



## CLOSED CASE SUMMARY

ISSUED DATE: JULY 12, 2018

CASE NUMBER: 2018OPA-0079

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	8.200 Using Force - 1. Use of Force: When Authorized	Not Sustained (Training Referral)
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions - 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Training Referral)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop	Sustained
# 4	5.001 - Standards and Duties 5. Employees May Use Discretion	Allegation Removed
# 5	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)
# 6	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Sustained

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	8.200 Using Force - 1. Use of Force: When Authorized	Not Sustained (Training Referral)
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions - 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Training Referral)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop	Sustained
# 4	5.001 - Standards and Duties 5. Employees May Use Discretion	Allegation Removed
# 5	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)
# 6	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Sustained

***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.***



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**EXECUTIVE SUMMARY:**

The Complainant, a Department supervisor, alleged that the Named Employees may have improperly extended a Terry stop and that, contrary to policy, the Named Employees required that the subject identify herself upon threat of arrest. The Complainant further alleged that the Named Employees may have arrested the subject in the absence of probable cause and may have subjected the subject to unlawful force. During its intake, OPA added allegations that the Named Employees may not have had reasonable suspicion to initially stop and detain the subject and that the Named Employees may have improperly exercised their discretion.

**STATEMENT OF FACTS:**

The owner of a residence that he was renting through AirBnB called 911 to report that a guest with a “possible mental illness issue” was refusing to leave his residence. The owner identified the guest as the Complainant and stated that she was told to leave his residence but refused to do so. He stated that the Complainant was “fiddling” with the residence’s utilities and that other guests were afraid of her.

The Named Employees were dispatched to the house. While on their way, the Named Employees learned the Complainant’s name, that the suspected crime was trespass, and that she had no criminal record. When the Named Employees arrived at the scene, they spoke to other guests and they walked around to the rear patio of the house. The Named Employees made contact with the Complainant, who was standing in the patio area and was apparently on her cell phone.

Named Employee #2 (NE#2) identified himself as a police officer and asked the Complainant to walk over to speak with them. The Complainant responded: “No, I’m on the phone.” NE#2 then told the Complainant that she was being detained. She responded: “No, for what?” NE#2 stated: “Yes you are, because you’re trespassing I have to make sure that’s clear to you, come over here and sit with me.” The Complainant told the officers that she had a valid reservation and was permitted to be at the residence. NE#2 told her that they would figure that out and again told the Complainant to come over to her and to sit down. The Complainant began to walk over to the officers and then stopped and said: “you’re not...you can’t detain me.” NE#2 told the Complainant that he could detain her, that he was investigating whether she was trespassing, and called her by her name, which she responded to.

NE#2 again told her to sit and said that he needed the Complainant’s “information.” The Complainant responded: “Yeah, no. You’re not getting my information.” NE#2 repeated to the Complainant that she was trespassing and she said that she was not doing so. NE#2 told her that, in order to figure this out, he needed her name. She refused. NE#2 again told her to sit down. She refused.

Named Employee #1 (NE#1) then approached them. NE#1, like NE#2, tried to identify the Complainant. The Complainant told NE#1 that she did not have to talk to him. She stated that she had a valid reservation to stay at the property and NE#1 responded: “Not according to the owner.” The Complainant offered to show the officers her reservation but then put her bag on her shoulder and stated: “yeah, I don’t have to talk to you.” NE#2 told her to have a seat, but the Complainant began to pack up her things. The Complainant told the officers that she was on the phone with AirBnB and NE#1 stated: “Listen, listen, the last thing we want to do is arrest you for Obstruction.” The Complainant replied that she was not obstructing.



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NE#1 then said to the Complainant: "This officer is asking you for your name, you are being detained right now." The Complainant and the officers then engaged in the following back and forth conversation:

**Complainant:** "No you can't detain me."  
**NE#2:** "Yes, I am investigating a crime."  
**Complainant:** "No there is no crime here."  
**NE#2:** "Then let me figure that out and have a seat."  
**Complainant:** "No, there's no...there is no crime being committed."  
**NE#2:** "Then you will be arrested for trespassing or an obstruction."  
**Complainant:** "No, I'm not...there is no crime being committed here."  
**NE#2:** "OK, then have a seat and let's figure it out."  
**Complainant:** No, I don't have to talk to the police, I'm sorry."  
**NE#2:** "Yes, you do."  
**Complainant:** "No, I don't."  
**NE#2:** "Yes, you do."  
**Complainant:** "Legally, I'm allowed to be here."  
**NE#1:** "OK, OK. So listen OK, give us your name or not, you're going to go in handcuffs."  
**Complainant:** "I'm not."

At that point, NE#1 reached forward in an attempt to grab the Complainant's arm. NE#2 grabbed for the Complainant's other arm. The Complainant pulled her arms into her body. The Complainant then stated her name and told the officers that she would cooperate with them, but she continued to pull her arms away and told the officers to get off of her and to let go. At that point, both of the officers were gripping the Complainant's arms in an escort hold. The Complainant stated that she was going to get her "stuff" – most notably, a purse and a laptop. NE#1 removed her laptop from her and began to try to take her purse. The Complainant swung her arm down, breaking NE#1's attempt to hold on to her. The officers continued to try to handcuff the Complainant and she pulled her arms away to prevent them from doing so. NE#1 told the Complainant to "stop resisting." The officers then fell to the ground with the Complainant.

The officers struggled with the Complainant while she was on the ground. She made multiple statements at that time, including: "you are not arresting me"; "I'll talk to you"; "no"; and "stop it." The officers told her to turn over and were able to handcuff her. After she was handcuffed, NE#1 told her that they had fallen to the ground because she pushed him "against a wall" and he "fell down."

Once she was secured in handcuffs, the officers continued to investigate the incident. NE#1 screened the Complainant's arrest for obstruction with a sergeant who responded to the scene. At one point, the officers contacted the owner of the residence who told them that the "Trust and Safety Team" from AirBnB was supposed to have escorted the Complainant off the residence. However, the officers were unable to verify that this occurred. As another officer who responded to the scene stated, that if the officers could not determine that this occurred, it was a civil issue rather than a criminal matter. NE#1 screened the Complainant's arrest for obstruction with a sergeant who responded to the scene. The sergeant asked the officers to explore whether the Complainant had committed a burglary at the residence. Notably, while conducting this further investigation, NE#1 told a civilian: "When a Police



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Officer legally detains you and asks for your information, you have to give them your information, and she refused, that's obstruction."

The Complainant was arrested for obstruction, assault, and burglary. The burglary charge was ultimately removed.

The sergeant conducted a force review, which included taking photographs of the Complainant. Those photographs indicated that she suffered no visible injuries. The sergeant, after watching Department video, identified that the officers demanded the Complainant's identification upon threat of arrest. The sergeant characterized this as a "miscommunication" and counseled both of the Named Employees.

Based on his later review of the incident, a Department Administrative Lieutenant believed that the arrest was potentially not supported by probable cause, that the force to effectuate that arrest was accordingly outside of policy, and that the officers improperly demanded the Complainant's identification during the Terry stop. The Administrative Lieutenant referred these issues to OPA.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegation #1**

##### ***8.200 Using Force - 1. Use of Force: When Authorized***

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends "on the totality of the circumstances" known to the officers at the time of the force and must be balanced against "the rights of the subject, in light of the circumstances surrounding the event." (8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where "no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose." (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

As a threshold matter, I do not believe that the force used in this matter was excessive. The officers gripped the subject's arms and wrists in an attempt to handcuff her and, when she pushed back against NE#1, she and the officers fell to the ground. No other force was used. Were the arrest supported by probable cause, I would have found this force appropriate.

However, as discussed below, I find that there was not probable cause for the arrest of the Complainant. For this reason, arguably all of the force used by the officers, even if de minimis, was in violation of policy as it was not reasonable, necessary, or proportional. However, both officers, even if clearly wrong based on case law and policy, believed that they had a lawful basis to take the Complainant into custody for obstruction. Thus, they believed that the force they used was appropriate.

For these reasons, and while technically any force used to effectuate an unconstitutional arrest is invalid, I recommend that the officers receive a Training Referral instead of a Sustained finding.

- **Training Referral:** The Named Employees' chain of command should discuss this incident with them and, particularly, the fact that the arrest was made without probable cause. The Named Employees should be informed that force used to effectuate an unlawful arrest is, itself, contrary to law and policy. The Named



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Employees' chain of command should provide the Named Employees with any additional retraining that it deems necessary. This counseling and any associated retraining should be documented and this documentation should be maintained in an appropriate database.

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

**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 6.200-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." (SPD Policy 6.200-POL-3.)

I find that the repeated requests and demands for identification, as well as the threat of arrest if no identification was provided, elevated the Terry stop to a functional arrest. For this to have been permissible, there must have been probable cause for the Complainant's arrest. As discussed below, I find that there was not. Accordingly, the Named Employees' conduct violated this policy.

That being said, I find that this conduct is already subsumed in the recommended Sustained findings for Allegation #3 and Allegation #6. For that reason, and while the evidence supports also sustaining this finding, I find it unnecessary to do so here. Instead, I issue both Named Employees a Training Referral.

- **Training Referral:** The Named Employees should receive retraining concerning SPD 6.220 generally, and, specifically, the provision that concerns those actions that can convert a Terry stop into an arrest. The Named Employees should be counseled by their chain of command regarding how the actions they took in this case elevated the stop of the Complainant into an arrest and that they did so when there was no probable cause to effectuate that arrest. The Named Employees should be instructed to more closely adhere to this policy in the future. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

**Named Employee #1 - Allegation #3**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop***

SPD Policy 6.220-POL-6 states that "officers cannot require subjects to identify themselves or answer questions on a Terry stop." While officers are entitled to request this information, they cannot mandate it. (See SPD Policy 6.220-POL-6.)

When interviewed by OPA, NE#2 stated that the initial detention of the Complainant was a Terry stop. However, even though this was the case, it cannot be disputed that he made numerous demands for the Complainant's



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identification. NE#2 stated that he did not necessarily intend to demand her identification, but he did so because she was confrontational. This does not, however, make the demands consistent with policy.

NE#1 recognized that demands for identification could not be made during a Terry stop. However, he articulated that because he was “investigating a crime,” he could request identification. Notably, this is NE#1’s second OPA case in which he has demanded identification of an individual in a Terry stop. Even though he received remedial counseling after both situations, he seems to possess a fundamental misunderstanding of law and policy. If he is conducting a Terry stop, as he was here, he is functionally investigating a crime. During that investigation, he may request, but cannot demand, identification from the subject. If the subject refuses to provide that information and decides to walk away, he has a choice – he can either let the subject walk away or arrest the subject based on probable cause. He cannot, however, demand identification and, when the subject refuses to provide that identification, then arrest the subject for obstruction.

Here, it was inappropriate for the Named Employees to demand the Complainant’s identification. When they did so they violated Department policy and, as such, I recommend that this allegation be Sustained as against both Named Employees.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #4**

***5.001 - Standards and Duties 5. Employees May Use Discretion***

SPD Policy 5.001-POL-5 provides that: “Employees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-5.)

Here, I recommend Sustained findings related to aspects of the Terry stop, as well as concerning the arrest of the Complainant. These Sustained findings already capture the officers’ unreasonable exercise of discretion during this incident. This allegation is thus duplicative and, for that reason, I recommend that it be removed as against both Named Employees.

Recommended Finding: **Allegation Removed**

**Named Employee #1 - Allegation #5**

***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



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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.*)

At the time the Named Employees responded to the scene, they were aware that the owner of the residence had alleged that the Complainant had been told to leave the residence and had refused to do so. Given that knowledge, when they were informed that the Complainant was still at the residence and viewed her there, they had reasonable suspicion to detain her in order to investigate whether she was, in fact, trespassing.

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 #6**

***6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest***

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy.

Contrary to NE#1’s assertion during his OPA interview, the obstruction arrest of the Complainant was based solely on the fact that she refused to provide the officers with her identification when it was demanded. This is conclusively established by the Department video of the incident. NE#1 made several statements that were also determinative, including: prior to the arrest when NE#1 told the Complainant “OK, OK. So listen OK, give us your name or not, you’re going to go in handcuffs”; and when NE#1 told a civilian after the arrest that “[w]hen a Police Officer, legally detains you and asks for your information, you have to give them your information, and she refused, that’s Obstruction.” For his part, NE#2 also demanded the Complainant’s identification during the Terry stop, agreed with the decision to arrest the Complainant, and affirmatively assisted NE#1 in effectuating that arrest.

The fundamental issue here is, as discussed above, the initial detention of the Complainant was a Terry stop and, accordingly, the officers were not permitted to demand her identification at that time based on Department policy. Consequently, she was permitted to refuse those demands. When she permissibly did so, the officers had no basis to then arrest her for her refusals and those refusals did not constitute obstruction. There was no probable cause for the Complainant’s arrest and the Named Employees’ collective actions to arrest her violated Department policy.

For these reasons, OPA recommends that this allegation be Sustained as against both Named Employees.

Recommended Finding: **Sustained**



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**Named Employee #2 - Allegation #1**

***8.200 Using Force - 1. Use of Force: When Authorized***

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that the Named Employees receive Training Referrals rather than Sustained findings. I further refer to the Training Referral set forth above. (See *id.*)

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

**Named Employee #2 - Allegation #2**

***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 #2), I recommend that the Named Employees receive Training Referrals rather than Sustained findings. I further refer to the Training Referral set forth above. (See *id.*)

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

**Named Employee #2 - Allegation #3**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop***

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #2 - Allegation #4**

***5.001 - Standards and Duties 5. Employees May Use Discretion***

For the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #2 - Allegation #5**

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

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





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**Named Employee #2 - Allegation #6**

***6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest***

For the same reasons as stated above (see Named Employee #1, Allegation #6), I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**