



## CLOSED CASE SUMMARY

ISSUED DATE:      OCTOBER 26, 2019

CASE NUMBER:     2019OPA-0283

### 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	6.220 - POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion	Not Sustained (Lawful and Proper)
# 3	6.220 - POL – 2 Conducting a Terry Stop 2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	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	6.220 - POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion	Not Sustained (Lawful and Proper)
# 3	6.220 - POL – 2 Conducting a Terry Stop 2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	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	6.220 - POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion	Not Sustained (Lawful and Proper)
# 3	6.220 - POL – 2 Conducting a Terry Stop 2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	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 engaged in biased policing when they stopped and detained a group of African American males. The Complainant further alleged that the stop may not have been supported by reasonable suspicion and that the detention was not limited to a reasonable scope.



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**SUMMARY OF INVESTIGATION:**

On April 22, 2019, officers, including the Named Employees, were dispatched to a report of an individual with a gun outside of a K-8 school in South Seattle. The report of a gun was made by employees of the school. One of the employees, a school security guard, alleged that he saw a group of males outside of the front of the school and that one of those males possessed a handgun. The school security guard described the individual who possessed the handgun as an African American male wearing a light blue jacket. The school security guard reported that the group then walked to the back of the school. Given the observations of the school security guard, the school was placed on lockdown.

The officers' response to the school was captured on Body Worn Video (BWV). The BWV indicated that the officers located a group of six juvenile males – referred to here as the individuals – situated behind the school in a playground. The officers approached the individuals with their firearms drawn but not pointed. As they approached, the officers told the individuals to put their hands up and asked whether any of them had a gun. The individuals responded that they did not. When all of the individuals had their hands up, Named Employee #1 (NE#1) holstered his firearm (after confirming with his fellow officers that they were backing him) and walked several steps towards the individuals to engage them. During this time, he had his hands up in the air. He told them of the report that they were passing around a handgun. He told them that the officers needed to verify what was going on by speaking to a witness. One of the individuals called out that they were passing around a cell phone.

NE#1 then walked towards the school to locate and speak with the witness. Named Employee #2 (NE#2) and Named Employee #3 (NE#3) remained where they were and were joined by other officers. The officers collectively approached the individuals and told them to sit down while keeping their hands up. The officers told the individuals that they were being detained to investigate a report of possession of a handgun. Approximately three minutes after the officers first made contact with the individuals (around five minutes after the officers responded to the school), officers began placing them into handcuffs and began frisking their outer clothing to determine whether they were armed. No handgun was found at that time.

During this time, NE#1 continued investigate the report of a handgun and searched for the witness who had observed the handgun. He spoke to several other persons who were working in the vicinity of the rear of the school. Those persons stated that they saw the individuals but that they did not observe a handgun. Around eleven minutes after arriving on scene, NE#1 located the school security guard who was speaking with another officer. The school security guard previously told that other officer that he observed an African American male wearing a light blue jacket with a what appeared to be a semi-automatic handgun in his waistband. The school security guard stated that he believed it was a handgun because he saw the grip. The security guard specifically indicated that he saw the African American male wearing the light blue jacket show the handgun to another African American male wearing black clothes and red high-tops. The school security guard physically pointed to two of the males in the group of individuals who matched the clothing description. The school security guard stated that what he saw did not appear to be a cell phone. He stated that he observed the handgun get placed into a bag. He noted that there was prior history of people storing contraband in and around the school grounds. When NE#1 walked over, the school security guard repeated to NE#1 the general substance of what he saw and further stated that the group was passing the handgun around.

NE#1 walked back over to where the individuals were seated and handcuffed. He spoke to the other officers and confirmed that the individuals had been frisked. NE#1 determined that the African American male wearing the light



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blue jacket had not yet been frisked and the frisk was effectuated by NE#2. At this time, shift change from First to Second Watch was approaching. The officers discussed handing this investigation over to Second Watch. Approximately 18 minutes after arriving on scene, and nearly 13 minutes after the individuals had been placed into handcuffs, the officers made the decision to call for a K-9 officer to come to the scene to search for a handgun. The K-9 in question was specifically trained for that purpose.

The officers separated the African American male with the light blue jacket and the African American male with the black clothes and red high-tops from the rest of the group to question them concerning the handgun. This was due to the fact that they were the two individuals specifically identified by the school security guard. Both denied having a handgun or an airsoft gun. Another officer told them that a dog was coming to the scene to look for the gun. However, they continued to deny that they possessed a handgun.

Approximately 15 minutes after the individuals had been handcuffed, NE#1, a senior officer, a supervisor, and the Second Watch officer assuming control of the scene began discussing whether to place the individuals – and, specially, the African American male with the light blue jacket and the African American male with the black clothes and red high-tops – under arrest and to transport them to the precinct. The senior officer opined that they did not have sufficient evidence to do so at that point and that this matter should be documented in a report and the individuals released. The officers discussed reviewing security video from the school to see whether it showed the handgun. They also made the decision to continue their investigation and the detention of the individuals pending the arrival of the K-9 officer, who was on the way to the scene.

Approximately 40 minutes after the detention was effectuated, the K-9 officer arrived on scene. The K-9 officer conducted a search for the handgun on the school grounds. At around 65 minutes into the detention, the K-9 was walked by the individuals and did not indicate that any possessed a handgun. Two minutes later, the decision was made to terminate the detention. The individuals' handcuffs were removed, and they were informed that they were free to leave. The individuals were given SPD business cards with the incident numbers written on them. The lockdown of the school was then lifted.

The officers completed a General Offense Report concerning this incident, as well as documented the detentions of the individuals in *Terry* Templates. Lastly, a complaint of pain from the handcuffing was made by the African American male wearing the light blue jacket. This was documented as a Type I use of force. As no officers actually pointed their firearms at the individuals or used other reportable force, no further force documentation was completed.

One of the individuals later disclosed what had occurred to the Complainant, who worked with him in an afterschool program. The Complainant noted that the individual was very negatively affected by the incident. She recounted that the individual said that he was stopped “aggressively” by the police, that he was searched 4 to 5 times, that multiple officers had firearms drawn on him and his companions, and that he was accused of lying. The Complainant initiated this complaint on the individual’s behalf because:

working with young people that already deal with a lot of trauma, expecting them to just go on and make their way to school after they’ve had weapons drawn on them, and then detained for a pretty long period of time, and questioned—in my opinion, is problematic, and makes the relationship between communities that are hyper-policed and between the police that much more tenuous. And in particular for the young people that I work



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with as a service provider—provider—that works with young people that often times have routine encounters with police officers, this particular encounter was very disconcerting to me, but it also left this young person in a very extreme state of trauma.

**ANALYSIS AND CONCLUSIONS:**

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

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

While not explicitly alleged, OPA construed the Complainant to be asserting a bias policing allegation. Specifically, OPA interpreted the Complainant to be alleging that the individuals' status as African Americans was a factor in their detention and treatment in this case.

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 a review of the evidence, OPA concludes that the stop, detention, and handcuffing of the individuals was based on the initial 911 call received concerning this incident and the identification of the individuals as those potentially possessing a handgun by the school security guard. Notably, the school security guard pointed out the individuals as the potential suspects and, specifically, identified the African American male with the light blue jacket and the African American male with the black clothes and red high-tops as possessing the handgun. While the individuals' race did play a substantial factor in the law enforcement action taken towards them, it was due to the fact that they matched the description provided by an eyewitness rather than due to animus or disparate treatment by the Named Employees.

Given this and when applying a preponderance of the evidence standard, I find that the Named Employees did not violate the Department's biased policing policy during this incident and I accordingly recommend that this allegation be Not Sustained – Unfounded.

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

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

***6.220 - POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion***

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



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“[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 and in the Summary of Investigation, the officers responded to a call concerning several males who were observed possessing a handgun in front of the school, including one who was wearing a light blue jacket. They were further informed that the males had walked behind the school. When the officers arrived at the school, they viewed the individuals situated behind the school, including the African American male with the light blue jacket. Given the facts available to them at the time, as well as due to the significant public interest in locating a handgun possessed in the immediate vicinity of a school that was locked down, the officers had a lawful basis to detain the individuals to investigate potential ongoing criminal activity. In addition, when the officers spoke with the school security guard, who said he was an eyewitness to the incident, he confirmed that he saw a handgun, and identified the individuals as those who had possessed and/or been around the handgun. As such, this provided the officers with an additional lawful basis to continue to detention.

While a handgun was never located on the persons of any of the individuals or on school grounds, this fact does not vitiate the officers’ reasonable suspicion to conduct the stop and detention. It further does not yield improper the decision to detain the individuals for over an hour and to search them.

For the individuals and the Complainant, this will almost certainly seem to be an unfair result. In that respect, this case is emblematic of the limitations of an OPA investigation. Here, after being stopped and held for over an hour, the individuals were then expected to go to school, to focus and not act out, and to go on with their lives all while experiencing the mental toll of being detained and handcuffed by armed police officers. On the other hand, the Named Employees responded to a report of an armed person on school grounds and to a school on lockdown. They were required to thoroughly investigate this matter, which they believed could involve significant threats of potential harm, including detaining the individuals for their and the officers’ safety. They did so efficiently and competently. The BWV indicated that, during this incident, the officers were calm and tried to reassure the individuals that they were not in danger. Indeed, NE#1 took tactical risks by approaching individuals who he believed were potentially armed with his hands up and with his firearm holstered; however, he appeared to do so for the admirable purpose of de-escalating and ensuring a peaceful resolution to the situation.

OPA must evaluate the officers’ conduct in the context of applicable laws and policies. When doing so, it is clear that they acted within these parameters. These findings will not, however, address the concerns articulated by the Complainant and likely felt by the individuals. OPA believed at the inception of this case and still believes that mediation or a dialogue between officers – not necessarily the Named Employees – and the individuals would do significantly more to facilitate understanding and a potential resolution than this investigation. However, for several reasons, that was not feasible. OPA hopes that such a conversation involving the individuals will still occur in the future and that this discussion can address some of the questions that OPA simply cannot answer.

Ultimately, with regard to the matter within OPA’s jurisdiction – the *Terry* stop of the individuals, OPA concludes that the Named Employees’ law enforcement action was supported by reasonable suspicion and, as such, recommends that this allegation be Not Sustained – Lawful and Proper.

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



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

**6.220 - POL – 2 Conducting a Terry Stop 2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope**

This allegation was classified for investigation given that the individuals were detained for over an hour in handcuffs, were searched multiple times, and due to the fact that the officers drew their firearms during the detention. This prompted an examination of whether the *Terry* stop exceeded a reasonable scope.

SPD Policy 6.220-POL-3 requires that officers limit a seizure to a reasonable scope. The policy further states that: "Actions that would indicate to a reasonable person that they are being arrested or indefinitely detained may convert a *Terry* stop into an arrest requiring probable cause or an arrest warrant." (SPD Policy 6.200-POL-3.)

A *Terry* stop must last no longer than is necessary to verify or dispel the officer's suspicion, and the investigative methods employed must be the least intrusive means reasonably available to effectuate the purpose of the detention. *See State v. Williams*, 102 W.2d 733, 738-40, 689 P.2d 1065 (1984). In addition, and as a general matter, the most serious the crime at issue is, the more leeway officers have to expand the scope of the detention. *See, e.g., State v. Thierry*, 60 Wn. App. 445, 803 P.2d 844 (1991) ("Officers may do far more if the suspect conduct endangers life or personal safety than if it does not."); *State v. McCord*, 19 Wn. App. 250, 576 P.2d 892, review denied, 90 Wn.2d 1013 (1978) (seriousness of suspected crime bears on the degree of suspicion needed to make the stop and the extent of the permissible intrusion after the stop). Additional law enforcement actions found permissible in the context of a *Terry* stop includes: the manipulation of clothing; separating detainees for questioning; holding detainees at the scene while awaiting assistance from other officers; drawing firearms; and handcuffing. Moreover, while a presumptively valid *Terry* stop should not exceed 20 minutes, the detention may be extended where the officers are diligently investigating the potential criminal activity. Moreover, where, as here, K-9 officers are called to the scene to assist in the investigation, detentions of well over an hour have been justified so long as the K-9 officer was timely requested. *See, e.g., United States v. Donnelly*, 475 F.3d 946 (9th Cir.), cert. denied, 127 S. Ct. 2954 (2007) (over 90 minutes can be reasonable while waiting for a K9 unit); *United States v. Bloomfield*, 40 F.3d 910, 917 (8th Cir. 1994) (a one-hour detention upon reasonable suspicion to wait for a drug dog was reasonable).

Given the severity of the suspected crime here – the possession of a handgun on school grounds – the officers were legally entitled to extend the scope of the *Terry* stop in the manners detailed herein. Moreover, the officers summoned a K-9 officer in a timely fashion (13 minutes after handcuffing the individuals) and, as such, they were permitted to significantly extend the stop to allow for the K-9 to arrive and to conduct a search for the handgun.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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



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**Named Employee #2 - Allegations #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 #2 - Allegation #2**

***6.220 - POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion***

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**

***6.220 - POL – 2 Conducting a Terry Stop 2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope***

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**

***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**

***6.220 - POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion***

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)**



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

***6.220 - POL – 2 Conducting a Terry Stop 2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope***

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)**