



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 7, 2018

CASE NUMBER: 2018OPA-0069

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 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)
# 4	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Inconclusive)

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	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)
# 4	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Inconclusive)

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	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Inconclusive)
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 4	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)

Named Employee #4

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:	Not Sustained (Lawful and Proper)
# 2	8.200 - Using Force 8. Consistent With the Timelines in Section 8.400, Officers and Supervisors Shall Ensure That the Incident	Not Sustained (Lawful and Proper)



	Is Accurately and Properly Reported, Documented, and Investigated	
# 3	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	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 beaten by the Named Employees and that they violated his constitutional rights. It was further alleged that the Named Employees failed to report allegations of biased policing, as well as that Named Employee #4 failed to properly and timely cause force to be investigated.

STATEMENT OF FACTS:

Officers, including Named Employee #1 (NE#1), Named Employee #2 (NE#2), and Named Employee #3 (NE#3) responded to the Complainant’s residence. They had been dispatched to a potential domestic violence situation. The victim, who is the Complainant’s daughter, stated that she had been in an argument with her father when he grabbed her upper shirt area. She told the Complainant not to touch her and indicated that she was going to call the police. He then twisted the victim’s thumb and grabbed her arm. The Complainant also tried to take the victim’s phone away from her.

The officers made contact with the Complainant. He appeared to be intoxicated. When asked about the victim’s allegations, the Complainant stated that he had been disciplining her. The officers asked the Complainant to step outside of his house but he initially refused. The officers then made the decision to place the Complainant under arrest. The officers asked the Complainant, who was seated at the time, to stand up. He refused. NE#1 and NE#2 reported that they effectuated a soft takedown of the Complainant, wherein they grabbed his arms and eased him down to the ground. They denied that this force caused or appeared to cause any injury. The officers confirmed that the Complainant had a lump on the side of his head. This injury was diagnosed as old by medics. The Complainant yelled and struggled against the officers; however, NE#3 was able to handcuff him without using anything other than de minimis force.

The Complainant was then transported to the South Precinct. At that time, he made the following statements that were captured by the ICV for both NE#1 and NE#2: “White motherfuckers, officers are intoxicated by bigotry, you ain’t shit, you are a White motherfucking White man.” The Complainant later stated while he was being transported to the precinct by NE#1: “You don’t know much do ya, but taking Black motherfuckers to jail, huh? All it takes is for someone to say a Black man did something for them to send some fucking White men.” Neither NE#1 nor any of the other Named Employees reported these statements to a supervisor.

The Complainant complained of pain from tight handcuffs. Named Employee #4 (NE#4) stated that he checked the handcuffs in response to that complaint. A Type I force report was completed by NE#3 based on the complaint of pain.



No reports were generated for the force used to take the Complainant down to the ground and to handcuff him. Moreover, no force report was generated concerning the injury suffered by the Complainant.

The Complainant electronically submitted this claim to OPA. He alleged that he was beaten by multiple SPD officers and that his constitutional rights were violated. This investigation followed.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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.*)

Based on my review of the record, force appears to have been used twice by the Named Employees. First, it appears that NE#1 and NE#2 used force to perform a soft takedown on the Complainant to move him to the ground when he refused to stand up from his chair. Second, NE#3 used force to handcuff the Complainant after his arrest. There is absolutely no evidence supporting the Complainant’s allegation that he was beaten by police.

With regard to the first application of force, the officers had probable cause to arrest the Complainant. When he refused to stand up to allow the officers to take him into custody, the officers were permitted to use force to get him under control and to handcuff him. The force used to take him to the ground in a soft takedown was reasonable under the circumstances. Moreover, given the Complainant’s physical and verbal resistance, the force was necessary and I do not believe that the officers felt that they had any reasonable alternatives to that force. Lastly, I find that the force was proportional to ensure that the Complainant could be taken into custody. While the Complainant had an injury to his head, there is no evidence suggesting that this injury was caused by this takedown. Indeed, the officers denied that this was the case. Moreover, the medics who treated the Complainant characterized the injury as old. As such, I conclude that this force was consistent with policy.

I similarly find that the handcuffing of the Complainant was also reasonable, necessary, and proportional for the same reasons as stated above. Moreover, that the Complainant later complained of pain from the handcuffs is unfortunate but does not make this force unnecessary or contrary to policy. I note that NE#4 checked the handcuffs in response to the Complainant’s complaint of pain and ensured that they were not too tight.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#1, NE#2, and NE#3.

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



Named Employee #1 - Allegation #2

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

SPD Policy 8.400-POL-1 requires that officers document all uses of force except for de minimis force. Here, NE#1, NE#2, and NE#3 all stated that they solely used de minimis force on the Complainant. As such, they did not complete use of force reports concerning the soft takedown or handcuffing (NE#3 did complete a Type I report concerning the complaint of pain from handcuffs). While the Complainant had an injury to his head, none of the Named Employees believed that this injury was caused by their force. Moreover, as discussed above, the injury was characterized as old by the medics who examined the Complainant.

For these reasons, I find that the Named Employees acted consistent with policy when they did not document the soft takedown and the handcuffing in use of force reports.

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

Named Employee #1 - Allegation #3

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

This allegation was classified due to some of the statements made by the Complainant at the time of his arrest. Those statements, which are detailed above, do not explicitly allege that his arrest was the result of biased policing; however, they suggest that the officers came into contact with him because they are White and he is African-American. Notably, in the written complaint that the Complainant submitted to OPA, he did not make a bias allegation.

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 Named Employees all denied engaging in biased policing. Based on my review of the record, I find no evidence indicating that the officers’ response to the scene, the arrest of the Complainant, and his detention were the result of biased policing. Instead, I find that the officers responded to a domestic violence call and, once they determined that that the Complainant was the primary aggressor, they were required to arrest him and did so. Notably, the officers’ interaction with the Complainant was largely captured by Department video. There is no indication of any bias from OPA’s review of that video.

As such, I recommend that this allegation be Not Sustained – Unfounded as against NE#1, NE#2, and NE#3.

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



Named Employee #1 - Allegation #4

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

SPD Policy 5.140-POL-5 requires Department employees to call a supervisor in response to allegations of biased policing.

As discussed above, the Complainant made several statements that arguably suggested that he was alleging biased policing. All of the Named Employees denied hearing such statements. They further told OPA that, had they heard the statements, they would have notified a supervisor.

The most significant of the statements were made while the Complainant was being transported to the precinct by NE#1. NE#1 denied hearing them and, from OPA's review of the video, he did not respond to anything that the Complainant stated while in the patrol vehicle. This certainly suggests that, as NE#1 indicated, he did not hear what was said.

While close, I think the statements made by the Complainant rose to the level of allegations of biased policing. Ultimately, I cannot determine whether the Named Employees heard these statements. Had they heard them, they would have been required to notify a supervisor. If not, they cannot be penalized for what they did not know about. For these reasons, I recommend that this allegation be Not Sustained – Inconclusive as against NE#1, NE#2, and NE#3.

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

Named Employee #2 - Allegation #1

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

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - 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 #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - 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 #3), I recommend that this allegation be Not Sustained – Unfounded.



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

Named Employee #2 - Allegation #4

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

For the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #3 - Allegation #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 #3), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - Allegation #2

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

For the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #3 - Allegation #3

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

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #4

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 #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #4 - Allegation #1

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

SPD Policy 8.400-POL-3 requires that a Sergeant must review a force incident, classify the force by type, and cause it to be investigated.

A review of Department video indicated that none of the Named Employees told NE#4 that they used reportable force on the Complainant. Moreover, the Complainant, himself, did not make an allegation of excessive force to NE#4.

NE#4 told OPA that he noticed the injury to the Complainant's head while the Complainant was in the holding cell. He asked the Complainant about the injury, but the Complainant refused to answer his questions. He further learned that the medics had diagnosed the injury as old, which suggested that it had been incurred before the Complainant's interaction with the Named Employees.

NE#4 indicated that he was an Acting Sergeant on the date in question and did not have substantial experience with investigating force. As such, NE#2 stated that he sought advice from another Sergeant who told NE#4 to speak with the Complainant's daughter and the daughter's friend. NE#4 did so, but they were unaware of the injury.

In summary, NE#4 did not order any of the officers to complete force reporting concerning this injury because of the following: the officers denied using any force that could have caused the injury; the Complainant did not allege excessive force or that he had been injured by the officers; and the injury was diagnosed as old. While I think best practice would have been to document the injury in some fashion even if NE#4 did not believe that it was caused by the officers, I do not believe that his failure to do so violated policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #4 - Allegation #2

8.200 - Using Force 8. Consistent With the Timelines in Section 8.400, Officers and Supervisors Shall Ensure That the Incident Is Accurately and Properly Reported, Documented, and Investigated

For the same reasons as stated above (see Named Employee #4, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #4 - Allegation #3

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

SPD Policy 5.002-POL-5 requires supervisors who become aware of a potential policy violation to investigate or refer the allegations depending on their severity. Minor allegations of misconduct may be investigated by a supervisor,



while allegations of serious misconduct – such as the use of excessive force or biased policing – must be referred to OPA. (SPD Policy 5.002-POL-5.)

Based on OPA's review of the record, including Department video and the Named Employees' OPA interviews, there is no evidence that NE#4 was ever informed, either by the officers or the Complainant, of any allegation of excessive force or biased policing. Moreover, I do not believe that a reasonable officer in NE#4's place would have believed, given the information available to him, that any of the Named Employees had engaged in potential violations of policy. For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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