



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 9, 2019

CASE NUMBER: 2018OPA-0130

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 (Unfounded)
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions 2. Officers Must Distinguish Between Voluntary Contacts and Terry Stops	Not Sustained (Lawful and Proper)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops	Not Sustained (Unfounded)
# 4	5.120 - Off-Duty Employment 1. Department Policy Applies to Off-Duty Employment	Allegation Removed
# 5	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)

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 the Named Employee improperly stopped her in a grocery store and accused her of stealing. The Complainant contended that the Named Employee may have done so for the purpose of harassing her.

ADMINISTRATIVE NOTE:

This case was submitted to the former OPA Auditor for certification on August 2, 2018, four days prior to the expiration of the 180-day deadline. However, the OPA Auditor requested additional investigation. OPA ultimately completed this additional investigation. However, this was not done and the case was not finally certified until after the 180-day deadline had passed. As such, this case is untimely submitted.

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

OPA received an anonymous complaint in which the Complainant alleged that she was improperly stopped and accused of stealing groceries a police officer who was working secondary employment as a security guard at a Whole Foods Market. The Complainant alleged that this incident occurred on February 6, 2018.



OPA determined that Named Employee #1 (NE#1) was working at the Whole Foods on that date. OPA contacted Whole Foods and spoke with the Store Assistant Manager. She told OPA that the Complainant, who she identified as a woman, was “legitimately stopped” by NE#1 after store employee reported that the Complainant had been shoplifting. The Store Assistant Manager reported that, when the Complainant was stopped by NE#1, the Complainant “accused him of harassing her and completely flipped out.” The Store Assistant Manager stated that NE#1 did not physically touch the Complainant and NE#1 was “calm” and “never escalated.” The Store Assistant Manager stated that they verified that the Complainant was stealing from the store but that the store did not pursue the matter because the Complainant made such a scene and, from her perspective, it was not worth it.

OPA also interviewed NE#1. He remembered the incident in question. He stated that he was familiar with the Complainant and knew to handle her “gently.” He stated that he spoke with her “very calmly [and] quietly” while being “sensitive to her issues.” NE#1 stated that he did not detain the Complainant. He further stated that he did not step in front of the Complainant or take hold of the Complainant’s shopping cart. However, he told OPA that he asked the Complainant whether she had paid for her items. He stated that he just asked her a question and did not effectuate a *Terry* stop. As such, he explained that he did not complete a *Terry* Template because there was nothing to document. He stated that, after he asked the Complainant about whether the items were paid for, the Complainant began yelling at him. He stated that the Store Assistant Manager stepped in and he did not have any further interactions with the Complainant.

During its investigation, OPA tried to obtain video from the Whole Foods; however, that video was not retained. In addition, NE#1 was not equipped with Body Worn Video during this incident, which was consistent with policy.

Based on OPA’s evaluation of the evidence and given the statements of both NE#1 and the Store Assistant Manager, OPA finds that NE#1’s brief interaction with the Complainant was a social contact not a *Terry* stop. Accordingly, OPA finds this policy to be inapplicable and recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

6.220 - Voluntary Contacts, Terry Stops & Detentions 2. Officers Must Distinguish Between Voluntary Contacts and Terry Stops

SPD Policy 6.220-POL-2 states that officers must distinguish between voluntary contracts and *Terry* stops.

As discussed above, I find that NE#1 engaged in a social contact when he approached the Complainant when she was walking out of the store and asked her if she paid for her items. At his OPA interview, he appeared to understand the distinction between a social contact and a *Terry* stop and explained why the law enforcement action he took in this case fell within the former category.

For these reasons, 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 10. Officers Must Document All Terry Stops

SPD Policy 6.220-POL-10 requires that officers document all *Terry* stops using a *Terry* Template. Within the *Terry* Template, officers are instructed to “clearly articulate the objective facts they rely upon in determining reasonable suspicion.” (SPD Policy 6.220-POL-10.)

OPA’s investigation yielded the conclusion that NE#1 effectuated a social contact not a *Terry* stop. As such, he was not required to complete a *Terry* Template and I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegations #4

5.120 - Off-Duty Employment 1. Department Policy Applies to Off-Duty Employment

SPD Policy 5.120-POL-1 makes clear that Department employees who work secondary employment are still subject to the rules and requirements set forth in the SPD Policy Manual.

I find that this allegation is duplicative of the other allegations in this case. As such, I recommend that it be removed.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #5

5.001 - Standards and Duties 14. Retaliation is prohibited

The Complainant alleged that when NE#1 stopped her, he did so to harass her. OPA interpreted the Complainant to be alleging a violation of SPD Policy 5.001-POL-14, which concerns retaliatory actions by Department employees. Under this policy, SPD employees are prohibited from retaliating against a person who engage in activities including, but not limited to, “oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy” or “who otherwise engages in lawful behavior.” (*Id.*) Retaliatory acts are defined broadly under SPD’s policy and include “discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

Based on OPA’s review of the evidence, there is no support for the allegation that NE#1 contacted the Complainant in order to harass her. Instead and as discussed above, NE#1 contacted her because store employees reported that the Complainant had shoplifted, not because of personal animus.

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

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