



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 6, 2018

CASE NUMBER: 2018OPA-0413

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)
# 3	6.010 - Arrests 2. When Taking a Suspect into Custody, Officers Must Identify Themselves, Inform the Suspect that He or She is Under Arrest, and State the Reason for the Arrest As Early as Practical	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	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Training Referral)

Named Employee #4

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

Named Employee #5

Allegation(s):		Director's Findings
# 1	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)



Named Employee #6

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	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:

It was alleged that all of the Named Employees, except for Named Employee #3, subjected the Complainant and his girlfriend to biased policing. It was further alleged that several of the Named Employees used excessive force on both the Complainant and his girlfriend. It was additionally alleged that Named Employee #3, a Department supervisor, failed to refer allegations of misconduct to OPA as required by policy. It was further alleged that Named Employee #1 failed to comply with Department policies concerning providing identifying information during an arrest. Lastly, it was alleged that Named Employee #5 may not have had probable cause to effectuate the arrest of the Complainant and his girlfriend.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Complainant and his girlfriend were arrested for narcotics activity. The Complainant asserted that they were both arrested due on their race.

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.*)

Based on OPA’s review of the evidence, it appears that both the Complainant and his girlfriend were observed engaged in drug transactions. This probable cause for their arrests is set forth more fully in the General Offense Report generated for this case. Moreover, both the Complainant and his girlfriend admitted taking part in such activity. The Complainant acknowledged that he had engaged in several marijuana transactions. The girlfriend stated that she was selling Tylenol that looked like crack-cocaine.

Given the above, I find that the conduct of the Complainant and his girlfriend, not their race, was the reason for the law enforcement action taken towards them. I find nothing in the record supporting the claim that the Named Employees engaged in biased policing. Indeed, the evidence indicates the opposite – that the arrests effectuated in this case were lawful and were not due to any inappropriate reason.



For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against all of the Named Employees against whom this allegation was made.

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

Named Employee #1 - Allegation #2

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

The Complainant alleged that his girlfriend was thrown against a wall and/or a fence. He further contended that the officers who arrested him assaulted him. In addition, the girlfriend contended that she was slammed against a wall and/or fence and that her head hit the wall. She also recounted that the Complainant was slammed to the ground.

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.*)

The entirety of the force used on the Complainant and his girlfriend was captured on video. The video contradicts the force that they describe. Moreover, the video establishes that the force that was used was reasonable, necessary, and proportional to effectuate the lawful arrests of the Complainant and his girlfriend. I see no evidence in the record indicating that the force used by the involved Named Employees was excessive or was in any way inappropriate.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against all of the Named Employees who used force during this incident.

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

Named Employee #1 - Allegation #3

6.010 - Arrests 2. When Taking a Suspect into Custody, Officers Must Identify Themselves, Inform the Suspect that He or She is Under Arrest, and State the Reason for the Arrest As Early as Practical

SPD Policy 6.010-POL-2 states that “when taking a suspect into custody, officers must identify themselves, inform the suspect that he or she is under arrest, and state the reason for the arrest as early as practical.”

This allegation was classified against Named Employee #1 (NE#1) based on the fact that he quickly grabbed the girlfriend and took her into custody without first identifying himself, informing her that she was under arrest, or giving the reason for the arrest. I note that, while the BWV did not reflect NE#1 satisfying these requirements with regard to the Complainant, he contended that he did so but that the audio of this was not captured due to his late activation of his BWV. There is no evidence in the record contradicting this assertion.



At the time the girlfriend was taken into custody, there was probable cause supporting her arrest. Further, I credit NE#1's explanation that the girlfriend was advancing quickly towards him and the Complainant and that he deemed it necessary to quickly take her into custody to avoid an escalation of the situation. He further noted that, at that time, both the Complainant and the girlfriend were causing a commotion and he felt that the failure to take immediate action could be dangerous for officers.

I find NE#1's assertions to be reasonable and find that his failure to initially comply with this policy was justified. For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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 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)**

Named Employee #2 - Allegation #2

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

For the same reasons as stated 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

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

SPD Policy 5.002-POL-5 requires supervisors who become aware of a potential policy violation to investigate or refer the allegations depending on their severity. Minor allegations of misconduct may be investigated by a supervisor, while allegations of serious misconduct – such as the use of excessive force or biased policing – must be referred to OPA. (SPD Policy 5.002-POL-5.)

This allegation was classified against Named Employee #3 (NE#3) based on the fact that, while he properly referred the excessive force and biased policing claims concerning the girlfriend to OPA, he did not refer the same allegations concerning the Complainant. This was the case even through the Complainant was audio recorded making statements to NE#3 in which he set forth allegations of excessive force and biased policing against himself.

While this failure to report was technically in violation of policy, I find that this was an oversight rather than intentional misconduct. I further note that NE#3's referral of the allegations concerning the girlfriend evidenced that lack of intentionality and convinces OPA that a Training Referral is more appropriate than a Sustained finding.



- **Training Referral:** NE#3 should be retrained as to the elements of SPD Policy 5.002-POL-5. NE#3's chain of command should further debrief this incident with him and ensure that he understands that the Department expects him to fully identify any allegations of misconduct and to refer those allegations, when appropriate, to OPA. 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 #4 - Allegations #1

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

For the same reasons as stated 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 - Allegation #2

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

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

Named Employee #5 – Allegation #1

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

The Complainant and his girlfriend both contended that their arrests were not supported by probable cause and, thus, were unlawful.

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy.

As discussed above in the context of Named Employee #1, Allegation #1, the evidence indicates that there was probable cause to believe that the Complainant and his girlfriend were engaged in narcotics activity. Indeed, both were observed by officers doing so. Moreover, the Complainant admitted to selling marijuana and the girlfriend acknowledged that she was selling Tylenol that appeared to be crack-cocaine with the purpose of engaging in fraudulent transactions.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.



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

Named Employee #5 – Allegation #2

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

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

Named Employee #6 – Allegation #1

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

For the same reasons as stated 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 #6 – Allegation #2

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

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