



CLOSED CASE SUMMARY

ISSUED DATE: MAY 27, 2020

CASE NUMBER: 2019OPA-0721

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Sustained
# 2	8.400-POL-1 Use of Force Reporting and Investigation 4. The Sergeant Will Review the Incident and Do One of the Following:	Sustained

Imposed Discipline

Written Reprimand

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Allegation Removed
# 2	8.200 - Using Force 6. Officers May Only Use Force on Restrained Subjects When Objectively Reasonable, Necessary, and Proportional	Sustained
# 3	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)
# 4	8.400 - Use of Force Reporting and Investigation 8.400-POL-1 Use of Force Reporting and Investigation	Sustained

Imposed Discipline

Retired Prior to Proposed DAR - Discipline

Named Employee #3

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Allegation Removed
# 2	8.200 - Using Force 6. Officers May Only Use Force on Restrained Subjects When Objectively Reasonable, Necessary, and Proportional	Sustained
# 3	8.200 - Using Force 2. Use of Force: When Prohibited	Sustained
# 4	8.400 - Use of Force Reporting and Investigation 8.400-POL-1 Use of Force Reporting and Investigation	Sustained
# 5	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Sustained

Imposed Discipline

Five Day Suspension and Re-Training



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 he was subjected to excessive force by Named Employee #2 and Named Employee #3. After completing its intake investigation, OPA further alleged that Named Employee #2 and Named Employee #3 may have used prohibited force and that they failed to fully and accurately report their force. OPA also alleged that Named Employee #3 may have failed to de-escalate. Lastly, OPA alleged that Named Employee #1, the on-scene supervisor, failed to properly investigate the force and to refer the Complainant's allegation of excessive force to OPA.

AMENDED COMPLAINT:

After discussions with the chain of command at the discipline meeting, OPA agrees that Allegation #2 for Named Employee #2 should be Sustained. Initially and while a close call, OPA reasoned that the slap of the Complainant was reactive and, given the spitting that had occurred instantaneously prior and the possibility that it could occur again, the force did not violate policy, even though it was clearly contrary to training. The chain of command articulated the concern that, even given how quickly the incident occurred, it would set a bad precedent to find this force to be consistent with policy. The chain of command articulated that the relatively low level of force – a slap as opposed to a punch, the lack of injury, and the immediate reaction should not cause a Not Sustained finding, but instead were facts to be taken into account when evaluating discipline. After further deliberation, OPA believes that this is correct and that it furthers a significant Department interest in consistency. As such, OPA amends its initial finding.

ADMINISTRATIVE NOTE:

Named Employee #2 did not record Body Worn Video of this incident. That matter was handled by his chain of command and is not addressed in this investigation.

SUMMARY OF INVESTIGATION:

A. Incident and Force Used

Named Employee #2 (NE#2) and Named Employee #3 (NE#3) responded to a call regarding a man who was throwing cans at and kicking a parked vehicle. It was unknown to the officers whether the man was armed or whether the vehicle was occupied. A description was provided for the suspect.

When the officers arrived on scene, they located the Complainant, who matched the suspect description. The Complainant was clearly intoxicated at the time based on a review of Body Worn Video (BWV). The officers placed him under arrest and handcuffed him. The officers walked the Complainant to the front of their patrol vehicle. While being walked to the patrol vehicle, the Complainant continued to assert that he did not do anything. The officers then read him his Miranda warnings and searched him incident to arrest. The Complainant spoke to the officers during the search, including repeating that he did not do anything and asking why he was going to jail. The officers moved him around during the search, including bending him over to access his back pockets. The BWV indicated that, at no point during the search, was the Complainant physically resistive.



NE#3 began to walk the Complainant around the front of the patrol vehicle towards the rear door. Prior to doing so, NE#3 did not ask the Complainant to walk in that direction or inform the Complainant that this was his expectation. Regardless, the BWV depicted NE#3 placing his hand on the back of the Complainant's head and pushing it down, bending him forward. The Complainant immediately reacted to this and grew upset. He told NE#3 not to touch him in that manner. NE#3 pushed the Complainant's head forward again, this time further bending him over at the waist. NE#3 walked the Complainant up to the open rear door of the patrol vehicle.

At this point, the Complainant told NE#3 that he was going to "kill" him. NE#3 responded: "Oh yeah? Alright, that's a threat." Based on a review of the BWV, NE#3 then pushed the Complainant inside of the patrol vehicle face first. The Complainant landed on the rear seat face down and with his legs partly outside of the patrol vehicle. NE#3 then walked around the other side. NE#2 pulled the Complainant out of the patrol vehicle and then properly sat him inside. NE#3, who was at the other door, stated: "I wouldn't say you're going to kill me then." NE#3 grabbed the Complainant's arm and pulled him into a seated position. NE#3 then closed the door on his side.

NE#2 leaned around the Complainant in order to seatbelt him. He clicked in the lower belt and stood up immediately outside of the rear door to click in the upper belt. At that time, the patrol vehicle's rear In-Car Video (ICV) showed the Complainant spit at NE#2, hitting him in the face. The ICV indicated that, virtually instantaneously (less than a second after the spitting), NE#2 slapped the Complainant in the face. NE#2 then pulled the Complainant forward and reached out his right hand to push the Complainant's face to the right side and down towards the seat. He did so for approximately four seconds. He removed his hand and continued to attempt to seatbelt the Complainant. Around three seconds later, NE#2 again pushed the Complainant's head down, this time with his left hand. The Complainant appeared to prepare to spit on NE#2 again and NE#2 cupped the Complainant's mouth and pulled him back into a seated position. NE#2 finished seat belting the Complainant, removed his hands from over the Complainant's mouth, and shut the door. Based on a review of BWV, NE#2's hand placement did not appear to impair the Complainant's breathing at any point and the Complainant did not say that he could not breathe.

B. Force Screening

The officers called a supervisor to the scene to screen the incident. Named Employee #1 (NE#1) arrived and spoke to the officers. NE#3 told NE#1 that they were walking the Complainant to the rear of the patrol vehicle when the Complainant became aggressive and started pulling away. NE#3 indicated that, at this point, he bent the Complainant over and "put him in the back." NE#3 stated that the Complainant spit on NE#2 and threatened to kill NE#3.

NE#1 spoke with the Complainant and asked him if he had any injuries. The Complainant responded: "I didn't break nothing." NE#1 did not explore this comment of the lack of a direct answer to his screening question. NE#1 then asked the Complainant whether he had any further questions for him. The Complainant responded: "No, you all beat me up." NE#1 also did not follow up on this statement and, instead, walked away.

NE#1 then discussed the incident with NE#2. NE#2 told NE#1 that the Complainant spit in his face and he "very forcefully pushed his face off." NE#1 responded: "Ok. So, was it de minimis or was it a use of force?" NE#2 stated: "Well, he's not injured." NE#2 demonstrated the actions he took by extending out his arm and quickly pushing it forward, while telling NE#1 that he pushed the Complainant's head down towards the rear seat. Based on OPA's review of the BWV, NE#2 did not report his slapping the Complainant to NE#1. NE#3 later informed NE#1 that all of the force was de minimis and further stated that he "laid" the Complainant on the rear seat. At one point, NE#2



referenced watching the video of the force. However, NE#1 stated that this was not necessary and told the officers that the incident was “screened.” No force investigation was completed.

C. OPA Referral and Investigation

During the later criminal investigation into the Complainant’s conduct, the assigned detective noticed that the Complainant appeared to have an injury to his lip. While determining that the injury was likely pre-existing, the detective reviewed video and observed the slap of the Complainant by NE#2. The detective also recognized that NE#1 failed to investigate the force or to refer the Complainant’s allegation that he was “beat up” to OPA. After conferring with a supervisor, the detective was advised to notify a lieutenant of his findings. He did so. The lieutenant reviewed the video of the incident and determined that an OPA referral was warranted. OPA then commenced its investigation.

OPA’s investigation included reviewing the documentation generated concerning this incident, as well as the video that captured the arrest and what later occurred in the back seat of the patrol vehicle. OPA also interviewed all of the Named Employees, the Complainant, and two other witnesses. Lastly, OPA reviewed relevant SPD training materials.

1. NE#2’s OPA Interview

NE#2 described seating the Complainant into the rear of the patrol vehicle and attempting to seatbelt him. NE#2 stated that, at this point, the Complainant spat in his face. NE#2 asserted that he used an “open hand” to the Complainant’s face and “pushed his face away.” NE#2 recalled that this caused the Complainant’s glasses to fall off. NE#2 said that he used his hand to continue to push the Complainant’s face away to prevent further spitting. He said that he also cupped the Complainant’s mouth and nose and pulled his head backwards. NE#3 did so because the Complainant kept turning towards him and NE#2 was concerned that the Complainant would spit again.

NE#2 asserted that his actions were reactive. He believed that, under the circumstances, his force was reasonable, necessary, and proportional. He recognized in hindsight that he could have disengaged and closed the door; however, he stated that this was not his thought process at the time.

NE#2 denied that his force was purposed to retaliate against the Complainant. He further denied that it constituted a slap and reiterated his belief that it was a push. NE#2 acknowledged that he told NE#1 that the “forcefully pushed” the Complainant’s face away. NE#2 asserted that his force was de minimis and that he accurately described the force to NE#1.

NE#2 described the Complainant as being resistive and uncooperative when they were trying to place him into the patrol vehicle. He did not know why NE#3 initially pushed the Complainant’s head down and bent him over at the waist. NE#2 told OPA that he could not opine as to whether those actions unnecessarily escalated the incident.

NE#2 thought that they were going to place the Complainant into the patrol vehicle “butt” first per training. However, he then saw the Complainant go “headfirst into the seat, land[ing] on his stomach.” NE#2 said that he did not have physical control over the Complainant at that time. NE#2 heard the Complainant threaten NE#3, but he did not know whether that was before or after the Complainant was inside of the patrol vehicle.



NE#2 recalled that NE#3 informed him that the Complainant “stumbled and fell” into the patrol vehicle. NE#2 said that he was under the impression that this was what occurred. He had “no idea” whether NE#3’s actions towards the Complainant were retaliation for the threat.

2. NE#3’s OPA Interview

NE#3 stated that, while searching the Complainant at the front of the patrol vehicle, the Complainant turned his face towards NE#3. NE#3 told OPA that he believed that the Complainant could spit at him or “run into” him. Accordingly, he felt it appropriate to push the Complainant’s head down and bend him over at the waist while walking him to the rear of the patrol vehicle.

He further believed that these actions constituted de-escalation. NE#3 did not recall ever telling the Complainant to walk to the rear of the patrol vehicle. NE#3 stated that he told the Complainant to get into the car at one point; however, a review of BWV indicated that this occurred after he made physical contact with the Complainant’s head and pushed it down. OPA asked NE#3 whether he had the opportunity to apply time or distance. NE#3 said that he did not because he felt he needed to get the Complainant into the patrol vehicle for both the Complainant’s and the officers’ safety.

NE#3 recalled that the Complainant fell forward into the rear seat of the patrol vehicle. NE#3 believed that it was not possible to use another manner to place the Complainant into the patrol vehicle given how uncooperative the Complainant was. NE#3 denied pushing the Complainant.

NE#3 was asked by OPA to explain why he told NE#1 that he “laid” the Complainant on the rear seat given that he later wrote in his report that the Complainant “fell.” NE#3 could not clearly explain this discrepancy and cited that he “laid” the Complainant in the rear seat because he was unable to properly seat the Complainant. He asserted, however, that his description of the force and his belief that it was de minimis was accurate.

NE#3 acknowledged his statements surrounding the threat to kill made by the Complainant; however, he denied that he pushed the Complainant into the rear seat in retaliation for the threat.

3. NE#1’s OPA Interview

When shown the video of his interaction with the Complainant, NE#1 stated that he did not recall the Complainant alleging that he was “beat up” by officers. NE#1 told OPA that he had already disengaged at that time and was walking away. NE#1 believed that he might have been focused on something else at the time but recognized that he had no trouble hearing the Complainant during their conversation. NE#1 acknowledged that the Complainant’s statement constituted an allegation of serious misconduct that was required to be reported to OPA. However, he did not make an OPA referral, he did not screen this incident with another supervisor, and he did not provide OPA’s contact information to the Complainant.

NE#1 stated his belief that the force used was de minimis. He based this on his discussions with the officers and their descriptions of the force. He did not review any video relating to the force and said that it was not his practice to do so. He told OPA that NE#2’s contact with the spitting Complainant’s face would not have been sufficient in his mind to trigger a video review. NE#1 did not speak to any witnesses at the scene and did not believe that any were available. He further did not see any injuries to the Complainant or hear any complaints of injury.



4. Complainant's Interview

The Complainant told OPA that he had no independent recollection of his arrest. He did not recall whether he consumed any alcohol on that date. He stated, however, that his friend, who worked nearby where the incident occurred, recorded it. He further stated that the friend provided him with a copy of the video. The Complainant told OPA that his friend informed him that one of the officers called him the N-word and threatened to shoot him. OPA requested that the Complainant provide it with a copy of the video. However, the Complainant later confirmed that his friend did not, in fact, witness the incident and that there was no video.

5. Other Witnesses' Interviews

OPA interviewed two other witnesses who saw portions of the incident. Witness #1 described the Complainant as drunk and belligerent. Witness #1 also stated that he observed the Complainant become "assaultive" to officers when they attempted to get him into the patrol vehicle. He recalled that the Complainant kicked at one of the officers at that time. He did not know whether the Complainant was forced into the vehicle or fell inside. Witness #1 stated that he did not view any force that he felt was excessive, but he confirmed that he did not see what occurred in the rear of the patrol vehicle. He did not hear any officers used racial slurs towards the Complainant.

Witness #2 also described the Complainant as being intoxicated. Witness #2 saw the officers handcuff the Complainant and place him in the rear of the patrol vehicle. Witness #2 did not perceive any force that he believed was excessive. Witness #2, like Witness #1, did not hear the officers use any slurs.

6. Review of Relevant SPD Training

OPA reviewed SPD training concerning seating handcuffed detainees into the rear of a patrol vehicle. The training directs that officers walk the detainee to the patrol vehicle using the escort position (where an officer places a hand on the detainee's elbow and wrist). Where detainees resist being placed into the vehicle, officers are trained to use an under-hook, where the hand on the subject's elbow moves to the back of the neck and the hand previously grabbing the wrist hooks under and around the top of the subject's arm. The officer is then trained to bend the detainee over by pushing down on the back of the neck and pulling the arm. The detainee is then seated into the patrol vehicle, rear first, with another officer pulling the detainee in from the other side using the detainee's arms. The Department does not train officers to push handcuffed detainees into the rear of the patrol vehicle.

OPA also reviewed training concerning dealing with spitting subjects. Relevant to this case, the training instructs officers to use an open hand "check/push" to prevent a subject from spitting and/or from continuing to do so.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

SPD Policy 5.002-POL-5 requires supervisors who become aware of a potential policy violation to investigate or refer the allegations depending on their severity. Minor allegations of misconduct may be investigated by a supervisor,



while allegations of serious misconduct – such as the use of excessive force – must be referred to OPA. (SPD Policy 5.002-POL-5.)

Here, the Complainant asserted that he was “beat up” by the Named Employees. This was, on its face, a claim of excessive force. As such, once this assertion was made by the Complainant, SPD policy required NE#1 to, at a minimum, investigate it. However, as discussed more fully below, NE#1 conducted no follow-up investigation into this claim. Moreover, NE#1 had two additional options: first, to refer the claim to OPA; or, second, to screen the allegation with OPA to the extent he believed it to be unsubstantiated. Again, he did neither.

When he failed to take any of the above steps, NE#1 acted contrary to clearly established and trained SPD policy. Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

8.400-POL-1 Use of Force Reporting and Investigation 4. The Sergeant Will Review the Incident and Do One of the Following:

SPD Policy 8.400-POL-1(4) provides that, upon responding to a use of force, the Sergeant reviews the incident and classifies the force by type.

NE#1’s screening of the force used by NE#2 and NE#3 was cursory at best. During his initial conversation with NE#3, NE#1 asked no clarifying questions concerning the force used. His conversation with NE#2 was similar. After NE#2 described “pushing” the Complainant’s face away, NE#1 asked him whether it was a reportable use of force or de minimis. NE#2 responded by saying, in reference to the Complainant: “Well, he’s not injured.” NE#1 did not ask any follow-up questions to further understand whether the force needed to be reported. This was particularly problematic as, just moments before, the Complainant had stated that he was “beat up” by the officers. Lastly, NE#1 rebuffed NE#2’s offer to watch the video, simply stating that the force was screened.

This review of force was inconsistent with the requirements of SPD policy. Supervisors are expected to ask probing questions to evaluate the nature and extent of the force. This includes determining exactly what occurred and, when claims to the contrary are made by a subject, following up on those allegations. When NE#1 failed to do so here, he did not ensure that clearly reportable force was documented and fully investigated. As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

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

The appropriateness of the force used by NE#2 during this incident is fully addressed in the allegations below. As such, OPA believes that this allegation is duplicative and recommends that it be removed.

Recommended Finding: **Allegation Removed**



Named Employee #2 - Allegations #2

8.200 - Using Force 6. Officers May Only Use Force on Restrained Subjects When Objectively Reasonable, Necessary, and Proportional

SPD Policy 8.200-POL-6 governs the use of force by officers against restrained subjects. The policy states that such force must be reasonable, necessary, and proportional. (SPD Policy 8.200-POL-6.)

As a threshold matter, OPA concludes that the force used by NE#2 as an initial reaction to the spitting was a slap, not a forceful push. This determination is based on the ICV, which clearly depicts NE#2's actions.

SPD training comprehensively sets forth how officers should respond to a spitting subject. Officers are trained to use an open-hand check/push, not a slap. Given this, OPA finds that the slap used by NE#2 was outside of his training. However, this does not mean, in and of itself, that the force was outside of policy.

In determining NE#2's compliance with the Department's use of force policy, OPA makes a number of factual conclusions. First, as discussed above, the force was a slap, not a push. Second, the slap occurred less than one second after the spitting. Third, at the time of the slap, NE#1 was standing up and was immediately outside of the patrol vehicle by the rear door.

Given these conclusions, coupled with OPA's review of the video and analysis of prior analogous cases, OPA finds that the slap violated Department policy.

Using force in response to spitting can be reasonable depending on the circumstances and the level of force used. Spitting can cause health risks to an officer and is considered an assault. As discussed above, SPD trains officers to use an open-hand check to push the subject's face away, not a slap or a closed fist strike. This is especially the case where the subject is handcuffed. Given that NE#1 used a slap here rather than the trained open-hand check, his force was unreasonable.

In addition, as noted above, NE#1 was standing outside of the patrol vehicle at the time of the spitting. He then leaned back into the vehicle to slap the Complainant. Instead of doing so, he could have simply backed away or he could have closed the door. Given this, OPA finds that the force was not necessary.

The slap was not a particularly high level of force and, based on OPA's review of the ICV, was not significantly different than a forceful open-hand check. Moreover, the Complainant did not appear to suffer any injury from the slap. However, even if OPA found the force to be proportional to the spitting, it would still be out of policy as it was not reasonable or necessary.

In reaching the finding that the slap violated policy, OPA notes that this decision is consistent with past precedent. Specifically, in three prior cases - 2017OPA-0550, 2014OPA-0216, and 2015OPA-0195 – officers were found to have violated policy when they used force on spitting subjects. In all three cases, the officers used force inconsistent with SPD training.

In 2017OPA-0550, a handcuffed woman was being held at the front of a patrol car by three officers. She spit in the face of one of the officers. The second officer moved her face away from the first officer and held her down to the hood of the patrol vehicle. Approximately two seconds after being spit on, the first officer braced one of his hands



on the hood and brought his forearm/elbow down on the subject's head area. This was deemed to be unreasonable because, at the time of the force, the subject did not present an immediate threat of harm and there were other officers securing her. As such, there was no need to use force, let alone a forearm/elbow strike.

In 2014OPA-0216, a handcuffed woman kicked out at an officer who was placing her into a patrol vehicle. After doing so, she fell backwards onto the rear seat. The officer exclaimed that the subject struck him in the jaw and then leaned into the patrol vehicle and punched her in the face with significant force. This officer was outside of the vehicle and was no longer at risk of immediate harm. He made the decision to go back into the vehicle to strike the subject approximately two seconds after the subject kicked at him.

Lastly, in 2015OPA-0195, an officer struck a spitting subject in the face with a closed fist rather than using an open-hand check.

OPA finds that NE#2's actions are less egregious than those engaged in by the officers in the precedent cases. In reaching this conclusion, OPA finds NE#2's intent to be significant. Unlike in the precedent cases where the evidence clearly evinced the intent of the officers to retaliate for being spit upon, NE#2's conduct was an immediate reaction and there was no basis to conclude that he acted out of anger or in order to punish the Subject. OPA also finds it notable that NE#2's reaction was much quicker than that of the officers in the precedent cases and that the Complainant did not suffer any injury. However, these are mitigating factors to be discussed in the context of potential discipline to be imposed do not overcome a Sustained finding. NE#2's failure to comply with his training and the expectations of the Department when he slapped the Complainant ultimately warrants the conclusion that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegations #3

8.200 - Using Force 2. Use of Force: When Prohibited

SPD Policy 8.200-POL-2 provides guidance as to when force is prohibited. The policy specifically precludes officers from using force to "punish or retaliate."

The question here is whether the force used by NE#2 was purposed to punish or retaliate against the Complainant for the spitting. Based on OPA's review of the ICV and analysis of NE#2's OPA interview, OPA finds that it was not. In reaching this conclusion, OPA places significant weight on how quickly NE#1 reacted – less than one second after the spitting – and the nature of his force – a slap versus a punch or strike.

As such, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #2 - Allegation #4

8.400 - Use of Force Reporting and Investigation 8.400-POL-1 Use of Force Reporting and Investigation

SPD Policy 8.400-POL-2 states that officers, including witness officers, will verbally notify a supervisor immediately, unless not practical, following any use of reportable force. SPD Policy 8.400-POL-1 provides examples of the



categorizes of force. The lowest level of force is de minimis force. Officers are not required to report or document such force. The policy provides the following example for de minimis force: “Using hands or equipment to stop, push back, separate or escort, and the use of compliance holds without the use of sufficient force to cause pain.”

With regard to the next level of force – Type I, which must be reported, the policy provides three examples that are relevant to this case: (1) “Open hand technique with sufficient force to cause complaint or indication of pain”; (2) “Strike with sufficient force to cause pain or complaint of pain”; and (3) “Controlled placement/takedown that results in a complaint of pain or causes/is likely to cause transitory pain or disorientation.” The next level of force is Type II. The policy provides the following definition for Type II force: “Force that causes or is reasonably expected to cause physical injury greater than transitory pain but less than great or substantial bodily harm.” The policy further provides the following example of such force: “Takedown that causes injury or is reasonably expected to cause injury.”

Based on a review of the BWV and the ICV, OPA concludes that NE#2 used higher than de minimis force. His slap of the Complainant was a strike with sufficient force to cause pain. As such, it should have been reported as Type I force. Moreover, even if NE#2’s description of the force during his screening conversation with NE#1 was to be credited, it was still force that needed to be reported as it was an open hand technique used with sufficient force. Further, NE#2’s screening of the force was suboptimal. For example, when initially asked whether his force was reportable, NE#2 responded: “Well, he’s not injured.” This is not consistent with the reporting requirements set forth in SPD policy. While OPA recognizes that NE#1’s cursory screening of the force did NE#2 no favors, NE#2 was still required to satisfy his responsibilities and he did not do so here.

As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #3 - Allegations #1

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

The appropriateness of the force used by NE#3 during this incident is fully addressed in the allegations below. As such, OPA believes that this allegation is duplicative and recommends that it be removed.

Recommended Finding: **Allegation Removed**

Named Employee #3 - Allegation #2

8.200 - Using Force 6. Officers May Only Use Force on Restrained Subjects When Objectively Reasonable, Necessary, and Proportional

NE#3 used force on the Complainant on two separate instances. First, he forcibly pushed down the Complainant’s head and bent him over at the waist while walking the Complainant to the patrol vehicle. Second, he pushed the Complainant, while handcuffed, face first into the rear seat of the patrol vehicle. The first force is discussed more fully in the context of Allegation #5, as, in OPA’s opinion, it relevant to the failure of NE#3 to de-escalate. The second use of force is discussed here.



The BWV indicates that, after NE#3 pushed the Complainant's head down, the Complainant grew angry. This included the Complainant telling NE#3 that he was going to kill him. While this was a threat of physical harm, it is unreasonable for NE#3 to have believed that the Complainant was going to act on it. First of all, the Complainant was heavily intoxicated at the time. Second, the Complainant was in handcuffs and under the physical control of officers with no opportunity to cause then serious bodily injury, let alone kill them.

The BWV further indicated that NE#3 brought the Complainant to the rear door of the patrol vehicle and then, after the threat was made, forcibly pushed him inside. Contrary to NE#3's assertions, there was no indication from the BWV that the Complainant posed a physical threat to him at the time. The video also conclusively disproved that NE#3 "laid" the Complainant on the rear seat or that the Complainant fell. To be clear, it was a shove.

Lastly, the video depicted that the push occurred very soon after the Complainant threatened to kill NE#3 and immediately after NE#3 said to the Complainant: "Oh yeah? Alright, that's a threat." NE#3 further told the Complainant that he should not have made the threat after the force occurred.

All of these facts yield the conclusion that the force used by NE#3 to push the Complainant face first into the patrol vehicle was inconsistent with policy. Notably, SPD Policy 8.200-POL-6 directs that, in the context of securing a handcuffed subject into the rear of a patrol vehicle, force may only be used "after reasonable attempts to gain voluntary compliance have failed." (Id.) NE#3 did not make any such reasonable attempts. This included failing to abide by his training to seat the Complainant into the patrol vehicle rear first.

The force was not reasonable under the circumstances. It was further not necessary as there were a number of other tactics NE#3 could have used to gain the Complainant's compliance. Lastly, the force was not proportional under the circumstances. While NE#3 articulated his belief that the Complainant presented a physical threat at that time, this is simply not supported by the video evidence. Moreover, even if the Complainant did present a threat, pushing the handcuffed and vulnerable Complainant forwards into the patrol vehicle was unwarranted.

For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #3 - Allegation #3

8.200 - Using Force 2. Use of Force: When Prohibited

OPA concludes that, when NE#3 pushed the handcuffed Complainant face first into the rear of the patrol vehicle, he did so to punish or retaliate against him. In reaching this determination, OPA finds the video compelling.

The video showed that, as they approached the rear of the patrol vehicle, the Complainant made a threat to kill NE#3. While, as discussed above, this was not a realistic threat, NE#3 immediately responded, saying: "Oh yeah? Alright, that's a threat." He then pushed the Complainant forward into the patrol vehicle. Lastly, after doing so and once he was on the other side of the patrol vehicle, NE#3 told the Complainant: "I wouldn't say you're going to kill me then."



OPA believes that these statements, coupled with the push, evinced NE#3's intent to use force in response to the threat. Under OPA's interpretation of the policy, doing so was improper and constituted prohibited force. For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #3 - Allegations #4

8.400 - Use of Force Reporting and Investigation 8.400-POL-1 Use of Force Reporting and Investigation

When reviewing the BWV, OPA concludes that NE#3 failed to accurately and completely report the force he used. Most notably, NE#3 told NE#1 that he "put" the Complainant in the rear of the patrol vehicle and that he "laid" him on the rear seat. Both of these descriptions were lacking in necessary detail if not blatantly inaccurate. The BWV clearly indicated that NE#3 pushed the Complainant forward face first into the rear seat. However, he did not disclose that to his supervisor. Had he made that report, the force would have been deemed more than de minimis given the higher scrutiny placed on force used against handcuffed detainees. Moreover, NE#3 should have been aware that pushing a handcuffed individual from the back was higher than de minimis force and he incorrectly stated the nature of the force to NE#1.

Given the above, OPA finds that NE#3 inaccurately, insufficiently, and incorrectly reported the force he used. As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #3 - Allegation #5

8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

"De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance." (SPD Policy 8.100-POL-1.)

The policy further instructs that: "When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution." (*Id.*) Officers are also required, "when time and circumstances permit," to "consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors" such as "mental impairment...drug interaction...[and/or] behavioral crisis." (*Id.*) These mental and behavioral factors should be balanced by the officer against the facts of the incident "when deciding which tactical options are the most appropriate to bring the situation to a safe resolution." (*Id.*)

The policy gives several examples of de-escalation, which include: mitigating the immediacy of the threat to give officers time to use extra resources and to call more officers or specialty units; and increasing the number of officers on scene to thus increase the ability to use less force. (*Id.*) Other examples of de-escalation include, but are not limited to:

- Placing barriers between an uncooperative subject and officers;



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- Containing the threat;
 - Decreasing exposure to the potential threat by using distance, cover and concealment;
 - Avoidance of physical confrontation unless immediately necessary to protect someone or stop dangerous behavior;
 - Using verbal techniques, such as “Listen and Explain with Equity and Dignity” (LEED) to calm an agitated subject and promote rational decision making;
 - Calling extra resources, including CIT officers and officers equipped with less-lethal tools; and
 - Using “any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject.

(*Id.*) De-escalation is inarguably a crucial component of the Department’s obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department’s policy and expectations.

Based on OPA’s review of the video, OPA concludes that NE#3 failed to comply with the Department’s de-escalation policy. NE#3’s initial decision to push the Complainant’s head down served to escalate the Complainant’s behavior. While NE#3 asserted that he did so because he felt that the Complainant might spit at him or run into him, this is simply not supported by the evidence. While the Complainant was repeatedly questioning why he was detained and denying that he engaged in criminal behavior, he was not resistive or assaultive and had not made any threats to harm the officers or others at that time. However, even before informing the Complainant that he needed to walk to the rear of the vehicle or telling him to do so, NE#3 used physical force to compel him to do so. This was simply unnecessary at the time. Instead of then trying to de-escalate the Complainant, he used more pressure to force the Complainant’s head down and bend him over at the waist. As a result, the Complainant grew even angrier and then threatened NE#3. As discussed above, this resulted in NE#3 pushing him face first into the patrol vehicle.

NE#3 asserted that his pushing down of the Complainant’s head constituted de-escalation. OPA disagrees and sees no support for this in the policy. To the contrary, OPA finds that NE#3 failed to comply with virtually every aspect of the de-escalation policy, including providing no directions to the Complainant concerning what he was expected to do and not using any trained verbal techniques. As such, instead of taking steps to avoid the use of force, NE#3’s words and actions made it more likely. This is exactly what the de-escalation policy is purposed to avoid.

For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**