



## CLOSED CASE SUMMARY

ISSUED DATE: MARCH 6, 2018

CASE NUMBER: 2017OPA-0927

### 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)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	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)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	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)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	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:**

It was alleged that the Named Employees may have violated the Department's policies concerning use of force, de-escalation, biased policing, and valid Terry stops.

**STATEMENT OF FACTS:**

A caller reported to 911 dispatchers that a male and a female were involved in a physical disturbance. As the Named Employees were responding to the call, several additional call updates came in. Notably, the officers were informed that there were potentially five males involved, that the individuals were in or around a white Toyota (and provided the license plate), and that it appeared that five males were now assaulting one other male.

The Named Employees were the first officers to arrive on the scene and their arrival and later interaction with the Complainant was captured by third party video and In-Car Video (ICV).

The third-party video, which was linked to the Crosscut article, was one minute and 23 seconds long. It showed three officers holding the subject down onto the hood of the white Toyota. From my review of the video, the officers appeared to be struggling to keep the subject from getting up and the subject's legs could be seen moving. The officers appeared to be speaking with other individuals that approached them during the incident. A fourth officer then came over to assist the other three officers. The subject continued to resist their attempts to keep him still. The subject's brother then approached the subject and the officers and reached down toward the subject. The fourth officer pushed him back away from the car. The subject's brother again moved towards the subject and the officers and was pulled back by a fifth and sixth officer. At the conclusion of the video, the officer to the subject's left appeared to be holding the subject's left arm.

The ICV depicted the officers' initial response to the incident. When the officers arrived, with their lights and sirens activated, a woman and four males were standing to the left side of the car. At the time the officers pulled up, one of the males – the subject – leaned into the open driver's side window of the car. He got out of the car and walked around the left front. An officer – identified as Named Employee #2 (NE#2) – stated that it appeared that the subject had a knife in his hand. While the subject had something black in his hand, I could not determine from the video what that object was or whether it was or appeared to be a knife. The Named Employees approached the car from the left side and the subject continued to walk around the car to the right side. Named Employee #1 (NE#1) could be heard telling the subject to put his hands on the hood of the car. When the subject continued to walk away, the officers quickened their approach to him. The officers then took hold of the subject and moved him around so that he was facing the car and pushed his body down onto the front hood. The subject stated that he did not do anything and his brother could be heard referencing their father's name. The subject told the officers to let go of him and he would relax. NE#1 told the subject that they would "start over" and that he wanted to make sure that everyone was safe. The officer then told the subject to sit down on the curb. Shortly thereafter, when the subject did not do so, the officers began to take steps to place the subject into handcuffs and moved his arms behind his back.

At this point, the subject became very agitated and started yelling. He began to push off of the car and back towards the officers. The subject's brother was directly to the right of the officers. One of the officers told the subject to stop resisting. An officer pushed the subject's brother away and the subject continued to scream that he did not do anything. From a review of the ICV, it appeared that all three officers were working together to keep the subject pressed against the car, but that he kept moving his body. His movement was powerful enough that it required the concerted effort of all three officers to hold him down. Another individual to the officers' left was recording them (presumably the civilian witness interviewed in the Crosscut article) and a second individual approached the officers from their rear and was told to "get back now."



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One additional officer then arrived on the scene and approached the Named Employees from their left. This fourth officer moved an individual back from the Named Employees and then tried to assist them in getting the subject under control. The subject continued to yell and push his body back. The fourth officer then moved the subject's brother away from the Named Employees and back to the left of the car. Two additional officers arrived and also pulled the subject's brother back and moved him away. They also moved other individuals away from the left of the car. At that point, the subject remained pressed to the side of the car and continued to yell. Another individual stated at that point that the subject did not do anything, which the subject echoed. The scene appeared to then calm down. The subject remained held against the car with several officers surrounding him. He stopped yelling and appeared to stop pushing his body back. A number of other individuals were talking to the police, some criticizing their actions. The officers then walked the subject away from the car and they were no longer captured on the ICV. However, the subject continued to state that he had not done anything. The ICV later captured a conversation between the subject's brother and NE#1. During this conversation, the subject's brother complained about their treatment by the police and NE#1 tried to explain why the officers had responded as they had and why they placed the subject under arrest.

Several days after the incident, Crosscut published an article concerning this matter. In that article, the subject alleged that he was grabbed by officers and was roughly forced to put his hands on the white Toyota. The subject further reported in that same article that his left arm was twisted behind his back and that he complained of pain. A civilian witness stated to the Crosscut reporter that he observed that the subject was "arbitrarily grabbed" by officers, but did not expressly state that he observed the officers employ excessive force. The subject also alleged in that article that the officers had no right to stop him and intimated that their actions had been motivated by bias.

Based on OPA's review of the Crosscut article, OPA self-initiated this complaint. This investigation followed.

During its investigation, OPA interviewed the subject, the subject's brother, and another individual. OPA also interviewed each of the Named Employees twice.

During his OPA interview, the subject told OPA that he did not believe that he did anything wrong, so when the officers made physical contact with him he purposefully resisted them. He stated that he was "slammed" onto the hood and then onto the window of the white Toyota. He further stated that the officers twisted his left arm. While these allegations were largely consistent with the statements he made to Crosscut, the subject further added that an officer had him pinned to the car like a "bitch." The subject recalled to OPA that he then told the officer: "Dude you're a fucking faggot, get the fuck off my ass dude, like I can feel your fucking faggot ass boner dog, that's not cool. I was like that's like sexual harassment, your trying to rape me. That's why I resisted the most. Cause I don't like to be hold down and then feel another pecker." The subject further stated that the officers did not move back from him and he continued to feel the officer's penis.

The Named Employees' OPA interviews described their involvement in this case. These interviews were largely consistent with each other and the video evidence. The interviews were also consistent with the previous written statements made by the officers.



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**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.” (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.*) These three factors and my conclusions as to each are outlined below.

From my review of the various videos, the subject was not struck or hit. Moreover, while I saw the subject being forcibly held by officers against the white Toyota, I did not observe him get slammed against the car. Lastly, while it appeared that one of the officers was holding the subject’s arm, I did not observe the officer twist the arm. I note that, in addition to the force he claimed was excessive, the subject also alleged to OPA that he was “sexually assaulted” by one of the officers in this case. He further claimed that he raised this issue with the officer during the incident. However, neither assertion is supported by the video evidence. In fact, the video evidence conclusively proves this to be a fabrication. This greatly lessened the subject’s credibility in my mind and the weight I placed on his account

Here, all three officers reported using de minimis force to place the subject under control and to handcuff him. Regardless of the level of force used, each officer’s application of force must have been reasonable, necessary and proportional.

As detailed more fully below, I find that there was reasonable suspicion to detain the subject to determine whether he was involved in the reported assault, as well as to determine whether he was armed. When the subject refused to comply with the officers’ directions and given their concern that he could have been armed, the officers were justified in using force to physically detain the subject and to handcuff him for their safety. This was particularly the case given that there were potentially other involved individuals surrounding them. Further, when the subject continued to resist the officers’ attempts to detain him, the officers were justified in using force to hold him against the vehicle and to continually keep pressure on his body to push him down when he tried to get up and push back.

The force used by the officers in this case, which was captured by the ICV and third party video, was reasonable to effectuate the lawful goals outlined above. Moreover, at the time they used the force, I find that the officers did not believe that there were any reasonable alternatives to the force. In addition, I find that the force used was proportional to the threat perceived by the officers under these circumstances and that the officers modulated and reduced their force as the situation progressed.

Ultimately, I find that the force used by the Named Employees was reasonable, necessary and proportional, and, thus, was consistent with policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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



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**Named Employee #1 - Allegation #2**

***5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

I find no evidence in the record indicating that the Named Employees took law enforcement action against the subject due to bias. There is no indication that he was treated differently based on his race or ethnicity. Even if the subject disputes the officers’ right to contact him and the officers were mistaken in doing so, they stopped and detained him based on the belief that he was possibly involved in an altercation and potentially had a knife, not for any reason premised on bias. While I am sympathetic to the subject’s family’s experiences with the police and believe that the subject genuinely felt victimized in this case, I do not find any evidence that the Named Employees violated the Department’s prohibition against biased policing in this matter.

Moreover, the subject made several allegations of insensitive comments by officers. These allegations were made both to OPA and Crosscut. I note that I found no supporting evidence of these statements on either the third-party video or the ICV. As such, I did not consider these alleged statements to be evidence supporting a finding of bias.

Lastly, while not necessarily germane to my finding in this regard, I note that the subject, himself, used a number of homophobic slurs and other pejorative terms during his OPA interview.

As such, I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

**Named Employee #1 - Allegation #3**

***8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force***

“De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.” (SPD Policy 8.100-POL-1.)

The policy further instructs that: “When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.” (*Id.*) Officers are also required, “when time and circumstances permit,” to “consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors” such as “mental impairment...drug interaction...[and/or] behavioral crisis.” (*Id.*)

The Named Employees all stated that they attempted to de-escalate this matter by attempting to talk with the subject prior to going hands on. Notably, NE#1, at one point, told the subject that he wanted to start over, which I believe was purposed to de-escalate this matter. It was only when the subject would not comply with NE#1’s



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direction to sit on the curb and was not cooperative that the decision was made to use force to secure the subject in handcuffs. Moreover, I find that the officers attempted to employ a tactical plan when they circled around the car to surround the subject. He continued to walk towards them, however, which required them to move the subject towards the car. Lastly, I find that the Named Employees called for additional units in an attempt to ensure that the situation got under control quickly and that no significant force was used. In this regard, the Named Employees were successful.

I find that, at the time they made the decision to use force, the officers had already attempted to de-escalate this matter and those attempts were unsuccessful. Moreover, I note that the officers had the reasonable belief at the time – even if that belief was ultimately incorrect – that the subject was possibly possessing a knife. Based on that belief, I find that when the officers used force it was reasonable for them to believe that further escalation was not safe or feasible.

While de-escalation is inarguably a crucial component of the Department’s obligations under the Consent Decree, it is not purposed to act as a bar to enforcing the law when necessary. Here, I find that the Named Employees’ actions complied with the Department’s expectations and policy concerning de-escalation. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #1 - Allegation #4**

**6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful**

SPD Policy 6.220-POL-1 stands for the proposition that Terry stops are seizures of an individual and, as such, must be based on reasonable suspicion in order to be lawful. SPD Policy defines a Terry stop as: “A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion in order to investigate possible criminal activity.” (SPD Policy 6.220-POL-2(b).) SPD Policy further defines reasonable suspicion as: “Specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging or is about to engage in criminal conduct.” (*Id.*) Whether a Terry stop is reasonable is determined by looking at “the totality of the circumstances, the officer’s training and experience, and what the officer knew before the stop.” (*Id.*) While “[i]nformation learned during the stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, it “cannot provide the justification for the original stop.” (*Id.*) Lastly, officers are required to inform the detainee of the reason for the detention as early on in the contact as safety permits. (SPD Policy 6.220-POL-5.)

At the time the Named Employees were dispatched to the call, they believed, based on information provided by the 911 dispatcher, that up to five individuals had been assaulting another individual in or around a white Toyota. When they arrived at the scene, they observed multiple males, including the subject and another individual not wearing a shirt and with blood on his face, in the near vicinity of that car. As such, at that point, the officers had reasonable suspicion to stop all of these individuals to further investigate whether they were involved in the assault. This was the case even if the subject did not match the exact description of the first suspect identified and even though no clear description was given of the five males who were allegedly involved in the assault.



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When the officers pulled up, they observed the subject lean into the car and come out with a black object in his hand. While, after reviewing this case with the luxury of time and hindsight, I believe that this black item was not a weapon, I do not find NE#2's instinctual belief that the item could have been the butt of a knife to have been unreasonable. The officers were warranted in being suspicious when they saw the subject leaning into the vehicle immediately after they had arrived with their lights and sirens activated. The officers were further warranted in detaining the subject to investigate whether what he was holding was, in fact, a weapon. I believe that the Named Employees were able to comprehensively explain their decision-making in this regard during their OPA interviews and that OPA fully and thoroughly explored this issue during its investigation.

For these reasons, I find that there was reasonable suspicion supporting the detention of the subject. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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.

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

**Named Employee #2 - Allegation #2**

***5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

**Named Employee #2 - Allegation #3**

***8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force***

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

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



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**Named Employee #2 - Allegation #4**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful***

For the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained – Lawful and Proper.

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.

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

**Named Employee #3 - Allegation #2**

***5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

**Named Employee #3 - Allegation #3**

***8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force***

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #3 - Allegation #4**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful***

For the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained – Lawful and Proper.

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