



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 20, 2019

CASE NUMBER: 2018OPA-0682

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	8. Officers May Conduct a Frisk or Pat-Down of Stopped Subject(s) Only if They Reasonably Suspect That the Subject(s) May Be Armed and Presently Dangerous	Not Sustained (Lawful and Proper)
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops	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:

It was alleged that the Named Employee, who was working off-duty, improperly stopped the Complainant and her son, searched her son without legal justification to do so, and engaged in biased policing towards them. It was further alleged that the Named Employee may have failed to properly document his actions in a Terry Template.

STATEMENT OF FACTS:

The Complainant filed a Claim for Damages with the City of Seattle. In the claim form, she alleged that she was intimidated and discriminated against by Named Employee #1 (NE#1), who was working off-duty security at Whole Foods. She stated that NE#1 followed her around the store and asked her about a product return that she had made. She provided no additional details concerning NE#1’s actions. The Complainant stated that she was discriminated against for a number of potential reasons, including race, color, physical condition, age, parental status, and housing status. She further indicated that she was seeking the following damages: “Injunction, General Damages need healthcare to Secure remedies.”

OPA commenced this investigation. OPA tried to interview the Complainant on several occasions; however, she did not respond to OPA.

OPA interviewed NE#1, who described his perception of what occurred during the incident. He told OPA that he was alerted by store security that the Complainant and her son were in the store and that they were engaging in fraudulent returns. NE#1 noted that they were in the store for an abnormally long amount of time. He stated that he got in a



position where he could observe the Complainant and that she gave him “a very angry look” on several occasions. He told OPA that he simply changed where he was standing and did not follow the Complainant and her son. The Complainant then began to walk in NE#1’s direction and towards the store exit.

NE#1 asserted that, at this time, he had reasonable suspicion to believe that the Complainant and her son were or had been engaging in criminal activity. Accordingly, he felt that he was legally justified in detaining them. He described that, when the Complainant’s son was walking towards him, he saw a bulge on the son’s right side that concerned him. He believed that it could be a weapon. He based this belief both on what he observed, as well as on what he described as the son looking at him aggressively. In addition, he based this belief on his experience that individuals actively committing crimes are often armed.

NE#1 stated that, as the Complainant’s son walked past him, he reached out and grabbed the bulge on the son’s side to determine whether it was a weapon. The bulge did not turn out to be a weapon and was, instead, plastic bags. At the time he conducted the frisk, he asked the son whether he had a weapon and the son stated that he did not. The Complainant and her son did not stop and walked out of the store.

Around 15 to 20 minutes later, the Complainant walked back inside of the store and asked NE#1 for his badge number. She stated that her son was upset by the interaction. NE#1 provided his name and badge number. NE#1 told OPA that he learned that the Complainant and her son were later caught engaging in illegal activities in the store and were trespassed.

NE#1 did not complete a *Terry* Template or a General Offense Report concerning this incident by the end of his shift. He ultimately did do so, but not until five days after the incident. His account in those reports was consistent with that provided at his OPA interview.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

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.*)

While the Complainant alleged that NE#1 engaged in bias in her claim form, she provided no specific details as to why she believed this to be the case. NE#1, who was interviewed by OPA, denied doing so and explained the reasons for why he made the decision to take law enforcement action towards the Complainant and her son.

Ultimately, I find that the facts in the record support NE#1’s account and that the Complainant has not met the evidentiary burden needed to establish that NE#1 engaged in biased policing. As such, 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

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.*)

When NE#1 stopped the Complainant’s son and grabbed the bulge on his side, NE#1 effectuated a detention, even if only momentary. Based on my review of the record, I find that this detention was supported by sufficient reasonable suspicion. Notably, the evidence indicates the following facts supporting reasonable suspicion: NE#1 was aware that the Complainant and her son had previously engaged in suspicious activity in the store; their behavior appeared to be suspicious on the date in question; they remained in the store for an abnormally long period of time; they looked at him angrily and aggressively; and the son had a bulge on his right side that appeared to NE#1 to be a weapon. These facts, when evaluated together, establish that the detention was legally justified.

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

8. Officers May Conduct a Frisk or Pat-Down of Stopped Subject(s) Only if They Reasonably Suspect That the Subject(s) May Be Armed and Presently Dangerous

SPD Policy 6.220-POL-8 states that: “Officers may conduct a frisk or a pat-down of a stopped subject only if they reasonably suspect that the subject may be armed and presently dangerous.” The policy explains that: “The decision to conduct a frisk or pat-down is based upon the totality of the circumstances and the reasonable conclusions drawn from the officer’s training and experience.” The policy provides a non-exclusive list of factors supporting such a search.

At his OPA interview, NE#1 stated that he believed that the Complainant’s son was armed and presently dangerous, which supported the frisk. In support of this assertion, NE#1 cited to the son’s suspicious behavior, his aggressive look towards NE#1, the bulge on his right side, and the fact that, in NE#1’s experience, individuals committing crimes were often armed.



While a close call, I defer to NE#1's belief that, based on the totality of the circumstances that he was presented with, the frisk was justified. In reaching this decision, I note, as discussed above, that the Complainant presented no evidence to contradict NE#1's assertion that the frisk was legally permissible. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegations #4

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.) Officers are required to complete the *Terry* Template before they leave at the end of their shift.

NE#1 indisputably did not complete either a *Terry* Template or a General Offense Report by the end of his shift on the date in question. This was the case even though NE#1 acknowledged that he effectuated a *Terry* stop. NE#1 did complete both reports five days later, which documented what occurred.

NE#1's failure to timely complete a *Terry* Template represented a technical violation of policy. That being said, I recommend that NE#1 receive a Training Referral rather than a Sustained finding for two main reasons. First, NE#1 recognized and took responsibility for his error. Second, NE#1 did ultimately complete the required paperwork.

- **Training Referral:** NE#1 should be retrained on the requirement to timely complete a *Terry* Template and should be counseled by his chain of command concerning his failure to do so here. NE#1's chain of command should instruct NE#1 to more closely comply with this policy moving forward. This retraining and counseling should be documented and this documentation should be maintained in an appropriate database.

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