



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 11, 2020

CASE NUMBER: 2019OPA-0507

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.220 - POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion - EXP	Not Sustained (Lawful and Proper)
# 2	2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Training Referral)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 5. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director's Findings
# 1	6.220 - POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion - EXP	Not Sustained (Lawful and Proper)
# 2	2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Training Referral)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 5. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop	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 detained him without reasonable suspicion to do so. OPA added additional allegations regarding the scope of the detention and the Named Employees' repeated demands for the Complainant's identification.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

6.220 – POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion

Named Employee #1 (NE#1), Named Employee #2 (NE#2), and two other officers were dispatched to a call from a building manager. The building manager reported that there was a male – later identified as the Complainant – who was trying to force his way into the building. The building manager further stated that the Complainant was refusing to leave.

The Named Employees contacted the Complainant while the primary officer and his partner met with the building manager. The Named Employees informed the Complainant of the reason for the contact. They asked the Complainant for his name and he refused to provide it. At that point, the Named Employees both repeatedly told him that he was required to give them his name and identification and that he would not be allowed to leave until he did so. The Complainant continued to decline to provide his name. During the interaction, the Complainant kept moving one of his hands into his sweatshirt pocket. NE#1 asked him to remove his hand and the Complainant said no. NE#1 told the Complainant that they were going to search him. NE#1 moved towards the Complainant and took hold of his hand. The officers then frisked the Complainant. No weapons were located.

Around this same time, the other officers confirmed with the building manager that the Complainant was the individual who had attempted to enter the building. The building manager said that he did not want to press charges and just wanted the Complainant to leave the vicinity of the building. This was relayed to the Named Employees. However, even after there was no crime at that point, the Named Employees continued to detain the Complainant and ran him for warrants. Ultimately, though the Complainant had a warrant from Pierce County, he was released from the scene and was given a Department business card.

The Complainant later alleged that he was improperly detained and frisked. Based on that complaint, this investigation ensued. As part of its investigation, OPA attempted to interview the Complainant; however, he did not provide a statement. OPA further interviewed the Named Employees.

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.*)

Here, the building manager reported that an individual was improperly trying to access the building and identified the Complainant as that individual. As such, the officers had reasonable suspicion to detain him to determine whether he had engaged in criminal activity. Given this, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

Named Employee #1 - Allegation #2

6.220 – POL – 2 Conducting a Terry Stop 2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope

SPD Policy 6.220-POL-2(2) 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-2(2).)

This allegation was classified based on two aspects of the detention: (1) the weapons frisk conducted by the Named Employees; and (2) the continued extension of the stop after it was determined that the Complainant had not committed a crime.

With regard to the weapons frisk, NE#1 asserted his belief that the Complainant could have been armed given that he was suspected of trying to force entry into the building – which potentially suggested an attempted residential burglary – and because he kept reaching into his pocket. While NE#1 agreed that the frisk occurred late in the detention, he did not believe that this made it impermissible. NE#2 stated that it was NE#1's observations that led to the frisk. Based on OPA's review of the record, while a close call, OPA does not find the frisk to have been impermissible under the circumstances of this case.

With regard to the extension of the stop, NE#1 told OPA that, were he to do this incident over, he would have taken steps to shorten the detention. When asked why the officers continued to detain the Complainant even after the building manager indicated that he did not want to file charges, NE#1 said that he was a secondary officer at that point and he felt that it was up to the primary officer to conclude the detention. NE#2 told OPA that the detention was extended after they determined that no crime had been committed because NE#2 thought the Complainant may have given a false name. In OPA's opinion, once it was determined that the Complainant had not committed a crime, the detention should have ended and there was no longer a legal basis to detain him. As such, when the Named Employees continued to do so, OPA believes that the stop exceeded a reasonable scope as contemplated by Department policy.

The above being said, OPA recommends that the Named Employees receive Training Referrals rather than Sustained findings for three main reasons. First, the Named Employees were counseled and retrained by their chain of commands. Second, the Named Employees appeared to recognize their errors. Third, neither of the Named Employees has previously been disciplined for violations of this policy or has received any Sustained findings during their careers. However, the Named Employees should be on notice that subsequent lack of compliance with this policy will result in recommended Sustained findings and the likely imposition of discipline.

- **Training Referral:** The Named Employees should be counseled concerning their partial failure to comply with SPD Policy 6.220-POL-2(2) during this incident and retrained as to the elements of this policy. To the extent this has already been addressed and documented by the Named Employees' chain of command, no further action needs to be taken. Otherwise, this counseling and associated retraining should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #3

6.220 – POL – 2 Conducting a Terry Stop 5. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop

SPD Policy 6.220-POL-2(5) states that "officers cannot require subjects to identify themselves or answer questions on a Terry stop." While officers are entitled to request this information, they cannot mandate it. (See SPD Policy 6.220-POL-2(5).)

The BWV established that both Named Employees repeatedly demanded the Complainant's identification. The Named Employees acknowledged to OPA that they were not permitted to have done so. Both referenced using a "ruse" to try to get the Complainant to identify himself.

SPD policy is clear that the Named Employees' actions were impermissible. However, for the same reasons as stated above (see Named Employee #1, Allegation #2), OPA recommends that the Named Employees receive Training Referrals rather than Sustained findings. Again, as with Allegation #2, the Named Employees should be on notice that subsequent lack of compliance with this policy will result in recommended Sustained findings and the likely imposition of discipline.

- **Training Referral:** The Named Employees should be counseled concerning their failure to comply with SPD Policy 6.220-POL-2(5) during this incident and retrained as to the elements of this policy. To the extent this has already been addressed and documented by the Named Employees' chain of command, no further action needs to be taken. Otherwise, this counseling and associated retraining should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #2 - Allegations #1

6.220 – POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion

For the same reasons as stated 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 – POL – 2 Conducting a Terry Stop 2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #1, Allegation #2).

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

Named Employee #2 - Allegation #3

6.220 – POL – 2 Conducting a Terry Stop 5. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #1, Allegation #3).

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