



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 18, 2020

CASE NUMBER: 2019OPA-0858

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)

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 Employee subjected her to excessive force and, in doing so, assaulted her.

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 Employee. As such, the Named Employee was not interviewed as part of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

Named Employee #1 (NE#1) was inside of a Safeway store when he observed an on-view robbery. He determined that the suspect – who is the Complainant in this case – tried to walk out of the store with items she had not paid for. When a store employee tried to block the Complainant's exit and cause her to return inside of the store, the Complainant struggled against the employee. NE#1 walked over to the Complainant and the employee and took physical control of the Complainant. Specifically, NE#1 took hold of the Complainant's arm in an escort position and led her back into the store. The Complainant pulled away from NE#1 and, in order to prevent her from continuing to do so, NE#1 rotated the Complainant's arm and wrist to turn them over. He further applied twisting pressure to the Complainant's wrist. This caused the Complainant to stop resisting and, eventually, to sit down. At one point, the Complainant tried to stand up in order to speak with another officer; however, NE#1 used his hand to push her back and to prevent her from doing so. As a result, she again sat down. The Complainant was later placed under arrest.

The Complainant subsequently claimed to a supervisor that the force NE#1 used was excessive and constituted an assault. The supervisor referred the Complainant's allegations to OPA, and this investigation ensued.

OPA determined that, at the time of the incident, NE#1 was completing a thirty-day rotation in a specialty unit. As such, he was not equipped with Body Worn Video. However, OPA was able to obtain security video from the



Safeway that showed the force used. The security video indicated that the force was consistent with the description above, as well as with what NE#1 reported after the incident.

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 a review of the totality of the evidence, OPA concludes that NE#1’s force was consistent with policy. First, at the time he used force, NE#1 had probable cause to arrest the Complainant. With that lawful authority came the right to use force, if needed under the circumstances, to effectuate the arrest. Here, the Complainant physically pulled away from NE#1. As such, it was reasonable to use force to prevent her from doing so and to take her into custody. Second, the force used was necessary as, given the Complainant’s conduct and established intention to flee if not detained, there was no reasonable alternative to using force to take her into custody. Moreover, the force used was only the level needed to do so. Lastly, the force was proportional to the threat posed by the Complainant and the possibility that she could escape. Notably, the force was relatively minor. NE#1 used a trained control hold on her arm to prevent her from pulling away and, then, pushed the Complainant back down to a seated position when she tried to stand up. NE#1 did not use any strikes or any significant force.

For the above reasons, OPA finds that the force NE#1 used was appropriate under the circumstances. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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