



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 26, 2019

CASE NUMBER: 2018OPA-0814

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	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

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	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #4

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #5

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #6

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	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 the Named Employees engaged in biased policing and subjected him to excessive force.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

Named Employee #1 (NE#1) concluded his response to a call and began to drive away from the location. At that time, he heard a loud scraping noise coming from the underside of his vehicle. He stopped his vehicle and looked underneath. He saw an industrial rat trap stuck under one of the axles. NE#1 reviewed his rear In-Car Video (ICV) to try to figure out how the rat trap got there. While watching the video, he observed a male holding a large stick walk up to the vehicle. The ICV audio captured loud noises consistent with the vehicle being struck by the stick and further showed the vehicle shake as if from an impact. NE#1 called in the description of that individual, who he believed, at that time, had engaged in property damage. Named Employee #4 (NE#4) reported that he observed an individual matching the description nearby where the incident had occurred. NE#1 drove to that location and both NE#1 and NE#4 made contact with the individual – who was later identified as the Complainant. As soon as the officers approached him, the Complainant acted aggressively towards them. The officers asked him for his identification and the Complainant walked away. The officers followed him and he picked up a large stick and, while brandishing it, told them to “get the fuck away.” NE#1 reported that he believed the Complainant appeared ready to use the stick as a weapon against the officers. NE#1 called for additional units and he and NE#4 continued to follow the Complainant.

The Complainant then started running away. He was chased by NE#1 and NE#4. NE#1 caught up to the Complainant and pulled him down to the ground into a seated position. Both NE#1 and NE#4 then attempted to secure the Complainant’s person and to prevent him from further resisting by applying control holds and their body weight. No strikes were used.

Other officers, including Named Employee #2 (NE#2), Named Employee #3 (NE#3), Named Employee #5 (NE#5), and Named Employee #6 (NE#6), came to the scene. These Named Employees helped load the Complainant into the rear of the patrol vehicle while dealing with his ongoing physical resistance.

During this incident, the Complainant alleged that he was subjected to excessive force and biased policing. A Department supervisor later referred this matter to OPA and this investigation ensued. During its investigation, OPA attempted to interview the Complainant through his attorney; however, the attorney did not make the Complainant available.

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.*)

Based on my review of the record, including the ICV and Body Worn Video (BWV), I find that there was reasonable suspicion to initially detain the Complainant and then probable cause to arrest him. The Complainant’s conduct, not his race, was the reason that law enforcement action was taken against him. There is no evidence establishing that



the Named Employees, instead, engaged in biased policing. 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 #1 - Allegation #2

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

As discussed above, NE#1 used force to grab onto the Complainant and then to pull him down to the ground in a seated position. NE#1 and NE#4 then both used control holds and body weight to hold the Complainant down to the ground and to place him into handcuffs. NE#2, NE#3, NE#5, and NE#6 also used control holds and other de minimis force to place the Complainant into the rear of the patrol vehicle against his physical resistance. No other force was used, including no strikes, punches, or kicks.

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 evidence, I find that the force used by the Named Employees was reasonable, necessary, and proportional, and, thus, consistent with policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper as against all of the Named Employees.

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

Named Employee #2 - Allegations #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 #1), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #2

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

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 #3 - Allegations #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 #1), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - Allegation #2

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

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 - Allegations #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 #1), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #4 - Allegation #2

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

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 #5 – 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 #1), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #5 – Allegation #2

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

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 #6 – 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 #1), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #6 – Allegation #2

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

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)**