigation.

However, under the new version of these policies, which went into effect approximately two months later, the force used by NE#1 would now be characterized as “head control,” not a neck or carotid restraint. The force no longer rises to the level of Type III and no longer necessitates a FIT response unless it causes or is reasonably likely to cause injury or where the subject loses consciousness. Otherwise, the force must simply be screened with a supervisor.

Under the previous iteration of the policy, OPA finds it likely that NE#1's force would have been outside of policy. However, under the current directive, this would no longer automatically be the case. As a matter of fairness, OPA decides to apply the current policy instead of the former version. When doing so, OPA finds that the force used by NE#1 did not violate policy and, as discussed above, was reasonable, necessary, and proportional under the circumstances. While OPA notes that NE#1 did not screen the head restraint with a supervisor as required, this conduct is captured in the context of Allegation #3, below.

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

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

Named Employee #1 - Allegation #3

8.400-POL-1 Use of Force Reporting and Investigation 3. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Following Any Use of Reportable Force, As Soon As Feasible

SPD Policy 8.400-POL-1(3) requires officers to verbally notify a supervisor of the force they use as soon as feasible. Inherent in this policy is the requirement that the reporting of the force be complete and accurate.

Here, NE#1 applied his knee to the Subject's neck and the Subject made multiple allegations concerning contact with his neck. However, NE#1 did not immediately report this force or the Subject's claims to a supervisor. While NE#1 stated that he later notified his supervisor at the precinct, his failure to immediately provide a complete accounting of his force was technically contrary to both this policy and, as discussed above, SPD Policy 8.300-POL-9.



The above being said, OPA finds that NE#1 did, ultimately, accurately and completely report his force. OPA further concludes that there is no evidence that NE#1 had any intent to conceal the nature and the extent of his force. For these reasons, OPA determines that NE#1's conduct is better addressed by retraining than discipline. As such, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1 should be reminded of the requirement that he completely and accurately notify a supervisor of the force that he uses. This notification must be made as soon as feasible. NE#1 should also be counseled concerning his obligation to report any contact with a subject's neck to a supervisor, as well as to report complaints of neck contact made by a subject. This retraining and associated counseling should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**