



ISSUED DATE: NOVEMBER 15, 2019

CASE NUMBER: 2019OPA-0411

**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)

**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:**

The Complainant alleged that the Named Employees used excessive force when they arrested a woman in mental crisis.

**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 Employees. As such, the Named Employees were not interviewed as part of this case.

**SUMMARY OF INVESTIGATION:**

On May 23, 2019 at approximately 5:30 p.m., SPD received a call from employees of the Addison apartment building. A male caller reported that a female resident suffering from a mental health crisis threatened to shoot him. Over the course of the next two hours, the behavior of the female resident – who is the Subject in this case – escalated and she reportedly assaulted a building employee. A subsequent call to SPD alleged that the Subject smashed a liquor bottle and was brandishing it as a weapon.

The Named Employees responded to the scene. Body Worn Video (BWV) showed Named Employee #2 (NE#2) and Named Employee #3 (NE#3) forming a tactical plan for how to handle the Subject if she was still armed with the broken bottle, including discussing the use of less lethal options, such as a Taser or a 40mm Launcher. NE#2 and NE#3 further referenced their familiarity with the Subject and the fact that she had spit on people in the past.



The Named Employees walked to the Addison lobby and called for the Subject by name. A building security guard said that she had gone outside. NE#3, who was carrying the 40mm Launcher, proceeded in front and the other officers provided cover. The Named Employees encountered the Subject in an alcove outside the Addison and directed her to “[g]et on the ground now!” At that time, NE#2 pointed his taser at the Subject and NE#3 pointed the 40mm Launcher. The Subject cooperated with NE#2’s orders. She laid down on the ground and put her hands behind her back. NE#2 placed her in handcuffs with assistance from Named Employee #1 (NE#1). At that point, NE#2 put away his taser and NE#3 pointed the 40mm Launcher at the ground. BWV did not show officers tackling the Subject to the ground or using any other reportable force to take her into custody. NE#2 and NE#3 briefly discussed whether they had sufficient justification to use a spit sock based on prior instances of the woman spitting. NE#1 and NE#2 continued speaking with the Subject. At that time, it appeared clear that she was suffered from a mental health crisis.

The BWV showed that an individual, who was later identified as the Complainant, stepped out of a metro bus and began filming. The Complainant was later joined by other witnesses. After these witnesses started to observe the incident, NE#2 told the Subject that he would be putting a “mask” (the spit sock) over her head and did so. NE#2 later adjusted the spit sock after he was asked to do so by the Subject.

NE#1 and NE#2 helped the Subject stand up and walked with her to the police vehicle. One of the witnesses asked officers if the “bag” (spit sock) was consistent with standard SPD procedure and NE#1 explained that the Subject had a history of spitting. During the walk to the car, the Subject screamed again, said she was being raped, and asserted that she was frightened of broken glass on the ground. BWV showed that NE#1 and NE#2 were holding the Subject by her upper arms to guide her to the car. When the Subject mentioned broken glass and since she was barefoot, NE#2 had her stand on his shoes while they walked together to the patrol vehicle. NE#2 placed the Subject into the patrol vehicle and called a supervisor to the scene to screen the arrest. The supervisor agreed to charges for assault and harassment but requested that the officers remove the spit sock from the Subject because she was sweating. NE#2 removed the spit sock. NE#2 and NE#3 then transported the Subject to jail. During the transport, the Subject became agitated and spat on the windows while yelling at the officers.

The Complainant subsequently made this complaint to OPA. The Complainant alleged that officers tackled the Subject to the ground, pointed a large weapon at her, and forced her to walk barefoot on glass. The Complainant also claimed that the use of the spit sock was unwarranted based on the Subject’s behavior, that it was “dehumanizing,” and that the officers kept the spit sock on the Subject for the “entire” Incident. This OPA investigation ensued.

#### **ANALYSIS AND CONCLUSIONS:**

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

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

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.*)

Here, the Named Employees used de minimis force to handcuff the Subject, to pick her up off of the ground, and to walk her to their patrol vehicle. There was no evidence supporting the Complainant’s assertion that the Complainant was tackled to the ground by officers. To the contrary, this was disproved by the BWV. While NE#2 pointed a Taser at the Subject and NE#3 pointed a 40mm Launcher at her, this was appropriate under the circumstances as the officers believed that she had committed an assault, that she had threatened to shoot a building employee, that she had brandished an improvised weapon, and that she could still be armed with that weapon. Once the Complainant got on the ground and put her hands behind her back, the officers no longer pointed their less lethal devices at her.

Given the circumstances of this case, OPA concludes that the minimal force used by the officers was reasonable, necessary, and proportional. As such, the force was appropriate and consistent with policy

Moreover, the use of a spit sock during this incident was also consistent with policy and the officers’ training. To use a spit sock, the officers must have had a reasonable basis to believe that the Subject would spit at them. Here, the officers articulated that, based on their prior experience with the Subject, there were aware that she could potentially spit at them. Indeed, when the spit sock was later removed, she did, in fact, spit on the windows of the patrol vehicle. For these reasons, I find that the application of the spit sock was appropriate.

In the OPA complaint that initiated this case, the Complainant asserted that “arresting and further traumatizing people who are houseless and/or living with significant mental health challenges is not cool.” It is unclear to OPA what the Complainant would have suggested as the alternative outcome in this case. Indeed, OPA was unable to explore this issue because the Complainant did not follow up with the assigned OPA investigation to allow for an interview. While the Complainant may not have been aware of this, the Subject had committed an assault and had threatened further harm while brandishing a weapon. There were victims of her crimes and, even though the Subject was suffering from mental illness, it was appropriate and necessary to take her into custody, for the safety of others in the area and, for that matter, for the Subject’s own safety. In addition, taking her into custody at that time was appropriate and necessary in order to get her medical treatment, as well as to place her into mental health court and to get her resources and services that could potentially save her life. Moreover, the officers treated the Subject calmly, respectfully, and, at times, caringly. For example, when the Subject expressed concerns with stepping on broken glass with her bare feet, NE#2 asked her if she wanted to step on his feet and walked her to the patrol vehicle. This, however, was either not seen or recognized by the Complainant. Lastly, while a spit sock was placed over her head, that did not occur for the “entire” incident, as the Complainant asserted. The application of the spit sock was purposed to ensure that potentially harmful biological material was not spread to the officers or, for that matter, other community members in the near vicinity, including the Complainant. Perhaps it would have been helpful for the Complainant to have taken a moment to try understand some other possible perspectives of this case and to have participated in this investigation. This may have given the Complainant a better and more nuanced understanding of the complexities of the interactions between officers and those in crisis, as well as more clearly conveyed the Complainant’s concerns to the involved officers.



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For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against all of the 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 as against NE#2.

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

**Named Employee #3 - 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 as against NE#3.

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