



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 15, 2020

CASE NUMBER: 2018OPA-0200

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 (Lawful and Proper)
# 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)

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Lawful and Proper)
# 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)

Named Employee #3

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Lawful and Proper)
# 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)

Named Employee #4

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Lawful and Proper)
# 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	6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Lawful and Proper)
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 8. Officers May Conduct a Frisk or Pat-Down of Stopped Subject(s) Only if They Reasonably Suspect [...]	Not Sustained (Lawful and Proper)

Named Employee #5



Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Lawful and Proper)
# 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)

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 Complainants, three parents, alleged that their children were profiled based on their race.

ADMINISTRATIVE NOTE:

Due to heavy caseloads at the time and given a request for additional investigation by the OPA Auditor, OPA was unable to timely complete this case. As such, this DCM is submitted past the expiration of the 180-day deadline.

STATEMENT OF FACTS:

On the date in question, a potential robbery and assault at a Safeway was reported. The caller provided descriptions of two perpetrators. The first was described as: a Black male; between 15-18 years old; approximately 5'10" with an average build; and wearing a red and black jacket, grey hooded sweatshirt, and grey pants; and possessing a red and black backpack. The second was described as: a Black female; between 15-18 years old; wearing a black jacket, grey hooded sweatshirt, and grey sweatpants. Lastly, it was relayed that the male and female suspects were together. The initial call came in at 16:13 hours.

At approximately 16:18 hours, Named Employee #1 (NE#1) and Named Employee #2 (NE#2) stopped a female (who is referred to herein as the "Female Subject"). When they contacted her, she was crossing the street. She was wearing a black jacket and dark gray sweatpants. She had crackers in her hand. The Female Subject immediately asked what she had done and became upset. NE#1 and NE#2 informed the Female Subject that she matched the description of one of the suspects from an earlier incident at the Safeway. They asked her whether she had been with another individual earlier at the Safeway. She denied that she had. During the detention, the Female Subject was asked for and provided her name, address, and phone number. She disclosed to the officers that she was 15 years old and that she had never been stopped by SPD before. In response to additional questions concerning whether she was involved in a robbery, the Female Subject said that she was not and went to the Safeway to buy Cheezits. She showed them the receipt. The officers advised her that they would conduct a show-up with store personnel, and she and NE#2 made small talk briefly while NE#1 ran the Subject's name. The Female Subject no longer appeared to be visibly upset. Dispatch advised the officers over radio that she was not involved. NE#2 gave her a business card and said she could leave. The length of the Female Subject's detention was approximately six minutes.

At approximately the same time, Named Employee #3 (NE#3), Named Employee #4 (NE#4), and Named Employee #5 (NE#5) were near the location of the shoplifting incident. NE#5 observed a male (who is referred to as the "Male Subject") and made contact with him while NE#3 and NE#4 served as backing officers. The Male Subject was wearing



clothing that matched the description given and wore a red and black backpack. NE#5 asked if the Male Subject had been in a Safeway. The Male Subject denied it. NE#5 took the Male Subject's right arm and wrist and escorted him to the front of his patrol vehicle. NE#3 took control of his left hand. They directed the Male Subject to place his hands on the front of the vehicle. NE#5 conducted a pat-down. NE#5 asked if the Male Subject took anything from the store, and the Male Subject said no. When NE#5 was finished conducting the pat down, the Male Subject stood up and put his hands in his pockets. NE#4 told him to take his hands out of his pockets, and briefly reached inside to feel around. NE#3 ran the Male Subject's name. The officers were advised over air that the Male Subject was not the correct suspect and that the suspect was wearing yellow shoes. NE#4 wrote information for the Male Subject on a business card. A car arrived, driven by the Male Subject's father, and NE#3 and NE#4 briefly explained the reason for the stop. The Male Subject and his father left the scene. The length of the detention was slightly over three minutes. Later, the officers detained another male and female matching the descriptions they were initially provided.

Later that day, the mother and father of the Male Subject and the mother of the Female Subject went to the South Precinct where they spoke to NE#3 and a supervisor. The parents alleged that the Male and Female Subjects were stopped because of their race.

In his OPA interview, NE#4 described the reasons for his pat-down search of the Male Subject. He stated that he conducted the pat-down for the following reasons: the violent nature ("strong-arm robbery") of the crime being investigated, the fact that the Department has designated that area as a high-crime area, his past experience encountering individuals with weapons in their pockets, and the fact that the Male Subject placed his hands in his pockets. When asked specifically about reaching into the Male Subject's pocket, NE#4 indicated that he had missed items inside of pockets before, and that the Male Subject's puffy coat made it harder to identify items in the pockets through an exterior pat-down. OPA notes that BWV does not show NE#4 removing anything from the pockets or searching beyond the outer layer of the Male Subject's clothing.

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.*)

OPA finds insufficient evidence to determine that NE#1 stopped the Female Subject based on her race. Body-worn video (BWV) established that the Female Subject was dressed in a black jacket and dark gray pants in the vicinity of the Safeway, thus giving them reasonable, articulable suspicion that she was the individual described. Notably, while the suspect description relied on by officers to stop the Female Subject included the information that the suspect—like the Female Subject—was Black, this was not the only way in which the Female Subject matched the description. There is no evidence in the record to indicate that NE#1 or other officers stopped the Female Subject because of her race alone, rather than because of her clothing, apparent age, and location being consistent with the suspect description. For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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



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-2 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-1.) 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.*)

OPA finds that NE#1 had reasonable suspicion that the Female Subject was one of the individuals described as a suspect. The Female Subject's clothing, apparent age, and overall location were all consistent with the description given, and she was observed carrying an unopened box of crackers that could plausibly have come from the store. Taken together, these facts give rise to the rational inference that the Female Subject was in fact the individual described and therefore, that there was reasonable suspicion supporting the Terry stop. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegations #1

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

For the same reasons as above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - 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

For the same reasons as above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #3 - Allegations #1

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

OPA finds insufficient evidence to determine that NE#3, NE#4, or NE#5 stopped the Male Subject based on his race. Like the Female Subject, the Male Subject's clothing, apparent age, and location exactly matched the description provided to the officers. While it is ultimately regrettable that two innocent teenagers were stopped and OPA is sympathetic to the fear experienced by both the Male and Female Subjects, as well as the frustration of their parents, OPA finds no basis to conclude that the officers improperly stopped either Subject on the basis of race. Rather, the record shows that their clothing and identifiable characteristics exactly matched the suspect descriptions initially provided. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - 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

For the same reasons as above (see Named Employee #3 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #4 - Allegations #1

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

For the same reasons as above (see Named Employee #3 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #4 - 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

For the same reasons as above (see Named Employee #3 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #4 - Allegation #3

6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope

SPD Policy 6.220-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.)

Based on its analysis of BWV, the length and scope of the officers' detention of the Male Subject was reasonable under the circumstances and did not exceed the brief, minimally invasive detention for investigatory purposes authorized by *Terry v. Ohio*. OPA bases its conclusion on the fact that the Male Subject was not handcuffed, transported anywhere, or in any way detained for longer than minimally necessary to establish that he was unarmed, and uninvolved in the crime being investigated. As soon as it was practical to do so, NE#3 and the other officers informed the Male Subject that he was free to go. For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #4 - Allegations #4

6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers May Conduct a Frisk or Pat-Down of Stopped Subject(s) Only if They Reasonably Suspect [...]

SPD Policy 6.220-POL-6 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." (SPD Policy 6.220-POL-6.) The policy provides a non-exclusive list of factors supporting such a search. (*See id.*)

OPA finds that NE#4's decision to conduct a pat frisk was consistent with policy. Based on the totality of the circumstances, NE#4 was reasonably concerned about encountering an armed individual fitting the description of the suspect in a violent crime and observed the Male Subject placing his hands in his pockets. As such, NE#4 was permitted to frisk him.

In addition, NE#4's reaching into the Male Subject's pockets did not violate law or policy. NE#4 stated that his intent was not to search the pocket. NE#4 explained that, given the layers that the Male Subject was wearing, he felt that he could better determine whether the Male Subject was armed by patting him down through the pocket. NE#4 told OPA that he had missed items during previous pat frisks, and he believed that frisking through the pocket would ensure that he did not do so here. OPA notes that the video did not indicate that NE#4 was looking for evidence in the Male Subject's pocket and he did not remove any items from the pocket. Moreover, OPA concluded that such a search is contemplated under *State v. Hudson*, 124 Wn.2d 112-13, 874 P.2d 160 (1994), which allows an officer to reach into a detainee's pocket when the initial pat frisk for weapons was inconclusive.

As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #5 – Allegation #1

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

For the same reasons as above (see Named Employee #3 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #5 – 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

For the same reasons as above (see Named Employee #3 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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