



## ***CLOSED CASE SUMMARY***

ISSUED DATE: JUNE 16, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0010

### **Allegations of Misconduct & Director's Findings**

Named Employee #1

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

It was alleged that the Named Employee used prohibited and excessive force when he pushed the handcuffed Subject into a holding cell wall.

### **ADMINISTRATIVE NOTE:**

OPA notes that, since the date of this incident, both the policy sections alleged in this case were changed in full or in part. As such, when assessing this case, OPA applies the policies that were in place at the time the incident occurred, not the new policies that are currently in force.

### **SUMMARY OF INVESTIGATION:**

Named Employee #1 (NE#1) and a second officer – Witness Officer #1 (WO#1) – responded to a traffic collision in which one of the involved vehicles rolled over. The officers quickly determined that the driver of that vehicle – who is referred to here as the Subject – was intoxicated. The Subject was arrested for DUI. At the time of his arrest, the Subject was aggressive and belligerent. At one point, he said: “Throw me on the hood, I like it rough, body cam, look at that, rub it, court case.” He simultaneously rubbed his head against the hood of the patrol vehicle. Later, after he was transported to the precinct, he threw himself into the patrol vehicle and blamed the officers for pushing him. He also moved towards the precinct door as if to hit himself against it. The officers pulled him back and he said: “Don’t push me bro. Why you got to slam me like that.” NE#1 and WO#1 led the Subject into the precinct and towards an open holding cell. NE#1 was behind the Subject and was holding his arm as he moved forward. The Subject turned back towards the officers and glared at them while being led into the cell. At that time, the Subject moved forward in the holding cell with increased momentum and appeared to hit his shoulder against the wall. He did not appear to strike the wall particularly hard, but he exclaimed: “ow.” He walked towards the officers as they



left the holding cell saying: “Look at that, look at that, look at that.” WO#1 told the Subject to face the wall and NE#1 closed the holding cell door.

The Subject later alleged to an SPD supervisor that NE#1 purposefully shoved him into the wall while he was handcuffed. He said that this caused him to strike his head. He contended that this was excessive force. The supervisor evaluated the allegation, including reviewing the Body Worn Video (BWV) – which is referenced above – and holding cell video.

The holding cell video showed a better angle of how the Subject was led into the holding cell and more clearly depicted the physical contact between the Subject and NE#1 at that time. It showed NE#1 walking behind the Subject into the holding cell. NE#1’s hand was on the Subject’s back and his arm was bent. The video indicated that the Subject moved forward into the wall while NE#1’s arm remained bent. NE#1 then removed his arm from the Subject’s back and walked out of the holding cell. The video disproved the Subject’s contention that his head struck the wall.

The supervisor believed that the collective video disproved the Subject’s claims of excessive force and screened the incident with OPA as unsubstantiated misconduct. While a close call, OPA declined to screen out the allegation as it believed that there was insufficient evidence at that time supporting such a determination. OPA initiated an intake to further assess the video, including trying to slow it down to better isolate and identify what occurred. OPA’s investigation also included interviewing NE#1 and WO#1.

NE#1 described the Subject as “heavily intoxicated” and uncooperative. He said that, throughout the Subject’s time in custody, the Subject made allegations that officers were pushing him and engaging in actions purposed to cause self-harm. This included throwing himself against the hood of the patrol vehicle and later doing the same against the patrol vehicle’s side while at the precinct and against the precinct door. At those times, the Subject again alleged that the officers were “pushing” him. NE#1 identified that, as they approached the holding cell, WO#1 – who was a student officer at the time – did a good job trying to convince the Subject to voluntarily enter. However, the Subject stared at both of them and, as he entered the holding cell, began to dig in his feet and push back. NE#1 used his body weight to push forward to prevent this and to ensure that the Subject did not fall. However, the Subject then moved quickly forward into the wall and NE#1 released him. NE#1 said that the Subject did so on his own power, and he denied pushing the Subject into the wall. He heard the Subject say: “Ow.” That being said, he did not see any injuries on the Subject’s person and did not believe that the Subject hit his head on the wall as the Subject later alleged to a supervisor.

WO#1 also described the Subject as belligerent and intoxicated. He stated that the Subject repeatedly made up scenarios where he was being abused by officers. WO#1 said that neither he nor NE#1 pushed the Subject during these times, even though the Subject asserted that they did. WO#1 observed NE#1 walk the Subject into the cell but noted that his view was blocked by NE#1’s back. However, he did not observe NE#1 use any “reportable force” while in the holding cell.

Given that criminal charges were filed against the Subject, OPA reached out to his criminal defense attorney to try to schedule an interview. The criminal defense attorney did not respond to OPA and no interview was held.

#### **ANALYSIS AND CONCLUSIONS:**



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

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

SPD Policy 8.200-POL-2 governs when force is prohibited. It bars force used: “to punish or retaliate”; or “against individuals who only verbally confront them unless the vocalization impedes a legitimate law enforcement function.” SPD Policy 8.200-POL-6 concerns force used against handcuffed individuals. It states that: “Officers may only use objectively reasonable, necessary and proportional force on restrained [handcuffed] subjects.” The policy further instructs that: “Officers may only use force on restrained subjects that would foreseeably result in a Type II or Type III investigation under exceptional circumstances where the subject’s actions must be immediately stopped to prevent injury, escape, or destruction of property.”

Had NE#1 shoved the handcuffed Subject into the holding cell wall, as the Subject asserted, this force would have violated both of these policies. However, from an in-depth analysis of the video, OPA concludes that this did not, in fact, occur. Specifically, OPA found that, based on the bent angle of NE#1’s arm, there was no evidence indicating that he pushed the Subject. Instead, it appeared that the Subject struck the wall based on his own momentum. In reaching this decision, OPA notes that the Subject’s behavior through the entirety of the call is extremely relevant. Notably, the heavily intoxicated Subject made multiple statements and engaged in physical actions that suggested his intent to fabricate a police assault on his person. This included rubbing his own head against the patrol vehicle’s hood, throwing himself into the side of the patrol vehicle, and trying to knock into the precinct door. After each one of these actions, the Subject accused the officers of pushing him. These were clear fabrications and provided insight into the Subject’s mindset and his intent. It further informs OPA’s decision that he engaged in the exact same behavior when they entered the holding cell, again pushing himself against a hard surface and blaming officers.

Based on the above, OPA concludes that NE#1 did not use excessive or otherwise prohibited force on the Subject. Accordingly, OPA recommends that both this allegation and Allegation #2 be Not Sustained – Unfounded.

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

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

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

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Unfounded.

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