



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 9, 2020

CASE NUMBER: 2019OPA-0850

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	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Lawful and Proper)
# 3	8.200 - Using Force 1. Use of Force: When Authorized	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 Complainant alleged that the Named Employee unlawfully entered her apartment and subjected her to excessive force while inside. She contended that this conduct was based on the Named Employee's bias towards her.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the review and approval of the Office of Inspector General for Public Safety, 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.

SUMMARY OF INVESTIGATION:

Officers, including Named Employee #1 (NE#1), were dispatched to a disturbance call at the Complainant's apartment. It was reported that there was yelling coming from the apartment and that people inside could be injured. The officers arrived at the residence and heard a disturbance, including yelling, coming from inside of the Complainant's apartment. The officers spoke with the 911 caller who confirmed hearing that someone was injured. NE#1 knocked on the door and announced the officers as police. The apartment grew silent, but no one answered the door. Another officer knocked a second time. The Complainant opened the door and the officer spoke to her. The officer asked if she could enter the apartment to make sure everyone was safe, and the Complainant said no. The Complainant kept the door only slightly cracked, which prevented officers from seeing inside. The Complainant denied that anyone was hurt in the apartment and said that she was having a conversation with her sister. The officer told the Complainant that they were responding to a call of a possible assault in the apartment. The officer asked to see the Complainant's sister and the Complainant called out to her.

At that point, NE#1 said to the Complainant: "Ma'am, I'm going to explain it to you once and I'm going to explain it to you very clear, okay. I am coming in because someone reported someone's eye was cut..." The Complainant



spoke over NE#1 and denied that there had been a disturbance. NE#1 pushed the Complainant's door open and the sister was visible. The Complainant blocked the threshold and told the officers that they needed a warrant. NE#1 pushed the door open and entered the apartment. He quickly looked in each room. When he attempted to look into the bathroom, the Complainant was blocking the door. NE#1 placed his right hand on the Complainant's shoulder and moved her away from the door. She told NE#1: "Get your hands off of me." NE#1 looked into the bathroom. Once he had inspected the entirety of the apartment, NE#1 said "we're good" and walked out. The Complainant closed the door. The officers had no further contact with the Complainant.

The Complainant later filed an OPA complaint. She alleged that NE#1 unlawfully entered her apartment and subjected her to excessive force while inside. She contended that this conduct was based on NE#1's bias towards her. This investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based 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 Body Worn Video, there is no indication that any of NE#1's actions were influenced by bias. To the contrary, NE#1's actions were warranted under the circumstances. Here, NE#1 responded to a call concerning an ongoing disturbance in the Complainant's apartment with a possible injured person, he heard continuous yelling coming from inside, and then the Complainant would not completely open the door and refused to allow officers to enter to verify that everyone was safe. As such, NE#1 reasonably believed that he needed to gain access to the apartment to examine it to ensure that there was no one harmed therein, and his conduct was based on these facts, not the Complainant's race or membership in any protected class.

For the above reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement

SPD Policy 6.180-POL-2 concerns searches and seizures, including entries into residences. It specifically references the various exceptions to the search warrant requirement. One such exception is where there are exigent circumstances. (SPD Policy 6.180-POL-2(b).) With regard to this exception, the policy states the following: "Police may conduct an immediate, warrantless search or seizure under emergency conditions, if there is probable cause to believe that delay in getting a warrant would result in the loss of evidence, escape of the suspect, or harm to police or public." (*Id.*) The policy specifically references exigent circumstances in suspected domestic violence cases and instructs: "Exigent circumstances also exist if the police are responding to a domestic violence call. Entry may be made if a person's health, welfare, or safety is concerned." (*Id.*)



OPA finds that, even though NE#1 did not have a warrant, he was permitted to enter the apartment based on exigent circumstances. Notably, NE#1 reasonably believed that an occupant of the apartment could be injured given the information provided by the 911 caller and the yelling coming from inside. Moreover, NE#1 also believed that the individuals involved in the disturbance were in a domestic relationship. As indicated above, SPD policy specifically permits entries in these exact types of situations.

Accordingly, NE#1 acted lawfully and consistent with policy during this incident and OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #3

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.*)

As OPA finds that NE#1 was lawfully permitted to enter the apartment, OPA similarly finds that he was permitted to search each room to ensure that there was no one injured, including the bathroom. When the Complainant stood in front of the bathroom blocking NE#1’s entry, he was allowed, under law and policy, to use force to move her out of the way. Here, the force he used was extremely minor and consisted of simply placing his hand on her shoulder and moving her out of the way. No other force was used. Under the circumstances, this force was reasonable, necessary, and proportional, and, thus, was consistent with policy.

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

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