



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 17, 2019

CASE NUMBER: 2018OPA-0940

Allegations of Misconduct & Director’s Findings

Named Employee #1

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

Named Employee #3

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 #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)

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 the Named Employees were biased towards the Subject and that they subjected him to excessive force. It was further alleged that Named Employee #1 failed to timely activate her Body Worn Video.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity

During this incident, NE#1 activated her Body Worn Video (BWV) belatedly. When she realized that she had done so, she notified her Sergeant. She further disclosed this during her interview by the Force Investigation Team (FIT), which she gave after the incident and which was in lieu of a statement. She gave a consistent statement at her OPA interview, during which she explained that the late activation was due to a mistake on her part.

From OPA's review of the record, the failure to timely record was a clear mistake on NE#1's part and not intentional misconduct. As such, and given that she promptly self-reported, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should counsel NE#1 to timely activate her BWV whenever possible. No further training or counseling needs to occur from OPA's perspective. Any training or counseling that occurs should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #2

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

On the date in question, officers, including the Named Employees, were engaged in a narcotics operation. A witness officer observed the Subject engage in a hand-to-hand drug transaction and he informed other officers of this fact and stated that there was probable cause to arrest the Subject.

The Named Employees converged on the Subject and attempted to take him into custody. The Subject resisted their attempts to do so, including trying to fight to get off of the ground. The Named Employees were able to get the Complainant into custody. While doing so, they used force that was initially classified as Type III (based on a possible separated shoulder suffered by the Subject) and was investigated by FIT The force was also later review by the Force Review Board.

The Complainant, who was not involved in but observed the incident, alleged that the Named Employees engaged in biased policing. The Subject further alleged to a Department supervisor that the Named Employees subjected him to excessive force. The supervisor referred both claims to OPA and 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.*)



The law enforcement action taken towards the Subject by the Named Employees was recorded on BWV. The BWV shows that the Named Employees contacted him and attempted to place him under arrest because they were informed that he had engaged in a drug transaction. This, not the Subject's race, was the basis for the law enforcement action taken towards him. As such, I find that there is no evidence supporting that the conclusion that the Named Employees engaged in biased policing and I recommend that this allegation be Not Sustained – Unfounded as against all of them.

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

Named Employee #1 - Allegation #3

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

As discussed above, the Subject alleged that the Named Employees collectively subjected him to excessive force.

OPA's investigation indicated that the following force was used on the Subject: Named Employee #2 (NE#2) used three knee strikes to the Subject's side; NE#2 also used a cross-face to the Subject's facial/head area; Named Employee #3 (NE#3) used a trained "figure four" hold to take the Subject down to the ground; NE#1 assisted NE#3 in taking the subject to the ground, which she described as a "soft takedown"; NE#1 also held the Subject's arm and prevented him from bending it; and Named Employee #4 (NE#4) used body weight to secure the Subject's leg, pulled his other arm, and placed it behind his back.

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.*)

Based on OPA's review of the BWV, the Named Employees' use of force reports, and the FIT investigation, I conclude that the Named Employees' collective force was consistent with policy. With regard to the initial takedown, the officers had the legal right to arrest the Subject and, when faced with his resistance, to use force to do so. The force in question, a soft takedown, was necessary to effectuate this lawful goal and was proportional to the threat posed by the Subject's conduct. Moreover, the de minimis force used to hold the Subject down, to control his arms, and to place him into handcuffs was also appropriate and warranted.

With regard to the cross-face and knee strikes used by NE#2, at that time, the Subject was actively resisting the officers. He was not a static turtled suspect. Instead, he getting off of the ground and had placed himself in a position to potentially physically harm the officers. The use of intermediate force at that time was reasonable, necessary, and proportional to stop the Complainant from further resisting and to take him into custody. Moreover, it was consistent with NE#2's training.

For the above reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against all of the Named Employees.



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 #2), 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 #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegations #1

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

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

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)**

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

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