



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 12, 2018

CASE NUMBER: 2017OPA-0862

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	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	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 Named Employee #1, along with other officers, attempted to trespass him from a park based on false information. The Complainant also alleged that Named Employee #1, along with other officers, conducted an illegal search and attempted to hide the Complainant's chopsticks. During Intake, OPA was able to identify the primary officer that engaged the complainant as the Named Employee.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

On the date in question, officers, including Named Employee #1 (NE#1), responded to a report of a man threatening people in a park. A subsequent call update indicated that the man – later identified as the Complainant – may have struck a child and may have been wearing a holster on his waist. Another call update indicated that the Complainant was possibly the suspect. The Complainant was known to officers operating in that precinct, including NE#1, for engaging in other prior disturbances in the park.

When NE#1 arrived at the park, he contacted the Complainant. Their interaction was captured by NE#1’s In-Car Video (ICV). At the beginning of their interaction, the Complainant asked why he was being approached by the police and NE#1 referenced the Complainant’s demeanor and behavior. NE#1 then told the Complainant that he was going to pat the Complainant down for weapons. He performed the pat down. A pair of chopsticks was removed from the Complainant’s backpack where they were sticking out of, but no other items were removed from his person or property. NE#1 then gave the Complainant his business card and another officer informed the Complainant that he



was being trespassed from the park. The Complainant was returned his chopsticks and then ultimately left the park on his own accord.

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 policy provides guidance as to when an allegation of biased policing occurs, explaining that: “an allegation of bias-based policing occurs whenever, from the perspective of a reasonable officer, a subject complains that he or she has received different treatment from an officer because of any discernible personal characteristic...” (*Id.*)

Based on my review of the record, including NE#1’s report and articulated prior knowledge, the Complainant’s myriad statements, the calls for service, and the ICV, I find no evidence that NE#1 engaged in any bias towards the Complainant. Accordingly, 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

As explained above, NE#1 responded to the park based on complaints that an individual was threatening parkgoers and may have struck a child. NE#1 was further aware that the Complainant was in the park at that time and had engaged in disruptive behavior in the park in the past. Lastly, NE#1 was informed by a fellow officer that the Complainant may have been the suspect responsible for the calls for service. When NE#1 responded to the park, he noticed the Complainant standing in the playground with children present. When he approached the Complainant, NE#1 was further concerned by NE#1’s aggressive demeanor.

Based on these facts, and on the information previously known to NE#1, I find that he had reasonable suspicion to perform a Terry stop on NE#1 at that time to further investigate whether the Complainant had been or was committing a crime. NE#1 noted in the Terry Template that he generated that he could not find a witness to confirm that the Complainant had been harassing people or struck a child and, as such, his reasonable suspicion did not develop into probable cause. Once he determined that he did not have probable cause to arrest the Complainant, the Terry stop was terminated.

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

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

Named Employee #1 - Allegation #3

6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement

SPD Policy 6.180 provides that, as a general matter, searches must be performed pursuant to a warrant. There are exceptions to this rule, however, which include a pat-down frisk. A proper pat-down frisk is purposed “to discover



weapons or other items which pose a danger to the officers or those nearby.” (SPD Policy 6.180-POL-2(d).) To justify the frisk, the officer must establish “a sufficient basis to believe an individual is armed, and be able to articulate the belief that their safety or that of others was in danger.” (*Id.*)

As stated above, NE#1 received information that the subject may have had a holster on his waist, which suggested that the subject could be armed. NE#1 was further aware, based on information he learned from another officer, that during a previous incident it had been reported that the Complainant had a knife on his person. This information, coupled with the reports of a possible assault and the Complainant’s aggressive demeanor, warranted a reasonable officer to believe that a pat-down frisk was necessary and appropriate. Moreover, the search itself that NE#1 conducted was of a reasonable scope. NE#1 performed a frisk of the Complainant’s outer clothing and took possession of a pair of chopsticks that could have plausibly constituted a weapon. Once the Terry stop was terminated, those chopsticks were returned to the Complainant’s possession.

As such, I find that the pat-down frisk conducted by NE#1 in this case was lawful and within policy. I accordingly recommend that this allegation be Not Sustained – Lawful and Proper.

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