



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 14, 2018

CASE NUMBER: 2017OPA-0733

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	Bias-free Policing - 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	Bias-free Policing - 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	Bias-free Policing - 5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	Force - Reporting - 8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Unfounded)

Named Employee #4

Allegation(s):		Director’s Findings
# 1	Bias-free Policing - 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(s) allege that the Named Employees may have engaged in bias policing. Additionally, during OPA’s intake it was determined that one of the Named Employees may have failed to report force as required by policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

Officers were dispatched to a call of a woman – later identified as the Complainant – who was possibly high or intoxicated and was yelling at children in a park. The officers conducted a search for the Complainant in the park, and later observed the Complainant looking into and apparently trying to access the doors of a patrol vehicle. The



officers made contact with and detained the Complainant. The Complainant tried to walk away on several occasions, but the officers prevented her from doing so. The officers ultimately placed the Complainant under arrest.

The Complainant asserted that her detention and subsequent arrest was based on her status as a Native American. Her friend also alleged bias. The Complainant reiterated her complaint of bias to OPA. During her interview, she admitted looking into the police cars and having a knife stashed in her bra (which was later recovered). She indicated that she was intoxicated, but stated that this and her attendant decision making did not play a role in the officers' allegedly biased conduct. Jane did not respond to OPA's requests for an interview.

The officers all denied engaging in biased policing. Two civilian witnesses, who were interviewed, supported the officers' accounts. Moreover, the officers' interaction with the Complainant was largely captured on In-Car Video (ICV). The ICV did not indicate any evidence that the officers engaged in bias.

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.*) SPD employees are required to "call a supervisor in response to allegations of bias-based policing." (SPD Policy 5.140-POL-5.) The supervisor must be called to the scene. (*Id.*) This section of the policy provides guidance as to when an allegation of biased policing occurs, explaining that: "an allegation of bias-based policing occurs whenever, from the perspective of a reasonable officer, a subject complains that he or she has received different treatment from an officer because of any discernable personal characteristic..." (*Id.*)

As indicated above, based on my review of the record and applying a preponderance of the evidence standard, I do not find that the Named Employees engaged in biased policing. Accordingly, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #1

Bias-free Policing - 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 - Allegation #1

Bias-free Policing - 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 - Allegation #2

Force - Reporting - 8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

SPD Policy 8.400-POL-1 sets forth the general requirements for the reporting of force used by officers. The policy sets forth four levels of force – de minimis; Type I; Type II; Type III. All categories of force must be reported, documented and investigated to varying extents, except for de minimis force. De minimis force need not be reported or investigated. De minimis force is defined as: “Physical interaction meant to separate, guide, and/or control that does not cause pain or injury.” (SPD Policy 8.400-POL-1.) Where there is a complaint of transient pain, force should be reported as Type I. In this case, a sergeant must screen the force in person and a Type I use of force report must be completed. (*Id.*)

While she was in police custody, the Complainant made two complaints of pain that were captured by In-Car Video. The first complaint was made at approximately 02:44:00 hours. At that time, the Complainant stated: “I can’t even fucking feel my hand.” [I note that NE#3’s union representative contended that she said “head” instead of “hand.” From my review of the ICV, I hear “hand.”] When she made that statement, she was in the backseat of NE#3’s patrol vehicle. NE#3 was in the front seat and was typing on his MDT. NE#3 did not acknowledge the statement being made and did not respond to the Complainant.

While he was in the patrol car when this statement was made by the Complainant, NE#3 claimed not to have heard it. He explained that he was distracted by the Complainant’s ongoing behavior, the chaotic situation her conduct was causing, and the fact that he was intermittently on the radio. For virtually the entirety of her interaction with the Named Employees, the Complainant was yelling, crying, complaining, and threatening the officers (including, but not limited to: “your families are dead”; “I’ll come after you and your family”; and “see if you are laughing at your baby’s funeral”). (*See, e.g., NE#3 Rear ICV, 14:35:59 – 14:44:30.*) I agree with NE#3 that the Complainant’s behavior was distracting and caused a chaotic atmosphere in the vehicle. For these reasons, while NE#3 would have been required to report the Complainant’s statement, I find that, applying a preponderance of the evidence standard, he did not hear what she said and he did not purposefully violate this policy. Moreover, the Complainant was not charged with making threats to kill the officers and their families, which she could have been given the nature of what she was saying. This provides corroborating evidence that NE#3 simply did not hear what the Complainant was saying at that time.

The Complainant made a second claim of pain in the back of the patrol vehicle when she said “ow.” However, at this point, NE#3 was outside of the vehicle and the evidence indicates that he did not hear this statement.

As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #4 - Allegation #1

Bias-free Policing - 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.



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CLOSE CASE SUMMARY

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