



CLOSED CASE SUMMARY

ISSUED DATE: MAY 8, 2018

CASE NUMBER: 2017OPA-1213

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)
# 4	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	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 the Named Employee “pushed” and “pulled” on him during an interaction. During OPA’s intake investigation, the Complainant made additional allegations that the Named Employee and other officers opened up his vehicle and were “digging in it.” He also alleged that he is unable to find his keys and cannot start his car. Lastly, the Complainant alleged that “everyone knew” that he was targeted because of his race and religion. He would not provide additional information in regards to his allegation of biased policing.

STATEMENT OF FACTS:

On the date in question, bicycle officers, including Named Employee #1 (NE#1), responded to a call of a suspicious vehicle. When they arrived at the scene, the officers observed that the vehicle was parked facing the wrong way and the driver’s side door was ajar. The officers inspected the car to investigate whether there had been a car prowling or other criminal activity. At that time, the Complainant approached them and began speaking to the officers. NE#1 reported that the Complainant yelled at him and another officer and asked them why they were looking through his car. NE#1 reported that he told the Complainant that he had not been searching the vehicle, but that he and the other officer were concerned of possibly criminality given the way the vehicle was parked and given that the door had been left open.

The Complainant continued to yell at the officers and grew more agitated. When further explanation by NE#1 was unsuccessful, the Complainant maintained his argumentative behavior, and the car remained improperly parked, NE#1 made the decision to issue the Complainant a parking citation. NE#1 went to his bicycle to retrieve his ticket book to issue the citation. At that time, the Complainant approached him. NE#1 recounted that the Complainant did so “quickly.” NE#1 stated that he held out his hand towards the Complainant but did not make contact with him. NE#1



reported saying: “back up, back up, don’t walk up on me.” The Complainant ultimately complied with that direction but continued to yell at the officers.

NE#1 told OPA that when he was writing the ticket, he noticed that the Complainant threw trash into the park. The other officer asked the Complainant to retrieve and throw away the trash but the Complainant refused to do so. The other officer also informed the Complainant that he was no longer free to leave the scene because he was going to be issued a citation for littering. While filling out the citations, NE#1 stated that he saw the Complainant walk to the rear of his car and open the truck. NE#1 saw tools in the truck, which caused him concern. Based on this concern for safety, he instructed the Complainant to sit down multiple times. The Complainant eventually did so. The officers concluded obtaining the Complainant’s personal identifying information and indicated that he would be mailed the citations in the mail. They then told the Complainant that he was free to leave. The officers began to ride away and the Complainant followed them. Based on this conduct and on the totality of the circumstances, the officers made the decision to contact a supervisor.

The supervisor came to the scene and spoke with the Complainant. She characterized the Complainant as upset and agitated. She attempted to reason with the Complainant but she was unable to do so. The Complainant contended that he was wrongly cited. He also alleged that an officer – presumably NE#1, grabbed him by his left lapel. The Complainant refused to provide the supervisor with a recorded statement concerning the incident. The Complainant did, however, identify two individuals who he said witnessed the incident. When the supervisor walked over to those witnesses to interview them, the Complainant also walked over and spoke with the witnesses about what they purportedly saw.

The first witness told the supervisor that the Complainant left his car with the door ajar in order to come feed her dog. She stated that the police appropriately examined the parked car to determine whether there was any ongoing criminality. She recounted that the Complainant was yelling and “cussing” at the officers. She recalled that, at one point, the Complainant rushed towards one of the officers and that officer held his hand up to stop him. She stated that the officer did not grab the Complainant, but that the officer may have touched him. The male witness said that the officers appeared to be doing their jobs. The male witness recalled that the Complainant moved quickly towards one of the officer and that the officer held his hand up and directed the Complainant to stop. The male witness did not report seeing the officer make any physical contact with the Complainant.

Pursuant to policy, the supervisor referred this matter to OPA and OPA initiated this investigation. OPA reviewed the documentation relating to this incident and also interviewed NE#1, the other officer, and the Complainant.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

SPD Policy 5.001-POL-9 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-9.)



At the outset, I note that there was no video of this incident recording the interaction between NE#1 and the Complainant. However, that does not prevent me from reaching a definitive conclusion on this allegation.

While the Complainant stated that NE#1 harassed him and was disrespectful when he looked into his vehicle, NE#1 denied this. NE#1's denials are buttressed by the statements made by the two witnesses to the incident. Both witnesses indicated that the officers, including NE#1, acted appropriately. Neither stated that they observed NE#1 behaving in an unprofessional manner. Moreover, the female witnesses identified the Complainant as yelling and swearing at the officers.

For the above reasons and applying a preponderance of the evidence standard, I find no indication in the record that NE#1 engaged in unprofessional behavior. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

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.*)

The Complainant contended both to the supervisor and to OPA that he was discriminated against based on both his race and religion (Judaism). NE#1 and the other officer denied doing so. The Complainant failed to relay any information actual establishing that the officers acted based on bias or, for that matter, that the officers even knew what the Complainant's religion was. Moreover, there was no indication from the accounts of the witnesses to the incident that the officers engaged in biased policing.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

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. 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.



As a starting point, it is not clear that NE#1 actually used any force on the Complainant, let alone force outside of policy. While the Complainant alleged that NE#1 grabbed his lapel and pulled him, NE#1 stated that he did not do so and that he never made physical contact with the Complainant. Notably, the female witness confirmed that NE#1 did not grab the Complainant and reported that, at most, NE#1 only touched him. The male witness did not mention observing any contact being made between NE#1 and the Complainant.

Even had NE#1 made physical contact with the Complainant, at the time this purportedly occurred the Complainant, who had been yelling at and was argumentative with the officers, moved quickly towards NE#1. It would have been reasonable, necessary, and proportional had NE#1 used minor force to move the Complainant away from him. Moreover, it clearly would have constituted de minimis force.

That being said, as I ultimately find that the claimed force did not occur, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #4

6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement

SPD Policy 6.180 generally sets forth the elements for searches effectuated by SPD employees and the requirement that search warrants are required. SPD Policy 6.180-POL-2(a) describes the exceptions to the search warrant requirement.

This allegation was classified based on the Complainant's allegation that the officers searched through his car. The officers denied doing so. Moreover, neither of the witnesses to the incident reported seeing the officers search through the car. Instead, they recounted that the officers merely examined the car while they were properly investigating suspicious circumstances.

Even had the officers looked into the car, the door was open and the car appeared to be temporarily abandoned. This search would likely have been justified under the plain-view doctrine.

Either way, I recommend that this allegation be Not Sustained – Unfounded.

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