



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 29, 2019

CASE NUMBER: 2018OPA-0732

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	8.100 - Using Force Use-of-Force: When Authorized	Not Sustained (Lawful and Proper)
# 3	5.001 - Standards and Duties 6. Employees May Use Discretion	Allegation Removed
# 4	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)
# 5	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Allegation Removed
# 6	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement d. Pat-Down Frisk	Allegation Removed
# 7	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)

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	8.100 - Using Force Use-of-Force: When Authorized	Allegation Removed
# 3	5.001 - Standards and Duties 6. Employees May Use Discretion	Allegation Removed
# 4	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)
# 5	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Allegation Removed
# 6	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement d. Pat-Down Frisk	Not Sustained (Training Referral)
# 7	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)

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 (Unfounded)
# 2	8.100 - Using Force Use-of-Force: When Authorized	Not Sustained (Lawful and Proper)

# 3	5.001 - Standards and Duties 6. Employees May Use Discretion	Allegation Removed
# 4	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)
# 5	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Allegation Removed
# 6	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement d. Pat-Down Frisk	Allegation Removed
# 7	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)
# 8	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)
# 9	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

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 (Unfounded)
# 2	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Inconclusive)

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 Employees #1, #2, and #3 violated a number of Department policies during the detention and arrest of the Complainant. This included Named Employee #2 allegedly inappropriately touching and improperly searching the Complainant, as well as Named Employee #1 and Named Employee #3 allegedly subjecting him to excessive force. The Complainant also alleged that all of the Named Employees subjected him to biased policing. It was additionally alleged that Named Employee #3 made unprofessional statements. Lastly, the Complainant alleged that he reported potential misconduct to Named Employee #4 and she failed to investigate it or to refer it to OPA.

SUMMARY OF INVESTIGATION:

On January 21, 2014, Named Employee #2 (NE#2) and Named Employee #3 (NE#3) observed an individual – later identified as the Complainant – who they believed was engaging in drug activity. He was standing in a high-drug activity location with a number of individuals around him that were reaching towards him. Both officers reported that it appeared to be drug activity. NE#2 stated that it looked to him like a “feeding frenzy.” NE#2 and NE#3 began to approach the scene and heard someone yell out “cops!” The Complainant then began walking away towards a transit tunnel. NE#2 and NE#3 made contact with the Complainant and detained him. NE#2 asked the Complainant for his identifying information and the Complainant gave a false name and date of birth. The officers, along with Named Employee #1 (NE#1) who had arrived at the scene, detained the Complainant for a period of time while they attempted to determine his identifying information. While they were not certain, they believed that the name he gave was false. At one point, NE#2 patted the Complainant’s pocket while asking him whether he had identification. The Complainant then alleged that NE#1 touched his genitals. NE#2 angrily denied doing so, saying: “Oh bullshit, bullshit!” The officers asked the Complainant for the last four digits of his social security number, but the Complainant stated that he did know what those numbers were. NE#2 responded: “You are a man, I knew my social when I was ten years.”

At that point, the Complainant ran from the officers without any warning. He was chased by NE#3 and a Department of Corrections (DOC) employee that was also with them. NE#2 moved their van to follow. Ultimately, NE#1, NE#3, and the DOC employee were able to catch up to the Complainant and take him into custody. While he was running, the officers reported items, which were later determined to contain narcotics, falling out of his pockets. Those items were recovered and the Complainant denied that they belonged to him. NE#3 responded: "Yes it was, it came out your pockets." The Complainant was searched incident to arrest and his wallet was recovered. The Complainant's ID provided his actual name and confirmed that the prior name and date of birth that he gave was false. The Complainant alleged that he had been stopped for no reason and that NE#2 had touched his genitals. Shortly thereafter he again stated that he had been stopped for no reason and also said that he was being harassed.

In response to the Complainant's statements, NE#3 called the Complainant a drug dealer. He further told the Complainant that he was worse than "slave drivers" and that he was the worst type of person. The Complainant was then placed into the van to be transported from the scene.

NE#1 called for another supervisor to assist in screening the incident and the force that had been used. Named Employee #4 (NE#4) did so. As part of that screening, she interviewed the Complainant. She contended that she did not recall the Complainant alleging that he had been inappropriately touched or subjected to excessive force. NE#4 further told OPA that she was not informed of an allegation of inappropriate touching by any of the involved officers.

More than four and a half years after this incident occurred, the Complainant filed this complaint. The Complainant was interviewed by OPA investigators concerning this incident. The Complainant stated that he was walking to get coffee when he was stopped by the Named Employees. He recalled that they asked him whether he was on DOC supervision and/or had any warrants. He told OPA that a sergeant came up and grabbed him between his legs. He opined that this happened because the sergeant was looking for drugs and/or weapons. The Complainant reported that he told the sergeant not to do that. The Complainant stated that he gave the officers his correct identifying information when they asked for it and that he ran from them out of fear. He was taken into custody and said that, at this time, NE#3 called him "the worst type of brother" and NE#1 further said to him: "I knew you were a drug dealer." The Complainant contended that he reported the inappropriate touching to a female supervisor and told her that he had made these allegations at the scene. However, the Complainant relayed to OPA that this supervisor did not do anything to address his claims.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Complainant alleged that all of the Named Employees subjected him to biased policing based on his race.

Based on OPA's review of the evidence, which included both video and the statements of all of the involved parties, there is no support for the assertion that the Complainant was detained and later arrested because of his race. Instead, the evidence indicates that the Complainant was in a high-drug activity location and was engaging in conduct that suggested potential criminal activity. Moreover, after he was detained, NE#1 provided a demonstrably false name and ran from officers, while dropping narcotics from his pockets. This provided a basis upon which to effectuate his arrest.

Ultimately, the Complainant's conduct, not his race, was the reason for the law enforcement action taken towards him. As such, I recommend that this allegation be Not Sustained – Unfounded as against all of the Named Employees.

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

Named Employee #1 - Allegation #2

8.100 - Using Force Use-of-Force: When Authorized

The Complainant alleged that he was subjected to excessive force. I note that it appears from the record that NE#3 and, potentially, NE#1 used force against the Complainant. NE#2 did not do so. As such, this allegation is only evaluated against NE#1 and NE#3.

When the Complainant ran from the officers, he was chased by NE#1 and NE#3 and was taken down to the ground. There is insufficient evidence to suggest that any force other than this takedown was used. Significantly, the Complainant did not make any allegations to the contrary, and did not state that he was punched, kicked, or otherwise struck. Moreover, there was no indication from the video or from any of the paperwork related to this incident that the Complainant suffered any injury from this force.

SPD policy requires that force must be reasonable, necessary, and proportional. When the officers used force to take the Complainant to the ground, they were justified in doing so. At the time, he was fleeing from them and, thus, they had probable cause to take him into custody. With the legal right to arrest the Complainant came the ability to use force, if necessary, to do so. Here, the Complainant's actions necessitated that force. The video further indicates that, once the Complainant was secured, no further force was used.

For these reasons, I find that the force was consistent with policy and I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#1 and NE#3.

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

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 6. Employees May Use Discretion

This allegation is duplicative of the other allegations in this case. As such, I recommend that it be removed as against NE#1, NE#2, and NE#3.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegations #4

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 5.001(VII)(4) requires that, during a *Terry* stop, officers attempt to explain the reasons for the stop.

The Complainant asserted that he asked why he was being stopped, but that he was not informed of the reason. However, the ICV of this incident indicates that the Complainant was informed of why he was being stopped by NE#2 just over a minute into the contact.

As such, the officers complied with this policy and I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#1, NE#2, and NE#3.

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

Named Employee #1 - Allegation #5

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

This allegation is duplicative of the other allegations in this case. As such, I recommend that it be removed as against NE#1, NE#2, and NE#3.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #6

6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement d. Pat-Down Frisk

NE#2 patted the Complainant's pocket, not NE#1 or NE#3. As such, this policy should not have been classified for investigation against them and I recommend that it be removed as against NE#1 and NE#3.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegations #7

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

The Named Employees contended that they observed the Complainant standing in a high-drug activity location with multiple individuals surrounding him. These surrounding individuals were reaching towards the Complainant and it appeared that the Complainant was passing items to them. The officers recounted that when some yelled "cops" (or, in one account, "DOC") the ground scattered and the Complainant began walking towards a transit tunnel.

The Named Employees asserted that the Complainant's conduct, which occurred in a high drug-activity location and among individuals that the officers knew, from experience, to be drug users, provided them with a reasonable basis to believe that the Complainant may have been engaging in a drug transaction.

When evaluating the totality of the evidence and when applying a preponderance of the evidence standard, I find that there was reasonable suspicion supporting the detention of the Complainant. As such, I recommend 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 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

8.100 - Using Force Use-of-Force: When Authorized

The video conclusively established that NE#2 never used force during this incident. As such, this policy never should have been classified for investigation against him and I recommend that it be removed.

Recommended Finding: **Allegation Removed**

Named Employee #2 - Allegation #3

5.001 - Standards and Duties 6. Employees May Use Discretion

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #2 - Allegations #4

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 stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #5

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

For the same reasons as stated above (see Named Employee #1, Allegation #5), I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #2 - Allegation #6

6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement d. Pat-Down Frisk

NE#2 told OPA that he tapped the Complainant's pocket while asking the Complainant if he had an ID inside. However, in his General Offense Report, he wrote that, at the time of the initial detention, he could see "two containers in the [Complainant's] front jacket pockets." NE#2 further wrote that NE#3 asked the Complainant whether he minded if the officers checked his pockets. The Complainant stated that he would mind. NE#2 reported that, regardless, he "padded the container in his left coat pocket and asked if the object in his pocket had his name on it."

When NE#2 tapped the Complainant's pocket, he engaged in a pat frisk. Such a conclusion is supported by NE#2's actions that were captured by the ICV. During a *Terry* stop, such a frisk is only permitted if the officer can articulate that it was believed that the subject was presently armed and dangerous and, even then, only to pat an area that appears to contain a weapon. There is no evidence from NE#2's report that he believed that the Complainant was armed and dangerous. There was further no information indicating that NE#2 reasonably believed that the "containers" in the Complainant's pocket could have plausibly held a weapon.

Even though OPA has no reason to doubt NE#2's explanation that he was simply patting the Complainant's pocket to suggest that he pull out ID, his conduct was technically contrary to Department policy and law. That being said, I recommend that NE#2 receive a Training Referral rather than a Sustained finding.

- **Training Referral:** NE#2 should receive additional training concerning SPD policy relating to pat frisks during *Terry* stop. He should be reminded by his chain of command of when such searches are acceptable and the permissible scope of the pat frisk. NE#2 should also be instructed to more fully describe pat frisks and to set forth the legal justification for the intrusion. 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 - Allegations #7

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

For the same reasons as stated above (see Named Employee #1, Allegation #7), I recommend 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

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 #3 - Allegation #2

5.001 - Standards and Duties 6. Employees May Use Discretion

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

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

Named Employee #3 - Allegation #3

5.001 - Standards & Duties VII. 1. Exercise of Discretion

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #3 - Allegations #4

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 stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #5

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

For the same reasons as stated above (see Named Employee #1, Allegation #5), I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #3 - Allegation #6

6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement d. Pat-Down Frisk

For the same reasons as stated above (see Named Employee #1, Allegation #6), I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #3 - Allegations #7

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

For the same reasons as stated above (see Named Employee #1, Allegation #7), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #8

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

SPD Policy 5.001(VII)(2) states that: “Employees shall strive to be professional and courteous at all times.” As discussed above, after the Complainant ran away and was then caught and taken into custody, the Complainant began complaining that he had not done anything and was being harassed by the officers. NE#3 appeared to grow frustrated and lost his temper. He told the Complainant to stop being a victim. NE#3 further stated to the Complainant that he was a drug dealer and that he was the worst type of person. NE#3 also told the Complainant that he was worse than a slave trader.

At his OPA interview, NE#3 explained the unfortunate history that his family members had experienced with drug use. He recounted how drugs had harmed the people he loved and affected his life. NE#3 told OPA that, in that moment, his “passion got away” from him.

He said the following to OPA;

I will not apologize for my words because of my—my life. He was a drug dealer, and in my mind, a Black man who deals drugs to Black people are worse than the Africans who sold for Africans into slavery. Because they did it out of tribalism, he was doing it for monetary gains. And, so my passion got the best of me, but I stand by what I said that day, and will not turn back.

NE#3 specifically requested that the record reflect that he, like the Complainant, is African-American. In this regard, he said to OPA that: “It should be known that it was a Black man speaking to another Black man.”

In evaluating this allegation, OPA read the content of NE#3’s OPA interview and also listened to the recording. From that review, NE#3’s emotion concerning this incident is evident, as is his pain concerning the harm that has befallen his family from drug use. This is a difficult case to decide. On one hand, NE#3’s statements were unprofessional in that he called the Complainant a slave trader and the worst kind of person. However, on the other hand, NE#3 did so because of his past experience and because, in that moment, he was human.

Were it not for NE#3’s explanation, I would have recommended that this allegation be Sustained. However, even with his explanation, NE#3 needs to understand that the Department expects that he will not make such statements in the future. While it may seem unfair, NE#3 is required to divorce his past experience from his interactions with suspects and the community at large. This is function of his role as a SPD officer and public servant, even if difficult to do.

For the reasons set forth above, I recommend that NE#3 receive a Training Referral rather than a Sustained finding.

- **Training Referral:** NE#3’s chain of command should counsel him concerning this incident. He should be reminded of the Department’s expectation of his conduct and concerning his statements to the individuals that he interacts with in a law enforcement capacity. 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 #3 - Allegations #9

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

SPD Policy 5.001(VII)(2) prohibits derogatory language, which it defines as: "Words which imply derogatory connotations or manifest contempt or disrespect toward any race, creed, religion, sexual orientation, or national origin." The policy further discourages profanity.

Here, NE#3 did not use derogatory language as contemplated by the policy or profanity. As such, he did not act contrary to the express terms of this policy and I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #4 - 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 #4 - Allegation #2

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

The Complainant asserted to OPA that he told a female Sergeant that he had been sexually assaulted during his arrest. However, OPA's investigation revealed that this allegation was never investigated by any supervisor or referred to OPA.

OPA interviewed NE#1 who was the female Sergeant referenced by the Complainant. She did not recall the Complainant stating that he had been inappropriately touched or that he had been subjected to excessive force.

Had NE#1 heard these allegations and failed to investigate and report them, she would have acted contrary to policy. However, there is insufficient evidence to determine whether this was the case. Notably, this incident preceded Body Worn Video and there was no other video evidence to prove to disprove the Complainant's allegations.

For the above reasons, I recommend that this allegation be Not Sustained – Inconclusive.

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