



## CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 4, 2019

CASE NUMBER: 2019OPA-0292

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

The Complainant alleged that the Named Employee used excessive force against her.

#### ADMINISTRATIVE NOTE:

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 Named Employee. As such, the Named Employee was not interviewed as part of this case.

#### ANALYSIS AND CONCLUSIONS:

##### **Named Employee #1 - Allegations #1**

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

On March 26, 2019, Named Employee #1 (NE#1) and his partner responded to a disturbance call. The alleged victim called 911 and reported that the subject, who is the Complainant in this case, unexpectedly and unwantedly arrived at the victim’s residence and threatened to kill the victim. When the officers arrived, the involved parties were still at the scene. The officers separately interviewed the Complainant and victim. After interviewing the victim and obtaining some additional background information, the officers determined they had probable cause to arrest the Complainant for harassment. They placed the Complainant into custody and handcuffed her. Virtually immediately thereafter, the Complainant began yelling out “police brutality” and “call 911.”

As the officers escorted the Complainant over to their patrol vehicle, she physically struggled against them and continued doing so as they attempted to place her into the backseat. The officers were able to eventually get the Complainant inside the patrol vehicle using physical control, but she planted her left foot against the door of the patrol car, preventing it from being closed. NE#1 asked the Complainant to move her foot several times, but she refused. NE#1 reached down with his hand to move the Complainant’s foot but was unsuccessful. It further appeared that she was preparing to kick him. NE#1’s partner warned him to: “Watch the kick.” NE#1 then used his



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foot to kick/push at the Complainant's foot in an attempt to dislodge it, but that effort was also unsuccessful. Finally, NE#1 relocated to the opposite (right) side of the patrol car and was able to pull the Complainant fully inside the backseat area by grabbing the back of her jacket and arms and sliding her fully inside.

When the officers' Sergeant arrived on scene to screen the arrest, the Complainant told him that NE#1 kicked her three times in the calf. When asked if she was injured, the Complainant told the Sergeant that she was and that her parents were going to "sue." The Complainant also told the Sergeant that she was pulled into the back of the patrol vehicle by her head. When the Sergeant asked the Complainant if she needed medical aid, she said that she did not and reiterated the threat of a lawsuit. When the Sergeant attempted to follow up on the Complainant's claim of injury by asking if he could pull up the cuff of the Complainant's pants to take a photo of her leg, she said he could not. The Sergeant explained to the Complainant why he wanted to take photographs and how that might support her account, but again she refused. Ultimately, the Sergeant reported that the Complainant's claims of injury could not be confirmed due to her lack of cooperation with the investigation process.

OPA received two voicemail messages from the Complainant on April 30, 2019, but the information she provided was difficult to hear and understand. OPA made repeated attempts to reach the Complainant but was ultimately unsuccessful in this regard. As such, the Complainant was not interviewed as part of this investigation. Nevertheless, OPA was able to discern enough information from the Complainant's voicemails to identify the incident she called about and this investigation ensued.

OPA viewed the Body Worn Video (BWV), In-Car Video (ICV), and third-party video associated with this incident. From the BWV and ICV, NE#1 was seen using short kicks in the direction of the Complainant's foot in an apparent attempt to dislodge it, but none of the camera angles provided a view that showed whether any of NE#1's kicks actually made contact with the Complainant's leg. The Complainant reacted to what NE#1 was doing but made no sounds or claims to suggest that she was injured. After NE#1 repositioned himself to the other side of the vehicle and pulled the Complainant inside the backseat, the rear ICV clearly showed that NE#1 never grabbed the Complainant's head, but rather that he pulled her coat and arms to move her backwards.

NE#1 completed a Type II use of force report due to the Complainant's claim to the Sergeant that she was injured as the result of his kicks. NE#1 noted in his use of force report that the Complainant made no complaints of pain and had no visible injuries.

NE#1's Captain reviewed this use of force and requested that it be reclassified as a Type I because, despite her claim of injury, the Complainant refused to specify the nature of her alleged injury when asked by the Sergeant and would not allow photographs to be taken. The Captain further concluded that the de minimis force used by NE#1 would not likely have caused the injury alleged. The Captain lastly stated that he believed the force used by NE#1 was objectively reasonable, necessary to overcome the Complainant's resistance, and proportional to the threat she posed.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. 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 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where "no reasonably effective alternative appears to exist, and only then to the degree which is



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reasonable to effect a lawful purpose.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

Based on the video evidence, OPA concludes that, at no point during this incident, was the Complainant subjected to “police brutality” or excessive force. The evidence further fails to establish that the Complainant suffered an injury during this incident, as she claimed. What the evidence does show is that the Complainant repeatedly ignored the officers’ requests to remove her foot and to be seated in the rear of the patrol vehicle. In order to overcome her resistance and to transport her from the scene, NE#1 and his partner were permitted to use appropriate force to get the Complainant inside the police vehicle.

While the force that NE#1 initially used to dislodge the Complainant’s foot may not have been the optimal choice, it was not inconsistent with policy. Moreover, the alternative tactic that was subsequently used – pulling the Complainant in the vehicle from behind – was effective, was consistent with SPD training, and minimized the risk of injury to the Complainant and officers.

For the above reasons, OPA finds that the force used by NE#1 was reasonable, necessary, and proportional, and, thus, consistent with policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

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

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

SPD Policy 8.200-POL-2 states that force is prohibited: “On restrained subjects (e.g. including handcuffed or contained in a police vehicle) except in exceptional circumstances when the subject’s actions must be immediately stopped to prevent injury, or escape, destruction of property. All such force shall be closely and critically reviewed.”

For the same reasons as discussed above in Allegation #1, I find that the force used by NE#1 was consistent with policy and, thus, was not prohibited. As such, I recommend that this allegation be Not Sustained – Unfounded.

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