



## CLOSED CASE SUMMARY

ISSUED DATE: JULY 16, 2019

CASE NUMBER: 2019OPA-0085

### Allegations of Misconduct & Director’s Findings

#### Named Employee #1

Allegation(s):		Director’s Findings
# 1	6.180 - Searches-General d. Pat-Down Frisk	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 improperly frisked him for weapons.

#### ADMINISTRATIVE NOTE:

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

#### ANALYSIS AND CONCLUSIONS:

##### **Named Employee #1 - Allegations #1**

##### ***6.180 - Searches-General d. Pat-Down Frisk***

On January 22, 2019, Named Employee #1 (NE#1) was working a bicycle patrol, when he observed the Complainant stumble out of a bush with what appeared to be the handle of a fixed-blade knife sticking out of the Complainant's pocket. NE#1 detained the Complainant to investigate his possession of the knife and frisked him for additional weapons. After the frisk was completed, NE#1 placed the Complainant under arrest for possessing an unlawful fixed-blade knife.

The Complainant later alleged that NE#1’s search was illegal because he was not advised of his Miranda warnings prior to the discovery of the fixed-blade knife. The Complainant made this allegation to the Sergeant who screened the arrest. In Sergeant’s later referral to OPA, he wrote that the Complainant said that NE#1 could not have seen the knife because only half of the knife with the dark sheath was hanging out of his pocket. As part of his investigation into the Complainant’s allegations, the Sergeant reviewed NE#1’s Body Worn Video (BWV). The Sergeant opined that, as the BWV established that NE#1 observed a fixed blade knife clearly in the Complainant’s possession, the search was justified by the open view exception to the search warrant requirement.



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After receiving the referral from the Sergeant, OPA commenced its investigation. OPA attempted to interview the Complainant but was unable to locate him. Thus, the Complainant was not interviewed as part of this investigation.

OPA additionally reviewed the BWV. The video indicated that, after observing the Complainant, NE#1 immediately asked him what he was doing with “this.” In response to that question, the Complainant claimed that he found the knife. NE#1 then frisked Complainant for weapons. At that time, the Complainant was wearing multiple layers of clothing, including a white jacket, a dark-colored Nike sweatshirt with pockets, and at least one additional shirt underneath. NE#1’s partner was heard on the BWV explaining to the Complainant that NE#1 was frisking him for additional weapons.

SPD Policy 6.180-POL-2(d) states that the purpose and scope of the pat-down frisk is to discover weapons or other items that may pose a danger to officers or others in the near vicinity. Officers conducting frisks are required to have a sufficient basis to believe that subjects are armed and must be able to articulate the belief that their safety or that of others may be in danger.

Based on OPA’s investigation, I find that the frisk conducted by NE#1 was consistent with policy. The BWV supports NE#1’s assertion that he immediately observed that the Complainant was carrying a knife. The presence of the knife not only provided a basis to stop and then arrest the Complainant, but also justified the frisk of the Complainant to ensure that he did not possess any other weapons. While the Complainant alleged that the search was unlawful because he was not first read Miranda warnings, I find that this argument lacks merit. A frisk for weapons is not a custodial interrogation for which Miranda is required. For these reasons, I recommend that the allegation be Not Sustained – Lawful and Proper.

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