



CLOSED CASE SUMMARY

ISSUED DATE: JULY 25, 2019

CASE NUMBER: 2019OPA-0102

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 | 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 | 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 | Not Sustained (Lawful and Proper) |
| # 3 | 5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy | Not Sustained (Unfounded) |
| # 4 | 5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing | Not Sustained (Unfounded) |

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 subjected him to biased policing and excessive force. It was further alleged that Named Employee #2 may have failed to de-escalate prior to using force and purportedly inappropriately grabbed the Complainant’s penis.

ADMINISTRATIVE NOTE:

This case was designated as a partial Expedited Investigation. OPA, with the review and approval of the Office of Inspector General for Public Safety, believed that it could reach and issue recommended findings on the biased policing allegations against both Named Employees based solely on its intake investigation and without interviewing them. The other allegations classified in this case were subject to a full investigation and the Named Employees were interviewed concerning those allegations.

In addition, based on OPA’s intake investigation, a professionalism allegation was added against Named Employee #1. That allegation was handled via a Supervisor Action and is not part of this investigation.



SUMMARY OF INVESTIGATION:

The Named Employees were working patrol when they contacted two individuals, a male and a female. The officers reported that these individuals were in the parking lot of a closed business that was marked with “No Trespassing” signs. The officers further documented that the individuals were crouched next to a vehicle. The officers’ response to the location was recorded on In-Car Video and Body Worn Video. The video did not capture the individuals kneeling by a vehicle; however, it did show that: the individuals’ vehicle was parked in a lot for a closed business; the individuals were in the immediate vicinity of the vehicle; and some of the individuals’ possessions were next to the vehicle.

Named Employee #2 (NE#2) and a backing officer were the initial officers who arrived at the scene. NE#2 spoke with both of the individuals, informed them that they were trespassing, and told them that, by law, he was entitled to identify them. Both individuals provided their personal identifying information. NE#2 went to his patrol vehicle to run that information. While NE#2 was able to identify the female, he could not identify the male, who is the Complainant in this case. At that time, Named Employee #1 (NE#1) arrived on scene. NE#2 briefed him as to what was happening and on his inability to identify the Complainant. NE#1 and NE#2 approached the individuals and told the Complainant that they could not identify him. The officers began to discuss whether there was a mobile fingerprint reader available and, in the alternative, bringing the Complainant to the precinct in order to identify him. The Complainant then bolted from the officers and began to flee across the street. NE#2 immediately began chasing the Complainant. NE#1 quickly got into his patrol vehicle and drove up to where the foot pursuit was occurring. NE#2 was able to take the Complainant down to the ground and NE#1 assisted him in placing the Complainant into custody. The other backing unit stayed with the female.

After he was taken to the ground, the Complainant virtually immediately alleged “police brutality.” He further claimed that the Named Employees were “White racists,” said that they broke his wrist, and alleged that the officers slammed his head into the concrete. He also alleged that NE#2 “grabbed” his penis. Seattle Fire Department personnel was summoned to evaluate the Complainant’s medical condition. The Complainant was determined to have no injuries consistent with what he had alleged. A supervisor also responded to the scene and tried to interview the Complainant concerning his allegations, but the Complainant was non-responsive. As such, the supervisor referred this matter to OPA and this investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Complainant made multiple allegations when he was taken into custody that constituted claims of excessive force.

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.*)

The entirety of the force used by the Named Employees was captured on video. At the time force was used, the Complainant was actively fleeing, including running in loops through a street. This posed a danger to other motorists driving on the street, the Named Employees, and the Complainant himself. Given the Complainant’s conduct and due to the fact that there was probable cause to arrest him, the officers had the legal right to use force to take the Complainant into custody. The force the Named Employees used to do so included taking the Complainant down to the ground and using control holds and body weight to secure his person and to place him into handcuffs. This force was appropriate under the circumstances and was reasonable, necessary, and proportional.

As such, I find that the Named Employees’ force was consistent with policy and I, accordingly, recommend that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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

Named Employee #1 - Allegation #2

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

During his arrest, the Complainant referred to the Named Employees as “White racists.” This was construed as an allegation of 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.*)

Based on OPA’s review of the video, there is no indication that the Named Employees engaged in biased policing during this incident. The Complainant was initially contacted and detained because he was trespassing. He was arrested after he fled from the officers. As such, his conduct, not his race, was the reason for the law enforcement action taken towards him. For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against both Named Employees.

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

Named Employee #2 - Allegations #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

8.100 - 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-1.)

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.” (*Id.*) 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 but are not limited to: 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.*)

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. That being said, 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.

NE#2 did not use force or even threaten force until the Complainant ran. Prior to that time, NE#2 calmly and clearly explained the basis for the stop and detailed what steps he was taking. When the Complainant fled, any further de-escalation was no longer safe or feasible. At that point, the officers were entitled to use force to take him into custody. For the above reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #3

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. If the Complainant’s allegation that NE#2 grabbed his penis was true, it could have constituted a violation of this policy.

Based on OPA’s review of the evidence in this case – most notably, the video that fully captured this incident, there is no indication that NE#2 ever touched the Complainant’s penis, let alone that he inappropriately did so. As such, I find that this claim is frivolous, and I recommend that this allegation be Not Sustained – Unfounded.

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



Named Employee #2 - Allegations #4

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

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