



## OFFICE OF POLICE ACCOUNTABILITY

### Closed Case Summary

Complaint Number 2017OPA-0228

Issued Date: 09/13/2017

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 5.140 (2) Bias-Free Policing: Officers Will Not Engage in Bias-Based Policing (Policy that was issued August 1, 2015 )
OPA Finding	<b>Not Sustained</b> (Unfounded)
Allegation #2	<u>Seattle Police Department Manual</u> 8.200 (1) Using Force: Use of Force: When Authorized (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Unfounded)
Allegation #3	<u>Seattle Police Department Manual</u> 6.220 (1) Voluntary Contacts, Terry Stops & Detentions: Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful (Policy that was issued August 1, 2015 )
OPA Finding	<b>Not Sustained</b> (Unfounded)
Final Discipline	N/A

Named Employee #2	
Allegation #1	<u>Seattle Police Department Manual</u> 5.140 (2) Bias-Free Policing: Officers Will Not Engage in Bias-Based Policing (Policy that was issued August 1, 2015 )
OPA Finding	<b>Not Sustained</b> (Unfounded)

Allegation #2	<u>Seattle Police Department Manual</u> 8.200 (1) Using Force: Use of Force: When Authorized (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Unfounded)
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OPA Finding	<b>Not Sustained</b> (Unfounded)
Final Discipline	N/A

<b>Named Employee #3</b>	
Allegation #1	<u>Seattle Police Department Manual</u> 5.140 (2) Bias-Free Policing: Officers Will Not Engage in Bias-Based Policing (Policy that was issued August 1, 2015 )
OPA Finding	<b>Not Sustained</b> (Unfounded)
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OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
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OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Final Discipline	N/A

<b>Named Employee #4</b>	
Allegation #1	<u>Seattle Police Department Manual</u> 5.140 (2) Bias-Free Policing: Officers Will Not Engage in Bias-Based Policing (Policy that was issued August 1, 2015 )
OPA Finding	<b>Not Sustained</b> (Unfounded)

Allegation #2	<u>Seattle Police Department Manual</u> 8.200 (1) Using Force: Use of Force: When Authorized (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
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OPA Finding	<b>Not Sustained</b> (Unfounded)
Final Discipline	N/A

### **INCIDENT SYNOPSIS**

The Named Employees were involved in the detainment of the complainant as a robbery suspect.

### **COMPLAINT**

The complainant alleged the Named Employees unlawfully detained him while searching for a robbery suspect, used unnecessary force and that all of their actions were based on his race.

### **INVESTIGATION**

The OPA investigation included the following actions:

1. Review of the complaint
2. Search for and review of all relevant records and other evidence
3. Review of In-Car Video (ICV)
4. Interviews of SPD employees

### **ANALYSIS AND CONCLUSION**

A robbery occurred at a grocery store. A store employee called 911 to report the robbery and reported that the robber implied that he was armed with a firearm. The employee also provided a description of the robber to the dispatcher. The robber was described as an African American male in his 40s with a medium build and facial hair. The robber was further described as wearing a construction jacket over a grey hooded sweatshirt, dark pants, a construction helmet, and a medical mask. Lastly, the robber was described as having a black backpack.

Named Employee #3, who had responded to the call, observed an individual who he believed matched the suspect's description walking approximately three blocks away from where the

crime had occurred. The individual, who was later identified as the complainant, was an African American man, possibly in his 40s, with a medium build and facial hair. The complainant was wearing a grey and black hooded sweatshirt with the hood pulled over his head, dark blue jeans, and a black backpack. The modus operandi of the robbery suggested that it was perpetrated by a serial robber. This individual was suspected of, after committing each robbery, stowing the construction clothing in his black backpack.

Named Employee #3 radioed in the description of the complainant and waited for backup. Once Named Employee #3 was notified that two other patrol cars had arrived, he began walking after the complainant. Named Employee #3 followed the complainant on the street and up the stairs, where he contacted the complainant. Named Employee #3 then engaged the complainant in conversation. While Named Employee #3's ICV was activated, due to the distance the contact was made from his patrol vehicle, the audio of his statements to the complainant were not recorded.

At his OPA interview, Named Employee #3 stated that he identified himself as a police officer and told the complainant that he was stopping him based on the fact that the complainant matched the description from a recent armed robbery. While the complainant initially was compliant, once Named Employee #3 indicated the basis for the stop the complainant said something along the lines of "robbery...no" and began to walk away. At that point, Named Employee #3 placed himself in front of the complainant and placed his hands on the complainant's chest to stop him from doing so. The complainant pushed Named Employee #3's hands away in an attempt to walk past him. Named Employee #4 and Named Employee #2 were also on scene at that point. Named Employee #4 also attempted to stop the complainant from walking away and, while there was also no audio of his statements, Named Employee #4 appeared to be telling the complainant to stay where his was. The complainant again attempted to push by Named Employee #3 and walk away and, at that point, both Named Employee #3 and Named Employee #4 took hold of his arms to control him and prevent him from doing so. The complainant still attempted to pull away, but Named Employee #3 and Named Employee #4 were ultimately able to control him. Another officer could be heard on the ICV repeatedly telling the complainant to "relax." It appeared that after this initial interaction, the complainant no longer attempted to walk away.

At the tail end of this interaction, Named Employee #2 could be observed walking towards the complainant and Named Employee #3 and Named Employee #4. Based on a review of the ICV, Named Employee #2 did not appear to make any physical contact with the complainant.

At his OPA interview, Named Employee #3 stated that the complainant attempted on several occasions to reach his hand towards the front pocket on his sweatshirt. This concerned Named Employee #3 based on the report that the robbery subject had intimated possession of a firearm. The OPA Director did not observe these movements on the ICV and, based on Named Employee #3's OPA interview, it was unclear when exactly they occurred.

The complainant was kept in that location under the control of officers. A Sergeant arrived on scene and engaged in conversation with the complainant. The Sergeant again explained the basis for the stop. The complainant, in response, indicated that he was not involved in the robbery.

While the stop was ongoing, Named Employee #1 went to the grocery store in order to coordinate a field show-up with the store employee. The complainant remained at the location of the stop until the show-up was conducted by Named Employee #1. The result of that show-up was negative, after which the complainant was informed that he was free to go.

Based on ICV review, it appeared that the complainant was ultimately detained for approximately 19 minutes and was not handcuffed at any point. Aside from the force used to prevent the complainant from walking away, Named Employee #3 and Named Employee #4 did not report using any further force. Neither Named Employee #1 nor Named Employee #2 reported using any force on the complainant.

That same day, the complainant contacted OPA and filed a complaint concerning his treatment by the Named Employees. The complainant alleged that he was unlawfully stopped, detained and handcuffed, but did not make an explicit claim of biased policing at that time. The complainant was formally interviewed by OPA. During that interview, the complainant asserted that he was unlawfully detained and "assaulted." He further indicated his belief that he was "treated unfairly as an African American man."

With regard to Named Employee #1, the OPA Director did not find that he was consulted in or influenced the decision to stop the complainant. Moreover, based on the OPA Director's review of the evidence, Named Employee #1's involvement in this incident was limited to organizing and effectuating the field show-up. The sole contact Named Employee #1 had with the complainant was when he asked him to turn around during the show-up. The OPA Director did not find that any of Named Employee #1's conduct in this regard was motivated by bias.

Similar to the above, based on the OPA Director's review of the evidence, it did not appear that Named Employee #1 had any physical contact with the complainant, let alone used force against him.

Based on a review of the ICV, it was unclear what the full extent of Named Employee #2's contact with the complainant was. The ICV of the incident showed Named Employee #2 approaching the complainant after he had been detained and after Named Employee #3 and Named Employee #4 used force to prevent him from walking away, but then Named Employee #2 followed them and walked out of view of the camera. Based on Named Employee #2's OPA interview, it did not appear that Named Employee #2 ever directly spoke with or made physical contact with the complainant.

At his OPA interview, Named Employee #2 stated that his actions on that day were not motivated by bias. The OPA Director found no evidence in the record contradicting that assertion.

Named Employee #2, like Named Employee #1, did not report any physical contact with the complainant or using force on the complainant. The OPA Director found no evidence in the record indicating that Named Employee #2 did do so.

At his OPA interview, Named Employee #2 stated that he arrived on the scene after the complainant had been initially detained by Named Employee #3. There was no evidence in the record suggesting that Named Employee #2 was consulted in or influenced the decision to stop the complainant.

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.” This includes different treatment based on the race of the subject.

Here, the complainant alleged that he was “treated unfairly as an African American man.” As discussed more fully below, the OPA Director found that there was reasonable suspicion to stop the complainant to investigate whether he was involved in the robbery of the grocery store. While the complainant’s race was certainly a factor in why he was stopped, it was not the only or determinative reason. Both he and the suspect were African American men; however, the complainant had a number of other similar characteristics to the suspect, including appearing to be in his 40s, possessing a medium build and facial hair, and wearing a grey hooded sweatshirt, dark pants and a black backpack.

The OPA Director did not find that Named Employee #3 engaged in biased policing when he stopped and detained the complainant. Instead, he reasonably believed that the complainant matched the description of a suspect in a nearby robbery and engaged in an effort to determine whether the complainant was, in fact, the perpetrator. While the OPA Director certainly recognized the complainant’s frustration and anger at being detained, the stop was legally justified and occurred in good faith and without identifiable bias.

The complainant alleged that Named Employee #3 used excessive force on him during the stop and detention.

Manual 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.” The policy lists a number of factors that should be weighed when evaluating reasonableness. 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.” Lastly, the force used must be proportional to the threat posed to the officer.

Here, the OPA Director found that the force used by Named Employee #3 was reasonable, necessary, and proportional, and thus consistent with policy.

First, with regard to reasonableness, Named Employee #3 had reasonable suspicion to stop the complainant and investigate whether he was the suspect in a recent robbery. When the complainant pushed by him and attempted to walk away, it was reasonable for Named Employee #3 to use force to ensure that he did not leave the scene.

Second, with regard to whether the force was necessary, the OPA Director found that, at the time the force was used, Named Employee #3 believed that there was no reasonably effective alternative and that the degree of force was reasonable to effect the lawful purpose of ensuring that the complainant remained detained and did not leave the scene.

Third, with regard to the proportionality of the force, Named Employee #3 used force commensurate with the complainant's conduct, and only that level of force needed to control the complainant and keep him temporarily detained.

As discussed above, Named Employee #3 believed that the complainant matched the description of the suspect who had just reportedly robbed a grocery store. This was the most recent in an ongoing series of robberies and for this specific robbery the suspect was thought to potentially be in possession of a firearm.

When Named Employee #3 observed the complainant, he believed that he matched the description of the suspect that had been provided by dispatch. Notably, both the complainant and the subject were African American males with medium builds, facial hair, and apparently in their mid-40s. Moreover, both the complainant and the suspect were wearing grey hooded sweatshirts, dark pants and a black backpack. While the complainant was not wearing a construction helmet or construction jacket, Named Employee #3 was aware that in other robberies the suspect had stowed these objects in his black backpack. As such, the absence of these articles of clothing on the complainant did not serve to vitiate Named Employee #3's reasonable suspicion.

Based on the similarities between the complainant and the description of the suspect, Named Employee #3 had reasonable suspicion to stop and temporarily detain him in order to conduct an investigation. When the complainant attempted to push past the officers and walk away, Named Employee #3 was further permitted to forcibly take hold of the complainant's arm in order to ensure that he remained detained. Named Employee #3 only detained the complainant for the time necessary for a show-up to be conducted. Once that show-up occurred and was negative, the complainant was released. That the show-up had a negative result also did not serve to vitiate the reasonable suspicion for the stop and detention.

Based on a review of the evidence in the record, including the ICV and Named Employee #4's OPA interview, the OPA Director found that Named Employee #4 did not engage in biased policing in his interaction with the complainant.

Named Employee #4 concurred in Named Employee #3's reasonable belief that the complainant matched the description of the robbery suspect. Named Employee #4 then assisted Named Employee #3 in detaining the subject. There was no evidence suggesting that Named Employee #4's actions were based on any bias. Indeed, Named Employee #4 explicitly denied that any of his conduct was motivated by bias. The OPA Director credited Named Employee #4's account.

As with the force applied by Named Employee #3, the OPA Director found that the force used by Named Employee #4 was reasonable, necessary and proportional.

Named Employee #4 attempted to assist Named Employee #3 in detaining the complainant based on Named Employee #3's reasonable suspicion that the complainant was a subject in the earlier robbery. When the complainant refused to stop and repeatedly tried to walk away – at times through Named Employee #3 – Named Employee #4 was justified in using force to take hold of the complainant's arm and to prevent him from leaving the vicinity. The OPA Director accordingly found that the force was both reasonable and necessary. The OPA Director also found that the force was proportional. Named Employee #4 only used that level of force necessary to control the complainant and to prevent him from leaving the scene prior to the officers' completion of their investigation.

Named Employee #4 did not make the decision to stop and detain the complainant – that decision was made by Named Employee #3. Named Employee #4's role in the incident was to ensure officer safety. Even had Named Employee #4 been involved in the decision to stop the complainant, the OPA Director found that both the stop and detention were supported by reasonable suspicion.

## **FINDINGS**

### **Named Employee #1**

#### Allegation #1

A preponderance of the evidence showed that Named Employee #1's conduct was not motivated by bias. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Bias-Free Policing: Officers Will Not Engage in Bias-Based Policing*.

#### Allegation #2

A preponderance of the evidence showed that Named Employee #1 did not have any physical contact with the complainant, let alone use force against him. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Using Force: Use of Force: When Authorized*.



### Allegation #3

A preponderance of the evidence did not show that Named Employee #1 was consulted in or influenced the decision to stop the complainant. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Voluntary Contacts, Terry Stops & Detentions: Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful*.

### Named Employee #2

#### Allegation #1

A preponderance of the evidence showed that Named Employee #2's conduct was not motivated by bias. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Bias-Free Policing: Officers Will Not Engage in Bias-Based Policing*.

#### Allegation #2

A preponderance of the evidence showed that Named Employee #2 did not have any physical contact with the complainant, let alone use force against him. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Using Force: Use of Force: When Authorized*

#### Allegation #3

A preponderance of the evidence did not show that Named Employee #2 was consulted in or influenced the decision to stop the complainant. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Voluntary Contacts, Terry Stops & Detentions: Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful*.

### Named Employee #3

#### Allegation #1

A preponderance of the evidence showed that the stop was legally justified and occurred in good faith and without identifiable bias. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Bias-Free Policing: Officers Will Not Engage in Bias-Based Policing*.

#### Allegation #2

A preponderance of the evidence showed that the force used by Named Employee #3 was reasonable, necessary, and proportional. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Authorized*

#### Allegation #3

A preponderance of the evidence showed that based on the similarities between the complainant and the description of the suspect, Named Employee #3 had reasonable suspicion to stop and temporarily detain him in order to conduct an investigation. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Voluntary Contacts, Terry Stops & Detentions: Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful*.

## **Named Employee #4**

### Allegation #1

A preponderance of the evidence showed that Named Employee #4 did not engage in biased policing in his interaction with the complainant. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Bias-Free Policing: Officers Will Not Engage in Bias-Based Policing*.

### Allegation #2

A preponderance of the evidence showed that the force used by Named Employee #4 was reasonable, necessary, and proportional. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Authorized*.

### Allegation #3

A preponderance of the evidence showed that Named Employee #4 did not make the decision to stop and detain the complainant – that decision was made by Named Employee #3. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Voluntary Contacts, Terry Stops & Detentions: Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful*.

*NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.*