



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 17, 2019

CASE NUMBER: 2018OPA-0833

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 (Unfounded)
# 2	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 Employee engaged in bias policing towards him and that the Named Employee subjected him to excessive force.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the OPA Auditor’s review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employee. As such, the Named Employee was not interviewed as part of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

Named Employee (NE#1) observed the Complainant riding a bicycle without a helmet. NE#1 attempted to stop the Complainant using his patrol vehicle’s emergency equipment; however, the Complainant did not do so and continued to ride away. Once the Complainant’s path became blocked, he got off of his bicycle and walked aggressively towards NE#1. The Complainant, who was clearly agitated at that time, asked what he did and said that NE#1 tried to “kill” him. NE#1 asked the Complainant to take his hands out of the pockets. The Complainant did so but continued to walk away. NE#1 told the Complainant why he had been stopped. The Complainant, who remained upset, spoke over him and continued to walk away. NE#1 moved in front of him and blocked him. Based on a review of the Body Worn Video (BWV), it appeared that NE#1 pushed the Complainant back with his left hand.

The Complainant then stated: “do not touch me, you already tried to kill me.” At that point, the Complainant alleged that NE#1 hit him in his ribs with his hand. NE#1 told him that he was not free to go and went over the radio to ask for more officers and a supervisor. NE#1 continued to follow the Complainant around while waiting for backing units to arrive. The Complainant continued to angrily interact with NE#1.



Other officers then arrived and, together with NE#1, came up with a tactical plan. The supervisor arrived at the scene and spoke to the Complainant. The Complainant told the supervisor that NE#1 poked him in the ribs and alleged that this consisted excessive force. Shortly thereafter, the Complainant was placed under arrest by multiple officers. The Complainant later complained of pain both from the force used by NE#1 and his handcuffs.

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 in the record and the BWV, I find that the NE#1 had reasonable suspicion to initially contact the Complainant for riding his bicycle without a helmet. When the Complainant refused to cooperate with NE#1’s lawful orders, NE#1 then developed probable cause to arrest him. When the Complainant continued to move past NE#1, NE#1 was permitted to use force to prevent the Complainant from doing so. The force NE#1 used was a low level and consisted of him pushing the Complainant back with his hand. I find that this force was reasonable, necessary, and proportional under the circumstances. As such, I conclude that the force was consistent with policy and I do not find that it was excessive.

For the above reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

At one point when NE#1 told the Complainant that he was not free to leave, the Complainant responded: “it’s because I’m black.” This constituted 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 as 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 policy provides guidance as to when an allegation of biased policing occurs, explaining that: “an allegation of bias-based policing occurs whenever, from the perspective of a reasonable officer, a subject complains that he or she has received different treatment from an officer because of any discernible personal characteristic...” (*Id.*)

Based on my review of the record, including the BWV, I find no evidentiary support for the assertion that NE#1 detained, arrested, or used force on the Complainant due to his race. Instead, this law enforcement action appeared to have been properly based on the Complainant’s conduct. As discussed above, the evidence established that there was a legal basis both for the stop and the arrest of the Complainant. As such, I recommend that this allegation be Not Sustained – Unfounded.



Seattle
Office of Police
Accountability

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