



## CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 10, 2019

CASE NUMBER: 2018OPA-0795

### 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)
# 3	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Unfounded)
# 4	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)

**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	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Unfounded)
# 4	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	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:**

It was alleged that the Named Employees violated multiple Department policies when they detained and later used force on the Complainant.

**SUMMARY OF INVESTIGATION:**

The Named Employees were on bike patrol when they observed the Complainant riding his bicycle without his helmet in violation of the King County Health Code. The Named Employees detained him and requested his identification, which they were permitted to do under law. The Complainant stated that he did not want to talk to them and began to walk away. Named Employee #2 (NE#2) grabbed hold of the Complainant and he moved further away. The Complainant then went down to the ground with NE#2 still holding him. NE#2 brought the Complainant



back to where they were previously standing. Named Employee #1 (NE#1) also put his hand on the Complainant's other arm. At one point, the Complainant appeared to momentarily ball his fist as if he was going to punch NE#1. The officers then collectively took the Complainant down to the ground and placed him into handcuffs.

The Complainant complained of pain after the incident and suffered some minor injuries. As such, the force was investigated as Type II. A supervisor screened the force and the Complainant's arrest. During that conversation, the Complainant made statements that were construed by the supervisor as allegations of excessive force. The supervisor referred this matter to OPA and this investigation ensued.

**ANALYSIS AND CONCLUSIONS:**

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

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

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 OPA's review of the evidence – most notably, the Body Worn Video (BWV), the force used by the Named Employees was consistent with policy. First, the force was reasonable. At the time that they contacted the Complainant, the Named Employees had the right to identify him in order to cite him. When he resisted their attempts to do so, they were permitted to take him into custody by using appropriate force. Moreover, when the Complainant appeared to ball up his fist, a reasonable officer in the Named Employees' place could have believed that he was preparing to strike NE#1. As such, the Named Employees were justified in using force to take him to the ground and handcuff him.

Second, the force was necessary. At the time the force was used, there did not appear to be any reasonable alternative to that force. Moreover, the force was necessary to effectuate the officers' lawful purpose of taking the Complainant into custody and preventing him from physically resisting.

Third and last, the low level of force used was proportional to the threat posed by the Complainant and the need to take him into custody. Once the Complainant was secured and ceased resisting, the officers stopped using force. While it is unfortunate that the Complainant was injured as a result of this incident, that does not yield the force to be out of policy.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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



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**Named Employee #1 - Allegation #2**

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

While the Named Employees were interacting with the Complainant another individual approached them and asked them whether they had anything better to do than to harass the homeless.

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 insufficient evidence to establish that the Named Employees subjected the Complainant to biased policing. Instead, their actions appear to have been motivated by the Complainant’s conduct in riding without a bicycle helmet and then physically resisting the officers. For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against both Named Employees.

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

**Named Employee #1 - Allegation #3**

***5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing***

SPD Policy 5.140-POL-2 instructs that: “For the purpose of this policy, an allegation of biased-based policing occurs whenever, from the perspective of a reasonable officer, a person complains that *they* have received different treatment from an officer because of any discernable personal characteristic...” (emphasis added.)

Fundamental to this definition is the fact that, under SPD policy, a claim of bias policing is only made when the victim of the alleged bias is the individual who complains. Here, a bystander, not the Complainant, made the bias allegation. Based on a review of the video, the Complainant did not ever complain of bias. As such, and under a technical reading of the policy, this was not a claim of bias-based policing that the Named Employees were required to report to a supervisor.

For these reasons, the Named Employees did not violate this policy and I recommend that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#2.

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

**Named Employee #1 - Allegation #4**

***8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, 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.)



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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: 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.*) Other examples of de-escalation include, but are not limited to:

- Placing barriers between an uncooperative subject and officers;
- Containing the threat;
- Decreasing exposure to the potential threat by using distance, cover and concealment;
- Avoidance of physical confrontation unless immediately necessary to protect someone or stop dangerous behavior;
- Using verbal techniques, such as “Listen and Explain with Equity and Dignity” (LEED) to calm an agitated subject and promote rational decision making;
- Calling extra resources, including CIT officers and officers equipped with less-lethal tools; and
- Using “any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject.

(*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.

At the inception of their contact with the Complainant, the Named Employees, and particularly NE#2, tried to convince him to voluntarily comply with their requests. When he did not do so and walked away, it was no longer feasible to use de-escalate and NE#2 was warranted in taking hold of his arm. Moreover, when the Complainant physically resisted the officers, including balling up his fist, further de-escalation was no longer safe or feasible and the Named Employees were warranted in using force.

For these reasons, I find that the Named Employees acted consistent with this policy during this incident. As such, I 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 #2 - Allegation #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**

***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)**

**Named Employee #2 - Allegation #3**

***5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing***

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

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

**Named Employee #2 - Allegation #4**

***8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force***

For the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained – Lawful and Proper.

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