



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 31, 2018

CASE NUMBER: 2016OPA-1085

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)

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 had been subjected to excessive force and racially profiled by the Named Employees.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

Officers, including Named Employee #1 (NE#1), arrested the Complainant for outstanding warrants. His arrest was not captured on In-Car Video.

The Complainant alleged that the NE#1 used excessive force during the arrest. Officers, including NE#1, were on patrol and observed the Complainant in a public park. They knew the Complainant from previous contacts and ran his name from their MDT for warrants. They discovered that the Complainant had open warrants for his arrest and the officers contacted him in order to serve the arrest warrants. The Complainant physically resisted arrest by trying to kick the officers and prevent their attempts to take him into custody. As the physical altercation escalated, NE#1, who was a trained and Taser officer, determined that a Taser application was appropriate and necessary to get the Complainant into custody. The Taser was successfully applied and the Complainant was placed into custody. There were no factual discrepancies between the officers’ and NE#1’s statements and the Complainant’s allegation of 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.*)



From my review, the force used by NE#1 was consistent with policy. The Complainant was aggressive and was actively resisting arrest and was trying to assault officers. The officers, including NE#1, were in a confined space with a violent subject and unable to get him into custody.

SPD Policy 8.300(4) states that “Officers shall only deploy CEW when objectively reasonable.” The policy further provides two circumstances under which use of a Taser is appropriate and consistent with policy: (1) “When a subject causes an immediate threat of harm to the officer or others”; or (2) “When public safety interests dictate that a subject needs to be taken into custody and the level of resistance presented by the subject is likely to cause injury to the officer or to the subject if hands-on control tactics are used.”

Here, the Complainant’s continued active physical resistance, which included attempts to kick the officers, would have led a reasonable officer to believe that the Complainant’s actions were likely to cause injury to the officers if they continued to try alternative control tactics. Accordingly, I find that NE#1’s use of a Taser in these circumstances was compliant with SPD policy and was a reasonable application of force.

The force was further necessary to ensure that the Complainant was properly secured and to prevent him from causing physical harm to officers.

Lastly, the force was proportional to the threat facing the officers. Force was only used when the Complainant was actively trying to kick officers and, even then, only the least force necessary was used to secure the subject, to prevent an ongoing assault, and to reduce the threat of further significant injury to both the Complainant and the officers. NE#1 applied the Taser for one standard cycle and stopped utilizing the device when the Complainant was taken into custody.

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

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

Named Employee #1 - Allegation #2

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

The Complainant alleged that NE#1 racially profiled him. The Complainant did not give a statement to OPA during this investigation and, thus, did not provide any information as to why he believed that NE#1 was profiling him.

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 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.*)

Here, NE#1 knew that the Complainant had outstanding warrants for his arrest. As such, when NE#1 contacted the Complainant, he had the lawful authority to place him under arrest. There is no evidence in the record indicated that



NE#1 had any other impermissible motive for the arrest or that his actions were motivated by bias. Accordingly, I recommend that this allegation be Not Sustained – Unfounded.

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