



CLOSED CASE SUMMARY

ISSUED DATE: JULY 31, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0060

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Lawful and Proper
# 2	5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded
# 3	6.220-POL-2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion	Not Sustained - Lawful and Proper
# 4	8.400-POL-1 Use of Force Reporting and Investigation, 1. Officers Will Document in a Use-of-Force Report All Uses of Force Except <i>De Minimis</i> Force	Not Sustained - Unfounded

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Lawful and Proper
# 2	5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded
# 3	6.220-POL-2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion	Not Sustained - Lawful and Proper
# 4	8.400-POL-1 Use of Force Reporting and Investigation, 1. Officers Will Document in a Use-of-Force Report All Uses of Force Except <i>De Minimis</i> Force	Not Sustained - Inconclusive

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 unjustifiably aimed firearms at unarmed Community Member #1 (CM#1). The Complainant also alleged that the named employees mistreated CM#1 because of his race.

ADMINISTRATIVE NOTE:

On June 16, 2023, the Office of Inspector General (OIG) certified OPA's investigation as thorough, timely, and objective.



SUMMARY OF INVESTIGATION:

On February 1, 2023, at 6:43 PM, a 9-1-1 caller reported gunfire. The call taker noted:

"[REPORTING PARTY] HEARD 1 SHOT AND 2 MALES SCREAMING 1 MINUTE AGO, STATES THERE ARE A LOT OF [PEOPLE] NOW GATHERING ON THE CORNER OF [12TH AVENUE]/MERCER."

The offender was described as a Black male, 30 years old, wearing a dark jacket, yellow hoodie, and dark jeans. Another 9-1-1 call indicated the offender fired twice and yelled, "Everybody is going to die!" before fleeing toward 12th Avenue East. The named employees responded to the incident location.

Named Employee #2 (NE#2) wrote the related incident report. In summary, NE#2 wrote that he and his partner, Named Employee #1 (NE#1), were dispatched to a shots fired call. NE#2 stated that two 9-1-1 callers reported a gunshot followed by bystanders screaming. NE#2 wrote that they received the offender's description and direction of travel. NE#1 stated they conducted an area check and found CM#1—matching the offender's description— walking south on the 600 block of 12 Avenue East. NE#2 wrote that officers maintained a safe distance from CM#1 and ordered him to approach the back of the patrol cars. CM#1 reportedly ignored those orders, insisting he did nothing wrong. NE#2 estimated that CM#1 was 30-40 yards from officers during the exchange when 5-6 onlookers surrounded CM#1, shielding him from police. Officers yelled that CM#1 was suspected of discharging a firearm and was possibly still armed. More onlookers approached the officers and surrounded their patrol vehicles. NE#2 described the crowd as hostile, causing the outnumbered officers to disengage and leave without identifying CM#1. NE#1 and three witness employees wrote statements materially mirroring NE#2's report. Additionally, NE#1 noted that upon seeing CM#1 matching the offender's description, he exited the patrol car with a rifle to provide "long cover" for his colleagues, attempting to gain verbal compliance. NE#1 also stated, "Throughout the incident, I had my patrol rifle at the low ready¹ and did not point my rifle at the individual."

OPA's review of body-worn and in-car videos showed that CM#1 generally matched the offender's description when officers encountered him near 12th Avenue and Mercer.

¹ Low ready is when the muzzle of a firearm is pointed downward at a 45-degree angle in front of the officer. The buttstock is held in the shoulder's pocket. The handguard is held with the supporting hand. The strong hand grips the firearm with the trigger finger indexed on safe.



CM#1 on the Night in Question



Footage of NE#1 consistently showed his rifle in low ready.

NE#1 holding a rifle





NE#2's rifle position was not as clear.

NE#2 holding a rifle



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 - Using Force (1) Use of Force: When Authorized

The Complainant alleged that NE#1 used unauthorized force by aiming a firearm at CM#1.

Officers may use objectively reasonable, necessary, and proportional force. SPD Policy 8.200(1). Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” *Id.* 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 8.050. Reasonableness must consider that officers are often forced to make “split-second decisions” in tense, dynamic circumstances. *Id.* The policy also lists several factors that should be weighed when evaluating reasonableness. *See id.* Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” *Id.* Last, the force used must be proportional to the threat posed to the officer. *Id.*

Here, the named employees responded to a priority one call, the highest priority. Separate and detailed descriptions of a purported shooter in the area matched CM#1. Upon encountering CM#1, several officers issued ignored commands. Instead, CM#1 argued that he did nothing wrong. Given that there was reasonable suspicion—as discussed below—that CM#1 shot a firearm, threatened to kill a crowd, and was possibly still armed, it was objectively reasonable, necessary, and proportional to have their firearms in low-ready or aimed at the uncooperative and potentially dangerous subject.

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

Recommended Finding: **Not Sustained - Lawful and Proper**



Named Employee #1 - Allegation #2

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

The Complainant alleged that NE#1 engaged in bias-based policing by mistreating CM#1 because he was Black.

SPD policy prohibits biased policing, defined 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 treatments based on race. *Id.*

Here, OPA found no evidence that CM#1 was stopped for reasons beyond the officers’ reasonable articulable suspicion that he discharged a firearm, as discussed below.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 - Allegation #3

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

The Complainant alleged that NE#1 unlawfully stopped CM#1.

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 to be lawful. SPD Policy defines a *Terry* stop as: “A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion 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.*

Here, two 9-1-1 callers reported gunfire by someone near 12th Avenue and Mercer. One said the offender threatened to kill everyone. When officers saw CM#1 in that area matching the offender’s description, a Black man in his 30s wearing a yellow hoodie and dark jeans, a *Terry* stop was warranted. See *United States v. Edwards*, 761 F.3d 977 (9th Cir. 2014) [Officers stopped, aimed firearms at, and handcuffed the defendant who matched a shooter’s description. The Court found “such intrusive methods were justified by officers’ legitimate safety concerns.”

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

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #1 - Allegation #4

8.400-POL-1 Use of Force Reporting and Investigation, 1. Officers Will Document in a Use-of-Force Report All Uses of Force Except De Minimis Force

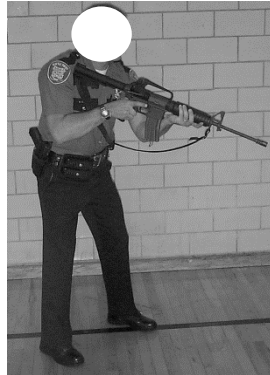
It was alleged that NE#1 failed to report force against CM#1.



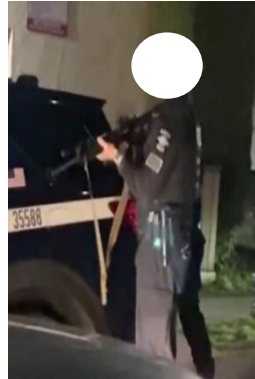
Officers who use reportable force while on duty must notify an SPD sergeant as soon as feasible. SPD Policy 8.400-POL-1-3(a). Pointing a firearm at someone is reportable Type I force. SPD Policy 8.050. However, simply displaying a firearm or holding it without aiming at someone, like low ready, is not reportable force. *Id.*

Here, several images showed NE#1 with his rifle in a textbook low-ready position.

SPD's Trained Low-Ready



NE#1



Since NE#1 did not aim the rifle at a person, he was unrequired to report it.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 - Allegation #1

8.200 - Using Force (1) Use of Force: When Authorized

The Complainant alleged that NE#2 used unauthorized force by aiming a firearm at CM#1.

For the reasons at Named Employee #1 – Allegation #1, OPA recommends 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, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing

The Complainant alleged that NE#2 engaged in bias-based policing by mistreating CM#1 because he was Black.

For the reasons at Named Employee #1 – Allegation #2, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**



Named Employee #2 - Allegation #3

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

The Complainant alleged that NE#2 unlawfully stopped CM#1.

For the reasons at Named Employee #1 – Allegation #3, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #2 - Allegation #4

8.400-POL-1 Use of Force Reporting and Investigation, 1. Officers Will Document in a Use-of-Force Report All Uses of Force Except De Minimis Force

It was alleged that NE#2 failed to report force against CM#1.

Here, unlike NE#1, NE#2's purported low-ready position was indistinct. The incident report, officer statements, and videos showed that CM#1 was yards from NE#1 throughout the encounter. While BWV showed NE#2's rifle was slightly angled, it is unclear, due to his distance from CM#1 and the darkness, whether his rifle was aimed at CM#1 rather than in an imperfect low-ready.

Recommended Finding: **Not Sustained - Inconclusive**