



## CLOSED CASE SUMMARY

ISSUED DATE:     APRIL 3, 2018

CASE NUMBER:    2017OPA-1091

### 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 - Voluntary Contacts, Terry Stops & Detentions 2. Officers Must Distinguish Between Voluntary Contacts and Terry Stops	Not Sustained (Training Referral)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops	Not Sustained (Management Action)
# 4	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint	Sustained
<b>Discipline Imposed:</b> Oral Reprimand		

**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 - Voluntary Contacts, Terry Stops & Detentions 2. Officers Must Distinguish Between Voluntary Contacts and Terry Stops	Not Sustained (Unfounded)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops	Not Sustained (Management Action)
# 4	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint	Sustained
<b>Discipline Imposed:</b> Oral Reprimand		

***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 targeted him based on his race and housing status. The Complainant further alleged that he was also targeted due to his prior criminal history, and that the Named Employees harassed and intimidated him regarding a cleared warrant. During OPA’s intake investigation, it was unclear whether the stop was supported by reasonable suspicion and whether it was properly documented. Additionally, it appeared



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that the Complainant asked to speak to the Named Employees' supervisor, and the Named Employees only provided a business card but did not otherwise assist the Complainant in filing a complaint as required by policy.

**ANALYSIS AND CONCLUSIONS:**

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

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

On the date in question, the Named Employees stopped and detained the Complainant. Based on a review of the Body Worn Video (BWV) of this incident, the basis for the stop was Named Employee #1's (NE#1) belief that the Complainant had an open felony DOC warrant. Named Employee #2 (NE#2) stated that he was unaware of the existence of any warrants. At his OPA interview, NE#1 contended that, at the time of the stop, he was also aware of the Complainant's misdemeanor warrants; however, based on my review of the BWV, NE#1 only referred to the purported felony warrant – which was cleared – and did not even mention the misdemeanor warrants until he ran the Complainant's name. That being said, and given that the misdemeanor warrants were issued on March 14, 2013 and March 29, 2016, OPA cannot disprove that NE#1 ran the Complainant's name on an earlier date and learned about these open warrants.

During the stop, the Complainant alleged that the officers were harassing him. He mentioned that these and other officers had previously stopped him and were making his life miserable. However, he did not state, at that time, that the Named Employees were targeting him due to bias or because he was a member of protected class.

In his OPA complaint, the Complainant alleged that he was subjected to law enforcement action by the Named Employees because of his housing status, race, and his criminal history.

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.*)

If the Named Employees targeted the Complainant based on his race or housing status, this action would constitute biased policing in violation of policy. However, there is no evidence in the record suggesting that this was the case. Instead, it appeared that the Named Employees stopped the Complainant based on his prior criminal history and open warrants, as the Complainant suggested in his complaint. But criminal history, unlike housing status or race, is not a protected class. Accordingly, even if the Named Employees targeted him for this reason, this would not constitute biased policing.

As such, I recommend that this allegation be Not Sustained – Unfounded as against both Named Employees.

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



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

***6.220 - Voluntary Contacts, Terry Stops & Detentions 2. Officers Must Distinguish Between Voluntary Contacts and Terry Stops***

SPD Policy 6.220-POL-2 directs officers that they must distinguish between voluntary contacts and Terry stops, and sets forth the definition and scope of each.

Here, while NE#2 believed that a Terry stop was conducted on the Complainant and that he was not free to go pending the warrant check, NE#1 contended that they, instead, performed a voluntary stop of the Complainant. However, this belief is unsupported by the facts of this case. First, the Complainant indicated that he believed that he was being detained at the time. Second, even NE#2 recognized that there was a time that the Complainant believed that he was being detained and was not free to go (“I believe there was a point that it came to him that I was stopping him and he wasn’t free to go.”). Third, the BWV suggests that the contact was a Terry Stop not a voluntary stop and that the Complainant was detained and was not free to go (“that’s why we’re just going to check [for the warrant] and get you on your way”; “can you take that hand out of your pocket please”; “we told you why we stopped you, for your felony warrant”).

Moreover, I question whether, even on the facts here, there was sufficient reasonable suspicion for the Terry stop of the Complainant. As discussed above, based on my review of the BWV, it does not appear, as NE#1 told OPA, that he was aware of the Complainant’s open misdemeanor warrants. I note, however, that OPA cannot prove its belief in this regard. With regard to the felony DOC warrant, it is further unclear what specific, objective, and articulable facts NE#1 had to believe that it was still open. Indeed, the warrant had been cleared at the time of the stop.

Ultimately, I am concerned by NE#1’s apparent inability to understand the difference between a Terry stop and a voluntary contact. While I do not think a Sustained finding is merited under the circumstances, I recommend that NE#1 receive a Training Referral.

- **Training Referral:** NE#1 should receive re-training concerning SPD Policy 6.220 generally and, specifically, the difference between a Terry stop and a voluntary conduct. He should be counseled that the stop in this case was a Terry stop and had all the characteristics of such a stop regardless of whether he ever told the Complainant that he was not free to leave and was being detained. This re-training and associated counseling should be memorialized in a PAS entry.

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

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

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

As indicated above, I find that the evidence in this case establishes that the Named Employees conducted a Terry stop of the Complainant. As such, SPD policy required them to document this stop and detention using a form called a Terry Template. (See SPD Policy 6.220-POL-10.) They admittedly did not do so in this case. In explaining why they



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did not so document the stop, NE#1 explained that, because they had probable cause to arrest the Complainant based on the open warrants, a Terry Template was inapplicable. NE#2 stated the same during his OPA interview.

Officers must document each and every time that they stop and detain someone. This is required not only by policy, but also under the Consent Decree and under law. (See SMC 14.11.060(C).) As such, when the Named Employees functionally engaged in a Terry stop, they were required to complete a Terry Template. This was regardless of whether they believed that they had probable cause to arrest the Complainant. For this reason, the failure to complete a Terry Template in this case was in violation of policy.

That being said, the Named Employees are not the only officers that have made this same argument. In a similar case recently evaluated by OPA (see 2017OPA-0967), officers had probable cause to stop a subject for trespassing, but instead conducted a Terry stop. They failed to document the stop on either a Terry Template or a General Offense Report, contending that a Terry template was inapplicable because they had probable cause to arrest and that a General Offense Report was also unnecessary because no arrest was effectuated. While I found that these officers, like the Named Employees, acted in violation of policy by not documenting the stop, I recommended that they receive a Training Referral and issued a Management Action Recommendation requesting that the Department clarify this policy and the expectation that all stops will be documented.

As such, and as a matter of procedural fairness, I issue the same recommended findings in this matter. This is the case even though I think that the policy is abundantly clear that a Terry Template is required any time a Terry stop is performed regardless of the circumstances.

- **Training Referral:** The Named Employees should be re-trained concerning SPD Policy 6.220, and specifically the requirement in SPD Policy 6.220-POL-10 that a Terry Template be completed whenever a Terry stop is performed. The Named Employees should be instructed that, if they perform a Terry stop, whether they had probable cause to arrest the Complainant at that time has no bearing on whether they should have completed this documentation. The Named Employees should be counseled to complete the appropriate paperwork in the future and that their actions were contrary to Department policy and City of Seattle law. This re-training and associated counseling should be memorialized in a PAS entry.
- **Management Action Recommendation:** As previously recommended in 2017OPA-0967, the Department should clarify SPD Policy 6.220-POL-10 to make it abundantly clear that when officers perform a Terry stop, a Terry template is required to be completed each and every time. The Department should further clarify that this is the case regardless of whether the officers had probable cause to arrest at the time of the Terry stop. Lastly, the Department should include in the policy that this requirement is memorialized in ordinance and cite to SMC 14.11.060(C).

Recommended Finding: **Not Sustained (Management Action)**

#### **Named Employee #1 - Allegations #4**

##### ***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint***

The Complainant indicated seven times that he wanted to file a complaint because, in his opinion, the officers were harassing him. NE#2 responded directly to his statements. NE#1 was looking at him and engaging him in



conversation during three times of the times that the Complainant stated that he wanted to make a complaint. Indeed, on the last occasion, NE#1 responded: “ok, perfect.” The Complainant told the officers that they were harassing him and both officers discussed that allegation with him and attempted to explain that they were not harassing him but were just checking on his DOC warrant. The Complainant told the officers that he wanted their cards and that he wanted to speak with their supervisor. NE#2 indicated that he would give the Complainant a card.

While NE#2 gave the Complainant a card, neither officer called a supervisor or asked the Complainant whether he wanted them to assist him in filing a complaint.

SPD Policy 5.002-POL-2 requires that SPD “employees will assist any person who wishes to file a complaint.” The policy further directs that “employees will assist the complainant by taking the complaint and passing it on to a supervisor and/or OPA.” (SPD Policy 5.002-POL-2.)

Here, the officers did not assist the Complainant by taking his complaint and passing it on to a supervisor and/or OPA. In addition, they did not explain to the Complainant how he could file a complaint, provide him with OPA’s contact information, or offer to file the complaint for him. Further, the Named Employees did not call their supervisor to the scene or provide the Complainant with the name and contact information of their supervisor, even though he said that he wanted to speak with a sergeant. I note that, while NE#2 stated that he disclosed the fact that the Complainant was probably going to make a complaint to his supervisor, that supervisor told OPA that he no recollection of ever having such a conversation with NE#2. NE#1 told OPA that he did not disclose the Complainant’s allegations or his statement that he was going to file a complaint to a supervisor. NE#1 further stated that he did not think he had to do that under policy.

As the Named Employees failed to comply with this policy, I recommend that this allegation be Sustained as against both of them.

Recommended Finding: **Sustained**

**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 - Voluntary Contacts, Terry Stops & Detentions 2. Officers Must Distinguish Between Voluntary Contacts and Terry Stops***

Unlike NE#1, NE#2 appeared to understand that they effectuated a Terry stop of the Complainant, not a voluntary contact. Moreover, the stop was effectuated based on NE#1’s purported knowledge of the Complainant’s open warrants. NE#2 admittedly was unaware of the Complainant’s warrant status and did not drive the decision to conduct the stop. Instead, he relied on the information he received from NE#1.



For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against him.

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

**Named Employee #2 - Allegation #3**

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

Applying the same logic as in Allegation #3, I refer to the Training Referral and Management itemized above. (See Named Employee #1, Allegation #3.)

Recommended Finding: **Not Sustained (Management Action)**

**Named Employee #2 - Allegations #4**

***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint***

For the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**