



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 17, 2019

CASE NUMBER: 2018OPA-0815

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 | 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 #3

| 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 #4

| 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 #5

| 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 #6

| Allegation(s): | | Director’s Findings |
|----------------|--|-----------------------------------|
| # 1 | 5.140 - Bias-Free Policing 6. Supervisors Conduct Preliminary Inquiry into Biased-Based Policing | Not Sustained (Training Referral) |
| # 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 engaged in biased policing towards her during her arrest. The Complainant further alleged that Named Employee #2 subjected her to excessive force. Lastly, it was alleged that Named Employee #6 failed to sufficiently screen, investigate, and document a potential claim of biased policing.



SUMMARY OF INVESTIGATION:

Multiple 911 calls were received concerning a woman – who was later identified as the Complainant – who was engaging in a disturbance in a bar. The bar indicated that they wanted the Complainant to be removed from the premises. It was further reported that the Complainant broke glasses and was fighting with bar security guards. The Complainant, herself, called 911 on several occasions. From a review of those calls, she appeared to be intoxicated. She further used profanity towards and threatened the 911 operators.

When the officers arrived on scene, the Complainant was sitting by a vehicle. The officers reported that she was heavily intoxicated and was verbally aggressive towards them. This is supported by the Body Worn Video (BWV) of the incident. The Complainant contended that her car keys were stolen by her friend; however, they were on the vehicle next to her. The officers spoke with the complaining victim who confirmed that the Complainant was the individual involved in the disturbance and who had broken property and assaulted the bar security guards. The officers also noted that the Complainant matched the description of the perpetrator.

When the Complainant's friend came to the scene, the Complainant began yelling at her and advanced towards her in a manner that was perceived by the officers to be physically aggressive. At that point, the officers made the decision to take the Complainant into custody, both to ensure that she did not assault her friend and due to the fact that they believed she had committed a number of crimes. Named Employee #2 (NE#2) took hold of the Complainant's arm and, with the assistance of another officer, placed the Complainant into handcuffs. NE#2 used a low level of force to handcuff the Complainant. Due to her physical resistance, he leaned the top of her body onto a vehicle (a "tabletop" maneuver) and this allowed him to more easily access the Complainant's arms and wrists and, thus, to handcuff her. He used two sets of handcuffs and both were gauged and double-locked. A third set was used later.

During her interaction with the officers, the Complainant made a number of statements that invoked allegations of biased policing. The statements that she made included: "You're talking about White supremacy. You guys are White privilege." From a review of the video, it was unclear what she was referring to at this point. She also made statements that suggested an excessive force claim against NE#2.

Named Employee #6 (NE#6), who was the officers' supervisor, came to the scene. At the time that he was interacting with the Complainant, she stated: "You guys are fucking racists! You're racists!" NE#6 then screens what had occurred with NE#2. NE#2 told him that there may have been an allegation of bias involved. First, NE#2 relayed that the Complainant was biased towards the officers. NE#6 directly asked NE#2 whether the Complainant was alleging that the officers took law enforcement action against her based on her race and NE#2 responded: "I don't think so, I think she's just calling us names." NE#6 replied: "That's fine." Named Employee #1 (NE#1) then told NE#6 that he would have to look at his video to verify whether a claim of bias was made. NE#6 concluded the conversation by stating that it appeared that all they had was a Type I use of force.

NE#6 then interviewed the Complainant. He solely questioned her about the use of force and did not ask her about any allegations of bias or confirm whether or not she had made such an allegation. During that conversation, the Complainant called NE#6 a racist and a skinhead. She told NE#6 that she made the latter statement to him because of the way he wore his hair and: "The way you deal with the situation, and also because of the way you're dealing with..." She did not finish her statement. He did not complete a bias review or refer a bias allegation to OPA.



Given that NE#6 was involved in restraining the Complainant at one point, another Sergeant completed the Type I use of force investigation. The Sergeant later interviewed the Complainant and she stated, at that time, that she had been subjected to excessive force. It does not appear that the Complainant made any allegations of bias to the reviewing Sergeant.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #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.*)

Based on OPA’s review of the evidence, including the BWV, there is no support for the Complainant’s allegation that the officers’ actions were motivated by or were the result of bias towards her. Instead, the Named Employees detained and ultimately arrested her based on her conduct and the fact that she was identified as the suspect in criminal activity. As her allegation is unsubstantiated by the facts in the record, I recommend that this allegation be Not Sustained – Unfounded as against all of the Named Employees.

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

Named Employee #2 - Allegations #1

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

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.*)

NE#2 used force on the Complainant in order to take her into custody. Specifically, NE#2 used force to place her into handcuffs and, when she physically resisted his attempts to do so, NE#2 used a tabletop maneuver, which involved pushing the Complainant’s body forward over a vehicle. This allowed NE#2 to have easier access to her arms and wrists. NE#2 first used two sets of handcuffs to ensure that they would cause as little discomfort to the Complainant as possible. Officers later used a third set of handcuffs on her after she complained of pain.

At the time the Complainant was handcuffed and taken into custody, NE#2 had probable cause to arrest her. With the legal authority to arrest the Complainant came the right to use force, where appropriate, to do so. Here, force was acceptable to handcuff the Complainant and, when she physically resisted, NE#2 was further justified in using



the tabletop maneuver. As such, I find that the force used by NE#2 was reasonable, necessary, and proportional under the circumstances. That the Complainant alleged that she was injured is unfortunate, but it does not yield the force to be outside of policy.

For the above reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#2.

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

Named Employee #2 - Allegations #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 #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)**

Named Employee #4 - 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 #5 - 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 #6 - Allegations #1

5.140 - Bias-Free Policing 6. Supervisors Conduct Preliminary Inquiry into Biased-Based Policing



SPD Policy 5.140-POL-6 requires supervisors to conduct a preliminary inquiry into an allegation of biased policing. Where such an allegation is made, the supervisor is instructed to discuss matter with the subject. (SPD Policy 5.140-POL-6.) The supervisor is required to explain to the subject the option of making an OPA complaint. (*Id.*) If the supervisor does so, the subject does not wish for an OPA complaint to be filed on their behalf, and the supervisor deems that no misconduct occurred, a supervisor may complete a Bias Review. (*Id.*) Otherwise, the supervisor must refer the allegation of bias to OPA. (*Id.*)

While NE#6 screened this incident with the involved officers, his investigation of the statements referenced bias could have been more thorough. Notably, NE#2 told NE#6 that he did not think that the Complainant was making a complaint of bias, not that she was definitively was not. Moreover, NE#1 stated that he needed to look at his video to confirm this fact. However, NE#6 did not appear to follow up with NE#1. Further, NE#6 did not ask the Complainant virtually any questions to explore this issue, including failing to specifically ask her whether she had made or was making an allegation of bias. This was the case even though she called the officers, including NE#6, racist in his presence and called him a skinhead, allegedly based on how he was handling the situation.

Optimally, NE#6 would have more comprehensively addressed the question of whether a bias allegation was made. Indeed, OPA concludes that such action was required by policy. In making this determination, OPA believes the question of whether the Complainant's statements actually rose to the level of an allegation of biased policing to be irrelevant. Moreover, as discussed more fully herein, OPA does not believe that any of the officers actually engaged in biased policing during this incident. OPA only concludes that NE#6 should have more fully investigated this matter. However, given NE#6's stated lack of clarity as to whether the Complainant's statements constituted an allegation of bias and given NE#6's generally excellent work as a Department supervisor, I recommend that he receive a Training Referral rather than a Sustained finding.

- **Training Referral:** NE#6 should be retrained as to the requirements of SPD Policy 5.140-POL-6. He should be reminded that, even if he does not necessarily believe that a subject's statements rise to the level of a bias allegation, he is still required to conduct an investigation to verify that this is the case. This includes asking follow-up questions of the subject where appropriate. When NE#6 did not do so here, he failed to fulfill the mandates of this policy. 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 #6 - Allegations #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)**