



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 29, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0253

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	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Sustained
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Sustained
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Allegation Removed
# 5	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Sustained
# 6	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report	Sustained

Imposed Discipline

Suspension Without Pay – 9 days

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:

It is alleged that the Named Employee engaged in biased policing when he stopped the Subject’s car. It was further alleged that the Named Employee failed to de-escalate and used excessive force. It also alleged that the detention of the Subject exceeded a reasonable scope and that the Named Employee functionally arrested the Subject in the absence of probable cause. Lastly, it was alleged that the Named Employee’s reports concerning this incident were deficient.

ADMINISTRATIVE NOTE:

OPA initially recommended that both Allegation #4, which concerns the extension of the Terry stop in this case beyond a reasonable scope, and Allegation #5, which concerns the lack of probable cause for the stop, be Sustained. After discussions with the chain of command and after further consideration, OPA determines that the conduct at issue in both of these allegations is the same.



In the first amended DCM, OPA determined that the Sustained finding in Allegation #5 was duplicative and amended its DCM to remove Allegation #5 but maintained the Sustained finding in Allegation #4. This was in error. OPA now finds, in agreement with the chain of command, that the proper allegation to Sustain is Allegation #5. Allegation #4 is now removed.

SUMMARY OF INVESTIGATION:

The Department's Force Investigation Team (FIT) was notified of a use of force that caused an injury to a person. As part of its initial review of the incident, FIT reviewed Body Worn Video (BWV) recorded by the involved officer, Named Employee #1 (NE#1). While the nature of the injury was not significant enough to warrant a FIT response, FIT's review of the video indicated that NE#1 may have engaged in potential misconduct towards the injured person – referred to here as the "Subject." Specifically, FIT contended that NE#1 may not have engaged in de-escalation prior to using force, may have arrested the Subject without probable cause, and may have been unprofessional towards the Subject. FIT also noted that NE#1 failed to timely activate his BWV. FIT made an OPA referral and this investigation ensued.

OPA also reviewed the BWV and the In-Car Video (ICV) from NE#1's patrol vehicle. NE#1's ICV showed the initial stop. The Subject's car drove in front of NE#1's parked patrol vehicle. Another car passed prior to NE#1 pulling out after the Subject. The Subject pulled over to the side of the road and NE#1 parked behind him. The ICV indicated that the Subject stepped out of his car and stood by the front driver's side door. NE#1 told him to stay in his car. The Subject stood stationary. NE#1 repeated that the Subject needed to get back in the car, raising his voice. NE#1 got out of his patrol vehicle and began walking towards the Subject. The Subject asked why he needed to get back into the car and NE#1 said that it was because he told the subject to do so. NE#1 approached the Subject, who had half turned and gestured towards his car, and said: "okay, turn around." He said "turn around" again and the Subject replied: "For what, I'm not doing anything..." At that moment, NE#1 grabbed the Subject's arm, turned him around, and pushed him up against the car. This caused the Subject's face to strike the top of the car and he exclaimed in pain. The Subject stated: "What the fuck are you doing?" NE#1 told him to stop and handcuffed him. The Subject asked whether NE#1 was "serious right now," and NE#1 remarked that the Subject should have "listened."

NE#1 walked the handcuffed Subject over to the front of his patrol vehicle and told the Subject to "have a seat" on his front bumper. The Subject replied that he could stand and said that he was not doing anything and was already handcuffed. NE#1 said that he was not "worried about it." NE#1 stated: "When I'm doing a traffic stop and I tell you to get back in your car, get back in your car." The Subject again said that he was not doing anything and remarked that he did not have a gun. NE#1 said to him: "This can go a bunch of ways." The Subject replied that he was not "doing anything wrong." NE#1 stated: "Let me know when you're done." The Subject asked: "Done with what?" The Subject asked why he was pulled over and NE#1 stated: "What do you think?" The Subject said that he did not know, and NE#1 referenced the Subject "revving" his motor when he drove by. The Subject stated that he did not do so and had a "two and a quarter inch exhaust." The Subject remarked: "That's fucking racist." NE#1 denied that it was racist. The Subject began positioning his cell phone that was in his hand and NE#1 took it from him. The Subject grew upset at this, said that he was entitled to record NE#1's actions, and told NE#1 to get his hands off of him.

At this point, NE#1's supervisor had arrived on scene and was watching the interaction. The supervisor stepped in and told NE#1 to go write the ticket. The supervisor asked the Subject why the Subject felt the stop was racist. NE#1 stood by them during this discussion. The Subject angrily asked why he was handcuffed. He looked at NE#1 and said: "Racist piece of shit. What the fuck is your problem?" When the supervisor asked again why the Subject felt the stop



was racist, the Subject said: “He had no right to slam my fucking head on my car. No goddamn right.” The Subject again asked what he did wrong.

The supervisor gestured towards the Subject’s pocket and asked for his identification. The Subject said that he was not going to give them his driver’s license because he did not do anything wrong. The supervisor responded: “Let’s go ahead and take him to the precinct.” Once NE#1 and the supervisor took hold of the Subject’s arms, he said that he would give them his identification. NE#1 told him: “You’re under arrest, man.” The supervisor said: “Hey, this is nothing. You’re talking yourself into jail. Is that what you want to do, on this beautiful day?” He told the Subject to calm down. The supervisor and NE#1 told the Subject to sit on the patrol vehicle’s front bumper and he did so. NE#1 then read the Subject his Miranda warnings. NE#1 then walked back to his patrol vehicle to complete the citation.

After NE#1 returned to his patrol vehicle, the Subject was released from handcuffs by the supervisor. NE#1 ultimately cited the Subject for having a loud exhaust and for not having proof of insurance. NE#1 documented this incident in a Field Contact Report. NE#1 described the Subject as quickly swinging his car door open and getting out “at a very fast speed.” NE#1 stated that the Subject then began to “escalate his aggressive behavior” and obstructed NE#1’s investigation, warranting NE#1 handcuffing him. NE#1 wrote that he physically turned the Subject towards the car because the Subject did not comply with NE#1’s command to turn around and put his hands behind his back. NE#1 documented that he took the Subject’s phone for safety reasons because he observed that the Subject: “started to dig through his pockets and removed his phone.” NE#1 referenced the citations issued to the Subject but did not indicate whether the Subject was arrested and, if so, for what crimes.

NE#1 also completed a use of force report. In justifying his need to use force during this incident and the level of force he applied, NE#1 wrote that the Subject “took an aggressive stance” and “stood in a confrontational manner.” NE#1 posited that this suggested pre-fight indicators. NE#1’s use of force, as well as the supervisor’s review, were analyzed by the Southwest Precinct chain of command. The force was not found to be reasonable, necessary, or proportional. In addition, significant deficiencies were identified with the supervisor’s force investigation at the scene. The issues concerning the supervisor are being investigated under 2020OPA-0678 and are not discussed further here.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

During his detention, the Subject asserted that he was subjected to biased 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.*)

While OPA perceives numerous problems with this incident and recommends multiple Sustained findings against NE#1, there is no evidence suggesting that NE#1’s conduct and approach to the Subject was based on the Subject’s race.



Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

“De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.” (SPD Policy 8.100-POL)

The policy further instructs that: “When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.” (SPD Policy 8.100-POL-1) Officers are also required, “when time and circumstances permit,” to “consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors” such as “mental impairment...drug interaction...[and/or] behavioral crisis.” (*Id.*) These mental and behavioral factors should be balanced by the officer against the facts of the incident “when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.” (*Id.*)

The policy gives several examples of de-escalation, which include: mitigating the immediacy of the threat to give officers time to use extra resources and to call more officers or specialty units; and increasing the number of officers on scene to thus increase the ability to use less force. (*Id.*)

(*Id.*) De-escalation is inarguably a crucial component of the Department’s obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. Where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department’s policy and expectations.

OPA finds that NE#1 failed to comply with the Department’s de-escalation policy. Indeed, NE#1 concludes that NE#1 engaged in no de-escalation at all during this incident. At the inception of the stop, NE#1’s sole comments to the Subject were telling him to get back into the car using a raised voice. NE#1 failed to consider whether it was possible that the Subject did not know whether or why he was being pulled over, rather than immediately concluding that the Subject posed a threat. NE#1 went from giving brief orders with no explanation to rapidly turning the Subject around – causing the Subject’s head to hit the car – and handcuffing him. Again, it does not appear that NE#1 took any steps to diffuse the situation prior to doing so.

In his defense, NE#1 referenced his belief that the Subject presented a threat under the circumstances given his body positioning. Based on a review of the video, this is simply not a reasonable inference from the Subject’s conduct. The video clearly established that he was not “aggressively” posturing, engaging in “pre-fight indicators,” or otherwise preparing for an imminent physical confrontation.

OPA’s analysis yields the inexorable conclusion that NE#1, not the Subject, was the aggressive party during this incident and that NE#1’s demeanor and actions served to unduly escalate the situation. This ultimately resulted in



what OPA – and NE#1’s chain of command – determined to be an out of policy use of force and an injury to the Subject.

In reaching this finding, OPA notes that this is not the first occasion that NE#1 has failed to de-escalate prior to using force. He has been disciplined once before for this exact same conduct, as well as been retrained on the policies in this area based on his actions in another case. However, this prior discipline and retraining does not seem to have made an impact given what occurred here. This is a problem.

For the reasons stated above, OPA recommends 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.*)

In evaluating whether NE#1’s force during this incident was consistent with policy, OPA finds the chain of command review of the force to be compelling. In that review, NE#1’s Captain, citing the Operations Lieutenant’s review, concluded that the weight of the evidence suggested that the force was not reasonable, necessary, or proportional. With regard to the lack of reasonableness, the Captain cited to multiple factors, including: the lack of seriousness of the underlying offense – a loud muffler; and the lack of resistance or threat posed by the Subject as established by video and contrary to NE#1’s claims otherwise. With regard to necessity, the Captain explained that there were multiple other reasonable alternatives available to NE#1 rather than pushing the Subject up against the vehicle in the manner he did. This included moving the Subject to another location or utilizing the supervisor as a backing officer. Lastly, with regard to proportionality, the Captain opined that the force used was not proportional to the speculative threat posed by the Subject.

OPA believes that the chain of command’s analysis is well-reasoned and supported by the evidence, and OPA adopts it in its entirety. OPA completely agrees that NE#1’s force was not reasonable, necessary, or proportional under the circumstances and, as such, that it violated SPD policy.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**



Named Employee #1 - Allegation #4

6.220 - Voluntary Contacts, Terry Stops & Detentions 2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope

SPD Policy 6.220-POL-3 requires that officers limit a seizure to a reasonable scope. The policy further states that: “Actions that would indicate to a reasonable person that they are being arrested or indefinitely detained may convert a Terry stop into an arrest requiring probable cause or an arrest warrant.” (SPD Policy 6.220-POL-3.)

Based on its review of the video evidence, OPA concludes that NE#1’s actions during the detention of the Subject exceeded a reasonable scope and resulted in a functional arrest being effectuated. In reaching this finding, OPA believes the following to be relevant: (1) NE#1 handcuffing of the Subject; (2) NE#1 leading the Subject away from his vehicle and eventually seating him on the front bumper of the patrol vehicle; (3) both NE#1 and the supervisor telling the Subject that he was under arrest; (4) NE#1 reading the Subject Miranda warnings after informing him of the arrest; and (5) the supervisor’s later documentation that the Subject was, in fact, arrested.

NE#1 further asserted that he had probable cause to arrest the Subject for obstruction. OPA disagrees. Most notably, OPA finds that there was an insufficient evidentiary basis to establish that the Subject either “intentionally and physically interfere[d] with” NE#1 or “intentionally refuse[d] to cease an activity that create[d] a risk to any person.” With regard to the first prong, at the time he was handcuffed, all the Subject had done was not gotten back into his car and asked why he had been stopped. This very well could have been due to the Subject not initially realizing that he was the focus of a traffic stop. Had NE#1 engaged in any dialogue with the Subject prior to going hands-on and the Subject, at that point, impeded the investigation, then obstruction might have been appropriate. However, that was not the case here. With regard to the second prong, while NE#1 asserted otherwise, there is simply no evidence supporting the belief that, at the time of the functional arrest, the Subject presented any significant threat to NE#1 or anyone else.

Ultimately, OPA finds that, while steps taken by NE#1 and the supervisor yielded all the hallmarks of an arrest, there was not probable cause at the time. As such, NE#1 both exceeded the scope of an appropriate Terry stop and also effectuated an improper arrest, albeit temporal in nature.

For these reasons, Allegation #4 and Allegation #5 relate to the exact same conduct and are duplicative. Because OPA finds that NE#1 ultimately arrested the Subject without probable cause—despite NE#1’s asserted belief that he had probable cause for obstruction—OPA finds that Allegation #5 (“6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest”) should be Sustained. This allegation is removed.

Recommended Finding: **Allegation Removed**



Named Employee #1 - Allegation #5

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

As discussed above, OPA concludes that NE#1 violated SPD Policy 6.220-POL-2 when he significantly exceeded the scope of a permissible Terry stop by functionally arresting the Subject. OPA further finds that NE#1 did not have probable cause when he effectuated this functional arrest.

OPA stated the following in its first amended DCM: "However, as NE#1's conduct is fully captured by Allegation #4 and given that the predominant concern in this case is the Terry stop effectuated by NE#1, OPA recommends that this allegation be removed." This was in error.

For the reasons set forth above in the Administrative Note and Allegation #4, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #6

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report

SPD Policy 15.180-POL-5 requires that officers document all primary investigations on a report. The policy further mandates that such reports be "complete, thorough, and accurate."

Based on OPA's review of NE#1's report, he failed to comply with this policy. Specifically, his report was incomplete, not thorough, and inaccurate.

First, OPA concludes that NE#1 functionally arrested the Subject. However, he provided no information about that arrest – including his telling the Subject that he was under arrest and his reading of Miranda warnings to the Subject after doing so.

Second, the BWV and ICV did not support NE#1's description of the Subject getting out of his car "very fast" or engaging in escalating aggressive behavior. Indeed, the video clearly shows the opposite.

Third, the BWV established that the Subject had his phone in his hand for the entirety of the stop and that he was not rooting through his pockets as NE#1 indicted.

Fourth and as NE#1's chain of command also found, NE#1 description of the Subject using an aggressive stance, standing in a confrontational manner, or engaging in pre-fight indications are all contradicted by the video.

Perhaps one of these standing alone would not constitute a violation of policy; however, when taken together, they yield NE#1's reporting during this incident deficient. Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**