



CLOSED CASE SUMMARY

ISSUED DATE: JULY 24, 2018

CASE NUMBER: 2018OPA-0114

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 2. Use of Force: When Prohibited	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 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Lawful and Proper)
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 2. Use of Force: When Prohibited	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 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Lawful and Proper)
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops	Not Sustained (Training Referral)

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 Employees may have effectuated the stop of the Complainant without reasonable suspicion, that the detention may not have been limited to a reasonable scope, and that the Named Employees did not properly document the Terry stop in a Terry Template. It was further alleged that the Named Employees may have used force on the Complainant that was prohibited under Department policy.



STATEMENT OF FACTS:

The Named Employees were dispatched to a call concerning a potential ongoing assault. The updates to the call indicated that a male and female were involved in the altercation and that both had struck the other and that the male was pulling the female's shirt off. The officers viewed an individual matching the male's description running after the female. The female did not have a shirt on. The officers viewed the male – who was later identified as the Complainant – catching up to and hugging the female. The officers made contact with the Complainant and tried to speak with him. The Complainant was belligerent and aggressive, including yelling profanities at the officers, and refused to answer questions.

Based on the fact that the male had been involved in an assault and due to his conduct, the officers detained him. Due to potential safety risks, the officers made the decision to handcuff the Complainant and placed him in the rear of the patrol vehicle. The officers then interviewed the female, who denied being assaulted by the Complainant and stated that he pulled off her shirt unintentionally. However, an independent witness verified that she had seen the Complainant assaulting the female and pulling off her shirt.

Given the witness's account, the officers placed the Complainant under arrest for assault. Even after his arrest, the Complainant continued to act belligerently. During his transport from the scene to the precinct, he repeatedly banged his head against the seat partition in front of him. He later claimed that he suffered injuries to his head that were caused by the purposeful braking of Named Employee #1 (NE#1). Notably, this incident, including the Complainant's transport to the precinct was completely captured by Department video. The video directly contradicts the Complainant's assertion that he was subjected to force by NE#1's purportedly inappropriate manipulation of the patrol vehicle. Named Employee #2 (NE#2) was the passenger and did not operate the vehicle.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 - Using Force 2. Use of Force: When Prohibited

While SPD Policy 8.200(1) provides for when force is authorized, SPD Policy 8.200(2) sets forth those scenarios in which force is prohibited. Among those scenarios are: when force is used to retaliate against or punish a subject; and when force is used against a restrained subject, "except in exceptional circumstances when the subject's actions must be immediately stopped to prevent injury, [] escape, [or] destruction of property." (SPD Policy 8.200(2).)

As discussed above, the Complainant's transport from the scene to the precinct was recorded on In-Car Video (ICV). The ICV conclusively established that NE#1 did not purposefully operate his vehicle in a manner to cause injury to the Complainant. Notably, the Complainant struck his head for the first time purposefully and before the patrol vehicle starting moving. As such, I find this allegation meritless and I recommend that it 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.*)

Here, the Named Employees were aware of an ongoing physical altercation between the Complainant and a female. They on-viewed the Complainant, who matched the description of one of the involved parties, running after a female, who had no shirt on as had been reported. At that time, the Named Employees were unaware as to who the primary aggressor was, as they received reports that the Complainant and the female had struck each other. When they made contact with the male, he was belligerent and aggressive. Based on these factors, the Named Employees had reasonable suspicion to stop and detain him in order to determine whether he was the suspect or victim in this incident.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

Named Employee #1 - Allegation #3

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

SPD Policy 6.200-POL-3 requires that officers limit a seizure to a reasonable scope. The policy further states that: "Actions that would indicate to a reasonable person that they are being arrested or indefinitely detained may convert a Terry stop into an arrest requiring probable cause or an arrest warrant."

Both before and after his detention, the Complainant was belligerent and aggressive. This behavior, when coupled with the fact that he had just been involved in a physical altercation, justified the Named Employees' decision to place the Complainant in handcuffs during the detention. Moreover, it further justified the Named Employees' decision to secure him in the rear of the patrol vehicle. By doing so, the Named Employees were able to conduct their investigation into this incident without fear of the Complainant causing harm to them, the female, himself, or any community members in the vicinity.



Accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

Named Employee #1 - Allegations #4

6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops

While the Named Employees indisputably conducted a Terry stop of the Complainant, neither completed a Terry Template documenting that stop. SPD Policy 6.220-POL-10 requires that a Terry Template be completed in such situations. This is the case regardless of whether officers later develop probable cause and arrest the subject.

At their OPA interviews, both of the Named Employees acknowledged that they failed to complete a Terry Template and that this failure constituted a violation of policy. NE#1 explained to OPA that he was confused concerning whether he needed to complete a Terry Template in this incident. He said that he had never had to do so when engaging in a domestic violence investigation (likely because of the mandatory arrest requirement which would obviate Terry stops in most domestic violence cases). He stated that, after reviewing the policy, he now understood that he should have done so. He indicated that he had learned from this experience and that he would generate a Terry Template in the future if faced with similar circumstances.

NE#2, who was a new officer at this time (only one day removed from his field training period), was also confused as to whether he was required to complete a Terry Template. He stated to OPA that he believed that where a Terry stop evolved into an arrest, only a General Offense Report needed to be completed. NE#2 indicated that he had since reviewed the policy, and like NE#1, now realized that he was required to complete a Terry Template in such situations. He told OPA that, in the future, he would ensure that he complied with this policy.

I commend both NE#1 and NE#2 for recognizing their error and learning from this situation. I take them at their word that they will comply with this policy moving forward. Given this, I recommend that they receive the below Training Referral rather than Sustained findings.

- **Training Referral:** The Named Employees' chain of command should discuss this incident with them. The chain should ensure that they understand this policy, which they appear to do, and counsel them to comply with its requirements in the future. If the chain believes that they understand the policy after this conversation, no further retraining or counseling need be performed. The chain should also commend both of the Named Employees for recognizing this error at their OPA interviews, accepting responsibility, and learning from this case. This counseling should be documented and this documentation should be maintained in an appropriate database.

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



Named Employee #2 - Allegation #1

8.200 - Using Force 2. Use of Force: When Prohibited

NE#2 was a passenger in the patrol vehicle and, as such, he was not responsible for its operation. Accordingly, this allegation should not have been classified against him. For these reasons, I recommend that this allegation be removed as against NE#2.

Recommended Finding: Allegation Removed

Named Employee #2 - 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

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 #2 - Allegation #3

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 #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: Not Sustained (Lawful and Proper)

Named Employee #2 - Allegation #4

6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops

I refer to the Training Referral set forth above. (See Named Employee #1, Allegation #4.)

Recommended Finding: Not Sustained (Training Referral)