



## ***CLOSED CASE SUMMARY***

ISSUED DATE: NOVEMBER 6, 2020

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0298

### **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 Based Upon Reasonable Suspicion | Not Sustained (Lawful and Proper) |
| # 3            | 6.220 - POL – 4 Documenting a Terry Stop 1. Officers Will Document All Terry Stops                               | 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 he was stopped and arrested based on bias exhibited by Named Employee #1. OPA further alleged that Named Employee #1 may have impermissibly detained and identified the passenger in the Complainant's vehicle and that Named Employee #1 failed to complete required paperwork concerning that detention.

#### **SUMMARY OF INVESTIGATION:**

On February 26, 2020, Named Employee #1 (NE#1) was on patrol when he conducted a traffic stop of the Complainant's car. The Complainant later alleged that the stop was based on bias. This investigation ensued.

As part of its investigation, OPA interviewed the Complainant. He stated that he was driving when NE#1 made a U-turn and began following him. NE#1 then pulled him over. The Complainant said that, unlike a normal traffic stop, he was immediately told to get out of the car. The Complainant asserted that this occurred even though there was not probable cause to arrest him. The Complainant denied that he was driving under the influence and alleged that the stop was invalid and based on bias on NE#1's part.

OPA reviewed the Body Worn Video (BWV) from this incident. The video showed NE#1 turn, begin to follow the Complainant, and then pull him over. NE#1 approached the Complainant and informed him that the stop was due to the Complainant speeding. The Complainant denied that he was speeding and alleged that he was stopped for no reason. NE#1 went over the radio and asked for a backing unit. He also directed the Complainant to turn off and exit his car and to sit on the front bumper of NE#1's patrol vehicle. The Complainant argued that he was not required to do so, and he said that he knew his rights. The Complainant ultimately exited the car after being advised by the front



seat passenger to do so. When the Complainant exited the vehicle, NE#1 observed narcotics in the driver's side door. He then handcuffed the Complainant.

NE#1 interacted with the passenger and asked him to hang out by the front of the car. The passenger did so. NE#1 asked him for his information and the passenger provided his name. Approximately two minutes after asking the passenger to stand by the front of the car, NE#1 told the passenger that he was free to leave. NE#1 did not ask the passenger any questions apart from seeking his name.

While handcuffed, the Complainant asserted that his stop and detention were based on bias. The backing officer, who had since arrived on scene, asked the Complainant why he felt the stop was biased. The Complainant responded: "I feel like he's discriminating me...since he pulled me over...literally he's just been on me like I'm not an innocent bystander." NE#1 asked the Complainant if he would engage in field sobriety tests and the Complainant agreed to do so. After the conclusion of the tests, NE#1 placed the Complainant under arrest for DUI.

OPA also reviewed the In-Car Video (ICV) from NE#1's patrol vehicle. That video showed the Complainant's car driving by NE#1 and NE#1 turning to follow it.

OPA further read the reports generated by NE#1 concerning the stop. The reports were consistent with the BWV. NE#1 documented that several narcotics, including Oxycodone, were recovered from the car. The Complainant admitted not having an active prescription for the Oxycodone. The Oxycodone was linked to a previous robbery of a pharmacy. Two handguns were also found in the car and entered into evidence, as was \$1,362 that had been on the Complainant's person.

Lastly, OPA interviewed NE#1 and the backing officer. The backing officer confirmed that the Complainant alleged bias, but the backing officer did not witness the traffic stop or the inception of the contact between the Complainant and NE#1.

NE#1 told OPA that he viewed the Complainant's car speeding. Given that it was dark outside and because the car was traveling in the opposite direction, he could not see the race, age, or gender of the driver. NE#1 told OPA that the Complainant was driving well over the 25-mph speed limit for that area. NE#1 described the Complainant as argumentative from the inception of the stop. NE#1 also said that where the Complainant stopped his vehicle and the Complainant putting both his hands out of the window when NE#1 approached the car were odd in his experience. When he spoke with the Complainant, NE#1 discerned that the Complainant's speech was slurred. NE#1 suspected that he was DUI and told him to get out of the car. When the Complainant did so, NE#1 saw narcotics in the door that he immediately recognized. The Complainant described that he conducted field sobriety tests on the Complainant and that the Complainant failed the tests. He then placed the Complainant under arrest for DUI and transported him from the scene.

NE#1 denied that the stop was based on bias. He asserted that he had a lawful basis to effectuate the traffic stop – speeding – and then developed reasonable suspicion to believe that the Complainant was DUI. He explained that, once he observed the narcotics and identified that the Complainant failed the field sobriety tests, there was probable cause to make the arrest.

NE#1 asserted that he also had reasonable suspicion to temporarily detain the passenger. He said that, when he removed the Complainant from the car and placed him into handcuffs, he saw the passenger engage in furtive



movements that, in his training and experience, were consistent with the passenger secreting or disposing of drugs or, potentially, a firearm. This suspicion was elevated by the fact that he had seen narcotics in the car and identified that the Complainant was impaired. However, given his focus on the Complainant and because the passenger was compliant and cooperative, he released the passenger from the scene and did not continue the detention.

NE#1 acknowledged that he failed to complete documentation concerning the Terry stop of the passenger. He noted that all of his other paperwork was complete for the stop and arrest, which turned out to be fairly complex. He stated that his failure to complete the required documentation was simply an unfortunate mistake.

### **ANALYSIS AND CONCLUSIONS:**

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

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

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 OPA’s review of the evidence – most notably, the BWV and ICV, OPA concludes that the stop, detention, and arrest of the Complainant were not based on bias. First, as NE#1 described and as the ICV conclusively established, NE#1 could not have identified the race of the Complainant when he first observed him. This is due both to the direction in which the Complainant was driving and the speed in which he was doing so. Second, the video supports the conclusion that the Complainant was potentially impaired and, at the very least, indicated that NE#1 could have reasonably believed that this was the case. Third, the narcotics in the driver’s side door were clearly visible, which formed a basis for taking the Complainant into custody. This decision was strengthened after the Complainant failed the field sobriety tests.

Ultimately, given the totality of the above, OPA concludes that the Complainant’s actions, not his race, were the basis for the law enforcement action taken towards him. OPA finds no indication that bias played any part in this. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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

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

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

SPD Policy 6.220 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



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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 facts articulated by NE#1, OPA concurs that he had reasonable suspicion to temporarily detain the passenger. Given NE#1’s observations of narcotics in the car, his belief that the Complainant – who was the driver – was impaired, and due to the furtive movements he saw the Complainant engage in, he met the applicable legal standard. Moreover, NE#1’s request for the Complainant’s identifying information was not a demand and, as such, was permissible under policy.

Given this, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #1 - Allegation #3**

***6.220-POL-4 – Documenting a Terry Stop 1. Officers Will Document All Terry Stops***

SPD Policy 6.220-POL-4(1) requires that officers document all Terry stops using a Field Contact report. Within the Field Contact report, officers are instructed to “clearly articulate the objective facts they rely upon in determining reasonable suspicion.” (SPD Policy 6.220-POL-4(1).)

As NE#1 acknowledged, he failed to comply with this policy, and he did not complete a Field Contact report for the detention of the passenger. However, given that NE#1 recognized his mistake, because he has not previously violated this policy, and due to the significant quality and thoroughness of the other reports he completed, OPA does not believe that a Sustained finding and discipline is warranted. Instead, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1 should be reminded of the requirement to complete Field Contact reports for all detentions and he should be counseled to comply with this policy more closely in the future. This counseling and retraining should be documented, and this documentation should be maintained in an appropriate database.

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