



## CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 11, 2019

CASE NUMBER: 2019OPA-0363

### 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)

**Named Employee #2**

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:

The Complainant alleged that the Named Employees used excessive force when they pushed him.

### ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the review and approval of the Office of Inspector General for Public Safety, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employees. As such, the Named Employees were not interviewed as part of this case.

When the Named Employees used force to push the Complainant outside of the bicycle fence, they effectuated a seizure of his person. This seizure should have been documented in a *Terry* Template, but neither of the Named Employees did so. While technically contrary to policy, OPA believed that this was better addressed by the Named Employees’ chain of command and returned this allegation for handling as a Supervisor Action.

### ANALYSIS AND CONCLUSIONS:

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

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

The Named Employees were conducting a narcotics operation in the vicinity of an encampment for unsheltered individuals. They set up a bicycle line and blocked both sides of the street off with patrol vehicles. The officers then began serving multiple search warrants and detaining individuals. Named Employee #1 (NE#1) was the Sergeant supervising the operation and Named Employee #2 (NE#2) was one of the involved officers.



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Body Worn Video (BWV) of the incident indicated that the officers detained two individuals and seated them on a street curb in front of the bicycle line. A man then started walking down the blocked off street and proceeded in between NE#1 and the detained individuals.

At that point, NE#1 grabbed the Complainant by the left arm and walked him to the bicycle fence line. NE#1 said: "Hey, what are you doing, man? Don't just walk through." NE#2, who was also present, grabbed the Complainant by the right arm. At the fence line, NE#1 and NE#2 pushed the Complainant outside the line. NE#1 stated to the Complainant: "Go, get out. This is the first time I'm warning you or you're going to be arrested for obstructing an investigation." NE#1 turned away to continue supervising the search. The Complainant told the officers that he was just going to work and that the Named Employees assaulted him. NE#2 told the Complainant that he had received his one warning and turned away to oversee the individuals detained on the curb.

Approximately two hours later, the Complainant called SPD to report that he had been assaulted by an officer. He said that an officer accosted and shook him. The Complainant asked to speak to a supervisor to report misconduct. A supervisor went to the Complainant's location and tried to find him. However, the supervisor was unable to do so. The supervisor forwarded the Complainant's allegations to OPA and this investigation ensued.

As part of its investigation, OPA interviewed the Complainant. He stated that the incident was particularly upsetting because of his past experiences with the police. The Complainant said that since in his view he committed no crime, the brief seizure of his person was unwarranted. He did not report any injuries to OPA or when he initially called 911.

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

When the Named Employees used force to move the Complainant outside of the bicycle line, this constituted a seizure. Were this seizure impermissible, it follows that any force used would have been inappropriate. SPD policy defines a *Terry* stop as: "A brief, minimally intrusive seizure of a subject based upon articulable reasonable suspicion in order to investigate possible criminal activity." (SPD Policy 6.220-POL-1.) At the time the force was used, the officers were conducting a law enforcement operation and had blocked off a street for security reasons. When they did so, no members of the public, including the Complainant, were permitted to walk through that area. As such, the officers were permitted to seize the Complainant, to remove him from that location, and to place him in a spot that was safer and did not interfere with their narcotics operation.

The force they used to effectuate the seizure and to move the Complainant – the push – was minor. Moreover, there is no indication from the BWV or from the Complainant's statements that he suffered any injuries from that force. While even minor force that causes no injuries can be contrary to policy and excessive, that was not the case here. As discussed above, the force was reasonable, necessary, and proportional under the circumstances and was in furtherance of the Named Employees' legitimate objectives.



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The above being said, it may have been advisable for the Named Employees to have explained to the Complainant exactly why he was being removed from the area. It did not appear from the BWV that the Complainant was aware of his surroundings at the time and that he knew that he was walking through a narcotics operation. While perhaps the Complainant should have been aware of this given that the officers were clearly conducting enforcement activity and the street was blocked off, an explanation may have avoided this complaint being filed.

Ultimately, for the reasons stated above, the force used by the Named Employees was consistent with policy. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

**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), I recommend that this allegation be Not Sustained – Lawful and Proper.

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