



## ***CLOSED CASE SUMMARY***

ISSUED DATE: JANUARY 27, 2020

CASE NUMBER: 2019OPA-0614

### **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 (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            | 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) |

***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. He also alleged that the Named Employees improperly arrested him due to his race.

### **ADMINISTRATIVE NOTE:**

This case was designated as an Expedited Investigation. This means that OPA, with the review and approval of the Office of Inspector General for Public Safety, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employees. As such, the Named Employees were not interviewed as part of this case.

### **ANALYSIS AND CONCLUSIONS:**

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

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

An employee of a gas station called 911 to report that an individual – the Complainant in this case – was threatening her with physical harm. She stated that the Complainant was still on the premises and was refusing to leave.

Officers, including the Named Employees, responded to the gas station. Their actions during this incident were recorded in their entirety on Body Worn Video (BWV).

The BWV indicated that, upon arrival, the officers spoke with the gas station employee. She told the officers that the Complainant had been harassing a customer and, when she tried to intervene, the Complainant threatened to harm her. She also confirmed that the Complainant was trespassing. As they had probable cause to arrest the Complainant at that time, the officers approached him and took him into custody. During his handcuffing, the Complainant complained of pain. However, based on a review of the BWV, there is no evidence that the officers used anything other than de minimis force to effectuate the handcuffing. The officers informed the Complainant why he was being arrested. They then walked him to a patrol vehicle and sat him down in the backseat. The Complainant initially refused to put his feet inside of the patrol vehicle and was uncooperative; however, the officers were ultimately able to put him completely inside of the rear and closed the door.

The Complainant later alleged to OPA that he had been subjected to excessive force by the Named Employees. He also claimed that he was arrested because of his race and, as such, that the Named Employees engaged in biased policing. 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.*)

Based on OPA’s review of the BWV, the Named Employees had abundant probable cause to arrest the Complainant. He was identified as the perpetrator by the gas station employee who provided a credible account of the Complainant’s criminal conduct. Given this, there is no basis to conclude that the Named Employees engaged in biased policing. Indeed, the evidence is clear that the Complainant’s arrest was due to his illegal behavior, not his race or membership in any protected class.

As such, OPA recommends that this allegation be Not Sustained – Unfounded as against all of the Named Employees.

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

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

##### ***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.*) 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 BWV for this incident clearly established that the officers used only de minimis force to handcuff the Complainant and to place him into the patrol vehicle, at times against his resistance. No officer struck him or used force that was in any way improper.

To the contrary, the force used by the Named Employees was reasonable to take the Complainant into custody. It was also necessary to secure his person and to seat him inside of the patrol car. Lastly, the force was proportional to the risk to the officers and others posed by the Complainant – particularly given his earlier threats to harm the gas station employee and his harassment of the customer – and was only that level of force needed to effectuate the officers’ lawful purpose.

Given that the force used by the officers was consistent with policy, OPA recommends 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 #1), OPA recommends 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), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #3 - 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), OPA recommends that this allegation be Not Sustained – Unfounded.

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

**Named Employee #3 - 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), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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