



## CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 2, 2019

CASE NUMBER: 2018OPA-0758

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 3	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Inconclusive)
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	Not Sustained (Lawful and Proper)

**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	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 3	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Inconclusive)
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	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:**

On August 27, 2017 at approximately 3:51 p.m., the Named Employees were dispatched to a 911 call concerning a disturbance involving a male and female at a bus stop near Stewart Street and Yale Avenue. After the Named Employees arrived, they detained and subsequently arrested the Complainant. Per the Complainant, the Named Employees should not have detained or arrested him because he was only a witness to the incident. The Complainant also alleged that the Named Employees used excessive force on him during this incident. It was lastly alleged that the Named Employees failed to report the Complainant’s allegation of bias policing to their supervisor as required by SPD policy.

**SUMMARY OF INVESTIGATION:**



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OPA interviewed the Complainant. The Complainant told OPA that he was seated on the ground near a bus stop when the Named Employees arrived and started harassing him. The Complainant stated that the Named Employees told him that there was a warrant for his arrest because the Complainant threatened to shoot someone. The Complainant also stated that the Named Employees told him that someone in the neighborhood called the police on him because he threatened someone at the bus stop. The Complainant told OPA that he never threatened anyone and that what goes on between himself and a family member was none of their business. In terms of the Complainant's allegation of excessive force, the Complainant stated the Named Employees immediately snatched his umbrella away and then slammed him to the ground and brutally assaulted him. The Complainant stated that their assault included elbowing and punching him in the face, which resulted in the Complainant having bruises and cuts all over his face. The Complainant further stated that he believed that the Named Employees immediately viewed him as a threat and overreacted because of his race.

OPA also reviewed an audio recorded statement that was made by the Complainant to a Sergeant following the Complainant's August 27 arrest. The Complainant made unclear and difficult to follow statements to the Sergeant about how his mother tried to kill his wife and child. The Complainant also told the Sergeant that he believed that his mother probably called the police on him. The Complainant told the Sergeant that the Named Employees tackled him and took his umbrella away from him. The Complainant did not make any allegations regarding the Named Employees' reasons for detaining or arresting him, the use of excessive force on him, or biased policing towards him. The Complainant also never mentioned anything about the Named Employees saying that they had a warrant for his arrest.

OPA reviewed the 911 calls. The initial 911 call was a reported disturbance at a bus stop near Stewart Street and Yale Avenue. Subsequent 911 callers provided a detailed description of the involved male and female, information that the male was acting aggressively, that he was carrying a broken end of an umbrella, and that the male threatened to kill the female.

Neither the Named Employees nor any of the other responding officers were equipped with Body Worn Video. This incident took place in August of 2017, which was prior to SPD's full deployment of those devices. However, In-Car Video (ICV) associated with this incident existed and OPA reviewed them. Most of this incident was not captured on video, but the audio of much of what was said was recorded on ICV. The Named Employees could be heard making their initial contact with the Complainant, which included their verbal attempts to separate him from the female, who was later identified as his mother.

The Complainant was heard refusing their request and demanding to know why they wanted to separate him from her. Before they had time to answer, the Complainant was heard saying that he wants "to walk with [his] mom because she's the fucking one who killed my baby's mother and my wife, fucking, and killed my, wife and my kid.... but, she's trying to set me up." Shortly thereafter, NE#1 was heard attempting to negotiate with the Complainant about putting down an umbrella that he was holding in his hand. NE#1 was also heard explaining his concern that the umbrella could be used as a weapon. Shortly thereafter, NE#1 and NE#2 could be seen on the video physically struggling with the Complainant. NE#1 and NE#2 were also heard ordering the Complainant to drop the umbrella and to stop resisting. Early on in this incident, the Complainant was heard asking the following question, "Why, because I'm dark skinned?" OPA was unable to determine what that question was in response to, but based on when it was made, it may have been related to when NE#1 tried to get the Complainant to put down the umbrella.



OPA reviewed SPD photos of the incident. The Named Employees and the Complainant sustained minor scratches on their legs, arms, and hands. There was no evidence of any injuries to the Complainant's face, in fact, in one of the photos, the Complainant was seen smiling for the photographer. The umbrella is best described as a long, jagged-edged metal stick.

OPA reviewed the SPD reports associated with this incident. The General Offense Report included details about the disturbance that led to NE#1's and NE#2's involvement and their encounter with the Complainant. NE#1 and NE#2 wrote that they used a team takedown to gain control of the Complainant and that this force was in response to the actions of the Complainant and the threat posed by the broken umbrella, which the Complainant refused to drop. SPD supervisors determined that the Named Employees' use of force was necessary, reasonable, and proportional. They also noted the comment that the Complainant was heard making on ICV audio during the incident about potential bias. They wrote that they did not detect any bias in their review of the Named Employees' actions. They also noted that the Complainant never raised that issue when he was interviewed by a Sergeant following his arrest.

OPA interviewed NE#1 and NE#2. NE#1 recalled that the Complainant refused to separate away from the female victim and to drop his umbrella. NE#1 noted that the broken umbrella presented a potential threat, especially in light of the 911 calls and the Complainant's response to the Named Employees' presence. NE#1 stated that when he and his partner determined that they had to physically restrain and detain the Complainant to get the umbrella away from him, NE#1 immediately grabbed the umbrella shaft and never let go of it during the struggle. NE#1 recalled the Complainant immediately resisting by pulling away and jerking his arms back and forth. NE#1 stated that they established probable cause to arrest the Complainant for domestic violence felony harassment after they finished their investigation, which was completed after they had the Complainant detained in handcuffs for safety. NE#2 reported similar information during his interview.

NE#1 and NE#2 told OPA that they never heard the brief comment that the Complainant made about the color of his skin until OPA played the audio of it during his interview. In explaining why, NE#1 stated he imagined that it was because he was focused on the actions of the Complainant and trying to secure the umbrella. NE#2 imagined that it was because of the surrounding noise and activity taking place with the Complainant. NE#1 and NE#2 denied all of the allegations made against them in this case.

OPA interviewed witness officers and none of them reported seeing the Named Employees using excessive force against the Complainant. Further, none of those witness officers ever heard the Complainant make any allegations of bias policing.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - 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.*)



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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.*) If, as the Complainant alleged, the Named Employees used excessive force when they detained and took him into custody, it would have constituted a violation of this policy.

The Named Employees responded to the scene of a disturbance between a male and female. After arriving on scene and being called over to the area where the Complainant and a female were standing, the Named Employees asked the Complainant to separate from the female, and he immediately became combative. Additionally, the Complainant was holding a broken umbrella in his hand, which he refused to drop even after the NE#1 explained that he was concerned about it being used as a weapon. In response to the Complainant’s refusal to separate from the female and to drop the umbrella, the Named Employees used a controlled takedown, body force, and control holds to remove broken umbrella from the Complainant’s hand and secure him in handcuffs so that they could safely investigate the incident. The Complainant sustained minor scratches on his knee and right hand. Moreover, the photographs of the Complainant taken after the incident establish that there were no injuries to his face, contrary to his claim in his OPA interview. OPA also found no evidence to support the Complainant’s claim that the Named Employees slammed him to the ground and brutally assaulted him. Instead, OPA finds that the Named Employees’ use of force was reasonable, necessary, and proportional and, thus, consistent with policy.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

**Named Employee #1 - Allegation #2**

***6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest***

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy.

The evidence reviewed by OPA clearly demonstrates that the Named Employees developed probable cause to arrest the Complainant for domestic violence harassment of his mother, who was the involved female in this matter. They obtained statements from the Complainant’s mother and other witnesses that established that the Complainant threatened his mother’s life and was armed with an improvised weapon while doing so.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

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

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



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SPD Policy 5.140-POL-5 requires employees to call a supervisor in response to allegations of biased policing. This includes providing sufficient information to the supervisor to allow a determination as to what occurred and what the nature of the bias allegation is. (SPD Policy 5.140-POL-5.)

The Complainant was recorded on ICV audio asking the question, “Why, because I’m dark skinned?” The Complainant’s statement was made shortly after the Named Employees were heard approaching him and asking that he separate from the female. From OPA’s review of the video, it appeared that this question was being asked by the Complainant of the Named Employees; however, neither responded. The Named Employees were asked about this statement during their OPA interviews and both reported that they did not hear it prior to listening to the ICV of the incident. Both of the Named Employees explained that the statement was brief and made during a period where their attention was focused on the Complainant’s actions, his refusal to separate from the female victim, and the fact that he was refusing to put down the broken umbrella he was holding. They also brought up the surrounding noises and the volume of those noises, as well as the overall activity that they were monitoring.

Based on OPA’s review of the evidence, including the ICV, it is not implausible that NE#1 and NE#2 did not hear the Complainant’s statement concerning biased policing. There was a significant amount of other activity going on at that same time. Moreover, when the statement was made, neither NE#1 nor NE#2 responded or seemed to hear what was said.

As OPA’s investigation and evaluation of the evidence cannot prove or disprove whether the officers heard and failed to report the claim of excessive force, I recommend that this allegation be Not Sustained – Inconclusive.

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

#### **Named Employee #1 - Allegations #4**

##### ***6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful***

SPD Policy 6.220-POL-1 governs Terry stops and stands for the proposition that Terry stops are seizures of an individual and, as such, must be based on reasonable suspicion in order to be lawful. SPD Policy defines a Terry stop as: “A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion in order to investigate possible criminal activity.” (SPD Policy 6.220-POL-2(b).) SPD Policy further defines reasonable suspicion as: “Specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging or is about to engage in criminal conduct.” (*Id.*) Whether a Terry stop is reasonable is determined by looking at “the totality of the circumstances, the officer’s training and experience, and what the officer knew before the stop.” (*Id.*) While “[i]nformation learned during the stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, it “cannot provide the justification for the original stop.” (*Id.*)

The Named Employees responded to multiple 911 calls of a reported disturbance involving a male and female. When they arrived, the victim of the disturbance waved them over. The Complainant, who was standing next to the victim, matched the description provided to the Named Employees prior to when they arrived on scene. The dispatched call had also been updated prior to their arrival with a report that the male threatened to kill the female. These facts clearly established sufficient reasonable suspicion to detain the Complainant.



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For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

**Named Employee #2 - Allegations #1**

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

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

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

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

***6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest***

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**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 – Inconclusive.

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

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

***6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful***

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)**