



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 18, 2020

CASE NUMBER: 2019OPA-0921

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 subjected him to excessive force.

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.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

Officers, including Named Employee #1 (NE#1) and Named Employee #2 (NE#2), were dispatched to a report of a male who was swinging a large knife outside of the Union Gospel Mission. The call was updated to reflect that there were other potential involved suspects and descriptions were provided.

After arriving on scene, the officers detained a male who matched the description of one of the suspects. The officers recovered a large pair of scissors and three knives from his person. The male told the officers that he had been threatened by other males and that those individuals had brandished knives. Given the male's assertions, one of the involved officers watched security video from the facility. Based on that review, that officer determined that another individual – who was later identified as the Complainant – was also potentially involved in criminal activity. The officers determined that they needed to detain the Complainant to figure out who the primary aggressor was. The officers were aware that the Complainant was reported to possess two knives.



NE#1, NE#2, and another officer approached the Complainant. They told him that they needed to speak with him. The Complainant kept his hands in his pockets and began to move away from the officers. The officers then grabbed onto the Complainant's arms. The Complainant began to struggle against the officers. The Complainant tried to punch NE#1, but he missed. The Complainant also swung at NE#2 and struck the side of NE#2's head. In response, NE#2 punched the Complainant approximately three times. One punch missed and the other two punches hit the Complainant's head and torso, respectively.

The officers continued to struggle with the Complainant. At one point, NE#1 pushed the Complainant backwards into a parked vehicle. Ultimately, the officers were able to collectively take the Complainant down to the ground. While the Complainant was on the ground, the officers used their body weight to hold him down and handcuffed the Complainant in the prone position. One officer also used a figure-four lock (crossing a subject's legs and one ankle) on the Complainant to prevent him from kicking. When the Complainant was searched incident to arrest, the officers located two knives.

A supervisor arrived on scene to screen and investigate the force. NE#2 accurately described the force that he used. NE#1 could not describe exactly what occurred but he recalled the Complainant "swinging on" NE#2 and he stated that he pushed both of them back towards the parked vehicle to try to gain control over the Complainant. The supervisor interviewed the Complainant. At that time, the Complainant alleged that the officers subjected him to excessive force and caused him to lose consciousness. He further asserted that the officers slammed his head against the ground and that one of the officers "dropped his knee" on the Complainant's head. The supervisor screened this matter with OPA and OPA requested that a referral be made. This OPA investigation ensued.

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 the Named Employees' force was consistent with policy. First, at the time they used force, the officers had the lawful right to detain Complainant to determine whether he had been engaged in criminal activity. With that legal authority came the ability to use force, if needed under the circumstances, to effectuate the detention. Here, the Complainant, who was believed to be armed, kept his hands in his pockets and was uncooperative. He further resisted the officers when they tried to control him and punched them. As such, it was reasonable to use force to prevent him from doing so and to take him into custody.

Second, the force used was necessary as, given the Complainant's conduct, there was no reasonable alternative to using force to take him into custody. Moreover, the force used was only they level needed to do so given the Complainant's physical resistance and assaultive behavior.

Third and last, the force was proportional to the threat posed by the Complainant. Again, the officers believed him, to be armed at the time – which was later substantiated – and he assaulted them. Given this, the officers were permitted to use significant force to prevent the Complainant from causing them harm. This included the control holds, the push against the parked vehicle, the takedown, and the strikes by NE#2. Indeed, under the circumstances,



the officers could have used a higher level of force than they did. Ultimately, once the Complainant was under control, the officers ceased using force and called for a supervisor. Notably, there was no evidence that any of the officers used excessive force and there was no support for the Complainant's allegations that the officers slammed his head on the ground, kned him in the head, or caused him to lose consciousness.

For these reasons, OPA finds that the force used by the Named Employees was appropriate. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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)**