



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 8, 2018

CASE NUMBER: 2018OPA-0326

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 (Inconclusive)
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions 9. Under State Law, Traffic Violations May Not Be Used as a Pretext [...]	Not Sustained (Training Referral)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops	Not Sustained (Unfounded)
# 4	16.230 - Issuing Tickets and Traffic Contact Reports 3. Officers Document All Traffic Stops	Sustained

Imposed Discipline

Oral Reprimand

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 effectuated a stop of the Complainant’s vehicle that was not supported by reasonable suspicion. It was further alleged that the stop may have been a pretext to investigate other criminal activity. Lastly, it was alleged that the Named Employee failed to properly document the traffic stop.

STATEMENT OF FACTS:

The Complainant initiated this complaint with OPA based on his belief that he was subjected to an improper traffic stop by Named Employee #1 (NE#1). The stop in question was recorded on NE#1’s In-Car Video (ICV). The ICV depicted NE#1 driving down a road until he came behind the Complainant’s car. The Complainant was clearly driving slowly at that time. NE#1 pulled directly behind the Complainant and the Complainant put on his right turn signal and began to turn into a space between two cars. He did not pull in, however, and continued driving. He put on his right turn signal a second time and drove past another opening between two cars. He slowed down but then accelerated forward, still with his right blinker on, and pulled into an open spot. NE#1 drove into the center lane and remained there for a moment. The Complainant then pulled out of the spot and began driving up the road. NE#1 pulled behind him and, while the Complainant again put on his right blinker to turn into an open space, NE#1 activated his lights and sirens and effectuated the traffic stop.

When NE#1 approached the Complainant’s vehicle, he told him the following concerning the basis for the stop: “First, you were going extremely slow on Delridge. Then, when I got behind you, you got off the road, and, uh, came back out with no blinker.” The Complainant interjected at this point and stated that he did have his blinker on, to which



NE#1 responded “ok.” NE#1 then told the Complainant: “Then I got behind you and you got off the road again. Is there a reason for that?” The Complainant stated that he had been looking for a job site but had been unable to find it. He explained that he had pulled over to locate the site. NE#1 explained to the Complainant: “The only reason why I stopped is at these time, these times of the day, at this hour, usually it’s like drunk people or stolen cars or something like that...I ran your plate and it’s all good, uh, it was just a little suspicious. Okay?” NE#1 requested his license, registration, and proof of insurance and returned to the patrol vehicle.

After a period of time, NE#1 walked back to the Complainant, provided him with his documents, and informed him where the job site was. NE#1 did not give the Complainant a ticket or any other documentation relating to the stop. NE#1 then told the Complainant that he could turn around. When the Complainant indicated doubt that he could do so given that he had just been pulled over, NE#1 stated the following prior to the Complainant leaving the scene:

No, no, no, no...You can go ahead and turn around. Like I said, the reason that I stopped you, it was just, you were just going super slow, I mean, way below the speed limit, the speed limit is 30, I know you were lost, and, uh, when you got pulled off the road, as soon as I passed you, you got off, I turned around, then you got off, it was just suspicious, okay?

As part of its investigation, OPA reviewed the Department video and the documentation relating to the stop. OPA also interviewed both NE#1 and the Complainant.

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

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.*)

With regard to this allegation, NE#1 contended that it was inapplicable as he made the stop based on probable cause to believe that the Complainant was driving too slowly in violation of SMC 11.52.130. He asserted that, as such, it was not a Terry stop. Whether NE#1 is technically correct is largely immaterial as, for a traffic stop to be valid, the officer must have reasonable suspicion (not probable cause) to believe that the driver committed the infraction. As such, the standard set forth above is applicable to this case.



Here, NE#1 stated that he believed that the Complainant committed two citable offenses: first, he was driving too slowly; and, second, he merged into the left lane without using a turn signal.

With regard to the first offense, SMC 11.52.130 provides that: “No person shall operate a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.” It is unclear to OPA how the Complainant’s driving served to “impede the normal and reasonable movement of traffic.” Notably, there appeared to be no other vehicles on the road at that time. Moreover, based on OPA’s review of the video, the Complainant was clearly driving slowly because he was looking for something. Notably, he stayed to the right side of the road and used his turn signal to pull partially or fully into open spaces. Indeed, as he explained both to NE#1 at the time of the stop and during his OPA interview, the Complainant was driving at a lower speed to safely operate his car while looking for a job site.

With regard to the second offense, while NE#1 stated that the Complainant merged into the left lane without using a turn signal, the Complainant denied doing so. The Complainant stated that he always used his turn signals. Notably, during the portion of the ICV that did record the Complainant’s driving, he used his turn signal on each occasion that he moved to the right lane. This is evidence supporting his contention that he also did so when he merged left. However, whether the Complainant committed this offense is ultimately inconclusive based on the lack of video evidence.

As indicated above, I find that there are questions concerning whether reasonable suspicion existed to stop and cite the Complainant for either offense. However, applying a preponderance of the evidence standard, I cannot make a conclusive determination on this issue. Accordingly, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #3

6.220 - Voluntary Contacts, Terry Stops & Detentions 9. Under State Law, Traffic Violations May Not Be Used as a Pretext [...]

SPD Policy 6.220-POL-9 precludes the use of a traffic violation to investigate unrelated crimes. The policy defines “pretext” as where an officer stops “a suspect for an infraction to investigate criminal activity for which the officer has neither reasonable suspicion nor probable cause.” (SPD Policy 6.220-POL-9.) The policy explains that pretext stops are prohibited by law. (*Id.*) It further explains that: “Officers must actually, consciously, and independently determine that a traffic stop is reasonably necessary in order to address a suspected traffic infraction.” (*Id.*)

At his OPA interview, NE#1 claimed that he solely stopped the Complainant for driving too slowly and not using his turn signal when he merged into the left lane. NE#1 denied that he used these alleged offenses as a pretext to investigate other suspected criminal activity.

However, these assertions were contradicted by NE#1’s statements during the stop. Notably, at that time, NE#1 told the Complainant that people who drove slowly as he did were “usually like drunk people or stolen cars or something like that.” Moreover, at the conclusion of the stop, NE#1 stated to the Complainant: “the reason I stopped you was, you were just going super slow, I mean, way below the speed limit. The speed limit is thirty, and when you got



pulled off the road, as soon as I passed you, you got off, I turned around, and you got off. It was just suspicious, okay?" When asked by OPA why he made these statements, NE#1 responded: "Like I said, it was just to—I don't remember exactly at what point of our contact I mentioned it, but it was just to help him feel at, at ease of the stop, not so he didn't, didn't worry or anything, I don't know." I find NE#1's explanation to be unconvincing.

Based on a review of the evidence, including the ICV and NE#1's own statements, it appears very possible that this was, in fact, a pretext stop. Indeed, in NE#1's own words, he appeared to be investigating whether the Complainant was intoxicated or was driving a stolen vehicle, rather than simply stopping the Complainant to investigate two citable offenses. NE#1 would not have had reasonable suspicion to investigate either DUI or a stolen vehicle at the time of the stop.

I have serious questions concerning whether NE#1 conducted a pretext stop in this case. However, I cannot be sure whether this was intentional misconduct or, instead, a newer officer trying to be proactive who made a significant mistake. I hope that it is the latter and I also hope that NE#1 uses this case as a learning experience and does not find himself in this type of situation again. Accordingly, I issue NE#1 the below Training Referral. I also note that, to the extent similar conduct occurs in the future, NE#1 should expect that OPA will recommend a Sustained finding.

- **Training Referral:** NE#1 should receive additional training concerning the elements of SPD Policy 6.220-POL-9. His chain of command should further discuss this incident with him. This should include watching the video together and discussing the stop, as well as reviewing the statements made by NE#1 to the Complainant. NE#1 should be informed that, even if it was not his intent, the evidence in this case suggests that this was a pretext stop. NE#1 should be counseled to avoid these types of situations 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 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.)

NE#1 asserted that as he effectuated a traffic stop based on two alleged citable offense, he was required to complete a Traffic Contact Report (TCR), not a Terry Template. From my review of both of this policy and of SPD Policy 16.230-POL-3, I agree with his interpretation. NE#1 did issue a TCR and, even though he did not serve the TCR on the Complainant, he complied with the requirement that he document the stop and detention.

As I find that this allegation and the requirement of a Terry Template to be inapplicable to this case, I recommend that this allegation be Not Sustained – Unfounded.

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



Named Employee #1 - Allegations #4

16.230 - Issuing Tickets and Traffic Contact Reports 3. Officers Document All Traffic Stops

SPD Policy 16.230-POL-3 details the documentation that can be generated as a result of a traffic stop. Included is a TCR. A TCR is “used to provide a written warning for traffic infractions.” A TCR is not appropriate, however, “for Terry stops on a vehicle.” SPD Policy 16.230-TSK-1 instructs officers on what steps to take when issuing an infraction or TCR. Notably, the policy instructs officers to serve a copy of the TCR on the driver. SPD Policy 16.230-POL-11 provides two exceptions from when service on the driver is not required: first, when a criminal citation is referred to the Law Department for review; and, second, when a notice of infraction is sent to the Court for mailing to the violator.

At his OPA interview, NE#1 stated his belief that service of the TCR on the Complainant was optional. NE#1’s Guild representative echoed that assertion. Based on the plain language of the policy, I find nothing indicating that service of the TCR is optional. Indeed, I conclude the opposite as I read the policy as requiring that the TCR be served except where the two delineated exemptions apply. Neither of those exceptions, which are discussed above, applied to this case.

NE#1’s failure to serve the TCR violated Department policy. It was further problematic as the Complainant had no documentation of a stop that he felt was improper and unnecessary. For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**