



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 17, 2019

CASE NUMBER: 2018OPA-0921

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 (Lawful and Proper)
# 2	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)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 4. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time	Not Sustained (Training Referral)
# 4	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 5	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Lawful and Proper)

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 Named Employee effectuated an investigatory stop of the Complainant because the he believed the Complainant matched the description of a robbery suspect, who reportedly lived in the area where the stop took place. The Complainant alleged that the Named Employee stopped him because of his race. It was further alleged that the Named Employee may have stopped the Complainant without reasonable suspicion, that the detention may not have been limited to a reasonable scope, and that the length of time of the detention was unreasonable. It was also alleged that the Named Employee may have also unnecessarily extended the time of the detention when he failed to inform the Complainant that he was not obligated to wait for a Sergeant to arrive at the scene to conduct a bias-based policing review of the incident.

SUMMARY OF INVESTIGATION:

Named Employee #1 (NE#1) was working patrol on August 21, 2018, in the South Precinct. Prior to the start of his shift, NE#1 spoke with a Detective about a recent robbery case that occurred on August 10, 2018, at a Cash America store within the South Precinct. The Detective showed NE#1 a police bulletin of the robbery suspect, which was issued by SPD on August 20, 2018. The bulletin included a description of the suspect along with two images of the suspect’s face. The images were still images that were taken from the store’s security cameras. In those images, the suspect’s head was covered by a bandana. During NE#1’s August 21 shift, the Detective phoned NE#1 to inform him that he received an anonymous Crime Stoppers tip about the suspect. The anonymous tip included information that



the suspect lived near 37th Avenue South and South Juneau Street and provided the suspect's name. The Detective told NE#1 not to disclose that he was investigating a robbery if he identified an individual who matched the suspect's description. While on patrol near the above-referenced location, NE#1 stopped the Complainant and questioned him because NE#1 believed that he matched the description of the robbery suspect. Based on the Detective's instruction that NE#1 not disclose that NE#1 was investigating a robbery, NE#1 used a ruse during his stop of the Complainant and explained to him that the reason the stop was that the Complainant matched the description of a shoplift that had occurred nearby. NE#1 asked the Complainant for his identification, but the Complainant declined to provide it or to identify himself to NE#1. NE#1 called in for the assistance of a backup officer. While NE#1 waited for the backup officer to arrive, the Complainant questioned the basis for the stop and alleged that NE#1 was engaging in racial profiling. In response to the Complainant's allegation of biased policing, NE#1 called for a Sergeant to come to the scene. After the backup officer and Sergeant arrived, NE#1 completed his comparison of the robbery suspect's photo to the Complainant and determined that the Complainant was not an exact match. Once that determination was made, which coincided with the Sergeant's completion of the bias review, the Complainant was released.

OPA initiated this investigation after it reviewed the Bias Review completed by the Sergeant. OPA initiated an investigation into the bias allegation, as well as added allegations concerning the *Terry* stop.

The Complainant was not interviewed for this investigation because his identity was unknown. The Complainant told a Sergeant who arrived on scene that he would contact OPA directly and was given a business card with OPA's number; however, there is no indication that the Complainant ever contacted OPA.

The Robbery Bulletin identified by NE#1 was dated August 20, and included the title "South Seattle Cash America Smash & Grab Suspect, Attempt to Identify." It included the following description of the robbery suspect: *Unidentified Adult Black Male, Mid to Late Thirties, 6'00" 180 lbs, Dark Complexion, Blue Bandanna, Overalls, Black Gloves, Doo-rag*. The bulletin included information that the suspect was armed with a sledge hammer when he robbed the Cash America, which occurred on August 10. The bulletin also contained two images of the suspect. The first one showed the front of the suspect's face, which was slightly covered by a bandanna that the suspect was wearing over the top of his head. The second image was a profile picture of the right side of the suspect's face. In that image, the shape of the suspect's nose, lips, and chin are easier to make out and could be used for the purpose of identifying a potential suspect.

OPA reviewed Body Worn Video (BWV) and In Car Video (ICV) as part of its analysis of this incident. NE#1's BWV provided the most comprehensive view of what transpired during this incident. Just prior to exiting his patrol vehicle, NE#1 is seen looking at his cellphone and using his fingers on the screen, which is indicative of him expanding an image on his cellphone to get a better view. NE#1 then exits his vehicle and tells the Complainant that he wants to speak with him. NE#1 tells the Complainant that he was looking for a shoplifting suspect, and that the Complainant matches the suspect's description. He then asks the Complainant for his identification. The Complainant informs NE#1 that he does not appreciate being stopped, and that he believes that he was racially profiled. The Complainant declines to provide his identification to NE#1, and states that he is refusing to do so because he did not do anything wrong and does not appreciate being stopped by the police. The Complainant proceeds to explain to NE#1 that he has no reason to steal, that he just got off the bus, and that he never entered the store where the alleged shoplift took place. The Complainant also provides NE#1 with a receipt for the food he just bought and offered to let NE#1 examine the contents of the bags he was carrying. The Complainant continues to



deny follow up requests from NE#1 to provide him with his identification or to give NE#1 his name. NE#1 then calls for a backing officer. It is unclear from the BWV why he did so. Minutes later, NE#1 also calls for a Sergeant and tells the Complainant that he is doing so because the Complainant made an allegation of biased policing and that SPD takes those allegations seriously. While waiting for the officer and Sergeant to arrive, NE#1 engages the Complainant in general conversation. During that period, the Complainant tells NE#1 that he is sixty and works as a ship builder. After the backing officer arrives, NE#1 walks away from the Complainant and explains the situation to the officer. NE#1 also displays his cellphone screen to the backing officer in an apparent attempt to show him the image of the robbery suspect. NE#1 then tells the backing officer that he is waiting for a Sergeant to arrive before deciding what to do next. While waiting for the Sergeant to arrive, the Complainant continues to question NE#1 about why he was stopped. After the Sergeant arrives, NE#1 explains the situation to him and tells the Sergeant that he believes the Complainant might be the robbery suspect. NE#1 also tells the Sergeant that the Complainant declined to provide his identification and that it is making it more difficult for NE#1 to figure out if he is the suspect. NE#1 tells the Sergeant about the potential name of the suspect that the Detective obtained from a Crime Stoppers tip. The Sergeant is then seen walking in the direction of the Complainant, where he proceeds to ask the Complainant questions about the bias allegation.

During that time, NE#1 phones the Detective. NE#1 tells the Detective about the Complainant and how he possibly matches the description, but that the Complainant declined to provide his identification. While still on the phone with the Detective, NE#1 walks over to where the Complainant is talking to the Sergeant and begins taking photos of the Complainant. NE#1 is then seen holding two phones side by side in an apparent attempt to compare images. NE#1 is then seen following the Sergeant as the Sergeant leaves the Complainant and returns to his vehicle. NE#1 then shows the screens of both phones to the Sergeant and states that he still thinks the Complainant could be the robbery suspect. Almost immediately after making that statement, NE#1 states that he thinks the Complainant's chin looks slightly different than the robbery suspect's chin. The Sergeant and NE#1 are then seen returning to where the Complainant and backing officer are standing. The Sergeant hands a business card to the Complainant and informs him that it contains OPA's phone number. The Sergeant also confirms that the Complainant intends on filing his own complaint directly with OPA and that the Complainant does not want the Sergeant to submit a complaint on his behalf. The Complainant then begins to pick up his bags and turns to NE#1 and asks, "No problem?" NE#1 responds by saying, "we're good." The Complainant then walks away. At no point in the BWV is there any evidence that the backing officer or Sergeant were asked for or offered their opinion of whether the Complainant looks like the robbery suspect. NE#1's BWV ends right after the Complainant walks away. NE#1's BWV recording is just under 21 minutes in length.

As part of its investigation, OPA interviewed NE#1. NE#1 stated that his reasonable suspicion to conduct a *Terry* stop of the Complainant was based on how closely he matched the description of the robbery suspect and the report that the suspect lived in the area where the Complainant was detained. NE#1 stated that the fact that the Complainant was older than the reported age on the bulletin was not so concerning to him because age descriptions are often inaccurate, and given the quality of the photo it would be somewhat difficult to determine the suspect's age. NE#1 explained that he did not take any steps to retrieve the bulletin photo and examine it while alone on the scene with the Complainant because of safety concerns. NE#1 noted that the robbery suspect had reportedly used a sledge hammer in perpetrating violent criminal acts. Therefore, NE#1 believed it was better for all involved if he requested the assistance of a backing officer before taking additional investigative steps. NE#1 also identified that as a de-escalation tactic.



Regarding why NE#1 continued with his detention of the Complainant after he refused to provide his identification, NE#1 stated that his investigation was purposed to determine whether the Complainant was the robbery suspect. The fact that the Complainant refused to provide his identification was not a reason to end the *Terry* stop. NE#1 also told OPA that he was unable to complete his comparison of the Complainant to that of the suspect until after the Sergeant arrived. Once the Sergeant arrived, NE#1 stated that he had sufficient time to review the Complainant's features against the bulletin photo and to then determine that the Complainant was most likely not the robbery suspect. At that point, NE#1 stated that the Complainant was free to go. In an earlier statement, NE#1 stated that he believed that he entered his patrol vehicle and began examining the robbery suspect's photo after the backing officer arrived. However, those acts were not present on the BWV and NE#1 may have been confused about the timing of events. Ultimately, NE#1 never fully explained why he did not proceed with his investigation after the backing officer arrived and, instead, waited for the Sergeant before further examining whether the Complainant was the robbery suspect.

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

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, NE#1 was aware of a recent robbery of a Cash America in the South Precinct from a police bulletin, which included images and a physical description of the suspect. He had further information concerning the crime and suspect from a conversation he had with the Detective assigned to that case. NE#1 also learned in advance of the stop of the Complainant that the suspect lived near 37th Avenue South and South Juneau Street, which was the location in which the detention occurred. While on patrol in that area, NE#1 saw the Complainant, who he believed matched the description of the suspect, and initiated a *Terry* stop. A concern of both OPA and the OPA Auditor was the age discrepancy between the bulletin, which listed the suspect as being in his thirties, and the fact that NE#1 listed on the *Terry* Template documenting the stop that he perceived the Complainant to be between 46-55 years of age. Additionally, the Complainant reported to NE#1 that he was at or near the age of 60 and then later stated that he was almost 70. NE#1 explained that listed ages on a description are often incorrect and that he stopped the Complainant because he believed he looked like the photos in the bulletin.

After performing its own comparison of the photos in the bulletin photos to those of the Complainant, OPA finds that a reasonable officer could have perceived that there was reasonable suspicion to detain the Complainant as the



possible suspect, even given the age disparities. As such, OPA concludes that NE#1 had a sufficient legal basis to make the stop in order to further investigate whether the Complainant was, in fact, the perpetrator. In making this decision, OPA recognizes that this incident must have been concerning, frightening, and frustrating to the Complainant. The Complainant was not the suspect and his rights were impacted during this stop. However, this does not mean that NE#1 violated policy when he effectuated the detention.

For these reasons, and given OPA's finding that NE#1 had sufficient reasonable suspicion for the detention, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

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 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." (SPD Policy 6.220-POL-3.)

The *Terry* stop in question was purposed to investigate whether the Complainant was, in fact, the robbery suspect. NE#1 articulated that he wanted to obtain the Complainant's identification during this stop because the Detective requested that NE#1 learn the name, address, and phone number of any subjects who matched the robbery suspect's description. Additionally, NE#1 hoped to obtain the Complainant's identification in order to compare it to the robbery suspect's name, provided earlier by the Detective. The Complainant prevented NE#1 from doing so because he declined to provide his identification to NE#1, which was his right during the *Terry* stop. That meant that NE#1 was left to investigate this matter by comparing the Complainant's appearance to the photographs of the suspect. As discussed below, NE#1 explained that he could not do this until a backing officer and/or the Sergeant arrived on scene.

Given the above, I do not find that this stop exceeded a reasonable scope. Notably, the Complainant was not handcuffed, he was not ordered to sit or placed into a patrol vehicle, and his identification was not taken from him or demanded. While none of these are dispositive, when coupled with the facts of this case, they suggest that the *Terry* Stop in this case was consistent with this policy.

Accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

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 requires that officers limit *Terry* stops to a reasonable amount of time. It further instructs that "subjects may only be seized for that period of time necessary to effect the purpose of the stop" and also states that "officers may not extend a detention solely to await the arrival of a supervisor." (SPD Policy 6.220-POL-4.)



Based on OPA's review of the BWV, it appears that the detention of the Complainant was longer than it had to be. OPA reaches this conclusion based on the fact that, while NE#1 stated that he could not identify the Complainant via the photographs until a backing officer arrived, he did not immediately do so when that officer got to the scene. Instead, he waited for a Sergeant to also come to their location. There is no indication that, after his arrival, the Sergeant played any particular role in determining whether the Complainant was the suspect. As such, it is unclear why the Complainant had to be detained while NE#1 waited for the Sergeant to arrive. To the extent NE#1 wanted the Complainant to remain at the scene because of his bias allegation, this was not a permissible basis to detain him under Department policy. Moreover, even if this was the case, NE#1 should have told the Complainant that he was not required to stay there pending the arrival of the Supervisor.

OPA notes that the stop was only extended for two minutes while the officers waited for the Sergeant to arrive; however, that was two minutes too long. Given the above, OPA finds that NE#1 extended the stop past a reasonable amount of time. However, given that the overall detention was only extended for a short time and given that NE#1 did appear to be investigating this matter in good faith during that period, OPA recommends that NE#1 receive the below Training Referral rather than a Sustained finding.

- **Training Referral:** NE#1 should receive additional training concerning SPD Policy 6.220-POL-4, and specifically, concerning limiting a detention to solely that amount of time needed to effectuate the purpose of the stop. This retraining and any associated counseling should be documented and that documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegations #4

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.*)

The Complainant alleged that he was racially profiled by NE#1. NE#1 denied profiling the Complainant or engaging in bias-based policing towards him. NE#1 stated that he engaged in law enforcement activity that involved the Complainant because he believed that the Complainant matched the description of the robbery suspect. Though OPA understands the Complainant's frustration with his detention in this case, there is insufficient evidence to establish that NE#1 treated the Complainant differently based on his race.

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

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



Named Employee #1 - Allegation #5

5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing

SPD Policy 5.140-POL-5 requires employees to call a supervisor in response to allegations of biased policing. This includes providing sufficient information to the supervisor to allow a determination as to what occurred and what the nature of the bias allegation is. Officers may not extend a detention solely to await the arrival of a supervisor. (*See id.*)

NE#1 called for a Sergeant in response to the Complainant's allegation of biased policing, which was appropriate and consistent with policy.

As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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