



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 17, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0554

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	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Training Referral)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers May Conduct a Frisk of Stopped Subject(s) Only if They Have an Articulate and Reasonable Safety Concern that the Person is Armed and Presently Dangerous	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	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Training Referral)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers May Conduct a Frisk of Stopped Subject(s) Only if They Have an Articulate and Reasonable Safety Concern that the Person is Armed and Presently Dangerous	Not Sustained (Lawful and Proper)
# 4	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report: All reports must be complete, thorough and accurate	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 engaged in bias-based policing when they subjected him to a *Terry* stop. It was also alleged that the Named Employees failed to call a supervisor to the scene in response to bias allegation, and that Named Employee #2 may have improperly reported the incident.

ANALYSIS AND CONCLUSIONS:



Named Employee #1 - Allegation #1

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

On June 21, 2020, at approximately 6:15 PM, an individual called 911 to report an individual holding a possible rifle in the area of 6285 Airport Way South. According to the 911 caller, the subject was a 35 to 40-year-old balding Black male, wearing a black sleeveless shirt with white trim. The 911 caller went on to state that the subject appeared to be pointing the gun, which may have had a scope attached to it. The Named Employees were dispatched to the incident location, where they encountered an armed individual who matched the 911 subject description. The Named Employees approached the individual, who was later identified as the Complainant. At that time, the Complainant “tucked away” his weapon.

The Named Employees asked the Complainant to walk toward them, which the Complainant did. Named Employee #1 (NE#1) advised the Complainant that she was going to pat him down. As the Named Employees conducted a pat-down of the Complainant, he stated: “you know what, this is some racism shit right here.” The Complainant then informed officers that the 911 call was about a pellet gun. He stated that the officers could verify for themselves that the rifle was a pellet gun. As the Named Employees continued to try and explain why they were called to the scene, the Complainant argued with the officers, including raising claims of general police abuse.

NE#1 advised the Complainant that she would update the call to reflect the fact that the Complainant was using a pellet gun, not a rifle. The Complainant then began to leave the scene. Named Employee #2 (NE#2) asked the Complainant if he wished to speak with a sergeant. The Complainant responded: “About what? As long as y’all ain’t shooting me over no pellet gun, I’m fucking cool.” NE#2 advised the Complainant not to “play with [the gun] in the alley.” This prompted the Complainant to allege that the 911 caller was prejudiced and that the officers were incompetent. The Complainant also expressed anger about the frisking, stating: “what you touching me for? Just to show your power?”

At the end of the interaction, NE#2 wished the Complainant a good day. The Complainant responded: “no, I’m not going to have a good day.” The Named Employees then left the scene. At that time, NE#2 stated: “I gotta call sarge”; however, she did not do so. The incident was eventually reviewed by an SPD sergeant, who was unable to take any investigatory action as he was not called to the scene. Given this, the sergeant referred this matter to OPA on behalf of the Complainant.

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-POL.) This includes different treatment based on the race of the subject. (*See id.*)

Based on OPA’s evaluation of the evidence in this case – most notably, the BWV, OPA finds no basis to conclude that the Named Employees engaged in biased policing. When the Named Employees arrived at the incident location, they encountered the Complainant, who matched the description provided by the Complainant and who was holding a rifle. At this point, the Named Employees had a sufficient legal basis to detain the Complainant in order to further investigate whether a crime had been or was actively being committed. As part of doing so, the Named Employees conducted a brief officer-safety pat down of the Complainant and were able to verify that the rifle was a pellet gun. While the Complainant may be warranted in his frustration of being stopped and searched, that anger should be focused on the 911 caller, not the Named Employees. With regard to the Named Employees’ conduct, they took the



steps needed to determine that there was no present threat and, in doing so, did not violate policy or engage in biased policing.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#2.

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



Named Employee #1 - Allegation #2

5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing

SPD Policy 5.140-POL(5) requires employees to call a supervisor in response to allegations of biased policing. This includes providing sufficient information to the supervisor to allow a determination as to what occurred and what the nature of the bias allegation is. (SPD Policy 5.140-POL-5.) If the complainant declines to speak with a supervisor, the employee will attempt to obtain the complainant's contact information and provide contact information for a supervisor and OPA. (*Id.*)

The BWV indicated that the Complainant clearly made an allegation of biased policing, which the officers were required to immediately report to a supervisor. While the Complainant indicated that he was not interested in speaking with a Sergeant, this did not absolve the Named Employees of making the notification.

Even though the Named Employees did not comply with this policy, OPA recommends that they receive retraining rather than discipline. OPA believes this to be appropriate as the Sergeant was ultimately notified. Moreover, neither officer has failed to comply with this policy in the past. Both Named Employees should be on notice that future noncompliance with this policy will likely result in discipline.

For the above reasons, OPA recommends that this allegation be Not Sustained – Training Referral as against both Named Employees.

- **Training Referral:** The Named Employees should receive counseling and retraining concerning when a supervisor should be called to scene to investigate an allegation of bias. They should be reminded to comply with this policy moving forward. This retraining and counseling 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 - Voluntary Contacts, Terry Stops & Detentions 6. Officers May Conduct a Frisk of Stopped Subject(s) Only if They Have an Articulate and Reasonable Safety Concern that the Person is Armed and Presently Dangerous

SPD Policy 6.220-POL-2(6) states that: "Officers may conduct a frisk or a pat-down of a stopped subject only if they reasonably suspect that the subject may be armed and presently dangerous." The policy explains that: "The decision to conduct a frisk or pat-down is based upon the totality of the circumstances and the reasonable conclusions drawn from the officer's training and experience." (SPD Policy 6.220-POL-2(6).) The policy provides a non-exclusive list of factors supporting such a search. (*See id.*)

As discussed above, the Named Employees responded to a 911 call of a subject pointing a rifle. When they arrived, they observed the Complainant, who matched the suspect description, holding a rifle. While the Complainant put aside his rifle when the officers approached him, they were entitled to pat him down for officer safety to ensure that he had no other weapons on his person. This was based both on the nature of the call and the fact that he was observed with a weapon.



For these reasons, 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 #2 - Allegation #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), OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #2

5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Training Referral.

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

Named Employee #2 - Allegation #3

6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers May Conduct a Frisk of Stopped Subject(s) Only if They Have an Articulate and Reasonable Safety Concern that the Person is Armed and Presently Dangerous

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #4

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report: All reports must be complete, thorough and accurate

Subsequent to the interaction with the Complainant, NE#2 authored a Field Contact Report documenting the incident. Within this report, NE#2 wrote that, as the Complainant approached the Named Employees: “[h]e was immediately yelling at us and escalated.” She documented that, after this, the Named Employees conducted a pat-down of the Complainant. NE#2 went on to write the following:

[The Complainant] refused to stay and speak to a sergeant about his bias statement saying: ‘as long as y’all ain’t shooting me I’m fucking cool.’ [The Complainant] continued to walk away yelling at us: ‘he see a [n-word] with a gun,’ ‘you touched me just to show your power.’ I was not able to get any further information or provide him with a business card or OPA information. We cleared the scene as [the Complainant] continued to be escalated and we had no crime to investigate. I notified [a supervisor] of the bias statements.



SPD Policy 15.180-POL-5 requires officers to document all primary investigations in a report. The report must be complete, thorough, and accurate.

From OPA's review of this incident, there appeared to be several discrepancies between the BWV and NE#2's report. First, while the Complainant was hostile to the officers during their interaction with him, the BWV did not reflect that he acted in this manner immediately prior to the pat down. Second, the BWV did not show NE#2 making efforts to obtain additional information from the Complainant as she described, or that she attempted to provide the Complainant with OPA's contact information. Third, while a supervisor was later notified, the report does not clarify that this was not until after the fact.

While these discrepancies certainly negatively impact the completeness and accuracy of the report, they are not so significant as to yield the report out of policy. Instead, OPA issues the Named Employee the below Training Referral.

- **Training Referral:** NE#2 should be counseled concerning the importance of accurate report writing. She should be encouraged to watch her BWV where appropriate to make sure that she is sufficient reporting incidents. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

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