



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 28, 2018

CASE NUMBER: 2018OPA-0556

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) |

Named Employee #3

| Allegation(s): | | Director’s Findings |
|----------------|---|---------------------------|
| # 1 | 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 Named Employee #2 subjected him to excessive force and that all of the Named Employees engaged in biased policing towards him.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the OPA Auditor’s review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employees. As such, the Named Employees were not interviewed as part of this case.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Complainant came into the OPA office to file a complaint of excessive force and biased policing. However, he refused to provide a recorded statement to the OPA investigator. He further would not elaborate on the basis for the bias complaint and, with regard to his allegation of excessive force, he would only say he was “slammed to the ground.” He was very upset and yelled during the OPA interview.

OPA’s investigation indicated that the Named Employees responded to a call concerning the Complainant who was refusing to leave Swedish Hospital. Named Employee #1 (NE#1) attempted to talk to the Complainant and asked him to step outside to speak with him. The Complainant immediately became upset and threw his phone in the air and began yelling at the officers. NE#1 determined that a peaceful resolution was not possible and the Complainant was subsequently arrested. Named Employee #2 (NE#2) handcuffed the Complainant. Both NE#1 and Named Employee #3 (NE#3) assisted in the arrest and the force used to control the Complainant’s person.

Following the arrest, the Complainant was heard saying, “All you people do is kill me; that’s all you people do.” This was not perceived by the officers or responding supervisor to constitute an allegation of biased policing. As such, this matter was not referred to OPA. However, when the Complainant self-initiated this matter, this investigation ensued.

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.*)

From my review of the record, I find no evidence indicating that the officers engaged in biased policing or acted in any type of a discriminatory manner towards the Complainant. To the contrary, I find that the Named Employees were professional towards the Complainant and acted appropriately at all times during this incident. Indeed, based on the Complainant’s conduct, there was sufficient probable cause to arrest him and to take him into custody. As such, I recommend that this allegation be Not Sustained – Unfounded as against all three Named Employees.

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

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

At the time of his arrest, the Complainant swung his arms at the officers. They then made the decision to take the Complainant down to the ground in order to handcuff him. NE#2 handcuffed him. Based on a review of the video, there did not appear to be any subsequent force used to detain the Complainant. The incident was documented as a Type I Use of Force and was thoroughly investigated.

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.*)

From my review of the evidence, I conclude that the force used by NE#2 was reasonable, necessary, and proportional, NE#2 only used that force needed to handcuff the Complainant and to keep him under control. The force used was largely de minimis and was certainly not excessive. As I find that the force was justified under the circumstances of this case, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - 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)**