

Issued Date: FEBRUARY 17, 2024

From: Director Gino Betts, Office of Police Accountability 

Case Number: 2023OPA-0357

Allegations of Misconduct & Director's Findings

Named Employee #1

1. **Allegation #1:** 8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)
 - a. **Finding:** Not Sustained - Lawful and Proper (Expedited)

 2. **Allegation #2:** 6.220 – Voluntary Contacts, Terry Stops & Detentions, 6.220-POL-2 Conducting a Terry Stop, 1. Terry Stops are Seizures Based Upon Reasonable Suspicion
 - a. **Finding:** Not Sustained - Lawful and Proper (Expedited)
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Named Employee #2

1. **Allegation #1:** 5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing
 - a. **Finding:** Not Sustained - Unfounded (Expedited)

 2. **Allegation #2:** 6.220 – Voluntary Contacts, Terry Stops & Detentions, 6.220-POL-2 Conducting a Terry Stop, 1. Terry Stops are Seizures Based Upon Reasonable Suspicion
 - a. **Finding:** Not Sustained - Lawful and Proper (Expedited)
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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:

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) arrested the Complainant for allegedly taking items from a construction site. The Complainant alleged that the named employees lacked reasonable suspicion to detain him and arrested him based on his race.

Administrative Note:

This case was approved for expedited investigation. That means OPA, with the Office of Inspector General's (OIG) agreement, believed it could issue recommended findings based solely on its intake investigation without interviewing the named employees. As such, OPA did not interview the named employees involved in this case.

On September 22, 2023, OIG certified OPA's investigation as thorough, timely, and objective.

Summary of the Investigation:

On August 21, 2023, Witness Officer #1 (WO#1) submitted a Blue Team complaint to OPA on the Complainant's behalf. WO#1 wrote that a caller reported a person entered a construction site and loaded items on a chair. WO#1 wrote that the caller described the person's physical features, including his attire. WO#1 wrote that the named employees responded, found the Complainant matching the physical description, and arrested him for burglary. WO#1 wrote that the Complainant alleged he was stopped because he was Black. WO#1 also documented that the Complainant repeatedly said, "They stopped me for no reason."

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, body-worn video (BWV), and police reports. OPA could not reach the Complainant for an interview.

On August 14, 2023, at 8:40 PM, CAD call remarks noted, "CONSTRUCTION SITE – MALE LOADING UP CHAIR WITH CONSTRUCTION SUPPLIES, SITE FENCED UNK[NOWN] HOW SUSP[ECT] GOT IN, NO WEAP[O]NS SEEN." CAD noted a Black male in his thirties or forties with afro hair wearing all black clothing.

The named employees responded to a residential area and activated their BWV, which captured the following events. The Complainant was pushing a chair filled with items on a sidewalk walking eastbound, just fifty yards north of the construction site. The named employees approached the Complainant. NE#1 told the Complainant he matched the description of a person taking items from a construction site. NE#1 handcuffed the Complainant and said he was detained during their investigation into a burglary. The Complainant asserted the items belonged to him.

NE#1 approached the reporting party, Community Member #1 (CM#1), who said he saw the Complainant enter the construction site, which was fenced off. CM#1 said he saw the Complainant loading items on a chair. CM#1 said the police, more likely than not, detained the right person. CM#1 described the Complainant's physical description consistent with that provided by dispatch.

NE#1 returned to NE#2. They discussed having probable cause to arrest the Complainant. The named employees approached the Complainant, and NE#2 told him he was under arrest for burglary. The Complainant denied burglarizing the construction site, saying he restored shoes using the paint he had and obtained tape from a dumpster in the alley. The Complainant said he bought tools at Walgreens. The Complainant said the police had no reason to arrest him. The Complainant acknowledged entering the construction site to use the portable bathroom.

The Complainant asked to speak with a sergeant. WO#1 responded to the scene. The Complainant told WO#1 that the named employees arrested him based on his race and had no reason to arrest him.

The named employees wrote police reports consistent with the events captured on BWV. NE#2 wrote, “Due to [CM#1] and [the Complainant] stating [the Complainant] was in the construction site, and [the Complainant] having construction items as well as burglary tools in his possession, he was placed under arrest for Burglary.”

Analysis and Conclusions:

Named Employee #1 – Allegation #1

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

The Complainant alleged that the named employees arrested him based on his race, constituting bias-based policing.

Biased policing means “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well as other discernible personal characteristics of an individual.” SPD Policy 5.140-POL. It includes different treatments based on race. *See id.* Officers are forbidden from making decisions or taking actions influenced by bias and expressing prejudice or derogatory comments concerning personal characteristics. *See* SPD Policy 5.140-POL-2.

Here, race was one factor in identifying the suspect. It was not the basis for arresting him. The named employees arrested the Complainant based on probable cause that he committed burglary. Dispatch noted several physical features matching those of the Complainant. Additionally, dispatch noted that the suspect loaded a chair with construction items. The Complainant was pushing a chair filled with items in close proximity to the crime scene when the named employees found him. The Complainant also acknowledged entering the construction site. Last, NE#1 interviewed CM#1, who provided an account consistent with his 9-1-1 call. CM#1 identified the Complainant as the person who, more likely than not, loaded items on his chair and took them. The Complainant was not authorized to be at the construction site. There is no evidence that the named employees were influenced by bias or treated the Complainant differently because he was Black. They were motivated by the evidence they gathered during their investigation into burglary.

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

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

Named Employee #1 – Allegation #2

6.220 – Voluntary Contacts, Terry Stops & Detentions, 6.220-POL-2 Conducting a Terry Stop, 1. Terry Stops are Seizures Based Upon Reasonable Suspicion

The Complainant alleged that the named employees lacked reasonable suspicion to detain him.

Terry stops are seizures of an individual and, as such, must be based on reasonable suspicion to be lawful. SPD Policy 6.220-POL-2(1). A *Terry* stop is a brief, minimally intrusive seizure of a subject based on reasonable articulable suspicion to investigate possible criminal activity. SPD Policy 6.220-POL-1. Reasonable suspicion means 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.* The reasonableness of a *Terry* stop is based on the totality of the circumstances, the officer's training and experience, and what the officer knew before the stop. *Id.* While information 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, the named employees had reasonable suspicion to detain the Complainant for the same reasons identified in Named Employee #1 – Allegation #1. The Complainant's physical features, including his attire, matched those provided by the 9-1-1 caller. The 9-1-1 caller also told dispatch that the person who burglarized the construction site loaded items on a chair. The named employees confronted the Complainant dragging a chair along a sidewalk in close proximity to the crime scene. The Complainant's seizure was justified under these circumstances.

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

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

Named Employee #2 – Allegation #1

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

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

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

Named Employee #2 – Allegation #2

6.220 – Voluntary Contacts, Terry Stops & Detentions, 6.220-POL-2 Conducting a Terry Stop, 1. Terry Stops are Seizures Based Upon Reasonable Suspicion

For the reasons at Named Employee #1 – Allegation #2, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

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