



CLOSED CASE SUMMARY

ISSUED DATE: JULY 23, 2019

CASE NUMBER: 2019OPA-0070

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	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)
# 3	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Lawful and Proper)
# 4	6.150 - Advising Persons of Right to Counsel and Miranda 8. Officers Shall Stop Questioning Once an Arrestee has Invoked the Right to a Lawyer	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 (Unfounded)
# 3	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Lawful and Proper)
# 4	6.150 - Advising Persons of Right to Counsel and Miranda 8. Officers Shall Stop Questioning Once an Arrestee has Invoked the Right to a Lawyer	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 him to excessive force and were biased towards him during his arrest. It was further alleged that the Named Employees may have failed to report an allegation of bias to a supervisor and that they continued to question the Complainant after he had invoked his right to counsel.

SUMMARY OF INVESTIGATION:

The Named Employees responded to a multi-vehicle collision. When they were on their way to the scene, the Named Employees were informed that the driver, who was later identified as the Complainant, had tried to flee and was being held down by civilian bystanders. When the officers arrived, they saw a male, who was later identified as the Complainant, being held down by several civilians. The officers lifted the Complainant onto his feet and walked him to the front of a patrol vehicle. The Complainant told the officers that he was thrown to the ground by the



civilians and that, while he was intoxicated, he had been a passenger not a driver of the vehicle. The Complainant also contended that the vehicle did not belong to him. However, the officers' investigation verified that the vehicle was, in fact, registered to the Complainant. They also determined that he had suffered airbag burns, which was consistent with him being the driver. The officers performed Standard Field Sobriety Tests (SFSTs) on the Complainant. At the conclusion of those tests, the Complainant was taken into custody.

He was seated in the rear of the patrol vehicle and Miranda warnings were read to him. The Complainant was then transported to the precinct. During that time, he spoke on and off to the officers and to himself. When he arrived at the precinct, he requested a lawyer and asked for his Miranda right to be read to him. Named Employee #1 (NE#1) located a marijuana cigarette in the Complainant's pocket. The Complainant referenced that the marijuana was related to his religion and intimated that, by seizing the marijuana, the officers were discriminating against him. The officers subsequently transported the Complainant to the hospital for a blood draw. At that time, the issue of the Complainant's lawyer again came up. NE#1 told the Complainant that they were not going to summon his lawyer to the scene and that he would be released from the hospital after the blood draw. NE#1 asked the Complainant whether he had a lawyer on retainer due to his age. The Complainant stated that he did. The blood was taken and the Complainant was ultimately released.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Complainant alleged that the Named Employees discriminated against him in two respects. First, he stated that they arrested him over the other involved parties to the crash due to the Complainant's Latino heritage. Second, he alleged that they discriminated against him due his religion when they seized his marijuana cigarette.

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, both of the Complainant's allegations lack merit. The Complainant was taken into custody based on his conduct and on the fact that the officers believed that there was probable cause to arrest him for DUI, not because of his race. Moreover, the marijuana cigarette was located during a search incident to arrest and was taken from the Complainant for legitimate law enforcement reasons. This did not constitute discrimination against the Complainant due to his religion.

For the above reasons, I recommend that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#2.

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



Named Employee #1 - Allegation #2

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

When his arrest was screened with a Department supervisor, the Complainant alleged that he was subjected to excessive force by the Named Employees. It was unclear from OPA's review of the video, exactly when this force purportedly occurred and what acts the Named Employees were supposed to have perpetrated in this regard.

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.*)

The video conclusively establishes that the Named Employees used no reportable force on the Complainant, let alone excessive force. Based on the objective evidence, the Complainant's allegation is clearly meritless and frivolous. As such, I recommend that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#2.

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

Named Employee #1 - Allegation #3

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

During its intake investigation, OPA reviewed the Blue Team Bias Review that was completed by the Named Employees' supervisor. The Bias Review did not contain any indication that the Named Employees requested that the supervisor come to the scene to investigate the Complainant's allegations of bias. Such a notification is required by SPD policy.

After classifying this allegation, OPA interviewed the supervisor. The supervisor told OPA that the officers did, in fact, call him to notify him of both allegations and that he mistakenly did not include this information in the Bias Review.

As the Named Employees complied with this policy, 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 - Allegations #4

6.150 - Advising Persons of Right to Counsel and Miranda 8. Officers Shall Stop Questioning Once an Arrestee has Invoked the Right to a Lawyer

SPD Policy 6.150-POL-8 requires that officers stop questioning an arrestee once the arrestee has invoked his right to counsel.



The video captured that, prior to being transported to the hospital for the blood draw warrant to be executed, the Complainant invoked his right to counsel. The video also documented that the Named Employees informed the Complainant that they were not required to call his attorney to either the precinct or the hospital for the blood draw. While the Named Employees spoke with the Complainant after his invocation of his right to counsel, their questions were not substantive. As such, the issue here is whether the Named Employees were required to make the Complainant's counsel available prior to his blood being taken.

OPA knows of no legal authority standing for the proposition that counsel must be provided prior to a blood draw, even if requested. Unlike a BAC test, where counsel is required, there is no similar requirement for blood draw. This makes sense for several reasons. First, part of the BAC test involves seeking consent from the subject. Where a blood warrant has been applied for from a judge and obtained, no consent is required or sought. Similarly, while questions are asked during the BAC test process, a blood draw involves no questions and is not, in any way, testimonial.

For these reasons, the Named Employees were not required to make counsel available to the Complainant prior to the blood draw. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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 #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

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

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

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



Named Employee #2 - Allegations #4

6.150 - Advising Persons of Right to Counsel and Miranda 8. Officers Shall Stop Questioning Once an Arrestee has Invoked the Right to a Lawyer

For the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained – Lawful and Proper.

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