



## CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 29, 2018

CASE NUMBER: 2018OPA-0765

### 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)
# 3	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	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)
# 3	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	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)
# 3	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	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 Complainants alleged that the Named Employees falsely arrested them, engaged in bias policing towards them, and subjected them to excessive force.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #1**

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



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The Named Employees were dispatched to an assault call. It was determined that the Complainants were husband and wife. The husband Complainant had a cut on his neck and some blood on his collar. He was also intoxicated. The husband Complainant stated that his wife struck him (he later tried to recant the statement). In addition, the wife Complainant stated that the husband Complainant caused an injury to her face. Moreover, independent witnesses stated that they saw the husband Complainant punch the wife Complainant in the face. The independent witnesses also stated that they observed the wife Complainant hit the husband Complainant with a tire iron.

The husband Complainant alleged that, because the Named Employees were White, they did not understand Black people. He made further comments referencing his race. The wife Complainant separately alleged that the officers treated her inappropriately due to her status as a woman. These comments were construed to be allegations of biased policing and a supervisor notified. The supervisor subsequently referred this matter to OPA and this investigation ensued.

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 OPA’s review of the evidence, including the Body Worn Video (BWV) of this incident, I find that the Named Employees had reasonable suspicion to contact the Complainants and later developed probable cause to arrest them. The Complainants’ conduct, not their race or gender, was the reason that law enforcement action was taken against them. There is nothing in the record establishing that the Named Employees engaged in bias policing during this incident.

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***

The Complainants alleged that the Named Employees used excessive force against them during their arrest. Specifically, the wife Complainant contended that Named Employee #1 (NE#1) pushed her without any cause to do so. The husband Complainant did not appear to make a specific complaint of excessive force used against him.

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



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reasonable to effect a lawful purpose.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

Based on OPA’s review of the record, including the BWV, the Named Employees used de minimis force to take the Complainants into custody, to handcuff them, and to transport them from the scene. While NE#1 pushed the wife Complainant forward when she was seated in the rear of the patrol vehicle, he did so because she purposefully sat back on his hand and arm, causing him pain. This minimal force, as well as the other force used by the Named Employees, was reasonable, necessary, and proportional under the circumstances.

For these reasons, 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 #1 - Allegation #3**

***6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest***

The Complainants alleged that the Named Employees arrested them without sufficient probable cause to do so.

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy.

As discussed above, both of the Complainants made statements implicating the other in an assault. While the Complainants appeared to attempt to recant those statements, there was still a sufficient source of evidence upon which to base probable cause to arrest. Moreover, even had the statements not been made by the Complainants, independent witnesses also asserted that the Complainants had both engaged in assaultive behavior.

For these reasons, there was sufficient probable cause to arrest the Complainants and, as such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #2 - 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)**



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**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 #2 - Allegation #3**

***6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest***

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**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 #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 #3 - Allegation #3**

***6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest***

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

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