



CLOSED CASE SUMMARY

ISSUED DATE: MAY 7, 2019

CASE NUMBER: 2018OPA-1055

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 (Unfounded)
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 8. Officers May Conduct a Frisk or Pat-Down of Stopped Subject(s) Only if...	Not Sustained (Lawful and Proper)

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 Employee conducted a stop that was not supported by reasonable suspicion and that may have been based on bias. It was further alleged that the Named Employee required the Subject to provide identification and that he frisked the Subject without a proper basis to do so.

ADMINISTRATIVE NOTE:

After his OPA interview, Named Employee #1 (NE#1) provided OPA with a document in which he raised what he believed were violations of the CBA engaged in by OPA. He further provided his analysis of the allegations set forth against him.

NE#1 itemized four contractual violations. First, that OPA did not send him a five-day notice. Second, that OPA sent a late 30-day notice. Third, that the 30-day notice lacked a sufficient detail concerning the facts surrounding Allegation #3 and Allegation #4. Fourth, that OPA provided internal investigation files to an individual not permitted to receive such documents under the CBA.

With regard to the first purported violation, OPA's records, which are included in the casefile for this matter, indicate that a five-day notice was sent to NE#1 on November 6, 2018, which was within five days after the receipt of the complaint on November 1, 2018. This was consistent with the CBA.



The 30-day notice was also timely. It was sent to NE#1 on November 30, 2018, which was less than 30 days after OPA's receipt of the complaint. Moreover, NE#1's assertion that the 30-day period runs from the date that the bias complaint was made and then relayed to a Department supervisor is inconsistent with SPD policy and the functional purpose of Bias Reviews. As such, NE#1's second allegation is also unsupported.

While NE#1 is correct that OPA is required to provide a factual basis for each allegation in the 30-day notice, OPA did so for Allegation #3 and Allegation #4. Indeed, it is unclear what more detail OPA could have provided other than that NE#1 was alleged to have improperly demanded identification and improperly frisked the Subject while apparently searching for identification. NE#1's interpretation of the policy is hyper-technical. OPA also finds it significant that the Guild, itself, did not raise this objection.

With regard to the fourth purported contractual violation, the Complainant in this case was the former interim OPA Auditor. As an interim, the Complainant was not required to be confirmed by the City Council to be allowed the access his office was entitled to. As such, NE#1's fourth allegation is also without merit.

OPA notes that NE#1 raises valid points in his discussion of the merits of the allegations against him, as well as in his criticisms of OPA and the accountability system as a whole. Those points were reviewed and considered by OPA.

Lastly, OPA rejects NE#1's assertion that he is being targeted or harassed by OPA or others in this matter. Once the Complainant alleged bias policing and search and seizure violations against NE#1, OPA's options were limited. A Contact Log would have been inappropriate as the allegations, if true, would have constituted plausible policy violations. OPA was further prohibited by its Manual from classifying a bias allegation as a Supervisor Action. As such, investigation was the only possibility. This was borne out of OPA's responsibility to fully and completely investigate allegations of misconduct not due to any animus against NE#1.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

Multiple officers, including NE#1, responded to a report of a strong-arm robbery in a business. It was relayed that a male suspect wearing a mask had robbed the store of cash while armed with a handgun. The initial description of the suspect was as follows: "BM (Black male), mid 20s-mid 30s, 5'6-5'7, 140, blk (black) short hair, whi (white) surgical mask, blk sweatshirt, blk jeans, blk handgun poss (possibly) Glock." Additional updates were provided to the call, including that the suspect's clothing was "dark" and that the suspect left the business on foot and was moving westbound. The call was again updated to describe both the clothing and the handgun as black, to state that the suspect was also wearing a black beanie, and to indicate that the direction of travel of the suspect was unknown.

The beanie was located in the near vicinity of the store approximately 13 minutes after the call was first received. Around 40 minutes after the initial call, NE#1 observed an individual who he believed was possibly the suspect. NE#1 informed radio of this. NE#1 then effectuated the detention of the individual, who was later identified as the Subject. NE#1 reported that the Subject was a Black male who appeared to be in his 20s to 30s. The Subject was walking southbound on 24th Avenue South. NE#1 further reported that the Subject was wearing black pants but did not have a black sweatshirt or a surgical mask. However, NE#1 explained his belief that the Subject could have



discarded these items. In NE#1's opinion, this did not rule the Subject out as the potential suspect. Shortly after first observing the Subject, NE#1 stopped and detained him. NE#1 did so to investigate whether the Subject was the robbery suspect and he believed that the *Terry* stop was supported by reasonable suspicion. The stop occurred in the vicinity of 26th Avenue South and South Judkins Street, which was around 6/10 of a mile from the crime scene.

The Subject was wearing a dark t-shirt, which appears from a review of the video to have been dark green. He was also wearing dark pants, which were either navy blue or black, and a baseball hat. As discussed above, the Subject was not wearing or in possession of a black sweatshirt or a white surgical mask. The Subject had short dark hair. Pursuant to his military identification, which had on his person at the time, he was 36 years old, 6 feet tall, and 190 pounds.

At the scene, the Subject was extremely upset about being stopped. He refused to comply with NE#1's various commands, including that he sit down. Other officers responded to the scene and the Complainant agreed to cooperate with one other officer but refused to speak with NE#1. He repeatedly told NE#1 that he was upset at him and criticized NE#1. He further alleged multiple times that he was only stopped because of his race and because NE#1 was racist.

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.*)

It is undisputed that the Subject was not the perpetrator of the robbery. As such, it is understandable that he was incredibly upset by his liberty being infringed upon for the duration of the stop. Moreover, it is further understandable that the Subject believed that the stop was based on his race. To be clear, his race did play into the decision by NE#1 to stop him; however, his race appeared to only be a factor given the similar race of the suspect. Moreover, the Subject's race was not the only reason why he was stopped. NE#1 also believed that the Subject shared some of the physical and clothing characteristics of the suspect and that he was in the approximate vicinity of where the suspect was believed to possibly be. As such, even if I concluded that the stop was not supported by reasonable suspicion, I find no evidence to support a finding that it was based bias.

In reaching this determination, I do not diminish how the Subject must have felt during the stop and empathize with him. That being said, the evidence simply does not establish improper bias on NE#1's part. 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 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful

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.*)

NE#1 asserted that he had sufficient reasonable suspicion to stop the Subject. NE#1 explained that when he learned that the K-9 had lost the track of the suspect, he believed it possible that the suspect had either eluded officers or was hiding out until the containment cleared. He noted that, when the containment cleared and the K-9 tracking ceased, he then observed the Subject walking in the same general area as where the suspect was believed to be. As discussed above, the Subject was approximately 6/10 of a mile from the incident location. Given his belief that the suspect could have been hiding, he asserted that 40 minutes after an incident was not an unreasonable time to be continuing an area check for the suspect and that this did not, in and of itself, rule the Subject out as the potential perpetrator. NE#1 recognized that the Subject did not perfectly match the suspect description, both in terms of physical build and clothing that he was wearing. However, NE#1 stated that this was not dispositive and did not, itself, undermine his legal authority for the stop. With regard to the clothing differences, NE#1 stated that they were not “completely different.” NE#1 also noted that the officers were aware that the suspect was ditching clothing and he believed it possible that the suspect potentially changed some of his clothes after the robbery. With regard to the Subject’s physical differences from the suspect description, NE#1 recognized that the Subject was larger but asserted that this was not “wildly so.” NE#1 thought it was close enough to support the stop.

Based on OPA’s review of the evidence, OPA believes that there was a sufficient basis supporting the *Terry* stop of the Subject. While neither the clothing nor the physical description of the suspect matched the Subject exactly, the Subject was in the relatively near vicinity of the location within 40 minutes of the incident. This proximity in time and place to the crime mitigated the lack of a perfect match between the Subject and the suspect. Moreover, as NE#1 indicated, the Subject was the only person in that vicinity who came close to matching the description and was one of the few individuals walking on the street. This was another fact supporting reasonable suspicion.

Ultimately, NE#1 is correct that reasonable suspicion is a fairly low standard. I find that it was met here, and the stop and detention of the Subject were permissible. Notably, this is the case even though the Subject was not the perpetrator and was completely innocent. For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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 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.)



Based on OPA's review of the BWV, NE#1 did not ask the Subject for identification or, for that matter, demand that he provide it. The request for identification was made by another officer.

As such, I recommend that this allegation be Not Sustained – Unfounded as against NE#1.

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

Named Employee #1 - Allegations #4

6.220 - Voluntary Contacts, Terry Stops & Detentions 8. Officers May Conduct a Frisk or Pat-Down of Stopped Subject(s) Only if...

SPD Policy 6.220-POL-8 states that: "Officers may conduct a frisk or a pat-down of a stopped subject only if they reasonably suspect that the subject may be armed and presently dangerous." The policy explains that: "The decision to conduct a frisk or pat-down is based upon the totality of the circumstances and the reasonable conclusions drawn from the officer's training and experience." (SPD Policy 6.220-POL-8.) The policy provides a non-exclusive list of factors supporting such a search. (*See id.*)

NE#1 explained at his OPA interview that he conducted a pat frisk of the Subject because he believed that the Subject was the possible perpetrator of an armed robbery and was possibly armed with a handgun. Based on this belief, NE#1 patted down the Subject's pockets to make sure that this was not the case.

As indicated above, I find that NE#1's *Terry* stop of the Subject was legally justified. Inherent in that finding is the conclusion that NE#1 had reasonable suspicion to believe that the Subject was the potential armed robbery suspect. As NE#1 had this belief, he was legally permitted to pat frisk the Subject to ensure that he was not armed.

As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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