



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 20, 2019

CASE NUMBER: 2018OPA-0683

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 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	Not Sustained (Lawful and Proper)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop	Not Sustained (Lawful and Proper)
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	Allegation Removed

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 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	Not Sustained (Lawful and Proper)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop	Not Sustained (Lawful and Proper)
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	Allegation Removed

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 the Named Employees engaged in biased policing when they effectuated detentions of the male and female subjects. It was further alleged that the detentions were not supported by reasonable suspicion and that the Named Employees may have improperly required the subjects to identify themselves.



STATEMENT OF FACTS:

A community member called 911 to report four individuals who were attempting to break into storage lockers in an alley. The following general descriptions were given of the suspects: Asian male wearing a blue jacket; White male wearing a grey jacket; Black male; and a female of an unknown race wearing a green jacket. The White male was located by officers in the vicinity of the burglary, which occurred at Barton Street between 21st and 20th avenues. Named Employee #1 (NE#1) and Named Employee #2 (NE#2), who were dispatched to the call, observed a White female walking with a Black male in the vicinity of 16th avenue and Barton Street. NE#1 wrote in his report that the White female was wearing a green and blue jacket. The Named Employees believed that the man and woman were two of the suspects in the earlier burglary. The Named Employees effectuated the detention of both individuals.

The Named Employees approached the subjects. The female subject asked what they were suspected to have done. NE#1 told her that they were investigating a burglary. The female subject denied being involved. NE#1 asked her for her identification and she stated that she did not have it. She volunteered to the officers that she had an open warrant and provided her name. NE#1 ran her name and confirmed that she did have a warrant. The female subject was placed under arrest.

NE#2 spoke with the male subject. He asked him questions concerning where he had been and what he was doing. NE#2 asked the male subject whether he had identification and he said that he did not. NE#2 asked the male subject for his name and he provided it. Another officer went to verify the male subject's identity. At that time, NE#2 directed the male subject to take his hands out of his pocket and to sit on the sidewalk. It was determined that the male subject also had an open warrant and he was placed under arrest.

After the arrests were effectuated, the female subject asserted that the Named Employees were "racist ass faggots." This was construed as an allegation of biased policing. The officers also performed a show-up after the arrests; however, the male and female subjects were not positively identified as perpetrators of the burglary.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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.*)

The female subject asserted that the Named Employees engaged in biased policing. Based on OPA's review of the record, there is no indication that any of the Named Employees' actions were due to bias. To the contrary, the officers believed that the male and female subjects were potentially the perpetrators of a burglary. Even if this was ultimately not correct, the officers had sufficient reasonable suspicion to effectuate the detentions. Moreover, both individuals voluntarily provided their identifying information to the officers and it was determined that both had open warrants. As such, they were lawfully placed under arrest. I find that these factors, not the race of the male



and female subjects, was the basis for the law enforcement action taken against them. Accordingly, I recommend that this allegation be Not Sustained – Unfounded as against both Named Employees.

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

Named Employee #1 - Allegation #2

6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful

It was alleged that the detentions of the male and female subject may not have been supported by 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 “[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, at the time they were dispatched, the officers were aware of the general descriptions of the burglary suspects. They also learned that a White male suspect had already been detained. They then observed the female subject and the male subject walking together. At the time they were detained by the Named Employees, the male and female subjects were only four blocks from the scene of the burglary and it was still close in time to when the crime occurred. The Named Employees further noted that there was virtually no one else in the vicinity at that moment.

In his report, NE#1 described the female as wearing a “green/blue jacket.” However, from a review of the Body Worn Video (BWV), the jacket appears to be blue without any green. Moreover, in his report, NE#1 wrote that the female perpetrator was identified as White. However, her race was identified as unknown in the description and there is no evidence in the record that the description was ever clarified to state that she was White.

In OPA’s opinion, the question of whether reasonable suspicion existed for the detentions is a close one. That being said, when applying a preponderance of the evidence standard and when considering what a reasonable officer might have believed under similar circumstances, I find that the detentions were justified. Most significant to OPA is the fact that the male and female subjects were relatively near to where the burglary occurred shortly after the crime had been reported, were some of the only people on the street, and did match aspects of the vague descriptions provided by the 911 caller. While I note that NE#1’s report was inaccurate in how he described the jacket color and race of the female subject, this does not serve to vitiate reasonable suspicion.



For the reasons stated above, I recommend that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

Named Employee #1 - Allegation #3

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 holds 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.

From OPA’s review of the video, while the Named Employees asked both subjects for identification, they did not compel it. Ultimately, both subjects voluntarily provided their names, which resulted in the determination that they had open warrants.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

Named Employee #1 - Allegations #4

6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful

This allegation was mistakenly alleged twice against NE#1 and NE#2. Accordingly, I recommend that it be removed for both officers.

Recommended Finding: **Allegation Removed**

Named Employee #2 - Allegations #1

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

For the same reasons as indicated 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 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful

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

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 #2 - Allegations #4

6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful

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

Recommended Finding: **Allegation Removed**