



## **CLOSED CASE SUMMARY**

ISSUED DATE: JULY 21, 2020

CASE NUMBER: 2020OPA-0219

### **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 (Unfounded)
# 1	11.010 - Detainee Management 14. The Department Will Not Tolerate the Victimization of Detainees Through Sexual Abuse or Sexual Harassment	Not Sustained (Unfounded)

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)

***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 SPD officers subjected him to excessive force and that Named Employee #1 may have inappropriately touched his genitals during a search.

### **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***

SPD’s Gang Unit was working on an operation with U.S. Marshals in which the Complainant was identified as the subject. The Complainant had open warrants and, accordingly, was placed under arrest. Named Employee #1 (NE#1) reported that, prior to the arrest being effectuated, he observed the Complainant reaching towards his waist, which possibly suggested that he was armed. Given his immediate proximity to the Complainant and the perceived exigency of the situation, NE#1 made the decision to take the Complainant down to the ground in the vicinity of a planting strip. NE#1 described the planting strip as being an area where plants and dirt ensured that it was not a hard surface. After taking the Complainant down to the ground, NE#1 handcuffed the Complainant in the prone position while Named Employee #2 (NE#2) held his legs. The officers reported that, at that time, the Complainant was kicking and moving around, which required him to be held down. The Complainant suffered abrasions to his arms, wrists, and waist.



The Complainant later asserted that he was subjected to excessive force by SPD officers. He stated that they tackled him to the ground, “stomped” on his back, and “beat” him. The officers’ supervisor documented the complaint, photographed the Complainant’s injuries, and investigated the force. The Complainant also claimed that an officer – who he said self-identified as a U.S. Marshal – improperly grabbed his genitals, which were allegedly exposed. The supervisor screened these allegations with OPA and eventually made a referral. This OPA investigation ensued. As part of its investigation, OPA attempted to interview the Complainant, as well as other individuals who were arrested at the same time in order to obtain their account of what occurred. Through their attorneys, they declined to be interviewed.

OPA determined that there was no Body Worn Video or In-Car Video of the incident as the Named Employees were operating in a plainclothes capacity and as part of a task force. In addition, OPA could not locate any third-party video that captured what occurred.

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.*)

With regard to the Complainant’s allegation that he was beaten and that officers stomped on his back, OPA finds that the totality of the evidence indicates that such force did not occur. OPA reaches this conclusion for several reasons. First, the photographs of the Complainant’s injuries are inconsistent with being beaten or stomped on. To the contrary, the injuries, abrasions, are more consistent with the force described by the Named Employees and his movement on the ground while in the prone position. Second, based on OPA’s review of his interview with the supervisor, the Complainant did not provide a clear or convincing recitation of the force and how his injuries occurred. While not dispositive in and of itself, his failure to cooperate with OPA’s investigation leaves a lack of evidence supporting his claims. Third, the officers provided detailed reporting of the force they used and, given the lack of evidence presented to the contrary and the photographs, OPA deems this to be the most credible account of what occurred.

Lastly, in addition to finding the Complainant’s allegations of excessive force to be unsupported by the evidence, OPA notes that the force that was used, a takedown onto a planting strip, control holds, and prone handcuffing, would have been reasonable, necessary, and proportional under the facts of this case. That the Complainant suffered injuries as a result is unfortunate, but it does not yield the force out of policy.

For the above reasons, OPA recommends that this allegation be Not Sustained – Unfounded as against both Named Employees.

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



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**Named Employee #1 - Allegation #2**

***11.010 - Detainee Management 14. The Department Will Not Tolerate the Victimization of Detainees Through Sexual Abuse or Sexual Harassment***

SPD Policy 11.010-POL-14 states that: “The Department will not tolerate the victimization of detainees through sexual abuse or sexual harassment.” This allegation was classified for investigation based on the Complainant’s allegation that an officer grabbed his genitals.

Based on OPA’s review of the totality of the evidence, OPA finds that the evidence does not support a finding that NE#1 improperly engaged in this conduct. OPA reaches this conclusion for three main reasons. First, the Complainant failed to cooperate with OPA’s investigation and to provide any specifics concerning what occurred, including a definitive identification of who alleged in this conduct. Second, NE#1 affirmatively denied doing so. Third, while being interviewed by a Department supervisor, the Complainant asserted that the person who grabbed his genitals self-identified as a U.S. Marshall. This suggests that, to the extent this conduct occurred, it was not perpetrated by NE#1 or any other SPD employees.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

**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 – Unfounded.

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