



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 3, 2018

CASE NUMBER: 2017OPA-0667

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 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Training Referral)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 4. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time	Sustained
# 4	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)

Imposed Discipline

Oral Reprimand

Named Employee #2

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 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Training Referral)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 4. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time	Sustained
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop	Not Sustained (Management Action)

Imposed Discipline

Oral Reprimand

Named Employee #3

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)



CLOSE CASE SUMMARY

OPA CASE NUMBER: 2017OPA-0667

# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Training Referral)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 4. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time	Sustained
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop	Not Sustained (Management Action)

Imposed Discipline

Oral Reprimand

Named Employee #4

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 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Training Referral)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 4. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time	Sustained
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop	Not Sustained (Management Action)
# 5	5.001 - Standards and Duties 5. Employees May Use Discretion	Not Sustained (Training Referral)

Imposed Discipline

Oral Reprimand

Named Employee #5

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	5.001 - Standards and Duties 5. Employees May Use Discretion	Not Sustained (Training Referral)

Named Employee #6

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	Sustained
# 2	5.001 - Standards and Duties 5. Employees May Use Discretion	Sustained

Imposed Discipline

Oral Reprimand



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, a Department Sergeant, alleged that Named Employees #1 through #4 detained the subjects for an unreasonable amount of time in restraints after determining that the subjects were not involved in the underlying suspected crime and waited for a supervisor to arrive to screen the incident prior to releasing them. During intake, OPA added additional allegations for these Named Employees for potentially failing to have reasonable suspicion for the stop, and for not limiting the scope of the stop when they handcuffed the subjects and put them into the back of a patrol car. Lastly, also during intake, OPA further added allegations for Named Employee #5 and Named Employee #6 for inappropriate use of police authority and discretion for requesting that the vehicle be stopped without reasonable suspicion that the subjects had been or were about to engage in the commission of a crime.

STATEMENT OF FACTS:

A. The Initial Contact with the Occupants of the Black Vehicle

On June 2, 2017, a caller reported to police that she had seen someone with a firearm and that there was a male who was bleeding at the scene. During her conversation with the dispatcher, the caller relayed that the individual who was bleeding had been punched not shot. Multiple units were dispatched to the scene. The dispatcher referred to the incident as a shooting even though, at that point, no one had actually reported shots being fired. The dispatcher did not provide a description of any subjects or indicate that subjects were still in the vicinity at that time. Named Employee #5 (NE#5), Named Employee #6 (NE#6), and Officer Hoang were the first officers who arrived at the scene. NE#5 and NE#6 arrived at approximately 12:23:07 hours. The officers pulled into a parking lot in front of a building. (NE#5 and NE#6 Front ICV, at 12:23:10 – 12:23:23.) At the time they did so, they were immediately facing several individuals who were getting into a black vehicle. (*Id.* at 12:23:23 – 12:23:26.) Over the radio, another officer, believed to be Officer Hoang, reported seeing people who looked like they were fighting. (*Id.*) Based on my review of the ICV, however, these particular individuals were not fighting, pushing each other, or moving in any way that could be deemed aggressive. To the contrary, the individuals walked slowly up to the car, without any apparent indication that they were the subjects of police attention, opened the doors, and sat in the vehicle. (*Id.* at 12:23:26 – 12:23:31.) The vehicle then began backing up and NE#5 and NE#6 approached it on foot. (*Id.* at 12:23:31 – 12:23:33.) NE#5 stated: “stop the car.” (12:23:34 – 12:23:36.) However, prior to him doing so, the car was already backing up. (*Id.* at 12:23:34.) NE#5 then said: “you fucking stop the car right now.” (*Id.* at 12:23:34 – 12:23:42.) When he made the second statement, the car had already begun turning into the street. (*Id.*) As it turned away from NE#5, he took four to five quick steps towards the vehicle; however, it had already pulled out into the street and had driven away. (*Id.*) It was unclear from the video whether the occupants of the vehicle saw or were able to hear NE#5. The car turned into the street at a normal rate of speed and drove at that same rate away from the officers. (*Id.* at 12:23:42 – 12:23:50.)

NE#5 then issued a description of the vehicle over the radio and requested that it be stopped. NE#5 did not, at that time, provide a reason for why he wanted the vehicle stopped. (NE#5 OPA Interview, at p. 3.)



B. The High Risk Felony Stop and the Resolution of the Incident

NE#5's request that the vehicle be stopped came over the radio at 00:24 hours. One minute later, NE#4 initiated the high-risk vehicle stop. Virtually simultaneously, the call was updated to reflect that a man with a gun was walking south on Airport Way. One minute after that, at 00:26 hours, a description of the suspected shooter was provided. The single suspect described was a Black male between 26 and 32 years old, with facial hair and wearing a white shirt.

NE#4 ordered all of the occupants to put their hands outside of the vehicle's windows. The occupants did so. NE#4 and NE#2 then engaged in a conversation concerning the basis for the stop. The officers appeared confused as to why exactly they were stopping the vehicle. At one point, NE#4 stated: "do you want me to pull them out or just hang tight until we have something." NE#2 responded: "I don't think there is a crime yet." NE#2 then indicated his belief that there was "enough" to proceed with the stop and that they were already there. NE#2 said to NE#4: "we can go over the air and find out if you want." NE#4 stated: "I don't care either way, I mean we can hang tight now." At that point, the radio transmission concerning the male with a gun came over the radio. In response to that transmission, NE#2 said: "pull them out. Everybody says that there's a handgun, maybe not shots. But there's a handgun." There was no further conversation on this issue and the occupants were then pulled out of the vehicle at gunpoint.

Each of the occupants was frisked, handcuffed and placed into the rear of patrol vehicles. Once all of the occupants were secured, the officers again began to discuss why they had effectuated the stop in the first place. The officers asked why the car had been stopped and who had asked for it to be stopped. In-Car Video (ICV) further captured a conversation between NE#4 and NE#5 in which they discussed the stop and another conversation between NE#2 and NE#5 in which they discussed the fact that none of the occupants of the vehicle matched the description of a male suspect with a white shirt.

The ICV also captured conversations between NE#2 and NE#4 and the occupants. In one conversation, NE#2 asked the occupants whether they had seen anyone wearing a white shirt. At this point, however, the occupants were still handcuffed and detained. NE#4 also had a conversation with the occupants regarding what they saw at the scene and this occurred when they were still detained and handcuffed.

NE#2 summoned a supervisor to the scene and Sergeant Dunckle arrived shortly thereafter. Almost immediately, Sergeant Dunckle ordered that the occupants be released and they left the scene.

C. OPA's Investigation

This matter was referred to OPA by Sergeant Dunckle. In the Blue Team Complaint Form he submitted, Sergeant Dunckle alleged that NE#1, NE#2, NE#3 and NE#4 may have violated SPD policy by improperly detaining the occupants of the vehicle after it had been determined that they were not involved and waiting until a supervisor arrived at the scene before releasing them from custody.

OPA then initiated this investigation. During its inquiry, OPA reviewed ICV, calls and radio traffic, and paperwork generated as a result of the incident. OPA also interviewed all of the Named Employees and two of the occupants of the vehicle.



1. NE#5's Interview

At his OPA interview, NE#5 confirmed that when he arrived at the scene he had no subject or vehicle description. (NE#5 OPA Interview, at p. 2.) He stated that he first viewed a group of approximately six to eight people who were arguing outside of their vehicles. (*Id.*) He stated that it appeared that they were pushing each other but they were blocked in part by a pillar. (*Id.* at 3, 7) ("it looked like they might've pushed each other but I couldn't tell for sure because of the pillar.") NE#5 asserted that some of the individuals looked at him and then got into their vehicle and left. (*Id.* at 3.) After watching the ICV, NE#5 stated that the individuals were "running to their vehicles." (*Id.* at p. 5.) NE#1 claimed that the vehicle "sped off pretty quickly." (*Id.* at p. 3.) He explained that "it was probably doing 30 miles an hour before it left" and that he "could hear the motor revving." (*Id.*)

NE#5 stated that his reasonable suspicion to make the vehicle stop was based on a report of shots fired at that location and his belief that the individuals were involved in an altercation – namely that they were possibly pushing each other and arguing. (*Id.*) NE#5 confirmed that he requested over the radio that the vehicle be stopped, but that he did not provide a reason for the stop. (*Id.*) When asked whether he believed that it would have been helpful for the other officers to know why the vehicle was being stopped, NE#5 responded: "potentially." (*Id.* at p. 4.)

NE#5 indicated that, after the stop had been effectuated, the other Named Employees called him and asked him for the reason for the stop. NE#5 told them that it was because he saw the occupants involved in an altercation (arguing and "potentially" pushing) and then flee the scene. (*Id.* at p. 7-8.) I note that earlier in his interview, NE#5 stated that the reason he gave for the stop was that: "I saw them, saw the people who were in the vehicle arguing and I thought they might be involved and they left when I, when I got out of my vehicle and they saw me." (*Id.* at p. 4.)

2. NE#6's Interview

NE#6 stated that he and NE#5 pulled into a parking lot and saw a group of individuals "fighting" and "struggling with each other." (NE#6's OPA Interview, at p. 2.) He described the scene as "kind of chaotic." (*Id.*) NE#6 indicated that the individuals "in the fight split up and ran into the car," and that once the individuals "jumped into the car" they then "fled the scene." (*Id.* at pp. 2-3.) NE#6 did not recall having a description of either the suspected perpetrator or the subject vehicle. (*Id.* at p. 5.)

NE#6 explained that because he observed the individuals in a "struggle" he believed that he had reasonable suspicion to detain them to determine if one of them was the "shooter." (*Id.* at p. 6.)

3. NE#4's Interview

NE#4 reported that he received a call concerning a vehicle that "needs to be stopped." (NE#4's OPA Interview, at p. 2.) NE#4, who was by himself, stopped the vehicle and waited for a backup unit. (*Id.*) Based on the fact that the suspected crime involved a handgun, NE#4 decided that a high-risk felony stop was appropriate. (*Id.*) NE#4 noted that, at that time, no reason had been given for the stop. (*Id.* at p. 3.)

NE#4 stated that he believed a description was issued concerning the suspect or the suspect, but he did not remember whether he had that description when the stop was made. (*Id.* at p. 3.) Later in his OPA interview, he



stated that he did not have any information specific to the occupants. (*Id.* at p. 8.) When asked at his OPA interview what he believed the reasonable suspicion was for the stop, NE#4 stated that he thought the occupants were involved in a shooting. (*Id.* at pp. 3-4.)

NE#4 indicated that the officers were not in a rush to perform the search, but that he did not take the time to verify the basis for the stop because NE#5 had requested it and he relied on that request. (*Id.* at pp. 4-5.) However, NE#4 stated that he was definitely confused about the reasons for the stop. (*Id.* at p. 5.)

NE#4 asked the occupants of the vehicle to put their hands outside of the windows and they were compliant. (*Id.* at pp. 6, 7.) NE#4 did not recall that Officer Hoang came over the radio told everyone to slow down because no one had been shot. (*Id.*)

NE#4 stated that once the occupants were secured and in his vehicle, he realized that they were not the subjects the officers were looking for. (*Id.* at p. 10.) NE#4 indicated that the occupants were detained past this point because of NE#4's confusion with policy. (*Id.*) NE#4 was not aware that the occupants were required to be immediately unhandcuffed and released. (*Id.*)

4. NE#1's Interview

On the date in question, NE#1 was a probationary officer. (NE#1's OPA Interview, at pp. 1-2.) NE#1 stated that he and his partner, NE#2, assisted in conducting the high-risk felony stop. (*Id.* at pp. 2-3.) When NE#1 and NE#2 arrived at the scene, the vehicle had already been stopped. (*Id.* at p. 3.) NE#1 stated that, at the time that the stop was conducted, he did not know what the reasonable suspicion was. He just heard over the radio, "stop that car." (*Id.*) NE#1 stated that there was no rush to complete the stop. (*Id.*)

NE#1 did not remember NE#2 saying: "I don't think there's a crime yet, nobody was shot." (*Id.* at p. 4.) NE#1 believed that the stop was conducted to determine whether the occupants were connected to the shooting. (*Id.*) NE#1 did not recall hearing NE#2 and NE#4 engage in a conversation where they discussed that they did not know the reason for the stop. (*Id.* at p. 5.) He further did not recall hearing NE#4 state, in response to NE#2's assertion that they could go over the air to check the basis for the stop, "hey we're already here, we might as well do it." (*Id.*) NE#1 could not explain why the officers did not check what the lawful purpose was for the stop, except to say that he was relying on his belief that the officers requesting the stop would not have done so absent reasonable suspicion. (*Id.* at pp. 5-6.) NE#1 indicated that his role was as a backing officer and that he did not make the decision to proceed with the high-risk vehicle stop. (*Id.* at pp. 6-8.)

NE#1 explained that all of the occupants of the car were removed at gunpoint. (*Id.* at p. 6.) They were frisked, handcuffed, and placed into the rear of locked patrol vehicles. NE#1 stated that he did not recall whether he had a description of the subjects. (*Id.*) When the OPA investigator provided him with the description that was aired over the radio, NE#1 could not recall whether any of the occupants of the vehicle matched that description. (*Id.* at pp. 6-7.) NE#1 did not engage in any investigation to determine whether any the occupants were actually the suspect, and reported "standing by." (*Id.* at p. 8.)

NE#1 recalled that it was determined that the occupants were not connected to the shooting. (*Id.* at p. 10.) A sergeant arrived at the scene and the occupants were released. (*Id.*)



5. NE#2's Interview

NE#2 and his partner, NE#1, were the second car to arrive on the scene. (NE#2's OPA Interview, at p. 3.) At that time, NE#4 had already pulled the vehicle over. (*Id.*) NE#2 stated that the stop was effectuated because the vehicle was believed to be connected with the shooting and potentially had the shooter inside. (*Id.*) Later during his OPA interview, however, NE#2 reasoned that the vehicle could have contained the victims or the perpetrators and the officers were legally justified to stop them in order to find out. (*Id.* at p. 10-11.) NE#2 stated that he had no confusion concerning the basis for the stop. (*Id.* at p. 4.)

NE#2 stated that they did not rush to complete the stop. (*Id.*) NE#2 was asked about the conversation he had with NE#4 concerning the basis for the stop, and he recounted that NE#4 was unsure whether he had enough to pull the occupants out of the car. (*Id.* at p. 5.) NE#2 stated that he did believe they had a sufficient basis to do so. (*Id.*)

When he was asked at his OPA interview why the officers did not go over the radio to clarify the reasons behind the stop, NE#2 stated that he was just a backing officer and it was up to NE#4 to have done so. (*Id.* at p. 7.)

NE#2 stated that once the occupants were out of the vehicle, it was clear that they did not match the description of the male suspect; however, they were still frisked, handcuffed, and detained. (*Id.* at pp. 7-8.) Moreover, even though it was determined that the occupants were not involved in any underlying crime, they remained detained until a supervisor arrived at the scene. (*Id.* at pp. 8-9.) NE#1 stated that the occupants of the vehicle were identified prior to being released: "Just so we could run history and make sure that, that—it was a legit Terry Stop so we were identifying them just to ensure they didn't have any warrants or anything like that on top of just knowing who they are." (*Id.* at p. 9.)

6. NE#3's Interview

NE#3 assisted with the high-risk vehicle stop. He believed that the vehicle was stopped because it was related to a shots fired call, but he did not have any specific information. (NE#3's OPA Interview, at p. 2.)

NE#3 helped get the occupants out of the stopped vehicle and put several in his car. NE#3 stated that he got "contact info" for some of the people being detained. (*Id.* at pp. 2, 6.) One of the detainees made a complaint of pain from the handcuffs, and NE#3 reported that complaint to a supervisor. (*Id.* at p. 7.)

NE#3 did not remember what was discussed at the time of the stop, whether a plan was formulated, or the communications between the officers at the scene. (*Id.* at pp. 3-4.) NE#3 as shown the video of the stop at his OPA interview and was asked if he remembered some of the statements of the officers captured by the video that exhibited confusion concerning the reason for the stop and what steps they should take. (*Id.* at pp. 4-5.) The video did not refresh NE#3's recollection. (*Id.*)

NE#3 stated that he did not know why no one went over the radio to verify the reason for the stop. (*Id.* at p. 5.) He stated that this was not his role as he was simply serving as the cover officer. (*Id.*) As such, he stated that he was there only to assist the officers effectuating the stop. (*Id.*) When asked why everyone was pulled out of the vehicle, he stated that this is what is usually done so it was done in this case. (*Id.*) NE#3 indicated that the vehicle occupants were handcuffed, frisked and secured in patrol vehicles for safety reasons given the purported connection of the vehicle to a shooting. (*Id.* at p. 6.)



When asked why he, along with other officers, requested personal information from the occupants, NE#3 stated that it was: “to identify everybody to see if it’s re—related or be able to pass along the information.” (*Id.* at p. 7.)

He did not remember when it was determined that the occupants were not connected to the shooting. (*Id.* at pp. 6- 7.) NE#3 stated that he did not know why the occupants were not immediately released when it was determined that they were not connected to the shooting. (*Id.* at 7.) He indicated that this was the responsibility of the primary officer, who in this case was NE#4. (*Id.*)

Lastly, NE#3 stated that normally when a fellow officer requests that a vehicle be stopped, he assumes that the officer is making that request based on sufficient reasonable suspicion or probable cause. (*Id.* at pp. 7-8.) NE#3 stated that in some cases, he might go over the radio and ask for the basis for the stop. (*Id.* at p. 8.) However, he did not do so all the time and did not do so in this case. (*Id.*)

7. John Walker’s Interview

He reported that he was trying to get his friends in his car. He then saw the police drive up. He heard a police officer say stop, but he kept driving because he had done anything illegal. Walker stated that he had not been in a fight that evening or even in the vicinity of the fight, and that he was not arguing with anyone. Walker initially told OPA that he “sped” off, but later explained that he meant that he did not waste any time leaving the area not that he drove at high speeds away from the officers.

Walker was then pulled over. A police officer told him to put his hands outside of the car. The officer told him to get out of the car. The other occupants of the car were ordered to get out of the car one by one.

8. Bedanys Rivera-Luna’s Interview

Ms. Rivera-Luna recounted that she was at a party when a fight broke out. She and her friends were not involved in any fight or argument. She was trying to leave the location when she heard shots fired. She left the vicinity when police started arriving. The group that she was with tried to convince another group to try to leave the area. Police arrived at that location and everyone was scared. They then drove off. Ms. Rivera-Luna stated that while she saw the police officers, she did not believe that they were trying to get her attention.

They were pulled over approximately half a mile down the road. They were ordered out of the car and detained for a period of time. Another officer then arrived on the scene and they were released and went home.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #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

As explained more fully below, I find that there was no reasonable suspicion supporting the stop of the vehicle. However, NE#1, NE#2, NE#3 and NE#4 effectuated the stop based on information provided to them by NE#5. As such, NE#5 ultimately bears responsibility for this violation of policy and I do not believe it to be warranted to issue a



sustained finding against these other Named Employees solely because they relied, ultimately incorrectly, on the judgment of another officer.

From a review of the ICV, there was significant confusion between these Named Employees concerning why they were actually engaging in the vehicle stop. Given that confusion, the officers should have simply gone over the radio to determine the basis before conducting the high-risk vehicle stop. Certainly, this would have not been unduly onerous. Moreover, it would have prevented four innocent individuals from being subjected to an embarrassing and likely terrifying and traumatic ordeal.

For these reasons, I recommend that this allegation be Not Sustained – Training Referral.

Training Referral: NE#1 should receive additional training concerning the requirements of SPD Policy 6.220, and, specifically, when reasonable suspicion exists to stop and detain a subject and to conduct a high-risk vehicle stop. NE#1 should also receive counseling concerning his specific conduct in this matter and the Department’s expectation that, if he is unsure of the basis for a stop, he will verify that it is legally supported prior to taking law enforcement action. This training and associated counseling should be memorialized in a PAS entry.

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

Named Employee #1 - Allegation #2

6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope

SPD Policy 6.220-POL-3 requires that, during a Terry stop, officers limit the seizure to a reasonable scope. Where an officer orders a subject from a vehicle, handcuffs a subject, points a firearm, or frisks a subject for weapons, the officer “must have additional articulable justification for further limiting a person’s freedom...” (SPD Policy 6.220- POL-3.) Based on NE#5’s request and their associated belief that the vehicle was connected to a shooting, NE#1, NE#2, NE#3 and NE#4 conducted a high risk stop. This included ordering the occupants out of the vehicle at gun point, frisking and handcuffing them, and securing them in a patrol vehicle. The high risk stop, itself, was conducted consistent with the officers’ training. After the stop was effectuated, the officers determined that there was no connection between the occupants and any shooting. However, the occupants remained detained until a supervisor arrived on the scene. While the stop was, in my opinion, ultimately unsupported by reasonable suspicion and unwarranted, the officers acted in accordance with NE#5’s request and on the belief, albeit mistaken, that there was a basis for the stop.

For these reasons, I recommend that this allegation be Not Sustained – Training Referral. I further refer to the training referral above. (See Named Employee #1, Allegation #1.)

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



Named Employee #1 - Allegation #3

6.220 - Voluntary Contacts, Terry Stops & Detentions 4. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time

SPD Policy 6.220-POL-4 instructs that, during a Terry stop, the seizure must be limited to a reasonable amount of time. The policy indicates that subjects may only be seized long enough to effectuate the purpose of the stop and any delays in completing the stop must be objectively reasonable. (SPD Policy 6.220-POL-3.) Lastly, “officers may not extend a detention solely to await the arrival of a supervisor.” (*Id.*)

Here, the occupants of the vehicle were detained well after it was determined that they were not involved in the underlying shooting. Notably, none of the occupants matched the description of a Black male with a white shirt. Indeed, two of the occupants were women. Moreover, both NE#2 and NE#4 engaged in conversations with the occupants during which they were treated as witnesses rather than suspected perpetrators. However, the occupants remained detained, handcuffed and secured in the rear of patrol vehicles until a supervisor arrived. This was directly contrary to policy. While not necessarily responsible for the erroneous decision to effectuate the stop in the first place, all of the officers who conducted the stop had the personal obligation to ensure the release of the occupants once it was determined that they were not the perpetrators. These officers failed to do so and, thus, acted contrary to policy.

As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #4

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

I can find no evidence in the record indicating that NE#1, unlike NE#2, NE#3, and NE#4, requested identification from the occupants of the vehicle. As such, I recommend that this allegation be Not Sustained – Unfounded as against him.

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

Named Employee #2 - Allegation #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

For the same reasons as stated above (*see* Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Training Referral.

Training Referral: NE#2 should receive additional training concerning the requirements of SPD Policy 6.220, and, specifically, when reasonable suspicion exists to stop and detain a subject and to conduct a high-risk vehicle stop. NE#2 should also receive counseling concerning his specific conduct in this matter and the Department’s expectation that, if he is unsure of the basis for a stop, he will verify that it is legally supported prior to taking law enforcement action. This training and associated counseling should be memorialized in a PAS entry.



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

Named Employee #2 - Allegation #2

6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Training Referral. I further refer to the training referral detailed above. (See Named Employee #2, Allegation #1.)

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

Named Employee #2 - Allegation #3

6.220 - Voluntary Contacts, Terry Stops & Detentions 4. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #4

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.” The policy indicates that “in general, subjects are not obligated to provide identification upon request and have the right to remain silent.” (SPD Policy 6.220-POL-6.) The policy provides for three exceptions to this rule. (See *id.*) NE#2 and NE#3 both indicated that they requested the occupants’ personal identifying information. NE#4, who was ultimately responsible for the high risk stop, effectively authorized this action. As I read NE#3’s OPA interview, NE#3 stated that he requested this information to determine whether the occupants were related and to get contact information. NE#2, however, indicated that this information was sought to run them for open warrants, presumably to find another basis for the stop and potentially later arrest. Either way, the policy precluded them from doing so. Moreover, none of the exceptions delineated in SPD Policy 6.220-POL-6 applied to this case.

As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #3 - Allegation #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

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Training Referral.



Training Referral: NE#3 should receive additional training concerning the requirements of SPD Policy 6.220, and, specifically, when reasonable suspicion exists to stop and detain a subject and to conduct a high-risk vehicle stop. NE#3 should also receive counseling concerning his specific conduct in this matter and the Department's expectation that, if he is unsure of the basis for a stop, he will verify that it is legally supported prior to taking law enforcement action. This training and associated counseling should be memorialized in a PAS entry.

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

Named Employee #3 - Allegation #2

6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Training Referral. I further refer to the training referral detailed above. (See Named Employee #3, Allegation #1.)

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

Named Employee #3 - Allegation #3

6.220 - Voluntary Contacts, Terry Stops & Detentions 4. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #3 - Allegation #4

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 #2, Allegation #4), I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #4 - Allegation #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

NE#4 was the lead officer during the stop of the vehicle and NE#1, NE#2 and NE#3 indicated that he was responsible for the nature and scope of the stop. Even though I find that the high-risk stop was unwarranted, NE#4, like the other officers involved with the stop, acted based on the belief that the request from NE#5 that he stop the vehicle was supported by reasonable suspicion.



As such, and for the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Training Referral.

Training Referral: NE#4 should receive additional training concerning the requirements of SPD Policy 6.220, and, specifically, when reasonable suspicion exists to stop and detain a subject and to conduct a high-risk vehicle stop. NE#4 should also receive counseling concerning his specific conduct in this matter and the Department’s expectation that, if he is unsure of the basis for a stop, he will verify that it is legally supported prior to taking law enforcement action. This training and associated counseling should be memorialized in a PAS entry.

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

Named Employee #4 - Allegation #2

6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Training Referral. I further refer to the training referral above. (See Named Employee #4, Allegation #1.)

Recommended Finding: **Not Sustained (Training Referral) Named Employee #4 - Allegation #3**

6.220 - Voluntary Contacts, Terry Stops & Detentions 4. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #4 - Allegation #4

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 #2, Allegation #4), I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #4 - Allegation #5

5.001 - Standards and Duties 5. Employees May Use Discretion

SPD Policy 5.001-POL-5 provides that “[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.)



The allegation against NE#4 was that he failed to exercise his discretion in a reasonable manner when he effectuated the high risk stop. Of the Named Employees involved with the stop, NE#4 was the only officer against who this allegation was classified given that he was identified as the lead officer.

As indicated throughout, while I find that the stop was unsupported by reasonable suspicion, that was not NE#4's fault. I note that NE#4 did engage in some actions that were contrary to policy during the stop, but I commend NE#4 for acknowledging those mistakes at his OPA interview.

For these reasons, even though I find that NE#4 made several questionable decisions during this incident, I do not believe it warranted or necessary to sustain this allegation. I refer, however, to the training referral set forth above. (See Named Employee #4, Allegation #1.)

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

Named Employee #5 – Allegation #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

SPD Policy 6.220-POL-1 requires that a Terry stop must be supported by reasonable suspicion that a suspect has been, is, or will be involved in the commission of a crime.

At the time he approached the location where the occupant's car was parked, NE#5 was aware that a caller had reported a male subject with a gun. When NE#5 pulled into the parking lot, he observed a number of African- American males and females standing around two vehicles. NE#5 claimed that he observed the individuals arguing and potentially pushing. NE#6 alleged that they were fighting. However, this is unsupported by the video. It is clear from a review of the video that there was no physical altercation.

When NE#5 first approached the vehicle, he claimed that the African-American occupants ran to their vehicle, jumped in, and sped off. Again, this is unsupported by the video. The video instead shows the occupants walking at a normal speed to the vehicle, getting in, and driving away. Notably, there is no urgency in their movements and certainly no suggestion that they were trying to evade law enforcement. Moreover, when NE#5 first directed the vehicle to stop, the occupants were already in the vehicle and it was in motion. The second time he did so, the vehicle had already backed up and was pulling into the street.

Simply stated, it is unclear what information NE#5 was relying on when he ordered the stop of the vehicle. Ultimately, reasonable suspicion needs to be based on more than a hunch. There needs to be specific articulable facts that indicates that the subjects committed a crime. Here, the facts relied upon by NE#5 were insufficient and there was no basis to stop the vehicle.

As discussed herein, the occupants were not involved in any way with the crimes that occurred that night. As a result of NE#5's legally unsupported decision, they were subjected to a violation of their rights against the search and seizure of their persons. For these reasons, I recommend that this allegation be sustained.

Recommended Finding: **Sustained**



Named Employee #5 – Allegation #2

5.001 - Standards and Duties 5. Employees May Use Discretion

SPD Policy 5.001-POL-5 provides that “[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.)

In ordering that the vehicle be stopped in the absence of reasonable suspicion, NE#5 set in motion a series of events that resulted not only in the rights of the vehicle’s occupants being violated, but that also caused his fellow officers to engage in actions contrary to policy. At the very least, NE#5 should have provided the specific basis for the stop over the radio. This is particularly the case given that he knew, or should have known, that his request for law enforcement action would result in a high-risk stop. He did not do so and, as a result, four innocent civilians were ordered out of a video at gunpoint, handcuffed, frisked and locked in a patrol vehicle.

NE#5’s poor decision-making during this incident represented an unreasonable use of the discretion afforded to him as a law enforcement officer. His actions in this regard were therefore in violation of policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #6 – Allegation #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

I find that NE#5 was responsible for the decision to stop the occupants and that NE#5 made the request that the vehicle be stopped. While NE#6 also errantly believed that there was reasonable suspicion to stop the vehicle, as he did not actually cause the stop to occur, I do not believe that this allegation should be sustained as against him.

This being said, I found aspects of NE#6’s statements to OPA to be concerning in that they were inconsistent with the indisputable video evidence in this case. For example, NE#6 claimed that he observed the occupants of the vehicle “fighting.” There is simply no evidence of that occurring. He further reported that the subjects “ran into the car” and “fled the scene.” Again, this is absolutely contrary to the ICV. Ultimately, in my opinion, NE#6’s statement appears to be purposed more as a justification for NE#5’s poor decision-making rather than an accurate recounting of what actually happened on that date.

Given his inability to critically examine this incident and to understand how his and NE#5’s actions set into motion a violation of policy, I recommend that NE#6 receive the below training referral.

Training Referral: NE#6 should receive additional training concerning the requirements of SPD Policy 6.220, and, specifically, when reasonable suspicion exists to stop and detain a subject. NE#6 should also receive counseling concerning his conduct in this matter and how it fell short of the Department’s expectations. This training and associated counseling should be memorialized in a PAS entry.



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

Named Employee #6 – Allegation #2

5.001 - Standards and Duties 5. Employees May Use Discretion

For the same rationale articulated in the context Allegation #1, I recommend that this allegation be Not Sustained – Training Referral and refer to the training referral detailed above. (See Named Employee #6, Allegation #1.)

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