



## CLOSED CASE SUMMARY

ISSUED DATE:     OCTOBER 3, 2018

CASE NUMBER:    2018OPA-0310

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)
# 2	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	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)
# 2	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	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)
# 2	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Lawful and Proper)
# 3	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

**Named Employee #4**

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)
# 2	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Lawful and Proper)
# 3	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

**Named Employee #5**

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:	Sustained
<b>Discipline Imposed: Oral Reprimand</b>		
# 2	8.400 - Use of Force Reporting and Investigation 8.400-TSK-6 Use of Force –RESPONSIBILITIES OF THE SERGEANT DURING A TYPE II INVESTIGATION	Not Sustained (Training Referral)



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***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 all of the Named Employees except Named Employee #5 used excessive force on him and engaged in biased policing during his arrest. It was further alleged that Named Employee #3 and Named Employee #4 may have failed to report a complaint of pain. Lastly, it was alleged that Named Employee #5 may have failed to properly classify an allegation of force and did not ensure that it was investigated and documented.

**ADMINISTRATIVE NOTE:**

This case was designated as a partial Expedited Investigation. The claims of force and bias were expedited, while the claims of failure to report and failure to classify and investigate the force were subject to a full investigation. With regard to the expedited claims, this means that OPA, with the OPA Auditor's review and approval, 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 regarding the allegations of force and bias.

**ANALYSIS AND CONCLUSIONS:**

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

***8.200 - Using Force 2. Use of Force: When Prohibited***

The Complainant alleged that he was subjected to excessive force by all of the Named Employees except for Named Employee #5 (NE#5). Specifically, the Complaint told Named Employee #5 (NE#5), who was the supervisor on that date, that officers had punched him in the face and in the shoulder.

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.*)

Officers, including the Named Employees, responded to a call concerning a bar patron who was fighting with security and yelling. When the officers arrived, the bar patron – who was later identified as the Complainant – was being held down by security guards. The security guards relayed that the Complainant had been belligerent and assaultive.

The officers observed that the Complainant was heavily intoxicated. He was also belligerent towards them and, at one point, told the officers to arrest him. The Complainant was arrested for assault. He was placed in the rear of a patrol vehicle and was seat belted prior to his transport from the scene.



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Based on OPA’s review of the Department video, there is no evidence that any officer used force on the Complainant other than that needed to handcuff him and take him into custody. Specifically, the Complainant’s assertion that he was punched in the shoulder and face appears to be meritless. As such, any claim that the Named Employees used excessive force is unsupported by the record.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against all of the Named Employees.

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

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

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

The Complainant alleged that the officers engaged in biased policing towards him. In support of this claim, he stated that one of the officers called him a “beaner,” which is a pejorative term.

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.*)

As part of its investigation, OPA reviewed the Department video that fully captured this incident. From that review, OPA determined that none of the Named Employees used the term “beaner” at any time, nor, for that matter, did any of the Named Employees make any statements that suggested bias.

The evidence in this case establishes that the Complainant was arrested based on his conduct and on the statements from the victims that he had engaged in assaultive behavior. This, not his race or membership in any protected class, was the reason for his arrest.

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

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

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

***8.200 - Using Force 2. Use of Force: When Prohibited***

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**

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



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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 #3 - Allegations #1**

***8.200 - Using Force 2. Use of Force: When Prohibited***

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**

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

Named Employee #3 (NE#3) and Named Employee #4 (NE#4) transported the Complainant from the scene. When he was in the rear of the patrol vehicle, the Complainant complained of pain. This complaint was not related to any application of force by NE#3 and NE#4, nor was it related to his handcuffs. Instead, the Complainant asserted that he was in pain due to his seatbelt. NE#4 told the Complainant that he was likely in discomfort because he had “slipped out of the” seatbelt. NE#4 adjusted the seatbelt and the Complainant did not make any further complaints of pain.

Both NE#3 and NE#4 spoke with their supervisor after these complaints of pain were made; however, neither reported the Complainant’s statements. While NE#3 heard the complaints, he stated that it did not occur to him that this was something that needed to be reported to a supervisor. NE#3 recounted that, at this time, the Complainant had been tangled up in his seatbelt and no force had been used on him. NE#3 expressed confusion with the policy and whether he was, in fact, required to report. He used the example of applying a tourniquet to an injured person and having that person complain of pain and asked whether he was required to report that. NE#4 told OPA that he did not report the complaints because they were not related to or caused by a use of force. He stated that he did not view the buckling of the Complainant’s seatbelt as a use of force. NE#4 stated, however, that, knowing what he knows now, he would have reported the Complainant’s statements to a supervisor.

SPD Policy 8.400-POL-1 requires that officers report all uses of force except de minimis force. The policy further defines a complaint of pain as Type I force that must be reported to a supervisor and documented in a use of force report.

I agree with the officers’ interpretation of this policy. The policy concerns force and classifies a complaint of pain relating to that force as rising to the level of Type I. The applying of a seatbelt does not constitute force and, as such, even if the Complainant complained of pain from being tangled up in the seatbelt, I do not believe that this complaint needed to be reported. I find the hypothetical proposed by NE#3 to be compelling. Indeed, it would be an absurd result for a person to complain of pain from CPR or the application of a tourniquet and then require force reporting and a force investigation to occur.



The above being said, I think best practice would have been to notify a supervisor of the complaint and to document it in the General Offense Report. However, I do not find that the failure to do so was contrary to policy. For the above reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

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

***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 #2), I recommend that this allegation be Not Sustained – Unfounded.

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

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

***8.200 - Using Force 2. Use of Force: When Prohibited***

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 #4 - Allegation #2**

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

For the same reasons as stated above (see Named Employee #3, Named Employee #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #4 - Allegation #3**

***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 #2), I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #5 – Allegation #1**

***8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:***



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SPD Policy 8.400-POL-1(3) provides that, upon responding to a use of force, the Sergeant reviews the incident and classifies the force by type.

It was reported to NE#5 that the Complainant alleged that he had been punched in the face and shoulder. NE#5 conducted a preliminary investigation into this force, which included speaking with the Named Employees, unsuccessfully trying to interview the Complainant, and reviewing Body Worn Video. After reviewing that video, he stated that he saw no evidence that the Named Employees used any force consistent with that alleged by the Complainant. Ultimately, he did not classify the force and ensure that it was investigated. Instead, he made an OPA referral.

OPA has consistently found that making an OPA referral does not obviate a sergeant from also ensuring that alleged force is documented and reported. Even if NE#5 believed that the force did not occur, the allegation of force was sufficient to trigger the requirement to report. As such, NE#5 ensured that some form of reporting was completed by the officers who were alleged to have used force.

This result is not only in line with OPA's past findings on this same issue, which were approved by the Chief of Police, but also ensures that uses of force are always reported, even if the force does not appear on video or is denied by the officers. For these reasons, and to ensure consistency of the application of policy, as well as transparency into and accountability over officer uses of force, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #5 – Allegation #2**

***8.400 - Use of Force Reporting and Investigation 8.400-TSK-6 Use of Force –RESPONSIBILITIES OF THE SERGEANT DURING A TYPE II INVESTIGATION***

SPD Policy 8.400-TSK-6 sets forth the responsibilities of the sergeant during a Type II investigation. There are 22 separate tasks set forth in this policy.

As discussed above, the Complainant alleged force that, if true, rose to the level of Type II. While NE#5 engaged in some of the investigatory steps set forth in this policy, he failed to actually conduct a full Type II investigation and to direct any officers to generate either a use of force or witness report. This failure is already addressed herein (see Named Employee #5, Allegation #1) and, as such, I find it unnecessary to also sustain this allegation. Instead, I recommend the below Training Referral.

- **Training Referral:** NE#5 should receive additional training concerning the requirements of SPD Policies 8.400-POL-3 and 8.400-TSK-1. NE#5's chain of command should counsel him that, given the Complainant's allegations, NE#5 should have conducted a use of force investigation and that this requirement existed independent of the obligation to make an OPA referral. This retraining and associated counseling should be documented and this documentation should be memorialized in an appropriate database.

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



**Named Employee #6 – Allegation #1**

***8.200 - Using Force 2. Use of Force: When Prohibited***

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 #6 – Allegation #2**

***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 #2), I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #7 – Allegation #1**

***8.200 - Using Force 2. Use of Force: When Prohibited***

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 #7 – Allegation #2**

***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 #2), I recommend that this allegation be Not Sustained – Unfounded.

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