



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 8, 2019

CASE NUMBER: 2018OPA-0946

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)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	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 (Unfounded)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	Not Sustained (Lawful and Proper)

Named Employee #3

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)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	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 Employees improperly detained him and took law enforcement action towards him based on his sexual orientation. The Complainant further alleged that he was physically assaulted and “gay bashed” by the Named Employees.



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 Employees. As such, the Named Employees were not interviewed as part of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Named Employees responded to a 911 call in which the caller stated that an individual was spray painting on the caller's building. The caller further stated that the individual, who was later identified as the Complainant, was swearing at the caller. The Named Employees received a description of the Complainant and were informed of his general location. The Named Employees observed the Complainant, who matched the description provided and was in the location described. They ordered him to stop and told him that he was not free to walk away; however, the Complainant attempted to leave the scene. The Named Employees took hold of the Complainant and placed him into handcuffs. No other force was used, other than that needed to guide the Complainant to the patrol vehicle and to seat him inside.

During his arrest, the Complainant contended that the Named Employees had physically assaulted and "gay bashed" him. The Named Employees reported these allegations to their supervisor. The supervisor then spoke with the Complainant. The Complainant reiterated his allegations. As a result, the supervisor referred this matter to OPA and this investigation ensued.

This incident, including the Complainant's arrest and the force that was used on him, was completely captured by Body Worn Video (BWV). The BWV established that the force used on the Complainant was de minimis and was only that needed to control his body to prevent him from leaving the scene, to handcuff him, and to get him into the patrol vehicle. The force was reasonable, necessary, and proportional under the circumstances to effectuate the Complainant's lawful arrest.

There is no evidence supporting the Complainant's allegations that he was physically assaulted or "gay bashed." Indeed, the BWV conclusively established that the Complainant's assertions were frivolous. 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

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

The Complainant alleged that he was "gay bashed" by the Named Employees, as well as that they improperly detained and arrested him based on his sexual orientation.



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 BWV clearly established that the Complainant was arrested for his commission of criminal acts, not due to his sexual orientation or for any other inappropriate reason. I find that this allegation is unsubstantiated by the objective evidence and, further, is frivolous. For these reasons, 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 #3

6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful

SPD Policy 6.220-POL-1 governs Terry stops and stands for the proposition that Terry stops are seizures of an individual and, as such, must be based on reasonable suspicion in order to be lawful. SPD Policy defines a Terry stop as: “A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion in order to investigate possible criminal activity.” (SPD Policy 6.220-POL-2(b).) SPD Policy further defines reasonable suspicion as: “Specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging or is about to engage in criminal conduct.” (*Id.*) Whether a Terry stop is reasonable is determined by looking at “the totality of the circumstances, the officer’s training and experience, and what the officer knew before the stop.” (*Id.*) While “[i]nformation learned during the stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, it “cannot provide the justification for the original stop.” (*Id.*)

As discussed above, the Named Employees responded to a call concerning an individual spray painting a building in violation of law. The Complainant matched the description provided of the perpetrator and was in the location where the victim stated he would be. Given this, the Named Employees clearly had reasonable suspicion to detain the Complainant to investigate this matter further. When he was positively identified by the victim, the Named Employees developed probable cause to arrest him.

Accordingly, 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 #2 - Allegations #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 – Unfounded.



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

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

6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful

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 - Allegations #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 – Unfounded.

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

Named Employee #3 - 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 #3 - Allegation #3

6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful

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)**