



ISSUED DATE: APRIL 6, 2020

CASE NUMBER: 2020OPA-0152

**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 - POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion	Not Sustained (Unfounded)

***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 she was improperly detained, and that the detention was due to bias on the part of the Named Employee.

**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.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegations #1**

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

Named Employee #1 (NE#1) was conducting an emphasis patrol in downtown Seattle. Part of his duties on that day was to contact individuals engaging in citable behavior and either inform them of the applicable ordinances or, if warranted, issue citations.

NE#1's Body Worn Video (BWV) recorded him making contact with three individuals who were smoking in the doorway of a Chipotle restaurant. NE#1 explained to the individuals that they were in violation of City ordinance as they were smoking within 25 feet of both a doorway and a bus zone. NE#1 and the officer with him at the time also informed the individuals that they had been telling a number of other people in that area not to smoke in improper locations. The individuals were not pleased with being contacted by NE#1 and, as a result, NE#1 called for a supervisor to come to the scene. One of the individuals, who was Black, then pointed towards another Black woman who was holding a cigarette and told NE#1 to "educate" her.



NE#1 walked over to the woman – who was later identified as the Complainant. NE#1 tried to get the Complainant's attention, but she was wearing headphones and was walking away. NE#1 verbally addressed her (repeating "ma'am") but she continued to walk away from him. NE#1 then reached out his right hand, made contact with the Complainant's shoulder, and told her that she was not free to go. The Complainant took her headphones out and told NE#1 not to touch her. NE#1 then told the Complainant she was not permitted to smoke in a bus zone. The Complainant became upset and argued with NE#1. NE#1 asked the Complainant for identification and she said that she did not have any. NE#1 then asked if she would consent to be fingerprinted and she said no. He then told her that she was going to be placed under arrest. The Complainant continued to argue with NE#1.

At that point, NE#1's backing officer stepped in and began speaking with the Complainant. After a period of time, the Complainant and NE#1 re-engaged; however, a supervisor then arrived on scene and walked down the street with the Complainant. The Complainant and the supervisor spoke for a period of time. The Complainant continued to assert that she was improperly stopped by NE#1 and that his actions were due to his bias against her. The supervisor referred the Complainant's allegations to OPA, and this investigation ensued.

As part of its investigation, OPA reviewed the BWV and the documentation generated by NE#1. OPA also attempted to interview the Complainant but she did not respond to OPA.

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.*)

Based on the totality of the evidence, OPA concludes that NE#1's actions and decision-making were not motivated by bias. First, the BWV is clear that, prior to detaining the Complainant, NE#1 contacted a number of other individuals of various races. Second, the only reason he made contact with the Complainant at all was because one of the individuals he first spoke with, who was also Black, pointed her out and suggested that NE#1 educate her about smoking in the bus zone. Third, as discussed below, NE#1 had a lawful basis to make the stop. Given the above, OPA recommends that his allegation be Not Sustained – Unfounded.

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

#### **Named Employee #1 - Allegation #2**

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

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.*)



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The BWV indicated that NE#1 observed the Complainant smoking a cigarette in a bus zone. Moreover, she was pointed out by one of the individuals who NE#1 first contacted as doing so. When the Complainant engaged in this activity, she acted contrary to City law. As such, NE#1 had reasonable suspicion to detain her to investigate the underlying conduct. For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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