
Issued Date: APRIL 7, 2024**From:** Office of Police Accountability, Director Gino Betts Jr.,**Case Number:** 2023OPA-0446

Allegations of Misconduct & Director's Findings

Named Employee #1

1. **Allegation #1:** 5.001 – Standards and Duties, 5.001-POL-10. Employees Will Strive to be Professional
Finding: Not Sustained - Unfounded (Expedited)
2. **Allegation #2:** 5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing
Finding: Not Sustained - Unfounded (Expedited)
3. **Allegation #3:** 6.220 – Voluntary Contacts, Terry Stops & Detentions, 6.220-POL-2 Conducting a Terry Stop, 1. Terry Stops are Seizures Based Upon Reasonable Suspicion
Finding: Not Sustained - Unfounded (Expedited)
4. **Allegation #4:** 5.001 – Standards and Duties, 5.001-POL-7. Employees Engaged in Department-Related Activities Identify Themselves When Requested
Finding: Not Sustained - Unfounded (Expedited)

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:

Named Employee #1 (NE#1)—a sergeant—responded to a traffic collision involving the Complainant. The Complainant alleged that NE#1 discriminated against him due to a mental condition, unlawfully detained him, refused to identify himself, and flipped him off.

Administrative Note:

This case was approved for expedited investigation. That means OPA, with the Office of Inspector General's (OIG) agreement, believed it could issue recommended findings based solely on its intake investigation without interviewing the named employee. As such, OPA did not interview the named employee in this case.

On November 22, 2023, OIG certified OPA's investigation as thorough, timely, and objective.

Summary of Investigation:

On October 10, 2023, a lieutenant submitted an OPA complaint on the Complainant's behalf, documenting the allegations. The Complainant alleged that NE#1 was rude and flipped him off. The Complainant also alleged that NE#1 inappropriately asked about the Complainant's medical status and dropped a business card on the ground instead of handing it to the Complainant.

OPA investigated the complaint, reviewing body-worn video (BWV) and a behavioral crisis report. OPA also interviewed the Complainant.

NE#1 responded to the incident location and activated his BWV, capturing the following:

NE#1 approached the Complainant. The Complainant refused to be video recorded, citing a disability. NE#1 said department policy required him to record, but he would flag the video for confidentiality. The Complainant said a "biased crime" was committed against him because of his disability. The Complainant said one of the other parties to the traffic collision mocked him and his disability, saying he was "nuts" and a "lunatic." NE#1 asked how that was related to his disability. The Complainant said he profiled and asked NE#1 to identify himself. NE#1 complied. The Complainant asked for a report to be written about biased comments directed at him, but NE#1 replied that he failed to report a crime. The Complainant said NE#1 was biased, which NE#1 denied.

NE#1 wrote his lieutenant's name and OPA's contact information on a business card and tried handing it to the Complainant, who refused to accept it. NE#1 dropped the business card after the Complainant said he did not need it. The Complainant said he wanted to discuss the bias incident further, which NE#1 welcomed. The Complainant restated that he was discriminated against because of his disability, presenting itself as "physical mannerisms" like repetitive talking, shaking, and eye movements. The Complainant said he was diagnosed with an autism spectrum disorder. NE#1 refocused his questioning on what happened before the police arrived. The Complainant repeated his discomfort about being recorded. NE#1 said he could not establish a crime because the Complainant withheld information. The Complainant described a verbal altercation with the other parties to the collision but denied being threatened. NE#1 spoke with the other parties and witnesses, who confirmed a verbal altercation.

NE#1 reapproached the Complainant, telling him no crime was committed. NE#1 said he would document the information in a report. The Complainant refused to accept NE#1's business card again, so NE#1 dropped it.

NE#1's behavioral crisis report was consistent with the events captured on BWV. NE#1 described the Complainant's demeanor as hostile and confrontational. NE#1 also wrote, "[The Complainant's] resistance to discussing his condition on camera was very unusual. My experience with persons with [autism spectrum disorder] is that they are generally very open to talking about it with anyone who asks or is interested, [including] police officers."

On October 24, 2023, OPA interviewed the Complainant. He said NE#1 was hostile, rude, and dismissive upon contact. He said NE#1 twice “slammed” a business card against the ground instead of handing it to him. He said he felt detained during questioning due to NE#1’s aggressive demeanor. He said NE#1 inappropriately asked about his medical condition, which he did not want disclosed. He said NE#1 flipped him off as he drove away.

Analysis and Conclusions:

Named Employee #1 – Allegation #1

5.001 – Standards and Duties, 5.001-POL-10. Employees Will Strive to be Professional

The Complainant alleged that NE#1 was unprofessional.

SPD employees must “strive to be professional.” SPD Policy 5.001-POL-10. Further, “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers,” whether on or off duty. *Id.*

NE#1 was professional throughout his encounter with the Complainant. NE#1 repeatedly asked the Complainant to describe what happened, but the Complainant instead withheld information. The Complainant was combative and refused to cooperate, even after NE#1 provided ample opportunities for the Complainant to describe what happened. Throughout the encounter, NE#1 frequently refocused his questioning on what happened and how the Complainant felt he was discriminated against despite the Complainant’s resistance. NE#1 also offered to document the information reported to him in a report. NE#1’s interaction with the Complainant was professional.

The Complainant also alleged that NE#1 flipped him off as he drove away. However, the record reflects no evidence corroborating this allegation. BWV did not capture any such gesture.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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

Named Employee #1 – Allegation #2

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

The Complainant alleged that NE#1 was biased.

Biased policing means “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well as other discernible personal characteristics of an individual.” SPD Policy 5.140-POL. It includes different treatments based on mental illness. See *id.* Officers are forbidden from making decisions or taking actions influenced by bias and expressing prejudice or derogatory comments concerning personal characteristics. See SPD Policy 5.140-POL-2. Officers may not use discernible personal characteristics in determining reasonable suspicion or probable cause except as part of a suspect description. *Id.*

BWV captured the Complainant asking NE#1, “Why are you being so biased?” NE#1 replied, “I don’t understand what you’re saying, sir.” The record reflects no evidence that NE#1 was biased. Instead, NE#1 investigated whether a crime was committed against the Complainant. NE#1 repeatedly asked about the Complainant’s mental condition to determine how it impacted the verbal altercation between the parties. NE#1 also offered to flag his BWV for confidentiality because the Complainant expressed concern about its disclosure. No evidence indicates that NE#1 treated the Complainant differently based on his mental condition.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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

Named Employee #1 – Allegation #3

6.220 – Voluntary Contacts, Terry Stops & Detentions, 6.220-POL-2 Conducting a Terry Stop, 1. Terry Stops are Seizures Based Upon Reasonable Suspicion

The Complainant alleged that NE#1 unlawfully detained him.

Terry stops are seizures of an individual and, as such, must be based on reasonable suspicion to be lawful. SPD Policy 6.220-POL-2(1). A *Terry* stop is a brief, minimally intrusive seizure of a subject based on reasonable articulable suspicion to investigate possible criminal activity. SPD Policy 6.220-POL-1. Reasonable suspicion means specific, objective, articulable facts, which, taken together with rational inferences, 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.* The reasonableness of a *Terry* stop is based on the totality of the circumstances, the officer’s training and experience, and what the officer knew before the stop. *Id.* While information learned during the stop can lead to additional reasonable suspicion or probable cause that a crime occurred, it cannot justify the original stop. *Id.*

The Complainant was never detained, while NE#1 questioned him. NE#1 investigated whether the Complainant was a victim of a crime rather than a suspect. The Complainant was neither handcuffed nor told he was not free to leave. NE#1 offered to leave four times since the Complainant was uncooperative with NE#1’s investigation, dispelling the notion that the Complainant was detained.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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

Named Employee #1 – Allegation #4

5.001 – Standards and Duties, 5.001-POL-7. Employees Engaged in Department-Related Activities Identify Themselves When Requested

The Complainant alleged that NE#1 refused to identify himself by slamming his business card against the ground instead of handing it to him.

Employees engaged in department-related activities must provide their name and Department serial number verbally or in writing if requested. SPD Policy 5.001-POL-7.

Here, NE#1 verbally identified himself several times throughout his encounter with the Complainant. NE#1 also offered his business card to the Complainant twice, which the Complainant refused to accept twice. NE#1 dropped his business card in response to the Complainant's refusal to take it.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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