



## CLOSED CASE SUMMARY

ISSUED DATE: MARCH 6, 2018

CASE NUMBER: 2017OPA-0952

### 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 (Training Referral)
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 4	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	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 (Unfounded)
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)
# 4	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	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 Named Employees responded to a mutual fight disturbance call at DESC. The Complainant alleged that the Named Employees used force on him to remove a metal chain with padlocks that he was holding in a manner that was excessive and caused him injury. Additionally, the Complainant alleged that the Named Employees engaged in bias policing. Lastly, during its intake investigation, OPA added allegations that the officers may have failed to de-escalate and may have failed to report a complaint of bias to a supervisor.

**STATEMENT OF FACTS:**

The officers were dispatched to a call reporting an assault occurring in an elevator in a facility operated by DESC. When Named Employee #1 (NE#1), who was a Field Training Officer on that date, and Named Employee #2 (NE#2), who was



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NE#1's student officer, responded to the location, they could not immediately access the elevator but could hear an ongoing disturbance inside. When they eventually were able to access the elevator, they realized that the other individual involved in the fight had exited but the Complainant remained inside. The Complainant, who is a double amputee, was lying on the ground in, as described by the officers, an agitated state. He was also holding a chain with a lock attached to it in his hand, which the officer perceived to be a weapon.

In his report concerning this incident, NE#1 indicated that, based on the totality of the circumstances and on the Complainant's demeanor, he was concerned that the Complainant might use the improvised weapon against him. He reported that the Complainant immediately said to him: "Don't fuck with me! He was the one fucking with me" (apparently referring to the other individual). NE#1 further reported that the Complainant threatened to kill other DESC residents and made various racial and homophobic slurs. NE#1 then made the decision to try to take the improvised weapon from the Complainant's hand.

Both of the Named Employees attempted to reason with the Complainant and to convince him to give up the improvised weapon. NE#1 explained to OPA that, based on the subject's aggressive demeanor and statements, he did not think it was possible to further de-escalate this situation prior to taking the improvised weapon away. NE#1 stated that he reached down and grabbed the chain and tried to pull it from the Complainant. He gave the Complainant several orders to let go of the chain but the Complainant did not comply. NE#1 then pulled the chain harder and was able to wrest it from the Complainant. When he did so, he pulled the Complainant's arm and the Complainant's body was moved by the force. NE#1 did not report using any other force. At the time he pulled the improvised weapon away, NE#1 reported that the Complainant complained of pain. While NE#1 did not notice any injuries on the Complainant, the Seattle Fire Department was summoned and provided the Complainant with medical attention.

NE#2 also wrote a report concerning this incident. While his report contained some additional details concerning the interaction, it was consistent with NE#1's report. Based on his report, and from a review of the evidence, it does not appear that NE#2 used any force on the Complainant.

After the incident, the officers lifted the Complainant back into his wheelchair and tried to further reason with him unsuccessfully. They did not use force on the Complainant at this time. This was corroborated by a civilian witness. The Complainant was not arrested but was transmitted to a hospital for medical attention against his will.

Another civilian witness, who was the individual who called in the incident originally, viewed the officers' interaction with the Complainant on video and did not perceive that the officers engaged in excessive force.

OPA reviewed a copy of the video of the elevator maintained by DESC, as well as the Named Employees' Body Worn Video (BWV). The Named Employees' accounts of the incident are consistent with the video.

The officers notified a Department supervisor of the Complainant's complaint of pain and the supervisor came to the scene and interviewed the Complainant. At that time, the Complainant made allegations of excessive force and biased policing.



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**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #1**

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

As discussed more fully below, the Complainant made an allegation of biased policing against the Named Employees.

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 my review of the evidence in this case, including the Named Employees’ reports and statements, the civilian witness statements, and the Department and third party videos, I find no indication that the officers engaged in biased policing. They took action to seize the improvised weapon from the Complainant based on their perception of a possible threat, not based on the Complainant’s race.

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

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***

As indicated above, the Complainant reported to a Department supervisor that he was subjected to biased policing. Moreover, NE#1’s BWV captured a comment made to NE#1 by the Complainant that indicated a bias complaint. Specifically, the Complainant stated something along the lines of “this isn’t 1960’s America” and “you can’t treat a black man this way.” NE#1 did not perceive this to be a bias complaint, but more that the Complainant was angry, upset and was lashing out. NE#1 further noted that the Complainant was yelling virtually continuously during their interaction and, himself, made a number of racial slurs. Moreover, NE#1’s BWV captured the subject telling NE#1 at one point, “you can’t treat no black person like that.” NE#1 responded, “this has nothing to do with race.”

I construe the Complainant’s statements to raise allegations of bias. While NE#1 did not construe the statements as such, and while I do not find that NE#1 engaged in any bias, these statements should have been reported to a supervisor. I note that when asked whether he did report the statements to a supervisor, NE#1 stated that he did not recall. After reviewing his BWV, it did not appear that he did. While the Complainant ultimately repeated the allegation of bias to NE#1’s supervisor and it was explored and ultimately referred to OPA, NE#1 had the independent obligation to also report it.

That being said, given the chaotic nature of the incident, the difficult circumstances that NE#1 was placed in, and the Complainant’s continuous yelling and aggressive behavior throughout the incident, I conclude that a training referral, rather than a sustained finding, is the appropriate result here.



- **Training Referral:** NE#1 should receive counseling from his chain of command concerning his obligation to report complaints of bias, even if NE#1 did not engage in any bias, to a supervisor. While NE#1 should be commended for his overall handling of this incident, his chain of command should discuss with him the Department's expectations that all allegation of bias be reported and documented. This counseling should be memorialized in a PAS entry.

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

**Named Employee #1 - Allegation #3**

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

The Complainant alleged that he was subjected to excessive force by the Named Employees. Specifically, the Complainant reported to a Department supervisor that officers grabbed and twisted his hand causing him to suffer injury.

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.*)

In this case, I find that only NE#1 used force on the Complainant when he pulled the improvised weapon out of the Complainant's hand. As indicated above, at the moment that the weapon was released, the Complainant made an exclamation of pain. I conclude that this force was reasonable, necessary and proportional. First, it was reasonable to use force to remove a possible weapon from the hand of an agitated individual. This was the case even though the Complainant was a double amputee and was lying on the ground. Even in that position, he still represented a threat to the officers who were investigating an assault and believed that the Complainant could have possibly been the primary aggressor. Second, the force was necessary given that there was no reasonably effective alternative to removing the weapon from the Complainant's hand. The officers had already tried to convince him to drop it without success and, as discussed more fully below, I find that further attempts to de-escalate this matter prior to using force would not have been safe or feasible. Third, and last, I find that the force was proportional to the threat facing the officers. Only the level of force needed to remove the improvised weapon from the Complainant's hand was used.

For these reasons, I find that the force applied by NE#1 in this instance was consistent with policy. Accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper.

Lastly, while not necessarily germane to my finding concerning the force, I note that these officers responded to a very difficult situation and dealt with an angry and agitated individual. I believe that in their interaction with the Complainant, both officers conducted themselves consistent with the expectations of the Department and the community. They were calm, respectful and treated the subject with dignity. They tried to explain the actions they took, helped him back into his wheelchair, and did everything they could to minimize harm to the Complainant. OPA



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is required, by law and under its manual, to investigate allegations of bias and excessive force. However, this should not be construed to infer that OPA believes that these officers did anything wrong during this incident. Indeed, after reviewing the evidence in this case, I find the opposite and firmly believe that both of the Named Employees conducted themselves commendably.

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

**Named Employee #1 - Allegation #4**

***8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force***

“De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.” (SPD Policy 8.100-POL-1.)

The policy further instructs that: “When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.” (*Id.*) Officers are also required, “when time and circumstances permit,” to “consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors” such as “mental impairment...drug interaction...[and/or] behavioral crisis.” (*Id.*)

Under the circumstances of this case, I agree with NE#1 that further de-escalation would not have been safe or feasible and that it was a law enforcement priority for him to remove the improvised weapon from the Complainant’s hand. Moreover, I note that, prior to doing so, both Named Employees tried to calmly and respectfully reason with the Complainant and asked him to drop the improvised weapon, but he refused to do so. As such, I find that NE#1 decision to take the weapon, without engaging in further de-escalation, was consistent with policy.

While de-escalation is inarguably a crucial component of the Department’s obligations under the Consent Decree, it is not purposed to act as a bar to enforcing the law when necessary. Based on the above, NE#1 took appropriate action here. Moreover, that the subject was a double amputee does not change this outcome. As such, 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)**



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**Named Employee #2 - Allegation #2**

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

While NE#2 was aware that the Complainant made an allegation of biased policing after the fact, he did not recall the Complainant making any such statements in his presence prior to his supervisor's arrival on the scene.

At his OPA interview, NE#2 was shown NE#1's BWV; specifically, the moment that the Complainant raised the issue of his race. NE#2 stated that he did not recall being present for that conversation and did not see himself on the BWV.

Given that there is no indication that NE#2 heard the complaint of bias, I recommend that this allegation be Not Sustained – Unfounded as against him.

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

**Named Employee #2 - Allegation #3**

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

From my review of his statements and the video evidence, I find that NE#2 did not use force in this instance. As such, I recommend that this allegation be Not Sustained – Unfounded as against him.

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

**Named Employee #2 - Allegations #4**

***8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force***

I find that NE#1 was the primary officer dealing with the Complainant and that NE#1 made the decision to seize the improvised weapon from him. As such, I do not believe that this allegation applies to NE#2's conduct. However, even if I found that it did, for the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained – Lawful and Proper as against him.

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