



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 12, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0624

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	Not Sustained (Lawful and Proper)
# 2	5.140 – Bias Free Policing 2. Officers Will Not Engage in Bias Based Policing	Not Sustained (Unfounded)
# 3	5.140 – Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	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	Not Sustained (Lawful and Proper)
# 2	5.140 – Bias Free Policing 2. Officers Will Not Engage in Bias Based Policing	Not Sustained (Unfounded)
# 3	5.140 – Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	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:

It was alleged that the Named Employees engaged in biased policing during a traffic stop and that they failed to notify a supervisor of the claim of bias made by the Subject. OPA also evaluated whether there was a legal basis for the traffic stop and detention of the Subject.

SUMMARY OF INVESTIGATION:

The Named Employees were working as part of a joint SPD/FBI investigation. While on duty, the officers were aware that there was probable cause under federal law to stop a vehicle – operated by the Subject – and to seize any narcotics that were located. They were given the license plate of the vehicle.

The Named Employees noted that the FBI had been conducting a three-year long investigation and, as part of that investigation, had obtained a wiretap on the Subject's cell phone. Based on information learned through the wiretap,



probable cause was developed to believe that the Subject had narcotics on his person. OPA verified this through a review of FBI records.

At first unmarked vehicles followed the Subject but the Named Employees then took over and proceeded behind the Subject for two to three blocks. The Named Employees activated their vehicle's emergency equipment and effectuated a traffic stop on the vehicle. The Named Employees told the Subject that they pulled him over because of a call of a suspicious vehicle doing circles in the neighborhood that matched his car. The Subject grew upset and denied that he did anything wrong. The officers asked him for his identification. He disclosed that he had a valid CCW permit. He continued to state that he did not do anything wrong.

The officers went back to their vehicle and ran the Subject's information through their MDT system. They verified that his firearm application had been denied. The Named Employees conferred with detectives, and they were advised to remove the Subject from the vehicle and to handcuff him.

The Named Employees returned to the Subject and asked him to step out of the vehicle. He disclosed that he had a firearm. They placed him into handcuffs. He continued to argue with the officers and told them that he did not do anything. The Named Employees searched him and located narcotics on his person.

The Named Employees called other detectives and disclosed that they found crack-cocaine on the Subject. The decision was made to release the Subject in order to not compromise the federal criminal investigation. The Named Employees were directed to seize the firearm, the CCW permit, and the narcotics.

The Subject was released from custody. He alleged that he was stopped for no reason and that he was being subjected to law enforcement action because of his race. He remained very upset and other community members began to gather at the location. The Subject also asked for a supervisor to come to the scene. The Named Employees did not report that allegation to a supervisor or request that a supervisor come to the scene. The Named Employees' supervisor – the Complainant in this case – notified OPA of both allegations. With OPA's agreement, a referral was made at the conclusion of the federal criminal investigation in order to not compromise it. As part of its investigation, OPA also evaluated the legal authority for the traffic stop.

OPA interviewed both of the Named Employees. They told OPA that they had probable cause to stop the Subject based on the federal criminal investigation. They said that they relied on information provided to them in real time concerning the belief that the Subject had narcotics on him. The Named Employees told OPA that they used a ruse when advising the Subject of the reason for the stop because they did not want to disclose the existence of the federal investigation. They explained that this same probable cause justified the removal of the Subject from the car, his handcuffing, and the search of his person. They said that they were directed to seize the narcotics that were located, as well as the gun and the CCW permit. Both of the Named Employees recognized that the Subject made an allegation of biased policing but denied that their stop was biased in any respect. They stated that they did not notify their supervisor because of how agitated the Subject was and due to the fact that they wanted to de-escalate and leave the scene.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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



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

From a review of the documentation in the case file, OPA concludes that the Named Employees had a lawful basis to stop the Subject’s vehicle and to detain him. They would have also had the lawful authority to arrest him but chose to release him at the scene based on concerns for the integrity of the federal criminal investigation. For these same reasons, the extension of the stop – to include removing the Subject from the car, handcuffing him, searching him, and seizing the narcotics, firearm, and CCW permit – were also justified by the same probable cause.

The above being said, OPA believes that the officers could have been more thoughtful in the ruse they chose to use. There were likely other theoretical bases for the stop that could have been provided rather than what they offered to the Subject. Telling the Subject that his vehicle matched a car doing circles in the neighborhood sounded like a pretext stop, so it is not surprising that the Subject felt that this was the case, grew agitated, and made a biased policing allegation. The Named Employees should consider using a ruse more closely connected with a legitimate stop in the future.

As the Named Employees’ actions were legally justified, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both of them.

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

Named Employee #1 - Allegation #2

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

As discussed above, the Named Employees had probable cause stemming from the federal criminal investigation to stop the Subject’s vehicle. Given this, the stop was not discretionary and was not based on bias. For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded as against both Named Employees.

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

Named Employee #1 - Allegation #3

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.)

It is undisputed that the Named Employees failed to call a supervisor to the scene. They said that they did not do so because they felt that the Subject was too agitated, and they wanted to de-escalate the situation. While the Named Employees may have legitimately believed this, these are not exceptions to the policy's requirement that a supervisor be called to the scene.

However, OPA notes that this incident was unique in several respects. First, unlike virtually all other situations where bias allegations are raised, this was an ongoing and sensitive federal criminal investigation. As such, the Named Employees had an interest in cutting the interaction short in order to not raise questions that could undermine the investigation. Second, the Named Employees were assigned to a follow-up unit, not to Patrol. Given this, there was limited availability of a supervisor, and the Named Employees were less familiar with the intricacies of responding to a bias complaint. These factors inform OPA's decision that retraining and counseling rather than discipline is the best result. Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral for both Named Employees.

- **Training Referral:** The Named Employees should be counseled by their chain of command concerning their failure to notify a supervisor to come to the scene after hearing a bias allegation. The Named Employees should be reminded of the requirements of the policy and told to conform with it moving forward. This counseling and any associated retaining should be documented.

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

Named Employee #2 - Allegation #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

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 #2), OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #3

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



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)**