



CLOSED CASE SUMMARY

ISSUED DATE: MAY 23, 2018

CASE NUMBER: 2017OPA-1278

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 (Inconclusive)
# 2	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Inconclusive)
# 3	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	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Inconclusive)
# 2	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Inconclusive)
# 3	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	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 he was subjected to excessive force by the Named Employees and that the Named Employees engaged in biased policing towards him.

STATEMENT OF FACTS:

Officers were dispatched to the scene of a possible domestic violence incident. The caller alleged that his mother was being assaulted by her boyfriend. The caller indicated that the boyfriend – who was later identified as the Complainant – was intoxicated. The caller stated that there were six children within the home. The mother (who is referred to herein as the “victim”) also called 911. She identified the Complainant by name and asked that officers remove him from her home.

Officers, including the Named Employees, responded to the home. The Named Employees were the first to arrive and, when they got there, they were informed by the victim that the Complainant had already left. She told them that the Complainant had driven off in a grey VW Passat; however, the officers observed a car matching that description still parked in the driveway. The officers had a reasonable belief at that time that the Complainant was still inside of the home. Given the earlier allegations of domestic abuse and given that multiple children were reported to be in the home, the Named Employees decided to perform a protective sweep.

The Named Employees then entered the home. The events that followed (as well as their initial response to the call) were captured by their Body Worn Video (BWV). The house was dark and, as reflected by the BWV, appeared



disorganized and somewhat in disarray. A number of children were in the home and the officers searched the residence while accompanied by the victim. They viewed the Complainant walk outside of a room and towards them. They asked who he was and he told them that he lived in the residence. The officers told the Complainant to stop walking and to sit down, but he did not comply. Named Employee #1 (NE#1) took hold of the Complainant's right arm and Named Employee #2 (NE#2) took out his Taser. NE#2 later explained that he did so because of the Complainant's approach towards the officers, his perceived aggressive behavior, and the nature of the call.

The Complainant told NE#2 multiple times to tase him. At that same time, the victim moved in front of NE#2, blocking him from the Complainant and preventing him from tasing the Complainant if needed. NE#2 told her repeatedly to move out of the way but she did not do so. Ultimately, NE#2 pushed the victim to the side. She did not fall to the ground. She further did not appear to suffer or complain of any injury. NE#1 placed the subject into handcuffs. The Complainant reacted angrily to the victim being pushed away and began using expletives and racial slurs towards the officers. The Complainant continued to yell at NE#2. NE#2 left the room temporarily and, when he returned, there was a struggle between the officers and the Complainant fell to the ground, causing a laceration to his face. As discussed more fully below, the officers contended that the Complainant lunged at NE#2 and slipped on the linoleum floor of the kitchen, thus causing the injury. The Complainant asserted that the officers slammed his face into the ground.

Medical attention was summoned for the Complainant and he received treatment for his facial laceration. The victim was also temporarily placed into handcuffs to ensure no further interference with the officers. While he was held in the kitchen, the Complainant was extremely upset and angry. When he later spoke to a sergeant, he complained that he had been "violently harassed." The Complainant was formally placed under arrest and was removed from the home. A Department supervisor later referred this matter to OPA and this investigation was initiated.

While not classified for investigation in this case, from my review of the video, I believe that a number of the statements made by NE#2 towards the Complainant may have constituted unprofessionalism in violation of SPD policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

While in the kitchen and in the officers' custody, the Complainant fell to the floor and suffered a laceration to his face. This is undisputed. What is disputed is how the injury occurred and whether force was used or whether, instead, the Complainant slipped.

NE#1 wrote in his use of force report that the Complainant "charged [NE#2] in what was clearly an attempt to assault him." NE#1 explained that he pulled the Complainant back towards him and the Complainant lost his footing on the linoleum floor of the kitchen and fell to the ground, causing the laceration to his face.

NE#2 similarly recounted that the Complainant aggressively moved towards him and, when doing so, slipped on the linoleum floor and fell to the ground. NE#2 did not report using any other force aside from de minimis force to



control the Complainant's body while on the ground. NE#2 also stated that the Complainant kicked him causing pain to NE#2's knee.

Both officers made consistent statements to OPA during their interviews and did not provide any significant additional details.

The Complainant was captured on BWV as saying that the officers slammed his face into the ground (he specifically stated: "You just slammed my face into the fucking ground"). This was the basis for the OPA referral and this investigation. However, he did not respond to OPA's requests that he be interviewed and, thus, did not provide any further explanation of his perception of the incident.

OPA did interview the victim, who recounted that she observed a struggle between the Complainant and the officers, but said that she "didn't really know" how the Complainant came to fall to the ground. She further told OPA that the Complainant had consumed more alcohol than normal that evening, which she explained may have negatively altered his behavior.

The BWV of this incident is, in my opinion, inconclusive. It does not clearly show the force used and the mechanism of injury. While it reflects statements made by NE#1 at the time the Complainant went to the ground consistent with the officers' explanation that the Complainant was lunging at NE#2 ("get on the ground!") and is in line with the officers' general account of the incident, I cannot say this is the case by a preponderance of the evidence. As such, while I tend to believe that the Complainant fell to the ground as a result of his movements and a slippery floor instead of due to intentional force applied by the officers, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #2

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

While SPD Policy 8.200-POL-1 governs when force is authorized, SPD Policy 8.200-POL-2 explains when force is prohibited. Of significance to this case, force on handcuffed individuals is prohibited "except in exceptional circumstances when the subject's actions must be immediately stopped to prevent injury, or escape, destruction of property."

Were the Complainant slammed to the ground – as he claimed – while in handcuffs, this could very likely have been outside of policy. However, as discussed above, I find the question of whether the Complainant fell to the ground and suffered a facial injury due to force used by the officers to be inconclusive. For this reason, I reach a similar result here and, accordingly, I recommend that this allegation be Not Sustained – Inconclusive.

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



Named Employee #1 - Allegation #3

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 as 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 officers responded to a call of possible domestic violence from the victim’s son and, later, a call from the victim identifying the Complainant as the perpetrator and asking him to be removed from the home. Based on that information, the officers had a sufficient legal basis to perform a sweep of the home, even when the victim stated – untruthfully – that the Complainant was not there. Moreover, based on these initial calls and allegations, the officers also had probable cause, at that time, to arrest the Complainant. Indeed, in my opinion, the Complainant’s arrest was mandatory under SPD policy given that this was an alleged domestic violence assault.

As such, the nature of the crime and the identification of the Complainant as the perpetrator was the basis for his detention and eventual arrest, not the Complainant’s race. I find no evidence that the Named Employees’ actions were motivated by racial bias. For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

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 – Inconclusive.

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

Named Employee #2 - Allegation #2

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

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

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

Named Employee #2 - Allegation #3

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 #3), I recommend that this allegation be Not Sustained – Inconclusive

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