



CLOSED CASE SUMMARY

ISSUED DATE: JULY 3, 2018

CASE NUMBER: 2018OPA-0062

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop	Not Sustained (Training Referral)
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops	Not Sustained (Training Referral)
# 3	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 4	16.090 - In-Car and Body-Worn Video d. Recording in Sensitive Areas	Not Sustained (Training Referral)
# 5	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	6.220 - Voluntary Contacts, Terry Stops & Detentions 11. Supervisors Shall Approve the Documentation of Terry Stops	Not Sustained (Training Referral)

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 Named Employee #1 harassed him, was unprofessional, and may have engaged in bias towards him. It was further alleged that Named Employee #1 may have demanded identification during a Terry stop when it was inappropriate to do so. It was also alleged that Named Employee #1 may have failed to complete a Terry Template when required. Lastly, it was alleged that Named Employee #1 may have inappropriately recorded his Body Worn Video in a precinct restroom. With regard to Named Employee #2, it was alleged that he may have failed to ensure that Named Employee #1 properly documented the Terry stop.

STATEMENT OF FACTS:

Named Employee #1 (NE#1) was dispatched to a QFC grocery store with another officer. The officers were responding to a complaint from the store’s manager that an individual – later identified as the Complainant – had threatened to kill him. The officers arrived at the location and the victim pointed the officers to the Complainant. The officers approached the Complainant and told him that he was being detained because of the alleged threat. The Complainant denied engaging in this behavior. NE#1 asked the Complainant for his name, phone number, and address. The Complainant asked NE#1 whether he was required to provide that information and NE#1 again told the Complainant



that he was being detained and also said: “legally you have to provide that.” NE#1 then apparently asked the Complainant for his social security number. The Complainant was reluctant to provide that information until NE#1 stated: “Either you provide that, or you are going to be arrested for obstruction.” He then gave the requested information to NE#1.

NE#1 then went to speak with the victim who confirmed the threat. The officers then went back outside of the store and informed the Complainant that he was under arrest. The Complainant indicated that he was going to file an OPA complaint and NE#1 told the Complainant that he would provide him with OPA’s contact information. The Complainant also asserted that he was being “harassed.” The Complainant was handcuffed and transported from the scene without incident.

At the precinct, the Complainant spoke with Named Employee #2 (NE#2), who was working as an acting sergeant. The Complainant reiterated his complaints about this incident to NE#2. While at the precinct, the Complainant asked to use the restroom. He was taken to the restroom by NE#1, who stood outside of the ajar bathroom door. NE#1 used his Body Worn Video (BWV) to record the back of the Complainant when he was using the restroom. After his release from custody, the Complainant filed a complaint with OPA and this investigation ensued.

During its investigation, OPA interviewed the Complainant and spoke with him on a number of other occasions. The Complainant alleged to OPA that he was being harassed by QFC and that the officers were “in on it.” He further contended that NE#1 was a “total jerk prejudice” during the incident and was rude to him. However, he did not believe that NE#1’s treatment of him was based on his race. The Complainant further complained about the fact that NE#1 required his personal identifying information when he did not want to provide it.

OPA also interviewed both of the Named Employees, as well as the other officer who responded to the incident with NE#1.

NE#1 asserted that, at the time of the detention, he had probable cause to arrest the Complainant. He stated that this probable cause was based on the fact that, when he arrived at the scene, the victim pointed the Complainant out to him. NE#1 stated that he used the term “detained” both to the Complainant and in his reporting because the Complainant was not free to leave at the time of that initial contact. He stated that he would have used the word “detained” whether he was conducting a Terry stop or whether he was effectuating an arrest.

As NE#1 believed that he had probable cause to arrest at the time of the contact, he further believed that he had a lawful basis to require the Complainant to provide his personal identifying information. NE#1 told OPA that he did not complete a Terry Template because, at the time of the contact, he had probable cause to arrest and was not, in his mind, effectuating a Terry stop. As such, he believed that a Terry Template was not required.

NE#1 denied engaging in biased policing. NE#1 also denied engaging in unprofessional behavior.

Lastly, NE#1 asserted that it was not inappropriate to record with his BWV when the Complainant was in the precinct restroom. NE#1 explained that it was possible that a subject, such as NE#1, could attempt to destroy evidence in the restroom and, for this reason, it was important to keep recording. Notably, NE#1 believed that Department policy required him to do so. During his OPA interview, the assigned OPA investigator raised the provision of the policy concerning not recording in sensitive areas, such as restrooms, unless there is a “direct law enforcement purpose” for



doing so. NE#1 stated that, in his opinion, the restroom in the holding cell area was not a “sensitive” area in which recording was prohibited.

NE#2 told OPA that he believed that the initial detention of the Complainant was based on probable cause not reasonable suspicion. As such, NE#2, who screened and approved the arrest, also believed that a Terry Template was not needed.

The witness officer told OPA that he believed that, at the time of the detention, NE#1 was conducting a Terry stop. As such, NE#1 did not believe that the Complainant was required to provide his identification when he was ordered to do so. The witness officer stated that, in his opinion, NE#1 was professional and did not engage in bias.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop

SPD Policy 6.220-POL-6 states that “officers cannot require subjects to identify themselves or answer questions on a Terry stop.” While officers are entitled to request this information, they cannot mandate it. (See SPD Policy 6.220-POL-6.)

NE#1 stated that when he detained the subject, he did so based on probable cause, rather than reasonable suspicion. NE#1 asserted that, for this reason, he did not perform a Terry stop. Accordingly, he asserted that this policy was inapplicable to his conduct and, as he was effectuating a detention based on probable cause, he was not precluded from ordering the Complainant to provide his personal identifying information.

As discussed more fully below, I find that, at the time the initial detention was made, it was a Terry stop. While NE#1 quickly developed probable cause, I believe that he violated policy when he demanded the Complainant’s identification at the time of the initial detention. That being said, I do not believe that a Sustained finding is warranted here. Instead, I recommend that NE#1 receive a Training Referral.

- **Training Referral:** NE#1’s chain of command should discuss the detention in this case with him. It should review the elements of SPD Policies 6.220-POL-6 and 6.220-POL-10 with him and, when doing so, remind NE#1 that he may not demand identification during a Terry stop and that he must document all Terry stops in a Terry Template, regardless of whether he later develops probable cause. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**



Named Employee #1 - Allegation #2

6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops

SPD Policy 6.220-POL-10 requires that all Terry stops must be documented and sets forth what information shall be included. This documentation is completed on a Terry Template, which officers are instructed to attach to the General Offense Report or Street Check. (SPD Policy 6.220-POL-10.)

When the officers responded to the scene, they were aware of a report that an individual had allegedly threatened to kill the victim. The victim pointed out the Complainant, who was outside of the store. When the officers made contact with the Complainant, they informed him that he was being detained. The Complainant denied making the threats to kill the victim at that point and told the officers that he had solely been arguing with another person outside of the store. Notably, at that time, the Complainant was not placed into handcuffs or even informed that he was under arrest. Instead, NE#1 went inside of the store to speak to the victim to determine what had occurred. Only after receiving additional information concerning the incident from the victim did the officers formally arrest the Complainant.

The officer who was with NE#1 during the initial detention believed that it was a Terry stop. I agree. While certainly a close call, I do not think that probable cause was developed for the Complainant's arrest until the subsequent conversation that NE#1 had with the victim. Indeed, this is consistent with the plain language of NE#1's General Offense Report. He wrote: "I observed [the Complainant] was collecting his belongings and about to leave, so we approached him and detained him. I advised [the Complainant] that he was being detained and the reasons for contact." The report detailed the further conversation with the victim and then indicated that, after that point, NE#1 "re-contacted [the Complainant] and advised him that he was going to arrest[ed] for Harassment." Lastly, I do not find NE#1's explanation at his OPA interview convincing. Regardless of whether he refers to both a Terry stop and an arrest as a detention, a detention without the formal indicia of an arrest generally demonstrates a Terry stop. Ultimately, based on the totality of the circumstances and applying a preponderance of the evidence standard, the initial detention here was a Terry stop.

As the initial detention constituted a Terry stop, rather than an arrest based on probable cause, NE#1 was required to complete a Terry Template. This was regardless of whether he later placed the Complainant under arrest. That being said, as with Allegation #1, I recommend that NE#1 receive a Training Referral rather than a Sustained finding. I further to the Training Referral set forth above.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #3

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 my review of the record, which included the Department video of this incident, I find no evidence supporting the allegation that NE#1 engaged in biased policing towards the Complainant. The officers responded to a report that the Complainant threatened to kill the victim. This conduct, not the Complainant's membership in any protected class, was the basis for his arrest and detention. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #4

16.090 - In-Car and Body-Worn Video 5.d. Recording in Sensitive Areas

SPD Policy 16.090 generally governs the usage and recording of Department video, which includes both BWV and ICV. SPD Policy 16.090-POL-5(b) sets forth when officers are expected to record. There are limitations on the general requirements that officers record Department video, which are set forth in SPD Policy 16.090-POL-(5)(d) through (5)(g). Relevant to this case, officers are instructed not to record in sensitive areas. This section of the policy reads as follows: "Employees will not record in restrooms, jails and the interiors of medical, mental health, counseling, or therapeutic facilities unless for a direct law enforcement purpose, such as a crime in progress." (SPD Policy 16.090-POL-5(d).)

NE#1 contended to OPA that the restrictions on recording in sensitive areas did not apply to precincts and Department facilities. Specifically, he asserted that it was permissible to record in the restroom of a precinct.

Based on my review of the plain language of the policy, I disagree with NE#1's interpretation. I find no support for his belief that the policy is somehow inapplicable to sensitive locations within precincts, of which there are many. That being said, I believe that it could be argued that there was a direct law enforcement purpose in so recording to make sure that NE#1 did not destroy evidence while in the restroom. Certainly, this argument would have been stronger had the Complainant been arrested for possession of narcotics or of another crime in which he was believed to have evidence that could have easily been disposed of. This was not the case here. Moreover, NE#1 did not clearly articulate the purpose for recording in the restroom at his OPA interview or in any of the paperwork he generated concerning this incident.

While I do not believe that NE#1's conduct here warrants a Sustained finding, based on his incorrect interpretation of the policy and lack of sufficient articulation, I recommend that he receive a Training Referral.

- **Training Referral:** NE#1 should be retrained as to the elements of SPD Policy 16.090-POL-5, and, specifically, SPD Policy 16.090-POL-5(d). He should be informed by his chain of command that a restroom is a sensitive location, whether or not it is within the precinct. He should be counseled that he is not to record in such an area unless he has a direct law enforcement purpose. If such a purpose exists, he must be sure to clearly articulate it. This retraining and counseling should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**



Named Employee #1 - Allegation #5

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

SPD Policy 5.001-POL-9 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-9.)

Based on my review of the record, including the Department video that fully captured the interaction between NE#1 and the Complainant, I see no evidence suggesting that NE#1 was unprofessional in this instance. He remained calm with the Complainant, explained what actions he was taking, and conducted a thorough and fair investigation. While the Complainant asserted that he felt that he was being harassed, it appears that his complaint is more directed towards the victim and QFC than NE#1. I do not believe that NE#1 engaged in any harassing or unprofessional behavior, and, as such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #1

6.220 - Voluntary Contacts, Terry Stops & Detentions 11. Supervisors Shall Approve the Documentation of Terry Stops

SPD Policy 6.220-POL-11 requires that Department supervisors approve the documentation of Terry stops. The policy requires the supervisors to determine if the stops “were supported by reasonable suspicion and are consistent with SPD policy, federal and state law.” (SPD Policy 6.220-POL-11.) If a supervisor has a concern with a stop or the documentation of a stop, the supervisor is instructed to address this matter as appropriate, including sending the matter to OPA. (*Id.*) These concerns and the actions taken by the supervisor should also be noted on the General Offense Report or Street Check from, whichever is appropriate. (*Id.*) Lastly, the policy states that: “If a supervisor finds the documentation to be insufficient, that supervisor first shall require that the officer supplement the documentation before the end of that shift.” (*Id.*)

NE#2, who was an acting sergeant during this incident, screened the detention and arrest of the Complainant. He further reviewed and approved the General Offense Report generated by NE#1. As discussed above, I find that the initial detention of the Complainant was a Terry stop rather than an arrest based on probable cause. Even if NE#2 was not aware of the exact nature of that initial detention at the time that he screened the incident at the precinct, he should have determined that it was a Terry stop once he reviewed the General Offense Report. He thus should have also determined that a Terry Template was required and ensured that it was completed. In OPA’s opinion, by not doing so here, NE#2 failed to conduct the critical review required of a supervisor.

That being said, and for the same reasons as set forth above with NE#1, I believe that a Training Referral, rather than a Sustained finding is the appropriate result.

- **Training Referral:** NE#2’s chain of command should discuss this incident with him. NE#2 should be counseled to more comprehensively and critically review such incidents in the future. NE#2 should be instructed that, even where probable cause is later developed, an initial detention that takes the form of a Terry stop must be documented in a Terry Template and properly reported. This counseling and any



associated retraining should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**