



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 10, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0538

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)
# 2	8.400 - Use of Force Reporting and Investigation 8.400-POL-1 Use of Force Reporting and Investigation 1. Officers Will Document in a Use-of-Force Report All Uses of Force Except De Minimis Force	Not Sustained - Lawful and Proper (Expedited)
# 3	8.400 - Use of Force Reporting and Investigation 8.400-POL-1 [...] 3. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Following Any Use of Reportable Force, As Soon As Feasible	Not Sustained - Lawful and Proper (Expedited)
# 4	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 - 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 on November 14, 2021, Named Employee #1 (NE#1) responded to the scene of a 911 call regarding a domestic violence (DV) incident. The Complainant, who was on scene at the time of NE#1's arrival, alleged that NE#1 used excessive force against the Complainant when he abruptly pushed the Complainant away from the scene. This use of force was allegedly not documented or reported to a supervisor.

In addition, the Complainant alleged that NE#1 elected to immediately engage in the use of force, despite the presence of conditions that would have allowed for de-escalation. Lastly, it was alleged that NE#1 made condescending remarks to the Complainant regarding officer presence and the functionality of his Body-Worn Video (BWV) device.

ADMINISTRATIVE NOTE:

Due to present OPA staff limitations, OPA is submitting abbreviated Director's Certification Memorandums for many Not Sustained cases. At the Director's discretion, this Director's Certification Memorandum may be expanded at a later time.



During its Intake Investigation, OPA identified one allegation that it returned to the Chain of Command to be handled via a Supervisor Action. Upon review of relevant BWV, OPA determined that NE#1 did make unprofessional comments to the Complainant regarding the functionality of his BWV device. This matter was directed to the Named Employee's Chain of Command to address through training, communication, or coaching by the employee's supervisor.

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 NE#1's response were captured on BWV. Accordingly, the relevant facts are not in credible dispute.

The allegations in this case arose from a police response that took place on November 14, 2021, with officers arriving on scene to address a DV call. This response was documented on a police report and recorded on BWV, which OPA reviewed during the course of its intake investigation. Once on scene, the responding officers made contact with the DV suspect and attempted to detain him, at which point a bystander (the Complainant) began approaching the scene of the detention and questioning the basis of the officers' actions. In response to this development, NE#1 turned his attention to the Complainant and instructed the Complainant and a female bystander to step away, as depicted on NE#1's BWV.

Although the female bystander complied with this order, the Complainant remained in place and began reaching toward the officers who were effectuating the detention. NE#1 again requested that the Complainant move back, which the Complainant failed to do. At this point, BWV showed NE#1 pushing the Complainant away from the scene of the detention, with NE#1 appearing to use both of his hands to push the Complainant's upper left chest. This brief push was effective in relocating the Complainant away from the scene, with the Complainant remaining on his feet and appearing uninjured and not complaining of pain. The Complainant remained on scene subsequent to this use of force, whereupon officers managed to gain control of the DV suspect.

ANALYSIS AND CONCLUSIONS:

Following an expedited investigation that the Office of Inspector General certified as thorough, timely, and objective, OPA's analysis is that the preponderance of the evidence does not establish that any policy violations occurred or rose to the level of misconduct.

Named Employee #1 - Allegation #1

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

The Complainant alleged that NE#1 used excessive force against the Complainant when he abruptly pushed the Complainant away from the scene

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.*)

This use of force falls within the *de minimis* category, which is defined 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).

In considering the BWV that depicted the use of force, NE#1 was seen guiding the Complainant away from the scene of the detention, using a push that did not appear to cause pain or injury. Considering the convoluted circumstances of the arrest scene, the use of *de minimis* force to keep the Complainant away from the scene was reasonable. The *de minimis* force was also necessary in order to ensure that the arrest was quickly effectuated. The use of *de minimis* force was proportional to the Complainant’s repeated efforts to walk closer to the scene.

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

8.400 - Use of Force Reporting and Investigation 8.400-POL-1 Use of Force Reporting and Investigation 1. Officers Will Document in a Use-of-Force Report All Uses of Force Except De Minimis Force

It was alleged that NE#1 failed to write a use of force report pertaining to his contact with the Complainant.

SPD Policy 8.400-POL-1 requires that officers report all uses of force except *de minimis* force. The Complainant’s claim that NE#1 was holding his neck constituted, at the very least, an allegation of Type II (if not Type III) force that was required to be reported.

As stated above in Allegation #1, the use of force was *de minimis* and thus did not require a use of force statement.

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

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

Named Employee #1 - Allegation #3

8.400 - Use of Force Reporting and Investigation 8.400-POL-1 [...] 3. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Following Any Use of Reportable Force, As Soon As Feasible

It was alleged that NE#1 failed to notify a supervisor regarding his contact with the Complainant.

SPD Policy 8.400-POL-1(3) requires that a sergeant review a force incident and classify the force as either Type I, Type II, or Type III for investigation.



As stated above in Allegation #1, the use of force was *de minimis* and thus did not require reporting to a supervisor.

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

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

Named Employee #1 - Allegation #4

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

The Complainant alleged that NE#1 elected to immediately engage in the use of force, despite the presence of conditions that would have allowed for de-escalation.

“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)

The policy further instructs that: “When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.” (SPD Policy 8.100-POL-1) Officers are also required, “when time and circumstances permit,” to “consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors” such as “mental impairment...drug interaction...[and/or] behavioral crisis.” (Id.) These mental and behavioral factors should be balanced by the officer against the facts of the incident “when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.” (Id.)

In reviewing the evidence gathered during its Intake Investigation, OPA noted that the Named Employee initially requested that the Complainant and another bystander step away from the scene of the detention, which the bystander complied with but the Complainant did not. When the Complainant reached in toward the officers, the Named Employee again asked the Complainant to step away, which the Complainant did not do. At this point, NE#1 pushed the Complainant away from the scene of the detention.

In this situation, OPA notes that it appears that the scene of the detention was not secured, and that the suspect had claimed to have been armed. Considering these circumstances, the safety of all parties at the scene would be of concern to the officers, increasing the need to remove possible variables. Although NE#1 did make repeated efforts to verbally direct the Complainant away from the scene, this did not prove to be effective, creating a situation where NE#1 needed to physically guide the Complainant away.

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

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