



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 31, 2020

CASE NUMBER: 2019OPA-0773

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures Based Upon Reasonable Suspicion	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	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 Complainant alleged that he was unlawfully detained by Named Employee #1. The Complainant further asserted that Named Employee #2 subjected him to excessive force.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the review and approval of the Office of Inspector General for Public Safety, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employees. As such, the Named Employees were not interviewed as part of this case.

In addition, the Complainant included allegations as part of this complaint that were previously adjudicated by OPA under 2019OPA-0132. Accordingly, they were not evaluated as part of this investigation.

Lastly, OPA attempted to interview the Complainant but was directed not to do so by his criminal defense attorney. As such, the Complainant was not ultimately interviewed as part of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures Based Upon Reasonable Suspicion

The Complainant alleged that Named Employee #1 (NE#1) unlawfully detained him. Specifically, the Complainant asserted that NE#1 did not have reasonable suspicion to stop him because he was breaking into his own car at the time.

OPA's investigation indicated that NE#1 was dispatched to a call concerning a man who was trying to break into a vehicle. NE#1 arrived at the location of the suspected crime and observed a man – who was later identified as the Complainant – standing next to a vehicle. NE#1 reported, and Body Worn Video (BWV) confirmed, that it appeared as if the Complainant was trying to break into the vehicle. NE#1 approached the Complainant and detained him to investigate the potential car prowling/theft. The Complainant stated that the car belonged to him. NE#1 continued to detain the Complainant while he verified the ownership of the car. Once NE#1 confirmed that the car did, in fact, belong to the Complainant, he ended the 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 the information available to him at the time, OPA finds that NE#1 had a legal basis to detain the Complainant. Notably, he was informed that there was an ongoing car prowling/theft and observed an individual who appeared to be trying to break into a vehicle. NE#1 thus had a reasonable basis to believe that the Complainant was involved in criminal activity and he was permitted to investigate further to dispel that suspicion. Moreover, as soon as he verified the ownership of the vehicle, NE#1 ended the detention.

For the above reasons, OPA finds that NE#1's stop of the Complainant was consistent with policy. 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

8.200 - Using Force 1. Use of Force: When Authorized

The Complainant also alleged that Named Employee #2 (NE#2) "wrongfully shot/tazed and assaulted him." OPA construed this to be an allegation of excessive force.

OPA determined that NE#2 and other officers were dispatched to a call of a man – later identified as the Complainant – who was masturbating in public and in the vicinity of children. At the time, the officers were aware of the Complainant's identity. They further knew that he had previously been assaultive towards officers and had a mental caution. The officers attempted to de-escalate the situation and were able to convince the Complainant to stop masturbating and to cover up his genitals. However, when officers moved towards the Complainant in order to take him into custody, he assumed a fighting stance and postured towards the officers in a threatening manner.

NE#2, who was a Taser operator, gave an arc warning and informed the Complainant several times that, if he did not comply, he would be tased. When the Complainant did not cease his aggressive behavior, NE#2 fired his taser. The first application did not appear to have any effect on the Complainant. Accordingly, NE#2 again fired his taser. The second application also did not appear to have any effect. It was later determined the Taser applications had no effect because the probes were lodged in the Complainant's clothing and did not actually make contact with his skin. Officers then went hands-on with the Complainant and were able to take him into custody and handcuff him.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends "on the totality of the circumstances" known to the officers at the time of the force and must be balanced against "the rights of the subject, in light of the circumstances surrounding the event." (SPD Policy

8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

The force was found to be within policy by both the chain of command and the Force Review Board. In addition, OPA conducted a preliminary review of the force and did not identify any policy violations.

After re-reviewing the force during the course of this investigation, OPA reaches the same conclusion. Under the circumstances of this case and given the Complainant’s threatening behavior and prior assaults on officers, it was reasonable to use a Taser. Notably, NE#2 had a sufficient basis to conclude that the Complainant presented a risk of harm to officers and that going hands-on was likely to cause injuries to officers. This force was also necessary for the same reasons and NE#2 reasonably did not see any alternative to using such force at that time. Lastly, the force was proportional to the threat posed by the Complainant.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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