



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 24, 2018

CASE NUMBER: 2018OPA-0632

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)

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 force against her without justification when the Named Employee took the Complainant to the ground after she allegedly assaulted another female. The Complainant claimed that she was the victim of the assault by the other female, and, therefore, the Named Employee should not have used force against the Complainant.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

OPA interviewed the Complainant and her boyfriend. The Complainant stated that after attending a concert at Century Link Field and exiting the area, she and her boyfriend crossed an intersection where Named Employee #1 (NE#1) was working traffic control. As they entered the intersection, the Complainant followed her boyfriend across the street without paying attention as she was busy texting on her phone. The Complainant reported hearing her boyfriend saying “inappropriate” things to NE#1, and that her boyfriend and NE#1 were “yelling” back and forth at each other. When the Complainant reached the other side of the street, an unknown “girl” came in her direction and grabbed her arm. The Complainant stated that she had no idea why that happened and instinctively “shoved” the unknown woman “off of [her] arm,” when NE#1 tackled the Complainant to the ground. The Complainant believes that NE#1’s actions were uncalled for and inappropriate.

The Complainant’s boyfriend stated that he and the Complainant crossed the intersection against the orders of NE#1. They did so because they had the walk sign and NE#1 was instructing them counter to what the light indicated. As they crossed the intersection, the boyfriend alleged that NE#1 tried to grab the Complainant in an effort to prevent the Complainant from continuing on, but the Complainant “kind of kept walking.” When the Complainant and the boyfriend reached the other side of the street, an unknown female civilian yelled at the Complainant and told her to pay attention to what she was being told by NE#1. The unknown female then grabbed the Complainant by the arm, and the Complainant “pushed that girl away from her” in response. The boyfriend then asserted that NE#1 ran from the middle of the intersection and tackled the Complainant, but later acknowledged that he never actually saw what took place between the Complainant and NE#1 as his back was to them.



OPA interviewed NE#1. NE#1 stated that she encountered the Complainant and her boyfriend when NE#1 was working traffic control after a concert let out. NE#1 attempted to stop them and others from crossing the intersection by blowing her whistle, instructing them to remain where they were, and using her outstretched arms as a gate to indicate that they should remain in place. After the boyfriend pushed on one of NE#1's arms a couple times, she withdrew them to avoid a physical interaction and the Complainant and her boyfriend began crossing the street. As they did so, the Complainant yelled and cursed at NE#1.

As the Complainant neared the other side of the street, an unknown female civilian yelled at the Complainant and told her to follow NE#1's orders. The next thing that NE#1 witnessed was the Complainant pulling back her arm and punching the unknown female. NE#1 then saw the Complainant preparing to punch the unknown female again. NE#1 responded to what she witnessed by running in that direction and placing her arms around the Complainant, like a bear hug, and taking her to the ground in order to prevent the Complainant from continuing to engage in assaultive behavior. By the time other officers arrived at the scene to assist, the unknown female was nowhere to be found. Apparently, she quickly exited the area.

NE#1 stated that she did not turn on her Body Worn Video (BWV) because the circumstances developed so quickly that she never had the time to do so. NE#1 added that her BWV was also knocked to the ground during her use of force on the Complainant. NE#1 noted that she located her BWV and placed it back on her uniform and turned the camera on; however, it only captured video after the incident.

OPA reviewed NE#1's BWV, as well as those of the other responding officers, but the use of force was not captured on any of those videos. As noted above, NE#1 did not activate her BWV camera initially because she did not have enough time to do so. The responding officers' videos did not capture the use of force because they arrived after it had already occurred. There were no eyewitness accounts of this incident.

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.*) If, as the Complainant alleged, that the circumstances did not call for the use of force on the part of NE#1, then it would be a violation of this policy.

Based on the evidence in the record and applying a preponderance of the evidence standard, I find that it is more likely than not that NE#1's account of the incident is the most accurate. In reaching this determination, I note that the Complainant and her boyfriend provided OPA with accounts of the incident that were substantively different from each other, yet both each included information that supported the account offered by NE#1. In their separate statements to OPA, either the Complainant, her boyfriend, or both stated that: they ignored the traffic orders of NE#1; after doing so, one of them directed "inappropriate" words towards and yelled at NE#1; an unknown female civilian told the Complainant that she should listen to what she was told to do by NE#1; a physical encounter took place between the Complainant and the unknown female; and the Complainant was taken to the ground by NE#1.



As such, when NE#1 viewed a physical altercation between the Complainant and another female she was justified in intervening to prevent a further assault. Moreover, given that the Complainant had previously refused to listen to her lawful orders, had acted aggressively, and was apparently reacting to the unknown female's admonitions, NE#1 reasonably believed that the Complainant was the primary aggressor. As such, it was reasonable, necessary, and proportional to use force to stop the Complainant's assaultive behavior. Moreover, the force she used was consistent with policy and was only that needed to stop the Complainant's conduct.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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