



## CLOSED CASE SUMMARY

ISSUED DATE: JUNE 18, 2018

CASE NUMBER: 2018OPA-0016

### 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 subjected him to excessive force.

**ANALYSIS AND CONCLUSIONS:**

The Named Employees were conducting narcotics surveillance and observed the Complainant and another individual engage in what they believed to be a narcotics transaction. Based on their probable cause to believe that the Complainant had committed a VUCSA violation (narcotics were later found on the Complainant’s person), the Named Employees made contact with him, placed him under arrest, and handcuffed him. After being handcuffed, the Complainant repeatedly attempted to pull away from the officers and flee the scene. Notably, at multiple times, the Complainant also told the officers to shoot him and stated that he did not want to go to jail. While trying pull away from the officers and escape, a handgun fell out of the Complainant’s pocket. The officers then took the Complainant down to the ground in a controlled takedown. The Complainant did not appear to strike any portion of his body during the takedown, nor did the takedown appear to cause him any pain or injury.

At the time of his arrest and while the Named Employees were trying to prevent the Complainant from escaping, he alleged that the officers were hurting him. He further stated that they were breaking his fingers, that they broke his arm, and that his “right arm is dead.” In response to the Complainant’s allegations of pain and injury concerning his fingers and his question as to why the officers were grabbing his fingers, Named Employee #3 stated: “Cause I don’t want you to pull anymore, or reach for my fingers. You’re trying to reach for my hands, I don’t want you to do that.” From a review of the Body Worn Video (BWV), Named Employee #3 appeared to be trying to control the Complainant’s hands and fingers at that point and did not appear to be using any undue force.



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The officers repeatedly told the Complainant to stop resisting and to stop struggling. While he was being placed in the patrol vehicle, the Complainant asked why he was being kicked. At that point, the officers were discussing getting the Complainant's feet into the car. It appears from the BWV that one of the officers pushed his foot into the car, possibly with that officers' foot. The Complainant reiterated his complaints to a supervisor who screened the incident at the scene. Based on the Complainant's statements, the supervisor construed him to be making an allegation of excessive force and referred this matter to OPA. This investigation ensued.

During its investigation, OPA attempted to contact the Complainant to set up an interview. However, even after contacting the Complainant's criminal defense attorney, the Complainant did not participate in an interview. Lastly, after reviewing the documents generated as a result of this incident and the Department video, OPA made the determination, with the OPA Auditor's approval, to designate this matter as an expedited investigation. As such, the Named Employees were not interviewed.

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." (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.*)

In this case, there is the force that the Complainant alleged was used as well as the purported injuries that resulted from that force, as well as the force that was actually used by the Named Employees. With regard to the former, I find no evidence that the Named Employees deliberately used excessive force on the Complainant by injuring his fingers, hands, arms, or legs. With regard to the latter, I find that the force used to arrest the Complainant, place him into handcuffs, prevent him from escaping, take him to the ground when he did try to escape, and to seat him into the patrol vehicle was reasonable, necessary, and proportional. In making this determination, I note that the Named Employers had probable cause to arrest the Complainant for a narcotics transaction, experienced him repeatedly trying to escape, and observed him drop a firearm. For these reasons, the force was clearly consistent with policy and I recommend that this allegation be Not Sustained – Lawful and Proper as against all of the Named Employees.

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