



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 31, 2018

CASE NUMBER: 2018OPA-0639

Allegations of Misconduct & Director’s Findings

Named Employee #1

| Allegation(s): | | Director’s Findings |
|----------------|---|-----------------------------------|
| # 1 | 6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops | Not Sustained (Management Action) |

Named Employee #2

| Allegation(s): | | Director’s Findings |
|----------------|---|-----------------------------------|
| # 1 | 6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops | Not Sustained (Training Referral) |
| # 2 | 16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity | Sustained |
| # 3 | 16.110 - Crisis Intervention 2. CIT- Certified Officers Will Take the Lead, When Appropriate, In Interacting with Subjects in Behavioral Crisis | Sustained |
| # 4 | 5.001 - Standards and Duties 10. Employees Shall Strive to be Professional | Not Sustained (Training Referral) |

Imposed Discipline

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| Suspension without pay – 6 days and Disciplinary Transfer |
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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 Named Employee #1 and Named Employee #2 both failed to complete a *Terry* Template. It was further alleged that Named Employee #2 was unprofessional, failed to take appropriate action as a CIT-certified officer, and failed to activate his In-Car Video and Body Worn Video.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops

It was alleged that Named Employee #1 (NE#1) failed to complete a *Terry* Template recording his interaction with the Subject.

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 acknowledged that he did not generate a *Terry* Template, but stated that, pursuant to his reading of the policy, he did not believe that one was required in this case. He pointed to the following language contained in SPD Policy 6.220-POL-2(a): “A *Terry* Stop is a detention short of an arrest. All other detentions must be made pursuant to the policies for arrests without a warrant (6.010-Arrests), warrant arrests, (6.280-Warrant Arrests), traffic stops (16.230-Issuing Tickets and Traffic Contact Reports), or seizure of a person for a psychological evaluation (16.110-Crisis Intervention).” As NE#1 believed that he was conducting a crisis intervention, not a *Terry* stop, he did not think that a *Terry* Template was required. He did generate a General Offense Report and a Crisis Template. He later completed a *Terry* Template after the he received the five-day notice relating to this OPA complaint.

I agree with NE#1 that an officer could plausibly interpret the language of SPD Policy 6.220-POL-2(a) as not requiring a *Terry* Template to be generated in this type of scenario. While I believe that policy did, in fact, require a *Terry* Template in this case, I do not believe that a Sustained finding is warranted against NE#1 because of the ambiguity within the policy. I, instead, recommend a Management Action Recommendation to resolve this ambiguity and to make the policy clear that a *Terry* Template is required even when a person is detained to investigate whether they are possibly in crisis.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #2 - Allegations #1

6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops

Named Employee #2 (NE#2), like NE#1, also did not create a *Terry* Template as a result of this incident. This was the case even though NE#2 asserted his belief that the detention of the Subject constituted a *Terry* stop. In explaining why he did not generate a *Terry* Template, NE#2 stated that NE#1 said that he would do it and NE#2 relied on NE#1’s representation.

This purported conversation with NE#1 was not captured on either In-Car Video (ICV) or Body Worn Video (BWV). Moreover, as indicated by the paperwork that NE#1 actually completed – namely, a General Offense Report and a Crisis Template, it does not look like he ever intended to generate a *Terry* Template. Moreover, even had NE#1 said that he would do so, that did not excuse NE#2, who was equally involved in the call, from verifying that this did, in fact, occur.

That being said, given that this failure on the part of NE#2 may have been the result of a good faith miscommunication with NE#1, I recommend that he receive a Training Referral rather than a Sustained finding.

- **Training Referral:** NE#2 should receive retraining as to SPD Policy 6.220-POL-10 and the requirement of a *Terry* Template. He should be counseled regarding his failure to ensure that a *Terry* Template was completed in this case and should be reminded to more closely comply with this policy moving forward. 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 #2 - Allegation #2

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity

SPD Policy 16.090-POL-1(5) concerns when Department employees are required to record police activity. SPD Policy 16.090-POL-5(1)(b) sets forth the categories of activity that must be recorded, which include: responses to dispatched calls starting before the employee arrives on the scene; traffic and Terry stops; on-view infractions and criminal activity; arrests and seizures; and questioning victims, suspects, or witnesses.

OPA's investigation indicated that NE#2 failed to record either ICV or BWV during this incident. NE#2 acknowledged that he did not record video and that, based on the circumstances of this case, he was required to do so.

Where officers fail to record, OPA has recently been referring these matters back to the chain of command and/or issuing a Training Referral where the officer self-reports and complies with the requirements of SPD Policy 16.090-POL-1(7). This policy requires that Department employees document the existence of video or the reason for the lack of video. Officers are instructed to note the failure to record in an update to the CAD Call Report, as well as to provide an explanation for the lack of a recording in an appropriate report. (SPD Policy 16.090-POL-1(7).)

However, where, as here, an officer fails to record and fails to comply with the self-reporting requirements, a Sustained finding is warranted. As such, I recommend that this allegation be Sustained as against NE#2.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #3

16.110 - Crisis Intervention 2. CIT- Certified Officers Will Take the Lead, When Appropriate, In Interacting with Subjects in Behavioral Crisis

At the time of the incident, NE#2 was a CIT-certified officer. He responded to an incident at the ferry terminal concerning a woman – later identified as the Subject – who was possibly impaired. NE#2 and NE#1, who was also present, evaluated the Subject and determined that she was not actually impaired by any drugs or alcohol. NE#2 stated over radio that the Subject was “219 and a half.” 220 is the code for a crisis event. Moreover, both NE#1 and NE#2's supervisor stated that NE#2 ran the Subject's information and determined that she had two previous incidents where she was identified as being in crisis. OPA notes that this could not be conclusively verified during its investigation; however, it appears from the statements of the other officers that NE#2 knew, from some source, of the Subject's prior crisis history. NE#2 did not, however, call for a mobile crisis team or offer the Subject any resources. Instead, he released the Subject from the scene and instructed her to leave the vicinity of the ferry. The Subject was later involved in up to four other incidents. Two of the incidents were cleared by NE#2 as “220” and were associated, by him, with the earlier incident. Two other incidents were believed to involve the Subject; however, she and her vehicle were not actually seen.

SPD Policy 16.110-POL-2 states that “CIT-certified officers will take the lead, when appropriate, in interacting with subjects in behavioral crisis.” The policy further generally refers to a number of actions that a CIT-certified officer is expected to take when dealing with an individual who is potentially in crisis.



As indicated above, NE#2 took virtually none of these actions. Instead, he simply permitted the Subject to leave the scene and, shortly thereafter, she engaged in a course of conduct that was dangerous both to her and to other community members.

At his OPA interview, NE#2 stated that he “didn’t see [the Subject] in crisis whatsoever.” NE#2 told OPA that, had he thought she was in crisis, he would have stepped in because he was “pretty good at crisis calls.” When asked why he referred to the Subject as “219 and a half” if this was not a crisis call, he stated that “there’s a difference between mental health and crisis” and that it meant that it was “close to a mental call, but not really a mental call.” NE#2 asserted that the Subject may have been “a little mental,” but that she was not in crisis. NE#2 confirmed that he did not offer the Subject any resources because he did not think she needed any. He also did not remember ever asking the Subject whether she needed any medical or mental health treatment. He further confirmed that he released her from the ferry terminal because he did not perceive her as being a threat to herself or anyone else. When asked whether he complied with this policy, NE#2 asserted that he did because he “didn’t know it was a crisis call.”

NE#2’s contention that this was not a crisis scenario is undercut by five main facts. First, NE#1, who was dealing with the same facts, thought it was clearly a crisis situations and, indeed, completed a crisis template. Second, at the time of the incident, NE#2 characterized the Subject as a “219 and a half.” Third, NE#1 informed OPA that NE#2 told him that he believed the Subject was in crisis. Fourth, both NE#1 and NE#2’s supervisor indicated that NE#2 was aware that the Subject had at least two prior crisis incidents. Fifth, NE#2 indicated that the Subject was in crisis when documenting both of the subsequent incidents involving her.

Notably, at his OPA interview, NE#2’s supervisor stated that this was not the first time that he had these types of issues with NE#2. The supervisor, who was the Complainant in this case, also stated that he hoped that NE#2 would accept responsibility for his shortcomings during this incident and, if he did, the supervisor asserted that retraining was the appropriate remedy. However, as discussed above, NE#2 did not accept responsibility. Instead, he continued to assert that he did not violate policy and the Department’s expectations in this case.

OPA ultimately disagrees and finds that NE#2 acted inconsistent with policy and did not carry out his role as a CIT-certified officer. OPA further believes that, under the circumstances of this case, simply retraining NE#2 would be insufficient and that further intervention is needed to ensure that NE#2 performs his responsibilities sufficiently and consistent with policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegations #4

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

It was further alleged that NE#1 engaged in unprofessional conduct towards the Subject.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*)



Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

Based on my review of the record, I find no evidence that NE#2 spoke to the Subject disrespectfully, contemptuously, or in profane terms. I further find no evidence that he made any statements directly to the Subject that were unprofessional.

However, I find that NE#2’s utter failure to take any steps to utilize his experience and crisis training undermined the public’s trust in both him and the Department. I find that this is even more egregious given that the Subject was later involved in incidents that could have been avoided had he taken action as he was required to do. That being said, I find that this conduct is already captured by the Sustained finding in Allegation #3 and also issuing a Sustained finding here would be duplicative. Instead, I issue NE#2 the below Training Referral.

- **Training Referral:** NE#2 should be counseled concerning his conduct in this case. He should be informed that his failure to take required law enforcement activity was problematic and undermined the public’s trust and confidence both in him and the Department. He should be instructed to be more mindful of the far-reaching consequences of his actions moving forward. 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)**