



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 25, 2018

CASE NUMBER: 2017OPA-0997

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Unfounded)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Inconclusive)
# 3	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	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)
# 5	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 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 (Inconclusive)
# 3	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Unfounded)
# 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:

The Complainant alleged that he was falsely arrested for assault by the Named Employees when Named Employee #1 was the actual aggressor. The Complainant also alleged that the Named Employees lied about the incident and that Named Employee #1 was biased. Lastly, it was alleged that there may not have been reasonable suspicion supporting the stop of the Complainant.

ADMINISTRATIVE NOTE:

Named Employee #2 is presently assigned to OPA as a Sergeant. In order to ensure that there was no conflict of interest or the appearance of favoritism or impartiality in OPA’s investigation, Named Employee #2 was walled off from OPA’s work on this matter. In addition, OPA’s analysis, deliberations, and these recommended findings were not



shared with him. Moreover, given that Named Employee #2 is within my chain of command at OPA, I have forwarded my recommended findings to the Chief of Police to determine whether she, as the head of the Department, concurs with my decisions concerning this matter.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication

SPD Policy 5.001-POL-10 requires that employee be truthful and complete in all communications.

The Complainant alleged that both Named Employees were materially inaccurate in their documentation of this incident and that this inaccuracy constituted dishonesty. The Complainant specifically alleged that the Named Employees' account of the incident – particularly, both Named Employees' contention that the Complainant swung his arm at Named Employee #1 (NE#1) and Named Employee #2's (NE#2) reporting that the Complainant "charged" at a Sergeant – were deliberately false. If, as the Complainant alleged, the Named Employees were deliberately dishonest, this would constitute a serious violation of policy.

When interviewed by OPA, the Named Employees contended that they reported the events of this incident accurately and denied engaging in dishonesty. OPA interviewed three witnesses who were at the scene on the night in question. Two of the three stated that they saw the Complainant on the ground, but that they did not see what preceded this. The third saw more than the other two, but ultimately could not confirm or deny whether the Complainant charged at the Sergeant or attempted to strike NE#1.

In support of his claim that the Named Employees were dishonest, the Complainant pointed to a two-minute cell phone video recorded by a witness. Much of his interaction with NE#1 occurred out of view of the camera and that portion that was recorded happened quickly (less than five seconds). From my review of the video, I cannot determine whether the Complainant charged at the Sergeant as NE#2 described; however, based on the Named Employees' statements, this likely occurred prior to the recording beginning. With regard to the time that force was used to take the Complainant to the ground, there was a moment where the subject's arm appeared to swing up in the vicinity of NE#1 and the Complainant then moved with speed towards the street. Almost immediately thereafter, he was taken down to the ground by NE#1. While I cannot conclusively say that this was an attempted strike, I also cannot foreclose the possibility that it was or that the officers perceived it to be so in the heat of the moment.

Either way, this video and the rest of the evidence in the record do not meet the high standard required to prove that the Named Employees were intentionally and materially inaccurate. There is simply insufficient evidence to prove dishonesty against the Named Employees, which is one of the most serious allegations that can be made against an officer. As such, I recommend that this allegation be Not Sustained – Unfounded as against both 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.” (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.*) These three factors and my conclusions as to each are outlined below.

The Named Employees claimed that the Complainant swung at NE#1, charged towards him, and that NE#1 then took him down to the ground in a controlled takedown. After that point, the officers used de minimis force to place the Complainant into handcuffs.

The Complainant, to the contrary, alleged that he was subjected to police brutality. He specifically stated that NE#1 held him against a fence with his fist against the Complainant’s throat impeding his breathing and that NE#1 took him to the ground. He told OPA that he did not swing at NE#1 as both of the Named Employees reported.

OPA interviewed three witnesses, but only one claimed to have seen what occurred prior to the takedown. That witness, who admitted being intoxicated during the incident, said that he did not recall the Complainant “assaulting an officer” or hitting an officer. When asked if he saw the Complainant do anything that appeared like he was attempting to hit the officer, the witness initially answered “I don’t know that. I could not answer that,” but then said that when the Complainant was “pinned down” he would have been unable to hit the officer. OPA then inquired whether the witness saw the Complainant do anything prior to being pinned and he said that he did not.

While the video appears to show movement from the Complainant’s arm that could be consistent with a swing, I do not conclusively know this to be what occurred. Moreover, while the Complainant appeared to move quickly from the officers when he was taken down to the ground, I cannot say definitively that he was charging at NE#1. In addition, there is no video of the moment when NE#1 was holding the Complainant against the fence. As such, there is no evidence that can prove or disprove whether NE#1 held his fist against the Complainant’s throat and impeded his breathing, particularly as NE#1 denied doing so. I note that, throughout his interaction with the officers, the Complainant continually spoke at a high volume without any indication that his breathing was being impeded. I further note that a witness interviewed by OPA stated that, while he observed the Complainant pinned against a wall, he did not believe that the Complainant’s breathing was impeded.

If, as the Complainant, alleged, he did not swing or charge at NE#1 or present any physical threat towards him, the force he described NE#1 using could potentially have been outside of policy. On the other hand, if the incident occurred as NE#1 described, NE#1’s force would have been reasonable, necessary, and proportional, and, thus, consistent with policy. Given the disputes of fact in this case and the lack of any definitive evidence, I cannot make a conclusive determination as to what occurred. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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



Named Employee #1 - Allegation #3

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 that a suspect committed a crime in order to effect an arrest.

Here, the Complainant was arrested for the assault that he was alleged to have committed on NE#1. As discussed more fully herein, even though I view the video as depicting the Complainant's arm raising up in the vicinity of NE#1, I cannot definitively conclude that the Complainant attempted to assault NE#1. As such, I cannot find that there was probable cause supporting the Complainant's arrest. Similarly, I also cannot and do not find that the officers falsely arrested the Complainant, as he contends.

It may very well have been the case that the officers interpreted the Complainant's actions as attempting to assault NE#1, but the Complainant did not intend to act in a manner that caused them to believe that. Either way, I cannot reach a definitive determination concerning this allegation. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #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 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."

As discussed by the OPA Auditor in his review of this case, this allegation should have been classified against the Sergeant rather than the Named Employees. This is due to the fact that the Sergeant, at his OPA interview, stated that he personally made the decision to detain the subject based on his belief that the Complainant could have been one of the individuals involved in an assault at the bar. NE#2 wrote in his General Offense Report that the Complainant had been identified by security at the bar as possibility being one of the assailants. The Sergeant similarly reported to OPA that the Complainant and other individuals were walking away from the scene when they were pointed out by bar security. In addition, officers were also told by Seattle Fire Department personnel that when they were treating an individual, the Complainant interfered with them.



In his review, the OPA Auditor stated that the ICV reflected that the Complainant and other individuals were detained before officers had the opportunity to talk to any witnesses and before anyone identified them as possibly being involved in the assault at the bar. However, the ICV was only for one vehicle that responded. Prior to that vehicle arriving at the scene (and as is clear from the ICV), other officers were already there. As such, I find it likely that the identification that occurred happened at some point before the ICV started recording. Moreover, a number of officers walked the Complainant and other individuals back to the bar, and I presume that those officers were previously at the scene.

I believe that, based on the identification of the Complainant as a possible assailant, there was sufficient reasonable suspicion to detain him to further investigate. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #5

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.*)

Even if the Complainant is correct that NE#1 subjected him to excessive force and that he was unlawfully stopped and arrested, there is no evidence that this occurred because of bias. Moreover, there is no evidence supporting the Complainant’s contention that NE#1 arrested the Complainant due to his race, but did not arrest other similarly situated individuals. For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #1

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

The only force used by NE#2 was holding the Complainant’s legs down after he was taken down to the ground and while he was being handcuffed.

Regardless of whether NE#1’s force was permissible, I find that NE#2’s force was de minimis and was consistent with policy. As such, 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 #3), I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #2 - Allegation #3

5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication

For the same reasons as indicated 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 #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 indicated 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)**