



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 3, 2019

CASE NUMBER: 2018OPA-0752

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	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 (Training Referral)
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops	Not Sustained (Training Referral)
# 3	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	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 alleged that the Named Employee subjected him to biased policing. It was further alleged that the Named Employee may have detained the Complainant without reasonable suspicion to do so and that the Named Employee failed to complete a *Terry* Template as required by policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

Named Employee #1 (NE#1) observed a vehicle parked in a spot reserved for disabled drivers. The vehicle did not have a “disabled parking” placard. NE#1 saw two individuals in the near vicinity of the car. One of those individuals – who is the Complainant in this case – walked over to the car and NE#1 engaged him in conversation. NE#1 asked the Complainant for his license. The Complainant stated something under his breath and turned to walk towards his car. NE#1 then said in response: “The other option is I can write you the five hundred dollar ticket.” The Complainant told NE#1 that he could just move his car and NE#1 referenced that he was parked in an illegal spot and that there were other legal parking spots that the Complainant previously neglected to park in. The Complainant gave NE#1 his license and NE#1 returned to his patrol vehicle with the license and entered the Complainant’s information into his Mobile Data Terminal (MDT).

After running the Complainant’s information through the MDT, NE#1 determined that he had an open misdemeanor warrant. NE#1 placed the Complainant under arrest. The Complainant later asserted that he had been arrested



based on his race. During OPA's intake investigation, allegations concerning the stop, itself, and NE#1's apparent failure to have generated a *Terry* Template were also added to this case.

At the time that NE#1 took the Complainant's license and went to his patrol vehicle, the Complainant was functionally detained and the stop must 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 a general matter, a *Terry* stop may not be made to investigate a parking violation. *See State v. Day*, 161 Wn.2d 889, 168 P.3d 1265 (2007). Moreover, a seizure for constitutional purposes occurs when an officer retains a suspect's identification or driver's license and takes it with him to conduct a warrants check. *See State v. Thomas*, 91 Wn. App.195, 955 P.2d 420, review denied, 136 Wn.2d 1030 (1998); *see also State v. Dudas*, 52 Wn. App. 822, 834, 764 P.2d 1012, review denied 112 Wn.2d 1011 (1989).

At his OPA interview, NE#1 stated that he was justified in requesting the Complainant's identification and taking it back to his patrol vehicle based on SMC 11.23.400. This ordinance reads, in part, as follows: "Any peace officer or parking enforcement officer investigating the possibility of a violation of this Section 11.23.400 may request a person to show the person's identification card or special parking placard and, if such request is refused, may issue a notice of infraction for violation of this Section 11.23.400." However, this ordinance deals with the illegal obtaining of a placard, not improper display. Notably, the section of the Municipal Code that deals with improper display – SMC 11.72.065 – does not provide a legal justification to compel identification.

At his OPA interview, NE#1 further asserted that he took the Complainant's identification in order to "check the endorsement on his license." However, the identification card provided to disabled drivers – as referenced in RCW 46.19.010 – is a separate card that is not part of a motorist's driver's license. Moreover, even if such an endorsement was included on a Washington State driver's license, once NE#1 took the license, brought it to his car, and kept it there, he effectuated an unjustified detention of the Complainant.

The above being said, I find that this was a mistake on the part of a newer officer rather than intentional misconduct. NE#1 appeared to be confused, in good faith, concerning whether he could compel the Complainant to provide his identification and did not understand that, when he did so, he effectuated an unlawful seizure. I believe that retraining and counseling, rather than a Sustained finding, is the more appropriate result. For these reasons, I recommend that this allegation be Not Sustained – Training Referral.



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- **Training Referral:** NE#1's chain of command should discuss this incident with him. NE#1 should be required to review this DCM, as well as the legal and statutory authority referenced herein. NE#1's chain of command should ensure that he understands how he acted contrary to law and policy in this case and that he does not revisit this conduct in the future. 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 #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 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.) Officers must also include the following information in the *Terry* Template: "The reason (including reasonable suspicion or probable cause) and disposition of the stop (including whether an arrest resulted; and whether a frisk or search was conducted and the result of the frisk or search)." (*Id.*) A *Terry* Template may be completed in conjunction with a General Offense Report. (*See id.*) Stated differently, that a General Offense Report was completed does not excuse officers from also generating a *Terry* Template if it is required under the circumstances.

NE#1 completed a General Offense Report; however, he failed to also complete a *Terry* Template. Based on the video evidence, however, NE#1 clearly conducted a *Terry* stop of the Complainant. As such, he was required, by policy, to document that detention in a *Terry* Template.

At his OPA interview, NE#1 recognized that he made a mistake when he failed to complete a *Terry* Template. He contended, however, that a *Terry* Template was not required because he had probable cause to arrest the Complainant for the open warrant. Notably, this is immaterial to whether a *Terry* Template is required. This documentation must be completed wherever a *Terry* stop is effectuated – regardless of whether the officer had probable cause to arrest at the time or developed probable cause during the preliminary investigation.

While I find that NE#1's failure to complete a *Terry* Template violated policy, I recommend that he receive a Training Referral instead of a Sustained finding for two main reasons. First, NE#1 acknowledged that he made a mistake when he failed to complete this paperwork and, thus, was accountable for his actions. Second, NE#1 did complete a General Offense Report and he set forth the basis for and extent of the detention therein

As such, and based on the circumstances of this case, I recommend that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1 should receive retraining as to the elements of SPD Policy 6.220-POL-10. He should be reminded that the policy requires that he complete a *Terry* Template whenever he effectuates a *Terry* stop, regardless of whether he has probable cause at the time or whether the stop later results in an arrest.



This retraining and any associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #3

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.*)

As discussed above, the Complainant alleged that he was detained and arrested based on his race. This allegation is, however, disproved by the objective evidence in this case. First, the video establishes that the Complainant was illegally parked. Moreover, the video further indicates that there was a warrant for the Complainant’s arrest. Even if this warrant was ultimately invalid, NE#1 acted in good faith when he relied on the information he received.

Ultimately, NE#1’s actions were based on the Complainant’s conduct, the open warrant, and NE#1’s understanding of the applicable law. There is no indication that he engaged in biased policing at any point. As such, I recommend that this allegation be Not Sustained – Unfounded.

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