



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 15, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0361

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 (Expedited)

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper (Expedited)

Named Employee #3

Allegation(s):		Director's Findings
# 1	11.050 - Detainee Property 11.050-POL 1. Officers Secure Detainee Property	Not Sustained - Unfounded (Expedited)

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 Named Employee #1 (NE#1) and Named Employee #2 (NE#2) subjected the Subject to excessive force by slamming him to the ground during an arrest. It was also alleged that Unknown Employee(s) took the Subject's money and did not return it to the Subject.

ADMINISTRATIVE NOTE:

During its intake investigation, OPA identified two allegation that it returned to the chain of command to be handled via a Supervisor Action. OPA determined that NE#1 failed to include a Domestic Violence Supplement to his report, which would technically violate SPD Policy 15.410-POL-5. NE#3, a supervisor, reviewed and approved NE#1's report, which did not include a DV supplement. This technically violated SPD Policy 5.100(6)(a). OPA found that this paperwork omission amounted to a minor policy violation that was best addressed through training, communication, or coaching by the employees' supervisor(s).

This remaining allegation in this case were designated for Expedited Investigation. This means that OPA, with the Office of Inspector General's review and approval, believed that it could reach and issue recommended findings based



solely on its intake investigation and without interviewing the involved employees. As such, OPA did not interview the involved employees in this case

SUMMARY OF INVESTIGATION:

All relevant portions of the interaction between the Named Employees and the Subject were captured by Body Worn Video (BWV). Accordingly, the relevant facts are not in credible dispute.

On July 22, 2021, NE#1 and NE#2 responded to a 911 call pertaining to an altercation between the Subject and his girlfriend. According to the 911 caller, the Subject had been heard yelling at his girlfriend and had allegedly hit her. Once on scene, NE#1 and NE#2 spoke with the girlfriend, who advised the officers that the Subject had assaulted her within the past hour and had previously attempted to strangle her; the officers' response to the scene was depicted on BWV. The girlfriend also advised the officers that the Subject was known to be aggressive toward officers, a situation which she indicated tended to worsen when the Subject was high, which she stated was presently the case.

As NE#1 and NE#2 waited for additional units to respond to the scene, the officers observed the Subject and placed him in handcuffs. Once in handcuffs, NE#1 and NE#2 searched the Subject and removed various items from the Subject's pockets, including banknotes, then placed the items on the hood of NE#1's police vehicle. BWV showed that the officers used heavier items to weigh down the banknotes. Once the search was complete, officers advised the Subject that he would be moved into the back of the police vehicle, which appeared to cause the Subject to become distressed and contest the basis for his arrest. In response, NE#1 advised the Subject that he was being arrested for DV Assault, which appeared to cause the Subject to begin struggling with the officers.

During this time, BWV shows the Subject pulling away from the officers and exclaiming that he did not do anything, then repeatedly stating "I'll make y'all kill me." NE#1 and NE#2 then brought the Subject to the ground on his right side, adjacent to a street curb. The takedown lasted approximately 1-2 seconds, after which point NE#2 held the Subject's head and left shoulder area and instructed the Subject to relax. In response, the Subject continued shouting at the officers and moving his legs around. The Subject eventually became calmer, whereupon NE#2 advised the Subject that he could be sitting in the car. In response, the Subject stated that he "liked laying [there]."

Once backup officers arrived on scene, the Subject began shouting and writhing again, to which NE#2 held his right hand against the left side of the Subject's face. The Subject then began shouting that he couldn't breathe and announced that he had ingested a quantity of drugs. Although the Subject shouted out that the officers were holding his neck, BWV showed this not to be the case. During this timeframe, NE#2 asked the Subject to calm down, noting that he was holding his hand to the Subject's face as the Subject had been spitting on the officers. Once SFD paramedics arrived on scene to screen the Subject, officers asked the Subject to sit up, which the Subject stated he would do if officers would let him go.

In response, NE#1 and NE#2 stated that they could not let go of him. The Subject then shouted that they should not touch his arm as he had a metal plate in it. NE#1 and NE#2 gradually brought the Subject into a sitting position, during which time NE#2 held onto the back of the Subject's head in a sort of stabilizing maneuver. Although the Subject exclaimed that NE#2 was holding onto his neck, BWV shows the Subject's neck to be free from restrictions. This case was opened regarding NE#1 and NE#2's use of force after the Subject alleged that he had been "slammed to the ground" during his arrest.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

It was alleged that NE#1 used excessive force.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” 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 8.050.) The policy lists a number of factors that should be weighed when evaluating reasonableness. (See id.) Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” (Id.) Lastly, the force used must be proportional to the threat posed to the officer. (Id.)

In this case, NE#1’s use of force against the Subject was reasonable when viewed through the totality of the circumstances. Here, officers were attempting to place the Subject under arrest for DV Assault and sought to sit the Subject in the back of a police vehicle. However, the Subject did not comply with the officers’ request, electing instead to tense his body and pull away from the officers. Considering the need to gain the compliance of the Subject and effectuate the mandatory arrest for DV Assault, it was objectively reasonable for NE#1 to use a controlled takedown of the Subject and prevent his escape.

Considering the efforts that the officers had made to arrest the Subject without force, NE#1’s use of force in this case was also necessary. Prior to the use of force, officers had worked to explain the basis of the arrest to the Subject and seek his cooperation with the detention. Although the Subject was relatively cooperative with officers while they searched his person, the Subject’s demeanor changed when officers moved the Subject toward the back of the vehicle. At this time, the Subject began pulling away from officers, making it extremely difficult to move the Subject into the backseat. Given these circumstances, it was necessary for officers to use force in order to achieve their purpose of arresting the Subject and transporting him from the scene.

Lastly, in considering the evidence gathered in this case, the level of force utilized by NE#1 was proportional to the circumstances at hand. In response to the Subject’s tensing of his body and pulling away from officers, NE#1 and NE#2 used a controlled takedown tactic in order to better manage the Subject’s movement. While on the ground, the Subject continued to move his body and legs, during which time NE#1 and NE#2 maintained their hold on the Subject until paramedics arrived and began to examine the Subject. When reviewing the evidence collected during its Intake Investigation, OPA finds that NE#1’s use of force was reasonable, necessary, and proportional and was thereby within SPD Policy 8.200.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #1 - Allegation #2

15.410 - Domestic Violence Investigation 15.410-POL 5. The Department is Committed to a Thorough Primary Investigation of Domestic Violence Incidents

Please see Administrative Note above regarding Supervisor Action.

Named Employee #2 - Allegation #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 (Expedited)**

Named Employee #3 - Allegation #1

5.100 - Operations Bureau Individual Responsibilities III. Patrol Sergeant B. Field Supervision 6. Reports: a. Ensure accuracy and completeness

Please see Administrative Note above regarding Supervisor Action.

Named Employee #4 - Allegation #1

11.050 - Detainee Property 11.050-POL 1. Officers Secure Detainee Property

It was alleged that Unknown Employee(s) had taken some of the Subject's money.

Under SPD Policy 11.050-POL 1, "[o]fficers will store detainee property in a secured area when practical."

As stated earlier, NE#1 and NE#2 conducted a search of the Subject incident to arrest, during which time they removed banknotes from the Subject's pockets and placed them on the hood of a police vehicle. BWV then showed officers placing the currency and other possessions of the Subject into a brown paper bag, which was then counted in front of the Subject. The Subject proceeded to allege that officers stole his money.

In reviewing BWV pertaining to this incident, a chain of custody for the Subject's banknotes can be seen from the time officers place them in a paper bag until the time they are counted in front of the Subject.

For these reasons, OPA finds that the officers properly secured the Subject's property pursuant to SPD Policy 11.050-POL 1 and recommends that this allegation be Not Sustained – Unfounded.

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