



CLOSED CASE SUMMARY

ISSUED DATE: JULY 19, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0052

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.400-TSK-5 Use of Force – Involved Officers’ Responsibilities During a Type II Investigation	Sustained
# 2	8.200 - Using Force 2. Use of Force: When Prohibited	Allegation Removed
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Sustained
Imposed Discipline		
Written Reprimand		

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 she was subject to excessive force when arrested by Named Employee #1 (NE#1). On review of the complaint, OPA further alleged that NE#1 may have violated Department policies related to use of force when he took her down and struck her in the face with a closed fist and when he failed to appropriately document the injuries sustained by the Complainant.

ADMINISTRATIVE NOTE:

During its intake investigation, OPA identified other policy violations by attending and supervisor staff. This complaint related to another individual at scene, Community Member #1 (CM#1), who was the husband of the Complainant. CM#1 alleged that during his arrest, Named Employee #3 (NE#3) placed his knee on his handcuffed arm, causing bruises. He also alleged that Named employee #4 (NE#4) took the alcoholic beverages he purchased just before his arrest. Named Employee #2 (NE#2) and NE#3 may also have violated policy when, during their review of NE#1’s Use of Force Report, they failed to address the discrepancies between what was reported by NE#1 and what can be seen in body-worn video footage. Finally, OPA also alleged that NE#4 may have violated policy by failing to screen the CM#1’s complaints of handcuff discomfort with a supervisor and disposing of CM#1’s alcoholic beverages instead of placing them into the Evidence Unit as Safekeeping Only (SKO). These policy violations were processed and deemed to be appropriate to be returned to the chain of command to be handled via a Supervisor Action.

SUMMARY OF INVESTIGATION:

The Complainant contacted OPA and alleged that she was subjected to excessive force when she and her husband, CM#1, were arrested on January 27, 2022. The Complainant alleged that she was “viciously thrown to the ground,”



causing her clothing and hair to obstruct her vision and airway before an officer, NE#1, punched her in the face with a closed fist which was the focus of this investigation.

During its investigation, OPA reviewed the complaint, Computer Aided Dispatch (CAD) Call Report, Incident Report and supplements, and Body Worn Video (BWV). OPA also interviewed the Complainant and NE#1. NE#1's entire response to, and investigation of, this incident was recorded on his BWV. As such, these underlying facts are not in credible dispute.

1. Incident leading up to the arrest of the Complainant

Officers had been at the scene earlier in the day for a noise complaint. The complaint related to CM#1 and the Complainant. Due to CM#1's behavior, officers decided to leave in order to de-escalate the situation. After they departed, CM#1's "agitation escalated." However, when officers returned, victims approached them. One victim reported that CM#1 threatened to kill her, and she was in fear of him. The second victim reported that the suspect threatened to kill her and her baby. She reported that she was fearful, and she hid from the subject. The third victim reported that the suspect threatened him and used racial slurs toward him. He was also fearful of the subject. CM#1 threw a glass bottle at the fourth victim, striking her and causing shards of glass to be on her back and in her hair. While officers were interviewing the victims, CM#1 and his wife, the Complainant, left the scene in a vehicle. Officers subsequently followed them to the 76 Gas Station at 12500 Aurora AV N. They came out of the store and when police ordered them to stop, CM#1 ran back inside the gas station store and the Complainant stood in front of the door and held it while yelling at the officers to leave. Eight SPD personnel and two supervisory personnel attended the call.

2. Arrest of the Complainant

BWV depicted a supervisor at the scene instructing NE#1 and another attending officer to move the Complainant away from the door so as to clear the path for the arrest team to move inside the store to contact the second subject. In interview, NE#1 stated that he was a cover officer for this incident. Officers could be heard four times telling the Complainant to "get out of the way" (of the door). NE#1 moved forward and placed two hands face forward on the Complainant, by the collar of her jacket, and then pulled the Complainant away. In the process, both NE#1 and the Complainant fell to the ground. The Complainant was then observed swinging with her right hand in the direction of NE#1. Using his right hand, closed fist, NE#1 then swung in an uppercut motion direction at the Complainant's head and striking the Complainant's face. The Complainant continued to scream and stated that "you busted my nose," and "I can't breathe, I've got blood everywhere." Three officers assisted in her detention and can be heard repeatedly saying, "Easy, Easy." It is unclear as to who these statements were being directed at as both the Complainant and NE#1 were flailing on the ground. These officers detained the Complainant, and she was subsequently handcuffed.

The force was later reviewed by the Force Review Board (FRB). The FRB questioned NE#1 decision making in making contact without a backup team present. The FRB referred these matters to OPA.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.400-TSK-5 Use of Force – Involved Officers' Responsibilities During a Type II Investigation

SPD Policy 8.400-TSK-5 sets forth the requirements for an involved officers handling of a Type II investigation. Included



among these requirements is that, the involved officer requests medical attention for any injured persons, Notifies an on-duty Sergeant, Reviews the incident with the sergeant (unless unreasonable under the circumstances, Uploads and flags in-car video (ICV) and body-worn video (BWV) with the incident number before going off shift, Completes Report and Supplements, as appropriate and Completes a Type II Use-of-Force Report in Blue Team by the conclusion of the current shift, unless exigent circumstances require an extension.

BWV clearly depicted that the Complainant had no blood on her face prior to her contact with NE#1. Immediately after NE#1 struck the Complainant, as described above, she was heard complaining that her nose “was busted” and that there was “blood everywhere.” NE#1 did not include any of this information in his use of Force report. BWV also showed the Complainant making complaints of pain to her hands and arms to NE#1, none of which were noted in NE#1’s use of Force report. When interviewed, NE#1 stated that he recalled the Complainant stating that she could not breathe and that he requested medical aid and attempted to keep her calm until SFD arrived. In his interview to OPA, NE#1 stated that he did not recall the Complainant making complaints relating to her wrists and as such did not include this information in the report. NE#1 offered no additional information as to why information about her bloody nose was not included in the report.

While OPA appreciates the fast-paced nature of this arrest with a non-compliant individual, the injuries sustained by the Complainant drew blood which was readily visible. In addition to this, the Complainant then verbalized the pain about her nose, from which the blood flowed. These physical clues should have been enough of a reminder that the information, and the details of the actions which caused them, should have been sufficiently included in the use of force report by NE#1. OPA does not agree with the NE#1’s assertion that the determination by fire that there were no major injuries was enough reason to exclude the information as is required by policy. The lack of detail in this report, whether intentional or not, dilutes the actual level of force which was used.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

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

SPD Policy 8.200-POL-2 states that an officer may not use force to punish or retaliate. SPD Policy 8.200-POL-2. While this does not prevent an officer from using force to respond to danger or an assault where reasonable, necessary, and proportional; the officer’s use of force must be directed toward a legitimate law enforcement purpose.

The force used by NE#1 was documented as a closed fist strike to the face, after CM#1 and NE#1 both fell to the ground. From BWV, the Complainant appeared to be actively resisting. NE#1 stated that he thought that the Complainant was attempting to strike him, and he used force to prevent himself from being hit. The Complainant denied attempting to strike NE#1. BWV depicted the Complainant making a motion with her arm toward NE#1.

SPD policy outlines examples of when force is prohibited and it does not appear that they apply in this case, including neck/carotid restraint, to punish or retaliate, force on restrained persons and verbally confrontive subjects. As such, OPA recommends that this allegation is removed as the use of force in this case is more appropriately addressed under allegation #3 below.

Recommended Finding: **Allegation Removed**



Named Employee #1 - Allegation #3

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. Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” 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 8.050.) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

SPD Policy reads, in part, ‘an officer will use only the force objectively reasonable, necessary, and proportional to effectively bring an incident or person under control, while protecting the life and safety of all persons.’ NE#1 stated that he was detailed as the support officer. He said he approached the Complainant on his own, “unknowingly” and had expected other officers to move forward with him, which did not occur.

NE#1 described his grabbing onto the Complainants collar as a trained technique, “a double tap takedown” which involved grabbing onto the upper half of somebody’s body firmly and then pulling down to take the individual off balance which is meant to facilitate a smoother takedown. When on the ground, NE#1 “believed that she (the Complainant) was attempting to assault him.” NE#1 stated that the Complainant attempted to strike him approximately four times. BWV depicted the Complainant flailing blindly at NE#1, conduct that was certainly actively resisting arrest. But BWV does not support the characterization of these motions as purposeful assault.

OPA does not believe that the reasonableness of the force used here, *i.e.* a closed fist strike to the face, is consistent with policy. Although NE#1 was on scene to respond to the felony-level offenses of CM#1, NE#1 only had probable cause to arrest the Complainant for misdemeanor obstruction. Despite NE#1’s characterization of the incident, OPA finds that the level of “threat or resistance” presented by the Complainant was relatively low. NE#1 is approximately 6 ft 3 and has a medium to large stature. The Complainant was smaller in stature. Although the Complainant was argumentative, she made no physical motions towards NE#1 until she was pulled to the ground. Thereafter, the Complainant’s motions—whether seen as resistant or, for argument’s sake, assaultive—were entirely ineffective and best characterized as flailing. These motions hardly posed an “immediate threat to officers or a danger to the community.” Moreover, the risk of escape was slight; NE#1 was already engaged with the Complainant and there were numerous other officers immediately surrounding her. The Complainant also did not appear to have any proximity or access to weapons, other than those secured by the officers on scene. The fact that there was limited “time available” for NE#1 to make a decision was entirely a result of his own tactical error in engaging the Complainant on his own and, even then, not waiting for one of the numerous surrounding officers to assist him before striking the Complainant. In short, there were a number of other force option available to NE#1, all of which were less intrusive than punching the Complainant directly in the face with sufficient force to cause a bloody nose.

OPA believes that the force was further not proportional. While NE#1 was entitled to use some force to take custody of the Complainant and to secure her, that force was required to be commensurate with the threat posed. Here, the BWV conclusively established that the threat presented by the Complainant did not warrant a strike to the face. Based on that threat level, the punch was excessive and not proportional.



For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**