



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 27, 2019

CASE NUMBER: 2018OPA-0889

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 subjected him to excessive force.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Named Employees stopped two individuals who were riding bicycles without wearing helmets. They spoke with both individuals and informed them of the basis for the stop. The Named Employees also asked both individuals for their identifying information. The first individual provided that information. The second individual, who is the Complainant in this case, was initially reluctant to do so. He then said that his last name was “Smith,” which was later determined to be false. After he was told that he was required to provide his name based on the fact that he was stopped for a citable offense, the Complainant did so. The Complainant’s name was run through the Named Employees’ MDT system and it was determined that he had an open warrant.

The Complainant was informed of the warrant and, at that point, attempted to flee from the Named Employees by riding away on his bicycle. He was chased down by the Named Employees and they pulled him off of his bicycle. The Named Employees repeatedly ordered the Complainant to get down onto the ground, but he refused to do so. Ultimately, the Named Employees were able to take him down to the ground. Even after being placed on the ground, the Complainant continued to refuse to comply with the Named Employees’ directions, including their repeated orders for him to lie on his stomach. After a period of time, the Complainant did lie on his stomach and the Named Employees placed him into handcuffs.

The Complainant later alleged that he was punched in the face with a closed fist by one of the Named Employees. He further suffered a cut to his finger. As such, the force was investigated as Type II. Moreover, a Department supervisor referred this matter to OPA as a possible excessive force complaint. This investigation ensued.



As part of its investigation, OPA interviewed both of the Named Employees. They told OPA that they only used that force needed to stop the Complainant from fleeing and to secure his body in order to take him into custody. Both denied using any undue force on the Complainant, including punching him.

OPA tried to interview the Complainant several times; however, the Complainant did not respond to OPA's attempts to do so. As such, the Complainant was not interviewed as part of this investigation and provided no additional evidence in support of his allegation.

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.*)

Based on OPA's review of the record, which included the Department video of this incident, OPA concludes that the force used was reasonable, necessary, and proportional. First, the Named Employees had probable cause to arrest the Complainant. With the legal authority to arrest the Complainant came the right to use force, if needed, to take him into custody. When the Complainant fled, force was permitted to effectuate his capture. Moreover, when he resisted the Named Employees and refused to comply with their orders, they were entitled to use additional force in order to safely take the Complainant into custody. The force was also necessary under the circumstances to effectuate these lawful goals. In addition, there does not appear to have been any reasonable alternatives at that time to using force. Lastly, the force used was proportional to the threat that the Complainant posed to the Named Employees, as well as to mitigate the risk that the Complainant would continue to try to escape.

OPA finds no evidence supporting the Complainant's allegation that he was punched in the face by one of the Named Employees. To the contrary, the Department video indicates that no such force was ever used and corroborates the accounts of the Named Employees in this regard. Moreover, the photographs taken of the Complainant shortly after the incident show no evidence of a strike to his face.

For the above reasons, I find that the force used by the Named Employees was consistent with policy and that there is no evidence that it was in any way excessive. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegations #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)**