



## CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 7, 2018

CASE NUMBER: 2017OPA-0831

### 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)

#### 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)
# 3	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)

#### Named Employee #3

Allegation(s):		Director's Findings
# 1	11.020 - Transportation of Detainees 1. Employees Will Take Reasonable Steps to Ensure the Safety of a Detainee in Their Custody and for the Safekeeping of Detainee's Property	Not Sustained (Unfounded)

#### Named Employee #4

Allegation(s):		Director's Findings
# 1	11.020 - Transportation of Detainees 1. Employees Will Take Reasonable Steps to Ensure the Safety of a Detainee in Their Custody and for the Safekeeping of Detainee's Property	Not Sustained (Unfounded)

***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 Named Employee #1 and Named Employee #2 arrested him without investigating the incident and were therefore "biased." The Complainant further alleged that Named Employee #2 threw him to the ground when he was handcuffed in potential violation of policy. The Complainant lastly alleged that Named Employee #3 and Named Employee #4 failed to intervene and protect him when the Complainant was being assaulted by hospital staff.



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**ANALYSIS AND CONCLUSIONS:**

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

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

The Complainant alleged that Named Employee #1 (NE#1) and Named Employee #2 (NE#2) arrested him without fully investigating this incident and were therefore biased towards him.

NE#1 and NE#2 responded to a call for service at a Dollar Store. When they responded, they were informed that the Complainant and another individual had been told by Dollar Store employees to leave the business and, in response, threatened to return to the store and assault the employees. The employees provided a detailed description of the Complainant and the other individual to the officers and the officers then located the Complainant in the near vicinity. The Complainant was placed under arrest.

Both NE#1 and NE#2 denied engaging in biased policing in this instance. They both asserted that they had probable cause to arrest the Complainant.

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.*) The policy provides guidance as to when an allegation of biased policing occurs, explaining that: “an allegation of bias-based policing occurs whenever, from the perspective of a reasonable officer, a subject complains that he or she has received different treatment from an officer because of any discernible personal characteristic...” (*Id.*)

While the Complainant alleged that there was no basis for his arrest, I disagree. The officers received a description of an individual who had made threats to Dollar Store employees and the Complainant matched that description. Accordingly, at that time, there was sufficient probable cause to place him under arrest. I find that this, not the Complainant’s race or another impermissible basis, was the reason for the Complainant’s arrest. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

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

***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 #1), this allegation should be Not Sustained – Unfounded.

Recommended Finding: **Choose an item.**



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

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

NE#2 reported that after the Complainant had been handcuffed and was being held against the patrol vehicle, the Complainant began to pull away from him as if to walk away. NE#2 stated that he maintained contact with the Complainant's arm and pulled him back towards the vehicle. NE#2 then informed the Complainant that he was going to search him. The Complainant continued to pull away and tried to move away from NE#2. The Complainant told NE#2 to "leave [him] the fuck alone" and began to pull his arm away from NE#2. NE#2 reported seeing the Complainant grab towards his waistband. NE#2 pushed the Complainant down towards the patrol vehicle in order to better control his body, but he stated that the Complainant still provided significant resistance. NE#2 recalled that the Complainant began to try to turn to face him, and NE#2 reported that he was concerned that the Complainant would try to spit on him or head butt him. NE#2 accordingly made the decision to take the Complainant down to the ground using a controlled takedown.

Even after the Complainant was taken down to the ground, he continued to resist and tried to turn over onto his back. NE#2 prevented him from doing so and was able to secure him until a backup unit arrived. NE#2 searched the Complainant and located narcotics.

After he was taken to the ground, the Complainant complained of chest pain. The Seattle Fire Department was called and responded to the scene. A supervisor was also notified. The supervisor spoke with the Complainant who alleged pain to his chest and that the officers had arrested him for no reason. The Complainant later initiated an OPA complaint, alleging that the officers subjected him to excessive force.

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 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 my review of the record and on the ICV, I find that the force used by NE#2 was reasonable, necessary and proportional. First, when the Complainant began to pull away from NE#2, it was reasonable for NE#2 to use force to prevent him from doing so. Second, the force used, control holds and a soft takedown, was necessary to ensure that the Complainant did not attempt to escape or cause harm to NE#2. Third, the force used was proportional to the risk of harm to the officer and the potential for escape. No strikes or any other significant force was used.

For these reasons, I find that the force used by NE#2 was consistent with policy and 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 #3**

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

While SPD Policy 8.200(1) provides for when force is authorized, SPD Policy 8.200(2) sets forth those scenarios in which force is prohibited. Among those scenarios are: when force is used to retaliate against or punish a subject; and when force is used against a restrained subject, “except in exceptional circumstances when the subject’s actions must be immediately stopped to prevent injury, [ ] escape, [or] destruction of property.” (SPD Policy 8.200(2).)

Here, NE#2 used force against the Complainant in order to prevent harm to NE#2’s person and to prevent escape. As discussed above, NE#2 used only that force needed to accomplish his lawful purposes. While the Complainant was handcuffed when the force was used, I do not find that NE#2’s force was impermissible under the circumstances of this case.

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

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

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

***11.020 - Transportation of Detainees 1. Employees Will Take Reasonable Steps to Ensure the Safety of a Detainee in Their Custody and for the Safekeeping of Detainee's Property***

The Complainant alleged that, while at Harborview Medical Center (HMC), he was assaulted by hospital security and that the Named Employees did not intervene to protect him from harm.

Records generated by HMC security indicated that security officers were required to place the Complainant into soft restraints. Ultimately, four security officers were needed to do so. HMC records indicated that the Complainant was “very very resistive and vulgar.” There is no indication from those records that any physical force was used on the Complainant; for example, the records do not reflect that any strikes or undue force were utilized. Moreover, the records do not indicate that the Complainant suffered any injuries due to the security officers placing him into restraints.

Both Named Employee #3 (NE#3) and Named Employee #4 (NE#4) were present at the hospital when the alleged assault occurred. NE#4 recounted that multiple hospital employees were required to engage with the Complainant in order to place him in restraints. NE#4 stated that he did not observe any strikes or hear the Complainant state that he was in pain. NE#3 also stated that he did not observe HMC staff assault the Complainant and indicated that the Complainant, himself, was resistive, assaultive and uncooperative.

SPD Policy 11.020-POL-1 requires that officers take reasonable steps to ensure the safety of a detainee in their custody. As such, were the Complainant assaulted by a third party while in the officers’ custody, this could constitute a violation of policy.

Based on the facts in the record and applying a preponderance of the evidence standard, I do not find that the Complainant was assaulted by HMC medical staff. As such, I further do not find that NE#3 and NE#4 failed to



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properly safeguard the Complainant while he was in their custody. Accordingly, I recommend that this allegation be Not Sustained – Unfounded.

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

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

***11.020 - Transportation of Detainees 1. Employees Will Take Reasonable Steps to Ensure the Safety of a Detainee in Their Custody and for the Safekeeping of Detainee's Property***

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

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