



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 9, 2017

CASE NUMBER: 2017OPA-0521

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	Sustained
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Inconclusive)
# 4	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Inconclusive)
# 5	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	Sustained
Discipline Imposed: 2 Day Suspension and Disciplinary Transfer Held in Abeyance		

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 6. Employees Engaged in Department-Related Activities Identify Themselves When Requested	Not Sustained (Lawful and Proper)
# 2	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Sustained
# 3	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Sustained
Discipline Imposed: Oral Reprimand		

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:

OPA received two complaints concerning Named Employee #1 (NE#1) and Named Employee #2 (NE#2) that were routed through Blue Team by SPD supervisors. The allegations concerning NE#1 were that he engaged in biased policing while transporting the subject to the precinct and that he may have unnecessarily escalated the interaction with the subject causing the need to use force. In addition, NE#1 was alleged to have failed to notify a supervisor that the subject made an allegation that NE#1 had engaged in biased policing.

With regard to NE#2, he was alleged to have failed to report complaints of biased policing and excessive force. Further, OPA discovered during its intake process that NE#2 may have failed to provide identification information when requested by the subject.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

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.)

The subject alleged that NE#1 engaged in biased policing and, specifically, that NE#1 used several racially derogatory terms towards him. As a starting point, it is clear that the subject’s arrest was based on abundant probable cause. There is no evidence that the arrest was, instead, effectuated based on the subject’s race. Moreover, virtually the entirety of the interaction between NE#1 and the subject was captured on In-Car Video (ICV). None of the biased statements alleged to have been said by NE#1 appear on that video.

For these reasons, 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

During his transport from the place of his arrest to the precinct, the subject asked NE#1 whether he was being arrested because he was Black. The subject further accused NE#1 of being racist and a bigot (I note that the subject, himself, used racial slurs against NE#1).

SPD Policy 5.140-POL-5 requires that “[i]f a person alleges bias-based policing, the employee shall call a supervisor to the scene to review the circumstances and determine an appropriate course of action. The policy further states that: “For the purposes of this policy, 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 discernible personal characteristics...” (SPD Policy 5.140-POL-5.)

While NE#1 reported the force he applied to a sergeant, he failed to inform anyone of the statements made by the subject concerning bias. NE#1 stated that he did not hear the subject say that he was being arrested because he was Black, but did hear the subject call him a racist and a bigot. NE#1 contended that he did not construe the latter statements as alleging biased policing. I disagree. I find that these statements were clear and explicit, and ones that any reasonable officer would have interpreted as alleging bias.

As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**



Named Employee #1 - Allegation #3

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.*)

As discussed below, NE#1 failed to de-escalate the situation prior to using force. Accordingly, the question here is whether the initial failure to de-escalate causes any force later used to be inconsistent with policy. On one hand, it could be argued that had NE#1 de-escalated, the likelihood of force being required would have been less. Thus, any force ultimately used due to the failure to de-escalate could be deemed per se unnecessary and, thus, inconsistent with policy. On the other hand, it could be argued that, even though there was a failure to de-escalate, the force ultimately used should be evaluated standing alone and on its own merits. This is particularly the case where, as here, it cannot conclusively be determined that force would not have been used *but for* the failure to de-escalate. I tend to agree with this latter approach and apply that approach to my evaluation of the force used by NE#1.

Ultimately, I find that it is inclusive whether the force was reasonable, necessary and proportional. Based on NE#1’s account, when he took the subject out of the patrol vehicle, the subject appeared prepared to assault NE#1 but did not do so. When the subject was standing outside of the patrol vehicle, he spun to face NE#1 and appeared to be getting ready to spit on NE#1. NE#1 reported that he pushed the subject towards the doorway near the entrance into the precinct. He placed the subject into a corner with his right shoulder pinned against the wall. NE#1 used his left hand and arm to keep the subject’s head pointed away from his direction and to prevent the subject from spitting on him. With his right hand, NE#1 stated that he was able to open the door to the precinct. The subject then spit a large amount of phlegm on the ground. NE#1 then released the subject from the wall and then pushed the subject’s head down so that the subject’s body was leaned over. NE#1 indicated that he then moved the subject into the holding cell.

When interviewed by a sergeant at the precinct, and again when interviewed by OPA, the subject said that NE#1 shoved and banged his head against the wall. The subject further stated that, when NE#1 did so, NE#1 also stepped on the subject’s ankle, injuring him. The subject said that he felt dizzy as a result of his head hitting the wall. He was transported to Harborview Medical Center where he received x-rays. Notably, in the arrest screening, the sergeant did not notice any observable injuries on the subject’s person. No injuries are readily identifiable on the holding cell video, and the subject does not appear to be acting in a manner to suggest that he was dizzy or otherwise disoriented.

If the force occurred as described by NE#1, it was likely within policy. If, however, NE#1 slammed the subject’s head into a wall, it was not. Ultimately, the video does not capture the entirety of their physical confrontation and, as such, I cannot conclusively determine whether the force used was within or outside of policy.

For these reasons, I recommend that this allegation be Not Sustained – Inconclusive.



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

Named Employee #1 - Allegation #4

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

In addition to the general rules governing the use of force, SPD Policy 8.200(2) specifically prohibits the use of force on subjects in handcuffs “except in exceptional circumstances when the subject’s actions must be immediately stopped to prevent injury...”

As described above, I cannot conclusively determine whether the force used by NE#1 violated this section of the policy. Even though the subject was handcuffed, the force described by NE#1 would have likely been reasonable to effectuate the lawful purpose of preventing the subject from spitting on NE#1. It further would have been necessary and proportional. However, if NE#1 slammed the subject’s head against the wall, the result would be different.

Given this conclusion, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #5

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

SPD Policy 8.100(1) states that “when safe under the totality of the circumstances and when time and circumstances permit, officers shall use de-escalation tactics in order to reduce the need for force.” De-escalation techniques include, but are not limited to: “avoidance of physical confrontation, unless immediately necessary”; “using verbal techniques, such as Listen and Explain with Equity and Dignity (LEED) Training, to calm an agitated subject and promote rational decision making”; and “calling extra resources to assist or officers to assist.” (SPD Policy 8.100(1).)

Here, NE#1 failed to de-escalate the situation. While transporting the subject to the precinct, NE#1 engaged in an on-going verbal dispute with the subject. This dispute is described fully in the Case Summary for this investigation. As a result of this back-and-forth argument, which involved NE#1 and the subject talking over each other with elevated voices, the subject became more and more agitated. NE#1 did not use any verbal techniques to try to de-escalate the situation. Indeed, he did the opposite. For example, when NE#1 and the subject arrived at the precinct and NE#1 went to take him out of the car, NE#1 stated: “are you going to assault me, are you going to assault me, get out...” It is unclear why NE#1 found it necessary to engage with the subject in such a manner. The result of this was to take an already heightened situation and make it even more so. Moreover, through his failure to de-escalate the situation, NE#1 increased rather than avoided the likelihood that force would be needed. Lastly, given the escalation of the situation, NE#1 should have called for extra officers or resources upon arrival at the precinct. He could have kept the subject sitting in the car while he did so, which would have perhaps allowed the subject time to calm down. However, NE#1 did not do so and instead became involved in a physical confrontation with the subject.



The purpose of de-escalation is to help minimize the likelihood that force will be needed. Here, NE#1 had more than enough time to de-escalate this situation and it was safe and feasible to do so under the circumstances. NE#1's failure to do so violated SPD policy.

In making this determination I note that the entirety of NE#1's chain of command found that he failed to de-escalate and disapproved his force. I agree and I commend the chain of command for engaging in a thorough, objective and critical review of the use of force in this case.

For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

5.001 - Standards and Duties 6. Employees Engaged in Department-Related Activities Identify Themselves When Requested

SPD Policy 5.001-POL-6 requires SPD employees engaged in Department-related activities to identify themselves, including disclosing their names and serial numbers, when requested. The policy permits officers to provide an individual with a Department business card "to satisfy the request for information." (SPD Policy 5.001-POL-6.) The policy does not require officers to state what precinct they are assigned to. (*See id.*) The policy further requires that sworn officers display their badges upon request. (*Id.*)

Here, the subject asked NE#2 for both his and NE#1's names. NE#2 did not provide the requested information and stated to the subject that he could not respond to him at that point. Instead, NE#2 wrote his and NE#1's names on a Department business card and left that card with the subject's property at the time that the subject was booked into the King County Jail. There is no evidence in the record that contradicts NE#2's account.

It is unclear why NE#2 did not simply just tell the subject what his and NE#1's names were, and it seems that this would have been the simplest and most transparent course of action. That being said, it was consistent with policy for NE#2 to provide the names on a business card in order to satisfy the request for information. For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #2

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

It cannot be disputed that NE#2 had an obligation to notify a supervisor of the allegation of biased policing made by the subject. In explaining why he did not do so, NE#2 stated that he had previously spoken to NE#1 who had indicated that he and the subject had "a problem." NE#2 thought that NE#1 had screened this issue with a supervisor. As such, NE#2 believed that any allegation of bias had already been reported to a sergeant. It is clear from NE#2's OPA interview that he did not actually know what, if anything, NE#1 discussed with a supervisor. Accordingly, NE#2's assertion that the matter had already been addressed was pure conjecture.



Even if this were the case, after the subject made the allegation of biased policing, NE#2 should have followed up with NE#1 to ensure that NE#1 had properly reported the allegation. If, at that time, NE#2 was told that the matter had been explicitly addressed, he would have potentially been excused from reporting the allegations to a supervisor. Here, however, NE#2 did not take such steps. As such, he was required to report the allegation of biased policing and his failure to do so was contrary to policy.

As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #3

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

SPD Policy 5.002-POL-6 requires that when an employee becomes aware of an allegation of minor misconduct he must report that misconduct to a supervisor. Under that same policy, when an employee becomes aware of serious misconduct he must report that misconduct to both a supervisor and OPA. (See SPD Policy 5.002-POL-6.) SPD policy defines the use of excessive force and biased policing as serious misconduct.

Here, not only did the subject allege biased policing, he also told NE#2 that he was subjected to excessive force. If true, these allegations constituted serious misconduct. However, NE#2 did not report these allegations to a supervisor and OPA as he was required to do. As explained above, NE#2's contention that he thought NE#1 had already addressed these allegations with a supervisor does not excuse his failure to report. NE#2 should have taken affirmative steps to determine that this was the case, but he did not do so.

As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**