



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 27, 2018

CASE NUMBER: 2018OPA-0599

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)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	16.090 - In-Car Video System 5. Employees Will Record Police Activity	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	16.090 - In-Car Video System 5. Employees Will Record Police Activity	Not Sustained (Training Referral)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)
# 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:

The Complainant alleged that the Named Employees subjected him to excessive force, as well as that they engaged in biased policing towards him. It was further alleged that the Named Employees failed to record In-Car Video as required by policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Named Employees responded to a call of a suspicious person at a residence. The 911 caller gave a detailed description of the perpetrator. When the Named Employees responded, they observed the Complainant in the near



vicinity. The Complainant matched the description. The officers contacted the Complainant and determined that he had an open warrant. The officers took the Complainant into custody and handcuffed him.

After his arrest, the Complainant alleged to a Department supervisor that he had been assaulted by the Named Employees. He further alleged that the officers detained and arrested him based on bias. The supervisor referred these allegations to OPA and this investigation ensued.

The interaction between the Named Employees and the Complainant was captured on Department video. That video conclusively disproves that the Complainant was assaulted by the Named Employees or that they subjected the Complainant to excessive force.

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

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

Named Employee #1 - Allegation #2

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

As discussed above, the Complainant also alleged that the Named Employees subjected him to biased policing.

Again, the video is dispositive. The video conclusively establishes that the Complainant was initially contacted because he matched the description of the suspect and was in the immediate vicinity of where the alleged suspicious behavior was occurring. Moreover, the video establishes that the Complainant was arrested based on an open warrant. As such, the evidence in this case indicates the law enforcement action taken against the Complainant was not due to his race.

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

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

Named Employee #1 - Allegation #3

16.090 - In-Car Video System 5. Employees Will Record Police Activity

At the time of the incident, NE#2 was a student officer and NE#1 was his Field Training Officer. Both NE#1 and NE#2 were equipped with and trained on the use of In-Car Video (ICV). However, NE#2 failed to properly activate ICV. This was the case even though the officers were indisputably required to record their law enforcement activity during this incident.

After their involvement in this matter was completed, NE#1 counseled NE#2 as to his failure to activate the ICV. NE#1 reminded NE#2 of the need to screen such a failure with a Sergeant. Because NE#2 told NE#1 that his video was not working, NE#1 also explained to him that they were required to generate a HEAT ticket. They did so and



submitted the ticket to SPD ITS. However, NE#2 did not update the CAD Call Log and did not note the reason for his failure to record in an appropriate report.

SPD Policy 16.090-POL-1(5) concerns when Department employees are required to record police activity. SPD Policy 16.090-POL-1(5)(b) sets forth the categories of activity that must be recorded, which include: responses to dispatched calls starting before the employee arrives on the scene; Terry stops; on-view infractions and criminal activity; arrests and seizures; and questioning victims, suspects, or witnesses. SPD Policy 16.090-POL-1(7) requires that Department employees document the existence of video or the reason for the lack of video. Officers are required to note the failure to record in an update to the CAD Call Report, as well as to provide an explanation for the lack of a recording in an appropriate report. (SPD Policy 16.090-POL-1(7).)

While NE#2, not NE#1, failed to activate his video, NE#1, as the FTO, was ultimately responsible for this conduct. More importantly, NE#1 was also responsible for NE#2's failure to update the CAD Call Log and to document the reason for the lack of a recording in the General Offense Report. Both were contrary to SPD policy.

That being said, and based on OPA's review of the evidence, this failure to record was the result of a mistake by a new officer, rather than misconduct. As such, I recommend that both NE#1 and NE#2 receive Training Referrals rather than Sustained findings.

- **Training Referral:** NE#1 should receive retraining as to the elements of SPD Policy 16.090-POL-1(7) and should be reminded by his chain of command of the requirements that he note a failure to record video in an update to the CAD Call Log and document the reason for the failure in an appropriate report. This retraining and counseling should be documented and this documentation should be maintained in an appropriate database.

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

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 – Unfounded.

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

Named Employee #2 - 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 #2), I recommend that this allegation be Not Sustained – Unfounded.

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



Named Employee #2 - Allegation #3

16.090 - In-Car Video System 5. Employees Will Record Police Activity

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained and I issue the below Training Referral.

- **Training Referral:** NE#2 should receive retraining as to the elements of SPD Policies 16.090-POL-1(5) and 16.090-POL-1(7). He should be reminded by his chain of command of the importance of properly recording video, and should also be counseled by his chain of command of the requirements that he note a failure to record video in an update to the CAD Call Log and document the reason for the failure in an appropriate report. This retraining and counseling should be documented and this documentation should be maintained in an appropriate database.

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

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)**

Named Employee #3 - 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 #2), I recommend that this allegation be Not Sustained – Unfounded.

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