



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 30, 2019

CASE NUMBER: 2018OPA-1056

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	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)

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 Employee may have engaged in biased policing when he effectuated a traffic stop. It was further alleged that the stop may not have been supported by reasonable suspicion and that he may have extended the stop beyond a reasonable scope.

ADMINISTRATIVE NOTE:

OPA initially recommended that the Named Employee receive Training Referrals for Allegation #2 and Allegation #3. After conducting further research and after additional consideration, OPA has reconsidered these findings. For the reasons set forth below, OPA now recommends that these allegations be Not Sustained – Lawful and Proper.

SUMMARY OF INVESTIGATION:

The Complainant, the former OPA Auditor, reviewed a Bias Review that was completed by a Department supervisor. Based on that review, the Auditor initiated this complaint with OPA in which he contended that Named Employee #1 (NE#1) may have violated several policies when he effectuated a traffic stop. Specifically, the Auditor alleged that NE#1 may have engaged in biased policing, that he may have effectuated a *Terry Stop* without reasonable suspicion to do so, and that he failed to limit the seizure of the occupants of the vehicle to a reasonable scope.

As part of its investigation, OPA reviewed the Body Worn Video (BWV) of the stop. The BWV showed that NE#1 effectuated the stop and approached the vehicle. Inside was a female driver and three occupants (one in the front seat and two in the rear). All of the occupants were women. NE#1 explained that he stopped the vehicle for the failure to transfer title. The driver stated that it was not her car. NE#1 asked who owned the car and the front seat passenger



provided a name. NE#1 asked all of the occupants for identification to ensure that none were the owner. It was later disclosed that the owner of the vehicle a roommate of one of the front seat occupants.

NE#1 then asked the driver to get out of the vehicle. He had her walk to his vehicle and sit on the front push bar. NE#1 told her that, when he was observing her vehicle, he saw another car pull up and an interaction occur between the vehicles. NE#1 asked the Complainant if she could understand what that looked like from his position. The driver then referenced her race and contended that, because she was African-American, NE#1 suspected her of engaging in criminal activity. NE#1 stated that he could call a supervisor to the scene. Shortly thereafter, the driver alleged NE#1 of being racist and stated that he stopped her because she was African-American. After a further back-and-forth, NE#1 called a supervisor to the scene. The driver objected to this and repeatedly stated that she just wanted to get on with her night.

The driver asked to leave the scene and NE#1 told her that she could not do so until he concluded his investigation. NE#1 again spoke with the front passenger and asked for the roommate's name. NE#1 informed the front passenger that the name provided did not match the DOL records for the individual to whom the vehicle was sold. NE#1 returned the occupants' identifications and told them that he was going to give the driver a warning for operating a vehicle with expired tabs. He told them that they were free to go and the vehicle drove from the scene prior to the arrival of a supervisor.

NE#1 documented the stop in a Street Check – he later completed a *Terry* Template, which OPA believes was the appropriate paperwork for this stop. In the Street Check he wrote that, after he ran the vehicle's license plate and determined that title had not been transferred, he observed a Cadillac drive up and saw the driver get out of the vehicle and get into the Cadillac. He wrote that the driver got back out, appeared to confer with the passengers in her vehicle, and then reentered the Cadillac. After a period of time, the driver again got out of the Cadillac, returned to her car, and the Cadillac drove off "very hurriedly." NE#1 wrote that he asked all of the occupants of the vehicle for identification in order to "verify that they were not the person who purchased the car." He further wrote that he asked the driver to get out of the vehicle in order to question her about the interaction with the Cadillac that he perceived to be suspicious. He documented that he confirmed that none of the four occupants were the purchaser of the car. He lastly wrote that the Complainant recanted her bias allegation at the conclusion of the stop.

There was no BWV or In-Car Video (ICV) that captured NE#1's initial observations of the vehicle and the arrival of the Cadillac. NE#1's patrol vehicle was facing away from the vehicles at the time.

Lastly, the DOL records for the vehicle indicated that it was sold to a male in 2017 and that title had not been transferred within forty-five days of the sale.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

As discussed above, in responses to questions posed by NE#1, the Complainant initially asserted that she had been stopped because she was African-American. However, at the conclusion of the stop she walked back this allegation and explained that she no longer believed that this was the case.



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.*)

It is undisputed that NE#1 had a lawful basis for the stop. The tabs of the vehicle were expired and title had not been transferred forty-five days after sale. Moreover, even if the traffic stop was effectuated as a pretext to investigate possible narcotics activity, it was based on NE#1’s belief that criminal activity was afoot, not because of the race of the driver or any of the occupants of the vehicle.

As such, I recommend that this allegation 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.*)

The evidence in the record establishes that, at the time of the incident, the tabs of the vehicle were expired, and title had not been transferred within forty-five days after sale. As such, NE#1 had a sufficient legal basis to effectuate a traffic stop of the vehicle and detain the driver while he investigated those matters. Moreover, as a matter of law, NE#1 did not also seize the passengers when he effectuated the stop. *See State v. Mendez*, 137 Wash.2d 208, 222, 970 P.2d 722 (1999).

In the initial DCM, OPA raised concerns with NE#1’s request for the passengers’ identifications and his taking the identifications away from the vehicle. Based on case law reviewed by OPA, this was believed to have been a seizure of the passengers. *See, e.g., State v. Rankin*, 151 Wn.2d 689, 92 P.3d 202 (2004); *State v. Thomas*, 91 Wn. App.195, 955 P.2d 420, *review denied*, 136 Wn.2d 1030 (1998). For those seizures to have been valid, NE#1 must have possessed reasonable suspicion to believe that the passengers had committed a traffic infraction or a crime or that the passengers needed to be identified as a witness to any crime. OPA previously found that such reasonable suspicion was lacking and, thus, recommended that NE#1 receive a Training Referral.

After issuing this recommended finding, OPA re-reviewed the record and met with NE#1. During that meeting, NE#1 clearly articulated what was going through his mind at the time and why he believed that he had a reasonable basis



to detain and identify the passengers. He reiterated his previous explanation to OPA that he believed he could identify the front seat passenger because she was either the owner of the vehicle or had information concerning who the owner was that she purposefully was not providing. He stated that he believed that he could also identify the backseat passengers because one of them said that the owner was not in the vehicle, which suggested to NE#1 that they may be involved in concealing the owner's identity.

Ultimately, when re-reviewing the evidence in this case and when evaluating this matter in the context of the split-second decision made by an officer, OPA finds that the detentions effectuated by NE#1 were lawful and consistent with policy. As such, OPA reverses its previous finding and now recommends 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 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope

During the traffic stop, NE#1 removed the Complainant from her vehicle and walked her to the front of his patrol vehicle. He then questioned her for a period of time. OPA classified this allegation to determine whether the removal of the Complainant from the vehicle extended the *Terry* stop past 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 6.200-POL-3.)

Requiring the driver to exit the vehicle was a seizure but not a custodial arrest. That being said, to justify that seizure, the removal from the vehicle must have been reasonable and must not exceed the scope of the stop. In *State v. Watkins*, 76 Wn. App. 726, 887 P.2d 492 (1995), the court explained that, in making this determination, the following factors should be considered: (1) whether the initial interference with the suspect's freedom of movement was justified at its inception; and (2) whether it was reasonably related in scope to the circumstances which justified the interference in the first place. In *Watkins*, officers effectuated a valid traffic stop of a vehicle and, when they approached the car, they observed the passenger lean over as if to place something under his seat and engage in furtive movements. The officers also could not determine the passenger's identity. The court found that, while a seizure, removing the passenger from the car was appropriate given the officers' observations.

NE#1 explained to OPA that he removed the Complainant from the vehicle for two main reasons. First, he stated that the differing accounts and ongoing information being provided by the occupants of the vehicle made it challenging for him to question the Complainant. Second, he told OPA that his observations of the incident made him believe that it was possible that the Complainant had been engaged in narcotics activity.

When applying the *Watkins* factors to this case, OPA finds that, when NE#1 removed the Complainant from the vehicle, the *Terry* stop did not exceed a reasonable scope. In reaching this decision, OPA concludes that the detention was justified at the outset and, in addition, that further questioning uninterrupted by the other passengers was warranted to confirm or dispel NE#1's suspicions of criminal activity. Given this, OPA does not need



to reach the question of whether it would have been permissible to remove the Complainant from the car solely to investigate potential narcotics activity.

For these reasons, OPA now recommends that this allegation be Not Sustained – Lawful and Proper.

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