



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 19, 2020

CASE NUMBER: 2019OPA-0787

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)

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 assaulted him when he was observing their activity.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the review and approval of the Office of Inspector General for Public Safety, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employees. As such, the Named Employees were not interviewed as part of this case.

In addition, OPA interpreted the Complainant as alleging that the Named Employees were unprofessional. This allegation was returned to the chain of command for handling as a Supervisor Action. OPA further identified that another officer failed to timely activate Body Worn Video and also classified that for handling as a Supervisor Action.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

Named Employee #1 (NE#1), Named Employee #2 (NE#2), and other officers responded to a report of a woman brandishing a firearm from a vehicle. The officers detained another woman who was the driver of the vehicle in question. While the officers were speaking with the woman, a man walked up. The man – who was later identified as the Complainant – stated that the woman was his niece and began asking her if she was okay. The Complainant approached the woman and, when he came within 10 feet of the officers, NE#1 told him that he could watch but he needed to back up. NE#1 told the Complainant that he needed to back up several more times; however, the Complainant did not move. The Complainant replied to the officers that he was “almost 40 years old,” that he “knew” his “rights,” and that he could stand where he was. NE#1 and NE#2 then approached the Complainant. They extended their arms and made contact with the Complainant’s chest and pushed him backwards. At that time, NE#2



again told the Complainant that he needed to move back. The Complainant asked NE#2 why he was yelling. The Complainant grew upset. He said to an officer: "That's that fake tough guy shit." He continued to berate NE#1. The Complainant told NE#1 that, had NE#1 not had a uniform on, the Complainant would have "dogged" him. He repeated that statement to other officers. He further told NE#1, referring to being pushed backwards: "That's why no one in the Black community respects you punk ass cops." The Complainant also alleged that, when NE#1 and NE#2 pushed him, this constituted an assault. Accordingly, a supervisor was summoned to the scene.

The supervisor spoke with the Complainant, who repeated his assertion that he was assaulted by NE#1 and NE#2. The supervisor took his complaint and informed him that she would make an OPA referral. The supervisor later did so and this OPA investigation ensued. As part of its investigation, OPA interviewed the Complainant over the phone. He told OPA that the officers assaulted him when they pushed him. He stated that, had he pushed the officers, he would have been arrested. He told OPA that he would come to OPA's office to continue his interview; however, he did not do so.

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.*)

When the Complainant began to move towards the officers while they were conducting their investigation, they were permitted to direct him to move back. First, at the time, they were investigating the possible brandishing of a firearm. While the woman who was detained was not the suspect, she had been in a car with an armed individual and, as such, the officers were justified in further investigating her involvement. While doing so, they were further entitled to create a buffer to ensure their safety and to facilitate their investigation and to prevent other individuals from approaching them. Second, NE#1 explicitly told the Complainant that he was not prohibited from watching but that he simply needed to move back. NE#1 said this respectfully. However, the Complainant did not comply with this request and continued to remain where he was. Third, even when the officers approached the Complainant and again asked him to move back, he did not do so and denied that he was required to depart from where he was standing. Given his repeated refusal to comply with the officers' repeated lawful and reasonable requests, they were permitted to use force to cause him to do so. The force they ultimately used was de minimis and consisted of using their extended arms to push the Complainant back. The Complainant did not fall over and did not appear to suffer any injuries.

While OPA recognizes the Complainant's frustration, he did not have the unfettered right to remain where he was standing. The Named Employees were ultimately permitted to push him back and the force they used to do so was reasonable, necessary, and proportional under the circumstances. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#1 and NE#2.

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



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), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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