



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 12, 2018

CASE NUMBER: 2018OPA-0154

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	Not Sustained (Lawful and Proper)
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Lawful and Proper)
# 3	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	Not Sustained (Lawful and Proper)
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Lawful and Proper)
# 3	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Lawful and Proper)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	Not Sustained (Lawful and Proper)
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Lawful and Proper)
# 3	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Unfounded)

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 unlawfully entered his apartment, removed both him and his girlfriend from the apartment, and unlawfully detained and interrogated them.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the OPA Auditor's review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employees. As such, the Named Employees were not interviewed as part of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful

On the date in question, the Named Employees responded to calls concerning a potential domestic violence situation. One of the callers reported the following: "my neighbors are fighting and I don't know what's going on. He's throwing her somewhere, they're yelling at each other, he says he's bleeding and he says, 'call the police.'" The officers approached the front door of the residence and heard what sounded like shouting, including expletives, between a male and female. The officers knocked on the door and a male – who was later identified as the Complainant – answered. The Complainant had a cut to the right side of his face that was bleeding.

Named Employee #1 (NE#1) spoke with the Complainant while Named Employee #2 (NE#2) called for the girlfriend, who was inside the residence. NE#1 asked the Complainant what had occurred that evening and, specifically, what caused the cut on his face. The Complainant said that he fell, but the remainder of his statements to NE#1 were confused and, at time, nonsensical. He further became aggressive towards the officers. He first became upset because NE#2 was inside of his apartment speaking with his girlfriend. He moved towards the apartment yelling for his girlfriend. He pushed past NE#1 to do so. The girlfriend began to exit the apartment and the Complainant moved towards her. NE#1 used his arm to hold the Complainant back and to separate them. NE#2 asked the girlfriend to remain in the apartment, but she exited and stood next to the Complainant. The Complainant continued to scream at the officers, even while his girlfriend tried to calm him. He also started to yell the other apartment numbers out at the top of his voice, apparently because he believed that his neighbors had called the police. He repeatedly told the officers that there was "no problem at [apartment] 305." At one point, he told the officers that he paid their salaries, disparagingly referred to their careers, and referred to himself as the 1% and the officers as the 99% given his service in the military.

After approximately ten minutes of screaming, NE#1 told the Complainant that he was not free to leave and that he was being detained. Even after this point, the Complainant yelled at the officers, repeatedly pointed at them and raised his arms towards them, and continued to move around the hallway.



While NE#1 and Named Employee #3 (NE#3), who had arrived on the scene, continued to speak with the Complainant, NE#2 spoke with the girlfriend. After that discussion concluded, NE#2 told NE#1 that, while the girlfriend was being “evasive,” there was insufficient evidence to establish probable cause for a domestic violence assault.

NE#1 requested the Complainant’s name and birthday. He provided his name and continued to yell and scream. Ultimately, NE#1 asked the Complainant if there was anything that he could do for him and the Complainant said no. NE#1 again asked for the Complainant’s birthday and the Complainant provided it. NE#1 was finally able to ask the Complainant questions concerning what occurred. The Complainant told NE#1 that he had been in an argument with his girlfriend because she cheated on him two years ago. He denied that he struck his girlfriend or that she struck him. He claimed that he fell in another location and then took an Uber home. After learning this information and without obtaining any information from the girlfriend establishing criminal activity, the officers then left the scene.

SPD Policy 6.220-POL-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-2(b).) 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, the Named Employees received a call that there was a possible ongoing domestic violence incident. When they arrived at the apartment, they heard yelling and expletives coming from inside. When the Complainant exited the apartment, he was visibly injured and immediately aggressive. These circumstances provided the officers with reasonable suspicion that NE#1 was either the perpetrator or victim of domestic violence. They attempted to investigate this matter but the Complainant was so belligerent and so nonsensical that they were unable to do so. Ultimately, when they could not develop probable cause that any crime occurred, the detention was terminated.

I find that this stop was valid and supported by reasonable suspicion. From my review of the video, the Complainant appeared to be extremely intoxicated. There is no other rational justification for his behavior. I very much wish that the Complainant had seen this video before he filed this complaint. Had he done so, I think he would be as baffled as I am that anyone could allege that the officers in this case did not act appropriately and consistent with law and policy. Indeed, these officers acted in every way consistent with the Department’s and OPA’s expectations of their conduct. They were calm, reasoned, and measured, even though the Complainant and his girlfriend were not. They treated the Complainant and girlfriend with respect throughout the interaction, even though this was not returned. They tried to fairly and fully investigate a potentially dangerous crime and were prevented from doing so by an irrational and volatile individual. In summary, not only do I believe that these officers acted in compliance with policy, but I further believe that the Named Employees should be commended for the manner in which they handled this call.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.



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

Named Employee #1 - Allegation #2

6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope

SPD Policy 6.200-POL-3 requires that officers limit a seizure to a reasonable scope. The policy further states that: "Actions that would indicate to a reasonable person that they are being arrested or indefinitely detained may convert a Terry stop into an arrest requiring probable cause or an arrest warrant."

Based on my review of the record, including the Department video, I find that the officers limited the seizure in this case to a reasonable scope. They only detained the Complainant and his girlfriend long enough to investigate this matter and to determine if there was a crime that required an arrest. While the detention lasted for approximately 20 minutes, I do not find this to have been unreasonable. During virtually the entirety of this time, the Complainant was yelling and prevented the officers from timely conducting their investigation. Had he not been so unreasonable and belligerent, the detention would likely have been significantly shorter. Once the officers were finally able to determine that they did not have sufficient probable cause, they terminated the detention and left the apartment building.

In addition, from OPA's perspective, the Named Employees did not engage in any actions that would have suggested to a reasonable person that they were subject to an arrest. For example, the Complainant was never handcuffed, he was never ordered to sit down or to go outside, and his identification was not taken. While the officers did try to keep the Complainant and his girlfriend separated during their investigation, the officers were largely unable to do so. Lastly, the suggestion that the Complainant believed that he was under arrest is simply unsupported by the Department video of the incident. Virtually the entire time that he was in the presence of the officers, he was aggressive and abrasive and moved freely around the hallway

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #3

6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement

As discussed more fully below, of the Named Employees, NE#2 was the only one to make entry into the Complainant's apartment. As such, I recommend that this allegation be Not Sustained – Unfounded as against NE#1 and NE#3.

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



Named Employee #2 - Allegation #1

6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful

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

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

Named Employee #2 - Allegation #2

6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope

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

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

Named Employee #2 - Allegation #3

6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement

SPD Policy 6.180 concerns searches and, specifically, those types of searches that are justified by an exception to the general requirement of a search warrant. Among the exceptions outlined in the policy are: consent searches; searches based on exigent circumstances; and open view and plain view searches.

OPA interpreted the Complainant to be alleging that the Named Employees, and specifically NE#2, engaged in an unlawful entry of his apartment when seeking his girlfriend. I do not find that NE#2 did so in this incident. Instead, from my review of the evidence, she permissibly entered the apartment to verify that the girlfriend was not injured. She remained in the apartment for a short period of time in order to ask the girlfriend questions to determine what had occurred. The girlfriend then walked out of the apartment and she was later questioned by NE#2 in the hallway. Neither NE#2 nor any other officer made additional entry into the apartment.

For these reasons, I find that NE#2 acted consistent with policy when she entered the Complainant's apartment and remained there temporarily. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #1

6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful

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



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

Named Employee #3 - Allegation #2

6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #3

6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Unfounded.

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