



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 23, 2019

CASE NUMBER: 2018OPA-0552

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.220 Voluntary Contacts, Terry Stops, and Detentions, Paragraph 10. Officers Must Document All Terry Stops	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director's Findings
# 1	6.220 Voluntary Contacts, Terry Stops, and Detentions, Paragraph 10. Officers Must Document All Terry Stops	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Lawful and Proper)

Named Employee #3

Allegation(s):		Director's Findings
# 1	6.220 Voluntary Contacts, Terry Stops, and Detentions, Paragraph 10. Officers Must Document All Terry Stops	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Lawful and Proper)

Named Employee #4

Allegation(s):		Director's Findings
# 1	6.220 Voluntary Contacts, Terry Stops, and Detentions, Paragraph 10. Officers Must Document All Terry Stops	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Lawful and Proper)

Named Employee #5

Allegation(s):		Director's Findings
# 1	6.220 Voluntary Contacts, Terry Stops, and Detentions, Paragraph 10. Officers Must Document All Terry Stops	Not Sustained (Unfounded)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)
# 3	8.400-POL-1 Use of Force – REPORTING AND INVESTIGATION 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor [...]	Not Sustained (Unfounded)
# 4	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Lawful and Proper)

Named Employee #6

Allegation(s):		Director's Findings



# 1	6.220 Voluntary Contacts, Terry Stops, and Detentions, Paragraph 10. Officers Must Document All Terry Stops	Not Sustained (Training Referral)
# 2	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Lawful and Proper)

Named Employee #7

Allegation(s):		Director's Findings
# 1	6.010 Arrests, Paragraph 5. Sergeants Must Screen All Arrests Prior to Booking	Not Sustained (Training Referral)
# 2	6.010 Arrests Paragraph 6. Screening Sergeant Will Approve Report	Not Sustained (Unfounded)

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 stated that the Named Employees failed to exercise appropriate discretion when they improperly detained him. The Complainant also alleged that Named Employee #5 inapparently pointed a rifle at him. It was further alleged that Named Employee #5 failed to report the pointing of the rifle. Lastly, it was alleged that the supervisor on scene, Named Employee #7, failed to screen the functional arrest of the Complainant and to review and approve the report written by Named Employee #6.

ADMINISTRATIVE NOTE:

The initial DCM for this case incorrectly identified Named Employee #5 as Named Employee #6's Field Training Officer. As such, OPA further errantly issued her a Training Referral for Named Employee #6's failure to complete a Terry Template, reasoning that, as his Field Training Officer, she should have ensured that he completed this paperwork and, when it was not completed, she bore equal opportunity. As Named Employee #5 was not his Field Training Officer, OPA changes its finding in this regard from a Training Referral to Not Sustained – Unfounded.

STATEMENT OF FACTS:

A hotel guest – referred to here as the victim – came downstairs to the lobby and reported to hotel staff that there were two individuals in his room who were armed with guns. The victim stated that the two suspects threatened to kill him and took his debit cards. The victim further reported that the two suspects were still in the room and, at that time, were the only individuals inside. The Named Employees responded to the hotel. Named Employee #6 (NE#6) spoke with the victim and the victim stated that his room number was 326. The victim gave NE#6 a key to the room. At around that same time, Named Employee #5 (NE#5) spoke with the hotel manager. The hotel manager told NE#5 that the suspects were in room number 336.

The Named Employees went upstairs to the third floor. While upstairs, NE#6 asked NE#5 what the room number was. NE#5 told him that the room was 336. The Named Employees set up outside of room 336, knocked on the door, and identified themselves as SPD officers. The Complainant answered the door and stepped outside. NE#6 then took hold of the Complainant's arm and placed him into handcuffs. The officers quickly determined that this was the wrong



room and that the Complainant was not one of the suspects. They released the Complainant from handcuffs and asked him to wait at the scene. They then made entry into room 326, located the two suspects, and placed them under arrest. The officers apologized to the Complainant for the confusion and for what he had experienced.

Named Employee #3 (NE#3) then went downstairs with the Complainant and spoke with the hotel manager. The hotel manager confirmed that he provided the earlier incorrect room number to the officers. Named Employee #4 (NE#4) later spoke with the Complainant, again apologized, and asked if he wanted to speak with a supervisor about the situation. The Complainant stated that he did not. A Sergeant, Named Employee #7 (NE#7), came to the scene. NE#7 spoke with officers, including NE#3 and NE#4, who screened what had occurred. NE#3 told NE#7 that the Complainant was not requesting to speak with a supervisor. After that discussion, NE#7 did not attempt to make contact with the Complainant.

The Complainant later initiated this complaint with OPA. He alleged that he was improperly removed from his room and handcuffed. He further alleged that officers pointed firearms at him. The Complainant confirmed that he told an officer that he did not think it was necessary to speak with a supervisor.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

6.220 Voluntary Contacts, Terry Stops, and Detentions, Paragraph 10. Officers Must Document All Terry Stops

As discussed below, NE#6 told OPA that, as the primary officer for this incident, it was his responsibility to complete a *Terry* Template concerning the detention of the Complainant. As such, I recommend that this allegation be Not Sustained – Unfounded as against Named Employee #1 (NE#1), Named Employee #2 (NE#2), NE#3, and NE#4.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 6. Employees May Use Discretion

As indicated in SPD Policy 5.001-POL-5, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-5.)

It was alleged that the Named Employees who were involved with the entry into the Complainant’s hotel room, abused their discretion when they entered into the wrong room. The evidence, including the BWV, indicates that the Named Employees were confused as to which room the suspects were in. While the victim stated that the room number was 326, the hotel manager told the officers that it was room number 336. The officers made the decision to rely on the room number provided by the hotel manager. While this was ultimately incorrect, I do not believe that the Named Employees acted unreasonably when they relied on the hotel manager over the Complainant. For these reasons, and even though I sympathize with the Complainant for what he experienced, I find that the officers did not abuse their discretion during this incident.



As such, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#1, NE#2, NE#3, NE#4, NE#5, and NE#6.

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

Named Employee #2 - Allegations #1

6.220 Voluntary Contacts, Terry Stops, and Detentions, Paragraph 10. Officers Must Document All Terry Stops

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

5.001 - Standards and Duties 6. Employees May Use Discretion

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 #3 - Allegations #1

6.220 Voluntary Contacts, Terry Stops, and Detentions, Paragraph 10. Officers Must Document All Terry Stops

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 #3 - Allegation #2

5.001 - Standards and Duties 6. Employees May Use Discretion

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 #4 - Allegations #1

6.220 Voluntary Contacts, Terry Stops, and Detentions, Paragraph 10. Officers Must Document All Terry Stops

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 #4 - Allegation #2

5.001 - Standards and Duties 6. Employees May Use Discretion

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 #5 – Allegation #1

6.220 Voluntary Contacts, Terry Stops, and Detentions, Paragraph 10. Officers Must Document All Terry Stops

As discussed above, the initial DCM in this case incorrectly identified NE#5 as the Field Training Officer for NE#6. She was not serving in that capacity during this incident and, thus, bore no responsibility for NE#6's failure to complete a Terry Template for detention of the Complainant.

As such, OPA amends its decision from a Training Referral to Not Sustained – Unfounded.

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

Named Employee #5 – Allegation #2

8.200 - Using Force 1. Use of Force: When Authorized

The Complainant contended that NE#5 inappropriately pointed her rifle at his chest.

As a starting point, from OPA's review of the BWV, it does not appear that NE#5 ever pointed her rifle directly at the Complainant. At the time the Complainant exited the hotel room, NE#5's rifle was in the low ready position, pointing down to the ground. While the rifle did appear to be shouldered at one point, this appeared to occur prior to the Complainant exiting the room.

Moreover, even had NE#5 pointed her rifle at the Complainant, it would likely have been consistent with policy. At that time, the officers reasonably believed, even if ultimately incorrect, that the Complainant was an armed suspect and that there was one other armed suspect in the room. As such, it would have been appropriate for NE#5 to have pointed her rifle at the Complainant under these circumstances.

As the Complainant's allegation was that force, in the form of the pointing of a rifle, was used against him and as I find that this force did not actually occur, I recommend that this allegation be Not Sustained – Unfounded.

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



Named Employee #5 – Allegation #3

8.400-POL-1 Use of Force – REPORTING AND INVESTIGATION 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor [...]

SPD Policy 8.400-POL-2 states that officers, including witness officers, will verbally notify a supervisor immediately, unless not practical, following any use of reportable force. SPD Policy 8.400-POL-1 categorizes the pointing of a firearm as Type I force that must be reported to a supervisor.

As discussed above, I find that NE#5 did not point her rifle directly at the Complainant and, thus, that she did not use reportable force during this incident. Accordingly, NE#5 was not required to report force that she did not use and I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #5 - Allegations #4

5.001 - Standards and Duties 6. Employees May Use Discretion

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 #6 – Allegation #1

6.220 Voluntary Contacts, Terry Stops, and Detentions, Paragraph 10. Officers Must Document All Terry Stops

As indicated above, NE#6 was the primary officer during this incident. As such, he was responsible for completing any required documentation. Here, the Complainant was clearly detained and functionally taken into custody due to the application of handcuffs. As such, a *Terry* Template was mandated, but NE#6 failed to ensure that this report was generated.

SPD Policy 6.220-POL-10 requires that officers document all *Terry* stops using 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.)

At his OPA interview, NE#6 acknowledged that a *Terry* Template was required and accepted responsibility for failing to create that paperwork. While this constituted a violation of policy, I do not feel that a Sustained finding is necessary for two main reasons. First, NE#6 owned his error and clearly expressed that he would do better next time. Second, at the time of the incident, NE#6 was a student officer and was, thus, still very new to the Department. Moreover, his Field Training Officer, NE#5, did not catch that he failed to complete this paperwork and did not instruct him to do so.

For the above reasons, I instead recommend that NE#6 receive the below Training Referral.



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- **Training Referral:** NE#6 should receive additional training as to the requirement that a *Terry* Template be generated whenever he effectuates a *Terry* stop. He should be counseled concerning his failure to complete that report here and his supervisors should ensure that he more closely complies with this policy moving forward. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #6 – Allegation #2

5.001 - Standards and Duties 6. Employees May Use Discretion

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 #7 – Allegation #1

6.010 Arrests, Paragraph 5. Sergeants Must Screen All Arrests Prior to Booking

SPD Policy 6.010-POL-5 states that sergeants must screen all arrests prior to the booking of an arrestee. The policy further requires sergeants to conduct a screening any time an individual is detained and placed into handcuffs. (SPD Policy 6.010-POL-5.) Implicit in this policy is the requirement that sergeants must also screen an un-arrest situation.

It is undisputed that NE#7 failed to screen the un-arrest of the Complainant. This was clearly required under the circumstances of this case as the Complainant was detained and handcuffed.

NE#7 explained to OPA that, when he arrived at the scene and spoke with officers, he was informed that the Complainant had expressly stated that he did not need to speak to a supervisor. NE#7 further told OPA that he decided not to contact the Complainant to screen the un-arrest due to the late hour and because he did not want to “re-traumatize” the Complainant.

While NE#7’s reasoning is understandable, the policy is clear that the screening of an arrest situation is mandatory. NE#7 should have at least attempted to make contact with the Complainant. Had the Complainant expressed at that time that he was unwilling to discuss the matter, NE#7 would have been warranted in taking no further action. However, given the unique circumstances of this case, I recommend that NE#7 receive a Training Referral rather than a Sustained finding.

- **Training Referral:** NE#7 should be reminded that SPD Policy 6.010-POL-5 requires that he screen an arrest or, for that matter, an un-arrest situation. NE#7 should be counseled concerning his failure to do so here and his chain of command should discuss some other steps NE#7 could have taken in this case to ensure that he acted consistent with policy. 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 #7 – Allegation #2

6.010 Arrests Paragraph 6. Screening Sergeant Will Approve Report

SPD Policy 6.010-POL-6 instructs that the screening sergeant will approve the reports generated as a result of an incident. The policy further states that: “The same sergeant that screened the arrest will be the one to review all documentation related to the incident.” (SPD Policy 6.010-POL-6.)

Here, NE#7 did not approve the General Offense Report submitted by NE#6. Instead, it was approved by another supervisor. NE#7 told OPA that, right after he left the hotel, he responded to another call. He stated that when he returned to the precinct, the report had already been approved by NE#7.

It appears that NE#7 would have approved the report but for the other supervisor doing so first. This occurred because he needed to immediately go to another call, not because he abdicated his responsibilities. As such, I find that he did not violate policy in this instance and I recommend that this allegation be Not Sustained – Unfounded as against him.

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