



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 6, 2019

CASE NUMBER: 2019OPA-0165

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 POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion	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 Complainant alleged that he was detained by Named Employee without reasonable suspicion and that the stop was based on bias.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General’s review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employee. As such, the Named Employee was not interviewed as part of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

Named Employee #1 (NE#1) reported that she was driving her patrol vehicle when she saw the Complainant look in the back window of three separate unoccupied vehicles that were parked along the street. NE#1 explained that the area was known for car prowls. She stated that she was concerned about the Complainant’s actions and believed that he may have been engaging in or planning to engage in criminal activity. NE#1 reported that, due to what she observed and based on her years of law enforcement experience, she decided to detain the Complainant in order to investigate his suspicious behavior. During the stop, NE#1 and other responding officers discovered that the Complainant had an open warrant and placed him under arrest.



The Complainant later alleged that NE#1 lacked reasonable suspicion to detain him and that she only did so because of his race. A Department supervisor investigated this matter and, consistent with policy, ultimately referred the Complainant's allegations to OPA. This investigation ensued.

During its investigation, OPA made multiple attempts to interview the Complainant but was unsuccessful in this regard. Thus, the Complainant was not interviewed by OPA as part of this investigation.

OPA obtained and reviewed the Body Worn Video (BWV) and In-Car Video (ICV) associated with this incident and determined that it was consistent with what was reported by NE#1 and the other officers who investigated this matter. The BWV showed the Complainant expressing his dissatisfaction with having been stopped and asserting his belief that he was only detained because of his race. The BWV also captured the Complainant strongly expressing his frustration and maintaining that he had done nothing wrong. The Complainant stated that he was simply picking up cigarettes along the side of the road and asked NE#1 whether she saw him stealing anything.

SPD Policy 5.140 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." This includes different treatment based on the race of the subject. (*See id.*)

While the Complainant was clearly frustrated with being stopped and questioned, OPA concludes that the stop was legally permissible. NE#1's decision to detain the Complainant was based on the fact that she had reasonable suspicion to believe that the Complainant was potentially engaging in criminal behavior. Notably, reasonable suspicion is not a high legal standard and, based on NE#1's explanation and the video of this incident, it was satisfied here. Moreover, the video of this incident confirms that the detention and subsequent investigation were based on the Complainant's conduct as perceived by NE#1, not on the Complainant's race or membership in any protected class. For these reasons, 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 POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion

SPD Policy 6.220-POL-2 (1) prohibits Terry Stops when an officer lacks reasonable suspicion that the subject has been, is, or is about to engage in the commission of a crime. SPD Policy 6.220 – POL 1 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 further defines reasonable suspicion as: "Specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging or is about to engage in criminal conduct." (*Id.*) Whether a Terry stop is reasonable is determined by looking at "the totality of the circumstances, the officer's training and experience, and what the officer knew before the stop." (*Id.*) While "[i]nformation learned during the stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, it "cannot provide the justification for the original stop." (*Id.*)



As discussed above, OPA concludes that there was sufficient reasonable suspicion supporting the stop and detention of the Complainant. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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