



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 20, 2018

CASE NUMBER: 2018OPA-0647

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	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Lawful and Proper)
# 3	8.200 - Using Force 1. Use of Force: When Authorized	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	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Lawful and Proper)
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

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 her to excessive force. The Complainant further alleged that the Named Employees engaged in biased policing towards the Subject. Lastly, it was alleged that the Named Employees may have failed to call a supervisor to the scene to investigate allegations of biased policing.

STATEMENT OF FACTS:

The Named Employees responded to a 911 call concerning a woman who was being assaulted. The caller provided a description of the victim. The caller further indicated that the victim had been pushed to the ground by a male and provided the following description of that male: around 6 feet tall, thin, with dark hair, and wearing a dark hoodie and khaki pants. The Named Employees arrived at the scene and observed the Complainant, who matched the description of the victim. She was bleeding from her face at that time. The Named Employees further saw the Subject, who matched the description of the alleged perpetrator. At that point, the Named Employees believed that they had probable cause to arrest the Subject.

Named Employee #2 (NE#2) reported that he told the Subject to walk over to a nearby planter and to take a seat. NE#2 stated that, instead of complying with this order, the Subject held the Complainant around her hip and



attempted to walk away. Named Employee #1 (NE#1) stepped in front of them and told the Subject to sit down. The Subject did not do so. The Named Employees then made the decision to place the Subject into handcuffs for their safety and to allow them to further investigate this matter. As they did so, the Complainant attempted to intervene and prevent the handcuffing. NE#1 told the Complainant to move away, but the Complainant did not do so. The Complainant, instead, grabbed NE#1's arm and forcibly attempted to remove it from the Subject's person. NE#1 grabbed the Complainant's arm and pulled her around his right side. At that time, she fell to the ground. The Named Employees continued to try to handcuff the Subject. The Complainant got off the ground and again approached the officers. NE#1 pushed her back with his right hand and told her to back up. The Complainant again came towards the Named Employees and NE#1 took her to the ground and handcuffed her. All during this time, the Named Employees were talking with both the Complainant and the Subject, with the former yelling repeatedly. They were also interacting with a witness, who continually spoke with them throughout the incident.

NE#2 finished handcuffing the Subject and walked him over to a planter and sat him down. The Subject denied engaging in any criminal activity. The Subject further told NE#2 that he was not involved in the assault. The Subject stated that he was the Complainant's boyfriend. The Subject stated that other individuals were involved in the assault. The Subject stated that he just wanted to get the Complainant home. He asked if the Complainant was going to be arrested and NE#2 said that it was "very possible." Once he learned that the Complainant was going to be arrested, the Subject refused to provide any further information to the officers concerning the assault. The Complainant was placed into a patrol vehicle and was transported from the scene. NE#1 was treated for a scratch that he incurred from the Complainant.

At the time that she initially attempted to prevent the Named Employees from handcuffing the Subject, the Complainant stated: "he's Black." Moreover, while she was on the ground and being handcuffed, she stated, while crying: "you're fucking racist." Lastly, the Complainant said: "you assaulted a Black man, you assaulted a black man." The Named Employees did not report any of these statements to their supervisor while at the scene.

Later, while in the precinct, the Named Employees informed their supervisor that, during the incident, the Complainant stated, in regard to the Subject, "he's Black." Neither Named Employee believed that this statement rose to the level of an allegation of biased policing. Later video review by an Administrative Lieutenant caught the two other statements made by the Complainant. These statements were determined by the supervisor to constitute an allegation of biased policing, and this matter was referred to OPA. During its investigation, OPA attempted to interview the Complainant; however, she did not make herself available for an interview.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - 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.*)



As discussed more fully below, OPA, like the Named Employees' supervisor, construe the second and third statements made by the Complainant to have constituted an allegation of biased policing. In this regard, she asserted that the Named Employees were racist in connection with their alleged "assault" of a Black man – the Subject.

Based on OPA's review of the record, including the CAD Call Log and the Body Worn Video (BWV), there is no evidence supporting the Complainant's allegation.

First, the CAD Call Log described the suspect as a tall, thin male of an unknown race with dark hair and who was wearing a dark sweatshirt and khaki pants. That matched the Subject virtually exactly. Moreover, the Subject was standing in the near vicinity of a female who matched the description of the victim and who was bleeding from her face. As such, it was reasonable to believe, at that time, that the Subject was the perpetrator. At the very least, the Named Employees were justified in further investigating this matter.

Second, the BWV contradicts the Complainant's assertion that the Named Employees "assaulted" the Subject. To the contrary, the Named Employees used de minimis force to place the Subject into handcuffs. They did so because he was not complying with their initial orders to sit down and because of the chaotic nature of the scene. There is no indication that these actions, or the decision to detain the Subject in the first place, were motivated by any bias. Instead, the Named Employees' good faith belief that the Subject may have been the perpetrator of an assault and their desire to further investigate that crime prompted their actions.

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

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

Named Employee #1 - Allegation #2

5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing

SPD Policy 5.140-POL-5 requires employees to call a supervisor in response to allegations of biased policing. This includes providing sufficient information to the supervisor to allow a determination as to what occurred and what the nature of the bias allegation is. (SPD Policy 5.140-POL-5.)

It is undisputed that the Named Employees did not immediately report the Complainant's statements that invoked the Subject's race and racism to their supervisor. As such, their supervisor was not able to investigate these statements at the scene. The Named Employees both told OPA that they did not construe the Complainant's statement concerning the Subject being "Black," to constitute an allegation of biased policing that they were required to immediately report. Moreover, both contended that they did not hear the latter two statements made by the Complainant.

With regard to the first argument, I agree that simply stating that the Subject was "Black" did not rise to the level of an allegation of biased policing. As such, the Named Employees did not violate policy by not reporting this statement to their supervisor until they returned to the precinct.



With regard to the second argument, I find that the latter statements made by the Complainant did rise to the level of an allegation of bias. I find NE#2's assertion that he did not hear these statements to be reasonable under the circumstances. When the latter statements were made, NE#2 was several feet away and was speaking with the Subject. He did not react to the statements and, as such, it did not appear that he heard them. Moreover, these latter statements could not be clearly heard on NE#2's BWV, which further supports his defense. NE#1, unlike NE#2, was in the immediate vicinity of the Complainant when she made the latter statements. However, I also find it reasonable that he did not hear the statements at the time given the circumstances of this incident. Notably, when the statements were made, the Complainant had just physically assaulted NE#1 and was still struggling with him. She was yelling and crying and making multiple other statements. Moreover, both the Subject and the witness were also talking at the same time, which created some chaos and confusion. Lastly, it took OPA two viewings of the video to hear the statements. If the statements were not readily discernable to OPA, it is reasonable to believe that NE#1 did not hear or recognize them at the time.

For these reasons, and under the unique circumstances of this case, I find that the Named Employees substantially complied with policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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

Named Employee #1 - Allegation #3

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

NE#1 used force in this case on the following occasions: when he held the Subject's arms in order to handcuff him; when he grabbed the Complainant's arm to prevent her from interfering with the Subject's arrest; when he pulled the Complainant by her arm around his right side, which caused her to fall to the ground; when he pushed the Complainant back with his right hand, which again caused her to fall to the ground; and when he took her to the ground in a controlled takedown and then used holds to control her person and to handcuff her.

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.*)

I find that the force NE#1 used during this incident was consistent with policy. With regard to the force used to detain the Subject, as discussed more fully above, I find that the detention was legally justified based on the information available to the officers at the time. As such, they were permitted to use force to temporarily detain the Subject and to handcuff him. That force was reasonable, necessary, and proportional.

The force used by NE#1 on the Complainant was also justified under the facts of this case. On each occasion that he used force, the Complainant either tried to interfere with the Subject's detention or tried to physically assault NE#1. Indeed, the Complainant did, in fact, assault NE#1, causing an injury to his neck when she scratched him. NE#1 was



permitted to use force to prevent the Complainant from intervening in the detention and handcuffing of the Subject. Moreover, when the Complainant continued to reassert herself between the officers and the Subject, NE#1 was permitted to use force to stop her from doing so, both for the officers' safety and the safety of others. Lastly, when the Complainant assaulted NE#1, he was entitled to use force to prevent her from continuing to engage in that behavior and to take her into custody. Notably, he only used that level of force needed to do so and, once she was in custody, NE#1 properly modulated his force. Accordingly, I also find that this force was reasonable, necessary, and proportional.

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

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

Named Employee #2 - Allegation #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

5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing

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 #2 - Allegation #3

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

NE#2, like NE#1, used de minimis force to detain the Subject when he took hold of the Subject's arm. He further used additional de minimis force when he placed the Subject into handcuffs.

For the same reasons as discussed above in the context of NE#1, I find that this force was appropriate and consistent with policy. At the time, NE#2 reasonably believed that the Subject was the perpetrator of the assault and was warranted in conducting further investigation. Moreover, when the Subject did not initially comply with the Named Employees' orders and given the chaotic nature of the scene, NE#2 was justified in taking hold of his arm and placing him into handcuffs. This force was reasonable, necessary and proportional under the circumstances of this case.

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

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