



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 4, 2018

CASE NUMBER: 2018OPA-0321

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 (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 (Training Referral)
# 2	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Sustained

Imposed Discipline

Two (2) Day Suspension

Named Employee #3

Allegation(s):		Director’s Findings
# 1	8.200 – Using Force 1. Use of Force: When Authorized	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:

It was alleged that Named Employee #1 and an Unknown Employee used excessive force on the Complainant. It was further alleged that Named Employee #2 may have engaged in biased policing and unprofessional conduct.

STATEMENT OF FACTS:

Officers responded to a 911 call concerning a man who had threatened another motorist with a firearm. A description of the vehicle was provided. The subject was identified as an African-American man wearing a white t-shirt and white and blue shorts. Officers located a vehicle matching that description approximately half a mile away. The occupant of the car also matched the description of the subject. Officers attempted to effectuate a traffic stop and the subject – who was later identified as the Complainant – eluded them. After a short pursuit, the Complainant crashed his vehicle. The officers attempted to perform a high-risk felony stop of the vehicle, but the Complainant got out and fled on foot.

Officers, including Named Employee #2 (NE#2), ran after the Complainant. During that foot pursuit, NE#2 stated the following to the Complainant:

Police, stop. I’m going to beat your ass, you’re going to go to jail motherfucker. Get on the ground. Get on the ground. I’m going to catch you. You can’t run forever. Get on the



ground guy. I can do this all day. I can do this all day boy. Come on. Get down. Get on the ground.

The officers lost sight of the Complainant, but later found him by using a K-9 to track him. The officers ordered the Complainant down to the ground and placed him under arrest. At that time, the Complainant alleged that the officers had broken his hand by stomping on it during his arrest. He identified Named Employee #1 (NE#1) and another unknown officer as the perpetrators. However, NE#1 did not arrive on the scene until after the Complainant had already been taken into custody and was handcuffed. Medics responded and did not observe any injuries consistent with a break. While the Complainant did have some abnormalities to his hand, the medics believed these injuries to have been caused by the vehicle crash.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged that NE#1 and an unknown employee used excessive force on him when they stomped on his hand, causing it to break.

As a starting point, the arrest and handcuffing of the Complainant was caught on Department video. A review of that video yields no evidence that any officer ever stomped on the Complainant's hand. Moreover, the medics who treated the Complainant found no indication that he suffered a break to his hand consistent with his claim. Lastly, NE#1 was not at the scene at the time of the Complainant's arrest and handcuffing. As such, it would have been impossible for him to have caused any injury to the Complainant's hand.

Given the above, I find that the excessive force alleged by the Complainant never occurred. Accordingly, I recommend that this allegation be Not Sustained – Unfounded as against both NE#1 and the unknown employee.

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

Named Employee #2 - Allegation #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.*)

This allegation was classified against NE#2 due to the fact that he called the Complainant, who is African-American, “boy” during the foot pursuit. As recognized by NE#2, the term “boy” when used in the context of an African-American man has an extremely negative history and racial connotations. It is a term that is indicative of bias.

At his OPA interview, NE#2 provided several explanations for his statement. He stated that the Complainant was a young man and looked like a teenager. NE#2 stated that he was “amped up” and used the first “pronoun” that he



thought of. NE#2 explained that, where he was from, the term “boy” was used differently. NE#2 recounted that his father used to call him “boy” when he was in trouble.

NE#2 stated that he knew that the term had a negative racial meaning, but he asserted did not intend to use it in a pejorative manner or in any way to demean the Complainant’s race. NE#2 told OPA that he regretted using the word and, if he could revisit this incident again, he would have not have done so. Lastly, NE#2 indicated that he reported his use of the term to a supervisor and, while he told his supervisor that it was not racially motivated, he recognized that there could be consequences that flowed from his usage.

I find NE#2’s use of “boy” while chasing the Complainant to be troubling. NE#2 was running after an African-American man and called him a historically racist term while threatening to, “beat his ass” and take him to jail. While NE#2 claimed that he did not intend to use a racially-motivated term, when viewed in context, this situation looks very problematic. That being said, and applying the heightened standard of proof given the severity of this allegation, I cannot disprove his claim that this was an incredibly poor exercise of judgment and a mistake. As such, and even though it is a close call, I do not recommend that this allegation be Sustained. Instead, I recommend that NE#2 receive a Training Referral.

- **Training Referral:** NE#1 should attend a training concerning bias, racial equity, or a related topic. His chain of command should further discuss with him his usage of the term “boy” during this incident, the significance of that statement when used towards African-American men, and the impact that such a term coming from a police officer can have on the community. NE#2 should be informed that this incident, which he characterized as unintentional, should not be repeated. His chain of command should ensure that NE#2 understands the seriousness of this incident and how close this came to a recommended Sustained finding. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #2 - Allegation #2

5.001 – Standards and Duties 10. Employees Shall Strive to be Professional

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.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

Unlike with the claim of bias, I have no trouble finding that NE#2 clearly violated the Department’s professionalism policy. First, when he told the Complainant that he was going to “beat your ass” and stated “you’re going to jail motherfucker,” he used profanity and language that was derogatory, contemptuous, and disrespectful. Second, these statements undermined the public’s trust in NE#2, his fellow officers, and the Department as a whole. Most



notably, this occurred when NE#2 yelled out loud on a public street that he was going to subject the Complainant to excessive force. This was unacceptable.

Even if NE#2 did not make the above statements, his calling the Complainant “boy” was more than sufficient on its own to establish unprofessionalism. As discussed in the context of Allegation #1 above, using a racially motivated term while threatening a fleeing African-American man is well outside of the expectations of the Department and the norms of the community. Officers are expected to be better than this and such language, even if inadvertent as NE#2 claimed, can have an immense negative impact on the Department’s relationship with the individuals that it serves and its ability to maintain the public’s trust. This simply cannot be abided and, as such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

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 – Unfounded.

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