



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 11, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0379

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)

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) used excessive force against a subject when he pushed the subject for no apparent reason. It was further alleged that NE#1 and Named Employee #2 (NE#2) failed to provide their identifying information when requested.

ADMINISTRATIVE NOTE:

During its Intake Investigation, OPA identified two allegations that it returned to the Chain of Command to be handled via a Supervisor Action. Upon review of relevant Body-Worn Video (BWV), OPA determined that NE#1 and NE#2 were asked for their names and serial numbers during this incident, but that neither Named Employee provided such information. This matter was directed to the Named Employees' Chain of Command to address through training, communication, or coaching by the employees' supervisor(s). This was the only allegation classified against NE#2.

This case was designated as an 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 NE#1 and the subject were captured by Body-Worn Video (BWV). Accordingly, the relevant facts are not in credible dispute.

On August 15, 2021, NE#1 and NE#2 responded to a call of an assault near Broadway and Pine. While on scene, the Named Employees took the statements of witnesses to the assault, then prepared to return to their SPD vehicle. While heading back to his vehicle, NE#1 encountered a series of three bystanders situated between himself and his vehicle.



NE#1 passed the more proximate of the three bystanders without note, then continued toward the other two bystanders, who were standing several feet apart from one another.

As NE#1 walked forward, the bystander to his left pivoted into NE#1's path of movement, which closed the distance between her and the bystander to NE#1's right. NE#1 then moved to his own left and out of the direction of the moving bystander. The bystander then moved back once more, so that she was again in NE#1's path of movement. At this juncture, NE#1 moved forward and to his right, walking between the two bystanders.

As he was walking between the two bystanders, NE#1 bent his right arm upward, so that his elbow remained near his hip, with his hand moving to approximately shoulder level. Within his right-hand NE#1 was carrying a small notepad. While still cussing the notepad, NE#1's right hand touched the bystander on her left shoulder, at which time he stated, "excuse me, ma'am." The bystander to the right of NE#1 then exclaimed "excuse me, do not put your hands on her." NE#1 proceeded forward toward his vehicle, followed by NE#2. As the two officers entered their vehicle, a bystander asked the officers for their "name and badge number," which neither officer provided.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 Using Force 1. Use of Force: When Authorized

The Complainant alleged that NE#1 used unauthorized 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 appears to fall into the category of *de minimis*, which SPD Policy defines as "[p]hysical interaction meant to separate, guide, and/or control without the use of control techniques that are intended to or are reasonably likely to cause any pain or injury." (SPD Policy 8.050). The policy goes on to include examples of *de minimis* force, such as "[u]sing hands or equipment to stop, push back, separate, or escort a person without causing any pain, or in a manner that would reasonably cause any pain." (Id.)

Considering the circumstances of this incident, NE#1's application of the *de minimis* force would be reasonable, given that the bystander was repeatedly moving into the NE's path of movement and preventing him from accessing his police vehicle. By placing his hand on the shoulder of the bystander, NE#1 was able to stop the bystander's movement and proceed in a predictable path of motion. The *de minimis* force was also necessary in this situation, as the bystander was repeatedly impeding NE#1's ability to exit the scene and continue his policing duties. Lastly, the *de minimis* force was proportional to the actions of the bystander. In response to the bystander's repeated movement of her person in the path of NE#1, NE#1 placed his notebook-toting hand on the bystander's shoulder as he passed by her, while stating "excuse me."



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

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