



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 20, 2018

CASE NUMBER: 2018OPA-0360

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 (Training Referral)

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 (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 (Training Referral)

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 Employees stopped his vehicle without a legal basis to do so. The Complainant further alleged that the stop was due to bias.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Named Employees effectuated a traffic stop based on the mistaken belief that the driver of the car had an open warrant. The stop lasted for approximately five minutes, during which it was conclusively established by the Named Employees that neither the driver nor anyone else inside of the vehicle, was a warrant subject. After the stop, the Complainant called SPD to make a complaint concerning the Named Employees' conduct. He contended that, given the fact that he and the other occupants of the car did not have open warrants, he believed the stop was due to their race. The Complainant and his passengers African-American. As such, he alleged that he was subjected to biased policing by the Named Employees.

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.*)

As discussed below, prior to the stop, the officers should have done a more thorough job of examining whether the warrant subject they identified was actually affiliated with the car. However, I find that the stop was based on the mistaken yet good faith belief that there was a warrant subject therein. Based on my review of the record, there is no evidence suggesting that this stop was based on bias. Indeed, once it was determined just minutes into the stop that none of the occupants of the car were the subject of the warrant, the individuals were told that they were free to leave and the officers attempted to help the front seat passenger determine whether his father or another relative had an open warrant.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against both Named Employees.

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

The Named Employees recounted that they were following the Complainant’s car when they ran his license plate through their Mobile Data Terminal. This search yielded the name of the registered owner. The officers ran that name through the SPD Records Management System and that search yielded multiple results. One of those results was an individual with the same last name as the registered owner, but a different variation of the first name (Antonio versus Anthony). The Named Employees effectuated a traffic stop of the vehicle to investigate whether the driver was the warrant suspect. The Named Employees asserted their belief that they had reasonable suspicion to make that stop.

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.*)

Based on OPA’s review of the record, it is clear that the subject of the warrant was not the registered owner of the car. As discussed above, while their first names were close, they were not the same. Moreover, the registered owner’s birth year was 1958, while the birth year of the warrant subject was 1968. Both Named Employees acknowledged these facts and stated that, had they had perfect information at the time, they would not have



effectuated the traffic stop. However, they asserted that, while they may have made a mistake in this case, this mistake was reasonable under the circumstances.

As the officers indicated, hindsight is always 20/20. Given the actual facts of this case, the Terry stop of the vehicle was not legally justified; however, the officers' mistake was understandable under the circumstances. As such, instead of Sustained findings, I instead recommend Training Referrals.

- **Training Referral:** NE#1 and NE#2 should be counseled by their chain of command concerning this case. Their chain of command should go over this incident with them and remind them to take additional steps to verify that the registered owner of a car is a warrant subject prior to effectuating a traffic stop. Where such additional steps are not taken, it is possible that the stop will be legally invalid as the information possessed by the officers may not rise to the level of reasonable suspicion. The Named Employees' chain of command should brainstorm with them concerning what additional steps they could have taken in this case that would not have comprised law enforcement priorities. This counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #2 - Allegations #1

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

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

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

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

I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See Named Employee #1, Allegation #2.)

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