
Issued Date: JUNE 18, 2023

From: Director Gino Betts, Jr. 
Office of Police Accountability

Case Number: 2023OPA-0543

Allegations of Misconduct & Director's Findings

Named Employee #1

- 1. Allegation #1:** 6.220 – Voluntary Contacts, Terry Stops & Detentions, 6.220-POL-2
Conducting a Terry Stop, 1. Terry Stops are Seizures Based Upon Reasonable Suspicion
Finding: Not Sustained - Lawful and Proper (Expedited)
- 2. Allegation #2:** 5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-
Based Policing
Finding: Not Sustained - Unfounded (Expedited)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections may be written in the first person.

Executive Summary:

Named Employee #1 (NE#1) pulled over the Complainant and then arrested him for unlawfully possessing a firearm. The Complainant alleged that the traffic stop was based on his race and his being in a gang area.

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 employee. As such, OPA did not interview the named employee in this case.

On January 26, 2023, OIG certified OPA's investigation as thorough, timely, and objective.

Summary of Investigation:

On December 21, 2023, a sergeant, Witness Supervisor #1 (WS#1), submitted an OPA complaint on the Complainant's behalf. WS#1 wrote that NE#1 pulled over the Complainant for running a red light and saw a gun inside the Complainant's car. WS#1 wrote that NE#1 arrested

the Complainant for unlawfully possessing a firearm after learning the Complainant was a convicted felon. WS#1 wrote that NE#1 thought the gun was real because the Complainant left a gang area. WS#1 wrote that the Complainant alleged discrimination based on his race and NE#1's comment about the Complainant being in a gang area.

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, body-worn video (BWV), in-car video (ICV), incident report, and photographs. The Complainant did not respond to OPA's request for an interview.

On December 21, 2023, at 3:14 AM, CAD coded a "TRAFFIC STOP - OFFICER INITIATED ONVIEW."

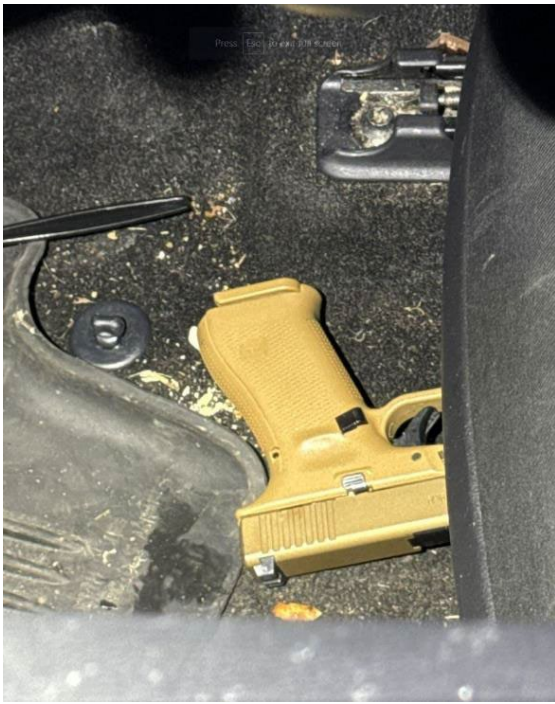
NE#1's BWV captured the following:

NE#1 pulled over the Complainant and explained that he ran a red light. NE#1's ICV captured the Complainant turning left at a solid red light. NE#1 requested driving documentation. The Complainant searched for documentation as NE#1 shone his flashlight at the car. NE#1's incident report documented, "As [the Complainant] searched for his paperwork I observed in plain view what appeared to be a gold or bronze Glock pistol on the floorboard beneath [the Complainant's] feet." NE#1 radioed for a backup unit. NE#1 asked to speak with the Complainant near NE#1's patrol car when the Complainant could not produce documentation. The Complainant exited and walked towards NE#1's patrol car. The Complainant said he did not have his driver's license, and the car belonged to his mother. NE#1 handcuffed the Complainant and told him he was detained.

NE#1 reapproached the car's driver side and asked the Complainant, "What's the story with the gun underneath your seat?" The Complainant denied knowledge about the gun. NE#1 asked about prior convictions, and the Complainant said he was a felon for committing robbery. The Complainant asked where NE#1 saw the gun. NE#1 replied, "It's a gold-looking Glock. Does that ring any bells?" The Complainant did not appear to respond. NE#1 entered his patrol car and, using his computer, confirmed the Complainant's robbery conviction.

NE#1 exited his patrol car and asked the Complainant whether the gun was a toy. The Complainant again denied knowledge about the gun. NE#1 said he would assume the gun was real and seize it. NE#1 told the Complainant he was arrested for unlawfully possessing a firearm. The Complainant inquired about NE#1's probable cause. NE#1 replied, "Probable cause is that you have a robbery conviction, and I – there's a gun in the car, and you're coming out of a neighborhood with a history of gang violence inside of it." The Complainant characterized NE#1's probable cause as "discriminatory." NE#1 replied, "No, it is not. It's articulable facts and circumstances." NE#1 transported the Complainant to the South Precinct, where WS#1 screened the Complainant's arrest.

An officer photographed the gun in the car:



Analysis and Conclusions:

Named Employee #1 – Allegation #1

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 NE#1 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 justify the original stop. *Id.*

NE#1 pulled over the Complainant for running a red light. However, the Complainant's detention was based on NE#1 seeing a gun on the floorboard beneath the Complainant's feet and the Complainant "coming out of a neighborhood with a history of gang violence inside of it." After NE#1 confirmed the Complainant's felony status, NE#1 informed the Complainant that he was arrested for unlawfully possessing a firearm. The Complainant's detention 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 #1 – Allegation #2

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.

As articulated in Named Employee #1 – Allegation #1, NE#1 pulled over the Complainant for a traffic infraction. NE#1 could not have known the Complainant’s race before pulling him over because the Complainant was not visible at night until NE#1 approached the driver’s side door. While NE#1 commented that the Complainant came “out of a neighborhood with a history of gang violence inside of it,” NE#1’s decision to arrest the Complainant was predicated on seeing a gun in the car near the Complainant’s feet and confirming a robbery conviction. The Complainant, as a felon, was prohibited from possessing a firearm. Overall, OPA found no evidence supporting the Complainant’s interpretation of racial-based mistreatment.

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

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