



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 9, 2019

CASE NUMBER: 2018OPA-0570

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #4

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #5

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Training Referral)

Named Employee #6

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	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 Employee officers subjected her and the Subject to excessive force and that the Named Employee officers were biased towards them. It was also alleged that Named Employee #5 failed to investigate or refer to OPA allegations of serious misconduct.

SUMMARY OF INVESTIGATION:

The Named Employees responded to a car crash that had evolved into a disturbance. It was also reported that a male and a female were in a physical altercation. After conducting a preliminary investigation, the decision was made to arrest the male – who is referred to here as the Subject – for domestic violence assault and DUI. The Subject failed to comply with the officers’ orders, which included walking away. Named Employee #1 (NE#1) tried to control the Subject in order to take him into custody. The Subject was extremely belligerent and refused to comply. Named Employee #2 (NE#2) then assisted. The female – who is the Complainant in this case – wrapped her arms around the Subject and refused to let go even after being told to do so multiple times by the officers. The officers continued to tell the Subject to comply with their commands and tried to reason with him. However, the Subject was non-compliant. He appeared, from OPA’s review of the video, to be heavily intoxicated.

The Subject continued to struggle against the officers and both NE#1 and NE#2 threatened to tase him. During this time, the Complainant refused to back away, even after she was told that she could also be arrested. NE#1 and NE#2, now joined by another officer, continued to try to control the Subject and also tried to remove the Complainant from his immediate area. At this time, officers, the Subject, and the Complainant fell to the ground. Once on the ground, the Subject continued to resist the officers. He kicked two officers and yelled repeatedly, at times telling the officers to tase him. An officer was able to move the Complainant back against a car and away from the Subject and, at that point, the Subject was tased. The Taser application was successful and the officers were then able to handcuff the Subject.

The officers also took the Complainant into custody based on her repeated attempts to prevent the Subject from being arrested. Named Employee #3 (NE#3), Named Employee #4 (NE#4), and Named Employee #6 (NE#6) were all involved in placing the Complainant under arrest. She resisted their attempts to take her into custody by moving down into a squatting position. The officers then put her on to the ground and were able to handcuff her. Once she was handcuffed, the Complainant appeared to suffer a seizure. Medical attention was summoned and the Complainant was placed into a recovery position. She was ultimately successfully treated.

A supervisor, Named Employee #5 (NE#5), came to the scene to screen the incident and investigate the use of force. At that time, and after both the Complainant and the Subject were taken into custody, the Complainant made multiple allegations of potential misconduct on the part of the Named Employee officers. Specifically, the Complainant alleged to NE#5 that the officers broke her wrists and that one officer put the Subject into a chokehold. She also stated the following with regard to the Subject’s aggressive demeanor during the incident:

[H]e’s a young black boy with a whole bunch of, no offense of being racist or anything, but this is actually what goes on in this now days, as I know you know yourself. White officer attacking Black guys, right, Black citizens, Black people period.



She further told NE#5 that when the officers looked at the Subject they saw a “Black boy” and an “easy target.” Lastly, the Complainant told NE#5 that she had been raped on multiple previous occasions and that two of the men who had raped her were police officers.

NE#5 completed a Type II force investigation. However, he did not complete a bias review or refer the Complainant’s statements to OPA. Moreover, he did not investigate or refer to OPA the Complainant’s allegation that she had previously been raped by unknown officers.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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.*)

Even if the Complainant was construed as making an allegation of biased policing against the Named Employee officers, this claim is unsupported by the objective evidence. This evidence, and particularly the Department video of this incident, indicates that the Named Employee officers initially detained the Subject due to the fact that they had probable cause to believe that he was DUI. When the Named Employee officers tried to take him into custody and he continuously resisted them, they had further probable cause to arrest him for obstruction and assault on officers. Moreover, the officers also had probable cause to arrest the Complainant for obstruction when she continued to hold on to the Subject and prevent the officers from arresting him.

The Complainant’s and Subject’s conduct, not their race, was the basis for the law enforcement action taken against them. As such, I recommend that this allegation be Not Sustained – Unfounded as against all of the Named Employee officers.

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

Named Employee #1 - Allegation #2

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

The Complainant further alleged that the Named Employee officers used excessive force on both her and the Subject.

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 a review of the evidence, the force used by the Named Employee officers was consistent with policy. With regard to the force used on the Subject, it was reasonable to use force to take him into custody. When he physically resisted the officers' lawful attempts to do so, they were permitted to increase their level of force. When he kicked them and continued to resist, it was objectively reasonable to use a Taser to prevent him from further doing so. This force was also necessary to effectuate the officers' lawful purpose and, given the Subject's level of resistance, there did not appear to be any reasonable alternative to this force. Lastly, the force was proportional to the Subject's resistance and the threat that he posed both to the officers and to himself. Once the Subject was subdued, the officers ceased using force. I note that, based on my review of the evidence, I see no support for the Complainant's claim that an officer used a chokehold on the Subject.

With regard to the force used on the Complainant, I find that it was reasonable to prevent her from interfering in the arrest of the Subject. Notably, prior to using force, the officers gave her multiple orders to move away from the Subject; however, she did not do so. In addition, the force was necessary to effectuate the officers' lawful purpose of preventing her from interfering in the Subject's arrest and there did not appear to be any reasonable alternative to using that force. Lastly, the force used, which was de minimis in nature, was proportional to the Complainant's conduct and her continued refusal to comply with their direction. While she contended that the force used on her broke her wrists, this is unsupported by the evidence in this case. Moreover, even if this were true, it would not, in and of itself, cause the force that was used to be excessive.

For the above reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against all of the Named Employee officers.

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

Named Employee #2 - Allegations #1

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

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

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

Named Employee #2 - Allegation #2

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

For the reasons set forth above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegations #1

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



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

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

Named Employee #3 - Allegation #2

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

For the reasons set forth above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #4 - Allegations #1

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

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

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

Named Employee #4 - Allegation #2

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

For the reasons set forth above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #5 – Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

As discussed above, the Complainant made multiple statements that could have been construed as allegations of serious misconduct.

First, she stated that her wrists were broken and that an officer put the Subject into a chokehold. NE#5 screened these matters with the Department’s Force Investigation Team (FIT). FIT stated that they would review the video and get back to him if necessary. FIT did not do so. NE#1 further documented this claimed force in his use of force review and ensured that it was critically reviewed.

Second, she contended that she had previously been raped by two police officers. NE#5 failed to ask any clarifying questions concerning this allegation. He did not determine whether these were SPD officers and, if so, when and where this alleged conduct occurred.



Third, NE#5 did not take any action concerning the Complainant's statements that suggested an allegation of biased policing. NE#5's Lieutenant later noted that these statements had been made and NE#5 tried to contact the Complainant after the fact to discuss her allegations; however, he was unsuccessful in this regard.

At his OPA interview, NE#5 explained that this was the first use of force investigation that he ever conducted. With regard to the Complainant's statements concerning the Subject's race, NE#5 stated that he simply did not construe them as allegations of biased policing. He believed that she was, instead, speaking generally about relations between Black people and the police. With regard to the claim of rape, he told OPA that he simply missed it based on the chaotic and hectic nature of the incident.

SPD Policy 5.002-POL-6 concerns the reporting of misconduct by Department employees. It specifies that minor misconduct must be reported by the employee to a supervisor, while potential serious misconduct must be reported to a supervisor or directly to OPA. (SPD Policy 5.002-POL-6.) The policy further states the following: "Employees who witness or learn of a violation of public trust or an allegation of a violation of public trust will take action to prevent aggravation of the incident or loss of evidence that could prove or disprove the allegation." (*Id.*)

With regard to the Complainant's allegations of force, I do not believe that they were, in and of themselves, excessive force claims. I find that NE#5 ensured that her claims were investigated and thoroughly analyzed them. As such, I do not believe that he violated policy when he failed to refer those allegations to OPA.

With regard to the Complainant's rape allegation, that claim should have been reported to OPA as possible criminal misconduct or, at the very least, investigated by NE#5. When NE#5 failed to do so here, he acted contrary to policy.

While I agree with NE#5 that the Complainant made a general statement concerning police using force on Black people and that this did not necessarily rise to the level of a bias allegation, he should have acted on her later claim that the officers saw the Subject as a "Black boy" and, thus, as an "easy target." In an abundance of caution, NE#5 should have conducted a bias review and, if appropriate, referred this matter to OPA. The failure to do so here was inconsistent with his obligations as a supervisor.

Even though I find that NE#5 acted outside of policy, I recommend that he receive a Training Referral rather than a Sustained finding for three main reasons. First, NE#5 recognized his errors at his OPA interview and it appears to OPA that he is committed to more closely complying with this policy in the future. Second, NE#5 was a relatively new Sergeant at the time and was still learning on the job. Such mistakes are a part of improving and should be a learning moment. Third, I recognize that this was NE#5's first force investigation and that the incident was very hectic and intense, which increased the likelihood that mistakes would be made.

- **Training Referral:** NE#5 should be retrained concerning his responsibility to identify, investigate, and/or report to OPA allegations of misconduct. He should be counseled concerning his failure to do so here. NE#5 should be encouraged to learn from this incident and to more closely comply with this policy moving forward. This retraining and associated counselling should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**



Named Employee #6 – Allegation #1

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

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

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

Named Employee #6 – Allegation #2

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

For the reasons set forth above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

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