



## CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 14, 2018

CASE NUMBER: 2018OPA-0250

### 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 10. Officers Must Document All Terry Stops	Not Sustained (Management Action)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Training Referral)
# 2	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Sustained

**Imposed Discipline**

Oral Reprimand
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***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:**

It was alleged that Named Employee #1 engaged in biased policing towards the Complainant and that she failed to document the Terry stop she conducted in a Terry Template, as required by policy. It was further alleged that Named Employee #2 violated Department policy and law when he searched the Complainant’s backpack without a warrant.

**STATEMENT OF FACTS:**

The Named Employees responded to a call concerning a possible shoplift inside of a Patagonia store. The caller reported that three individuals wearing backpacks came inside of the store and set off the door sensors, suggesting that they were in possession of stolen property. The caller further stated that the males got upset when staff members would not let them take their backpacks into the fitting rooms. The caller indicated that she was concerned that the individuals would try to shoplift.

The Named Employees and a witness officer responded to the store. Their response was captured in its entirety by Body Worn Video (BWV). They spoke with the manager who pointed them to the three individuals, one of whom was later identified as the subject. The officers ultimately instructed the other two individuals to leave the store, informed them that they were receiving a trespass warning, and confirmed with the manager that two individuals were no longer welcome inside. After a back and forth between the two individuals and the officers, they left.



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With regard to the Complainant, the officers asked whose backpack had beeped and he was pointed out by the manager. The witness officer told the manager that he was going to “run [the Complainant’s] bag through the door again.” The witness officer approached the Complainant while he was standing in the fitting room area. At the time he was approached by the witness officer, the Complainant was not wearing a backpack. There was a backpack sitting by a rack of coats. The witness officer asked the Complainant whether this was his backpack and the Complainant said no. The witness officer then picked up the backpack, showed it to the Complainant, and again asked whether it belonged to him. The Complainant then said that it did.

Named Employee #2 (NE#2) took the backpack from the witness officer. NE#2 and Named Employee #1 (NE#1) had a discussion concerning the backpack, during which NE#2 stated: “that’s the bag that beeped.” NE#1 took the backpack through the sensor and it beeped. She walked back to where NE#2 was standing and he stated: “go through it. Yeah we can go through it.” He then opened and searched the bag. When doing so, he located Ralph Lauren clothing with tags still on.

At around that same time, the witness officer engaged in a discussion with the Complainant, during which the Complainant asserted that he was being racially profiled. The issue of his backpack also came up. The witness officer responded: “I haven’t asked to check your backpack, I haven’t gone in your backpack.” However, approximately 45 seconds later, NE#2 walked up to the witness officer with the unzipped and open backpack. He stated: “so this has a bunch of stolen property in here.” The witness officer looked inside the backpack. The Complainant stated to the officers: “Oh, hold on, you guys can’t go through my backpack.” NE#2 responded: “why can’t we...tell me what laws says I can’t go through your backpack.” The Complainant had no response to that statement.

The Complainant was escorted from the store and brought in front of the witness officer’s patrol vehicle. At this time, he was told that he was being detained. This portion of the incident was captured on the patrol vehicle’s In-Car Video (ICV). The video captured the Complainant in front of the patrol vehicle with his open backpack on the hood. The Complainant again alleged that he was subjected to racial profiling and this was denied by the officers. The witness officer told the Complainant: “They didn’t mention anything about your race to me. When they pointed you out, they said, ‘the guy in the gray hoodie.’ They said nothing about your race.” NE#2 further stated to the Complainant: “You did enter this store with stolen property in your bag, ok. So, you can take ownership of that or you can keep playing the race card that these people and us are racially profiling you. You did walk into the store and set off the alarm.”

A sergeant was summoned to the scene. She screened the detention and the allegation of bias. The sergeant was informed by NE#1 that the backpack set off the sensor and that it contained clothing with tags on that was believed to be stolen. The Complainant reiterated his complaint that he was racially profiled. Ultimately, the officers could not conclusively verify that the clothing was stolen but, pursuant to NE#1’s General Offense Report, the Complainant also could not provide proof of ownership and would not confirm where he obtained the clothing from. The Complainant was released from the scene and the clothing was retained. The Complainant was never placed under arrest at any point during this incident. Based on the Complainant’s allegation, this matter was referred to OPA and this investigation ensued.

During its investigation, OPA reviewed the documentation and Department video concerning this case. OPA also interviewed both of the Named Employees.



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**ANALYSIS AND CONCLUSIONS:**

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

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

The Complainant alleged on multiple occasions during the incident that he was subjected to biased policing and that he had been racially profiled.

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.*)

At her OPA interview, NE#1 denied that she engaged in biased policing in this instance. She stated that the complaint from the store employees and the fact that the Complainant’s backpack beeped when brought through the door sensor provided the support for the stop. She told OPA that the stop had nothing to do with the Complainant’s race or membership in any protected class.

The BWV did not reveal any indication of bias on the part of NE#1. She had several interactions with the Complainant and the individuals that he was with, including telling them twice that the officers were “just hanging out while you guys do your shopping.” She also ordered the other individuals with the Complainant to leave the store when they said that they had no involvement in the incident and then again when they did not provide their identification. NE#1 also told the individuals that they were trespassed. When they told NE#1 that they had not been told to leave by anyone, she replied: “I just did. You can leave now, on your own, or I can take you to jail.”

Without opining as to the propriety of her tone, demeanor, and statements to the individuals and whether she was professional under the circumstances of this case, I do not find any evidence of bias. For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

**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 officers document all Terry stops. The form officers use to do so is called a Terry Template. Within the Terry Template, officers are instructed to “clearly articulate the objective facts they rely upon in determining reasonable suspicion.” (SPD Policy 6.220-POL-10.)

NE#1 was the primary officer during this incident. Even though the Complainant was indisputably subjected to a Terry stop, neither NE#1 nor any other officers completed a Terry Template as required by policy. At her OPA interview, NE#1 told OPA that she did not believe that she was required to complete a Terry Template in this case. In that regard, she stated the following: “The reason was, I wrote a GO report under the assumption I had probable cause for the possession of stolen items.”



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OPA has recently seen a number of cases in which officers have not completed Terry Templates because they believed that they had probable cause to arrest, even if they did not actually effectuate an arrest. In such cases, the officers have, instead, completed General Offense Reports and considered that to be sufficient documentation. As a result, OPA issued a Management Action Recommendation to the Department (*see* 2017OPA-1091; *see also* Second Quarter Management Action Letter). Had NE#1 not completed a General Offense Report, I would have recommended that this allegation be Sustained. However, because she did so, as well as due to the fact that she appeared to have a genuine even if misplaced belief that she acted consistent with Department policy, I refer to and renew OPA's previous Management Action Recommendation on this issue.

While not necessarily related to this allegation, I note that NE#1 failed to provide any detail in her General Offense Report concerning the circumstances underlying the search of the backpack and what the lawful basis was for that search. Moreover, at her OPA interview, she contended that because the officers had, in her mind, probable cause to arrest, the search of the backpack was justified as incident to arrest. This makes absolutely no sense given that the subject was never arrested. Logically, you cannot conduct a search incident to arrest when no arrest occurred. It is concerning to me that this is NE#1's belief and, as discussed above, her articulated understanding is contrary to policy, clearly established law, and the Fourth Amendment.

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

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

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. As discussed below, I find that the search of the Complainant's backpack was in violation of clearly established law and SPD policy. For these reasons, I find that this conduct also violated this policy. However, given that I recommend that the below allegation be Sustained based on this same conduct, I find it unnecessary to also do so here. Instead, I recommend that NE#2 receive a Training Referral.

- **Training Referral:** NE#2 should receive additional training concerning SPD Policy 6.180-POL-2. He should specifically be reminded of the exceptions to the general requirement of a search warrant for searches. NE#2's chain of command should counsel him concerning how the search in this case violated policy, law, and the Constitution, and remind him of their and the Department's expectations in this regard. 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 #2 - Allegation #2**

***6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement***

As discussed above, NE#2 searched the Complainant's backpack. He did so during the Terry stop and detention of the Complainant. At his OPA interview, NE#2 asserted that he had both reasonable suspicion and probable cause to believe that there were stolen items in the bag. NE#2 based this on the fact that the bag beeped when taken through the door sensor. NE#2 acknowledged that the Complainant was not under arrest at the time of the search



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and, as such, the search was not incident to arrest. NE#2 confirmed that the Complainant did not consent to the search. Indeed, the Complainant actively opposed the search, stating to NE#2: "Oh, hold on, you guys can't go through my backpack." NE#2 did not have a warrant permitting him to search the bag. Lastly, the bag was closed and the items therein were not in plain view.

SPD Policy 6.180 concerns searches and, specifically, those types of searches that are justified by an exception to the general requirement of a search warrant. At issue in this case is the exception for a search incident to arrest, which is detailed in SPD Policy 6.180-POL-2(e). The policy instructs that: "Officers may only search personal items such as wallets, backpacks, or other bags if the subject had them in his or her actual and exclusive possession at or immediately preceding the time of his or her arrest." (SPD Policy 6.180-POL-2(e).)

SPD's policy concerning these types of searches and the justification for searching without a warrant is abundantly clear. Moreover, that a personal item, such as a backpack, cannot be searched absent an exception to the warrant requirement, is black letter law. This is a concept that all officers should and are expected to understand.

When NE#2 searched the Complainant's backpack, none of the exceptions set forth in this policy applied. There was no search warrant, no consent to search, no exigent circumstances, and open view was inapplicable. Further, the Complainant was never arrested and, for this reason, the search of the backpack would not have been justified as a search incident to arrest or a custodial search. I note that, in response to the Complainant's assertion at the scene that NE#2 could not search the backpack, NE#2 stated the following: "why can't we...tell me what laws says I can't go through your backpack." The laws that support this proposition are found the United States and Washington State Constitutions and in federal and state court decisions. I find it problematic and concerning that NE#2 did not understand either at the time of the search or later when he had time to more fully think about his actions that this search was unlawful.

For the above reasons, I find that NE#2's actions in this case constituted not only a violation of policy but also of the Complainant's constitutional rights. Accordingly, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**