



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 14, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0390

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
# 2	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained - Training Referral

Named Employee #2

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

Named Employee #3

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:

It was alleged that the Named Employees "gang raped" a community member (CM#1) when he was being arrested.

ADMINISTRATIVE NOTE:

ASPD supervisor was reviewing a Type 2 Use of Force when he heard CM#1 state "they gang-raped me" on Body Worn Video (BWV). The SPD Supervisor screened this allegation with OPA. There was no evidence of any sexual assault during this event, but it was determined that CM's comment—and other statements—constituted an allegation of excessive force. OPA opened an investigation.

The following alleged violations of SPD policy were also noted during the SPD supervisor's review of the Type 2 Use of Force: (1) NE#1 driving over a sidewalk in responding to this call; (2) one officer, not named in this case, not activating In-Car Video (ICV); (3) CM#1's allegations that NE#1 was talking over him; and (4) issues related to the Incident Report. The SPD supervisor forwarded these allegations to the Chain of Command for Supervisor Action and are not addressed below.

SUMMARY OF INVESTIGATION:



The Named Employees attended a call to remove CM#1 from a premise. CAD details the CM#1as “making inappropriate gestures at employees from outside in front and refusing to move along, appears high – has been posturing/acting like he is fighting someone that is not there, no weapons [sic]”. A few minutes later it was further reported that the CM#1 had scissors, was gesturing stabbing motions, was possibly high or hallucinating, and was standing in front of the premise on a busy sidewalk. Named Employee #1 (NE#1) and Named Employee #2 (NE#2) arrived at the scene within minutes of each other.

On arrival, NE#1 spoke with the manager at the premise who confirmed that the CM#1 appeared to be “high” and was “holding intense eye contact with employees and customers while holding garden shears (described as having a 2-3” silver blade and black handles) and jabbing them in an upward motion; and licking his fingers suggestively before drawing smiley faces on the windows.” Named Employee #3 (NE#3) arrived at the scene and observed CM#1 with NE#2. CM#1 identified himself to the Named Employees and records check identified CM#1 as having a felony warrant. When NE#1 and NE#2 went to arrest the CM#1, he became extremely agitated and resisted arrest.

BWV is consistent with Use of Force statements made by the Named Employees. NE#1 and NE#3 took hold of CM#1 by an arm on each side. CM#1 curled into a ball and was taken to the ground by both Named Employees in a controlled manner. The Named Employees turned CM#1 onto his stomach and used their knees to hold CM#1 on the ground while attempting to pull CM#1’s arms from underneath him.

BWV depicts NE#1 removing the garden shears (mentioned by the manager) from CM#1’s rear pants pocket. As the Named Employees had CM#1 on the ground and face down, NE#3’s left leg was on CM#1 and NE#2’s left knee appeared to be between CM#1’s shoulder blades. NE#1’s knee and hand were on CM#1’s left leg. Handcuffs were applied to CM#1 and NE#2 double locked them. During the arrest CM#1 yelled, “Ohhh, please stop. My shoulder’s probably broke.” BWV depicts that the Named Employees were not restraining CM#1 at this juncture. NE#2 requested a supervisor and medical aid. No injuries were noted by attending medical personnel, but CM#1 was transported to the hospital for further evaluation and x-rays. After being transported to the hospital, CM#1 made a statement that, “They fucking gang raped me.” BWV does not support this allegation.

As part of OPA’s investigation an independent community member who witnessed the event was interviewed (CM#2). CM#2 alleged that the three Named Employees were kneeling on CM#1 for, “At least 10 minutes.” CM#2 stated that he “stopped because he sounded like he was in pain and I saw that he was also bleeding from his head. Umm, he kept talking about ah, his shoulder was bad, and it hurt, and they were...had him on the sidewalk with one of them kneeling on him. Umm, they did not really seem to take into consideration ah, that his shoulder was hurt.” CM#2 reiterated the positioning of the Named Employees as indicated above. OPA’s review of the BWV indicated that the takedown and hold of CM#1 on the ground lasted about 39 seconds. The Named Employees placed CM#1 in the recovery position less than 15 seconds after that. Six seconds later the Named Employees stated that they were going to assist CM#1 to sit up.

BWV does not support the allegation that CM#1 was sexually assaulted during his arrest or subsequent detention.

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.*)

During the initial arrest of CM#1, NE#1 grabbed CM#1’s arm near the wrist. When CM#1 is on the ground, NE#1 had a knee and hand on CM#1’s left leg. As the Named Employees were attempting to restrain CM#1 on the ground, NE#1 removed the garden sheers from CM#1’s back pocket. As CM#1 called out in pain, NE#1 appeared to have her left hand on CM#1’s right hip.

BWV is consistent with the statement made by NE#1 relative to the use of force used. BWV does not support the allegation that CM#1 was sexually assaulted during his arrest or subsequent detention. As such OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

8. 100 – De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force

It was alleged that NE#1 failed to de-escalate the situation as required by policy.

“De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.” (SPD Policy 8.100-POL).

When interviewed by the screening sergeant at the scene, CM#2 stated that NE#1 appeared to be “antagonizing him (CM#1) some.” CM#2 added that NE#1 was “somewhat condescending,” “provoking,” and “was definitely egging him (CM#1) on.”

During its investigation, OPA reviewed BWV and noted the following comments made by NE#1 in response to statements made by CM#1. Among other statements, NE#1 said the following things to CM#1 prior to his arrest.

CM#1: “I’m trying to be as nice as I can Officer Ball bangs.”

NE#1: “Well, you’ve got a pretty low bar for yourself, alright. So, first name please?”

CM#1: “Is this chick for real? Is she for real?”

NE#1: “I’m not a chick. I’m Officer (Name)”

CM#1: “Officer (Name) are you for real?”

NE1: “Yeah I am.”



CM#1: "Ma'am, I am totally at ease. Dog. You understand me, honey? Or, whatever man."

NE1: "(Undecipherable) call me honey, sweat heart"

After the CM's arrest and as he was being detained by the 3 NE's, the following comments were noted on BWV:

CM#1: "I hope you all fucking get shot." He then says something about "Die".

NE1: "Thank you."

CM#1: "Somebody fucking kill you."

NE1: "I sure hope not. But I can tell that you would like that."

Prior to arrival at the scene, NE#1 should have been cognizant that CM#1 was potentially in crisis from the available CAD information. Indeed, even if NE#1 had any doubt about this, it should have then been confirmed through the conversations she had with the manager of the store about CM#1's behavior and her own observations. Review of the BWV suggests that NE#1 reacted to comments made by CM#1, rather than taking the time to respond. OPA cannot conclusively determine if these prearrest comments enflamed CM#1, who was obviously already in crisis. But NE#1 did little to minimize the possibility of needing to use force during the detention and more likely lessened the possibility of voluntary compliance. Indeed, when CM#1 was being medically examined and continuing to shout at them, NE#2 advised NE#1, "You can just ignore him. I mean unless you want to engage with him." NE#1 responded, "Not really. It just...like, I want to make sure I document all this stuff he's saying." NE#1's conversation with CM#1 contrasts with the cordial conversation had between NE#3 and CM#1. OPA is aware however that some community members will and do react negatively to different genders. This may have been one of those occasions. Regardless, NE#1 should have limited her retorts to a community member who was experiencing behavioral crisis.

NE#1's comments were already addressed by her chain of command. NE#1's chain of command has addressed this issue with her, and NE#1 recognized her mistake and explained how she would avoid revisiting this conduct in the future, OPA finds it appropriate to issue the following training referral here:

- Training Referral: NE#1's chain of command should discuss OPA's findings and review SPD Policy 8.100(1) and 5.001(10) with NE#1. NE#1's chain of command should advise NE#1 that the use of "derogatory, contemptuous, or disrespectful" language with members of the public could escalate situations and its future use will not result in further training referrals and, instead, will necessitate discipline. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegation #1

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

It was alleged that NE#2 used excessive force.

During initial contact with CM#1, NE#2 acted as cover officer while NE#1 made contact with CM#1. When the warrant was verified to arrest CM#1, NE#2 took hold of CM#1's left arm. NE#2 then placed a handcuff on CM#1's left wrist, which was behind CM#1's back. NE#2 told CM#1, "You are under arrest." CM#1 then curled to the ground and, when on the ground, NE#2 appeared to have his right leg extended out and his left knee between CM#1's shoulder blades.



Review of BWV depicted NE#2 pulling out CM#1's arm from underneath him. NE#2 then confirmed attendance of a supervisor.

As discussed above, OPA concludes that the officers' use of force in the detention and arrest of CM#1 was reasonable under the circumstances. Accordingly, the OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #1

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

It was alleged that NE#3 used excessive force.

When it came to detaining CM#1, NE#3 took control of one of CM#1's arms. CM#1 began to "turtle" up and NE#3 tried to pull CM#1's arm from underneath him as he curled up. When CM#1 was on the ground, NE#3 was on CM#1's right side. He appeared to have one knee on CM#1's right leg. The take down and detention lasted for approximately 29 seconds in total. When CM#1 was handcuffed on the ground, NE#3 noticed a cut on CM#1's forehead and stated, "I don't know how he got the head wound." NE#2 responded, "I don't either." NE#3 appeared to notify his supervisor via phone call that he was in a Use of Force. On speaking with the screening Sergeant, NE#3 was asked, "There was no elbows or punches, or strikes, or kicks, or anything like that...Nobody was like doing an arm bar that could break his arm?" NE#3 responded, "I don't think so." BWV confirmed that no such tactics occurred and that the use of force appeared reasonable, necessary and proportional.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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