



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 7, 2018

CASE NUMBER: 2018OPA-0430

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 2	5.120 - Off-Duty Employment 4. Employees Must Request Approval for all Law Enforcement Related Off-Duty Employment and Business Activities	Not Sustained (Lawful and Proper)
# 3	5.120 - Off-Duty Employment 13. Employees Must Log-In at the Beginning of Their Off-Duty Shifts and Log-Off at the End of Their Shifts	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

Named Employee #3

Allegation(s):		Director's Findings
# 1	5.120 - Off-Duty Employment 13. Employees Must Log-In at the Beginning of Their Off-Duty Shifts and Log-Off at the End of Their Shifts	Not Sustained (Training Referral)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

Named Employee #4

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	6.220 - Voluntary Contacts, Terry Stops & Detentions 8. Officers May Conduct a Frisk or Pat-Down of Stopped Subject(s) Only if They Reasonably [...]	Not Sustained (Lawful and Proper)



# 4	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)
# 5	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 6	6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops	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 and the Subject alleged that the Named Employees were unprofessional towards them and that Named Employee #4 unlawfully detained and frisked the Subject. It was also alleged that Named Employee #4 improperly extended the scope of the Terry stop, that he failed to complete a Terry Template, and that he did not de-escalate prior to using force. Lastly, it was alleged that Named Employee #1 did not have a valid off-duty work permit and that both Named Employee #1 and Named Employee #3 failed to properly log in and out of their off-duty work.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

The Complainant and his wife (who is referred to herein as the “Subject”) alleged that all of the Named Employees were unprofessional. Specifically, both stated that they did not like how the officers handled their response to the incident, were upset that the Neptune Theater’s bouncers were not arrested for throwing the Subject’s phone in the street, were angered by some of the statements made to them by the Named Employees, and believed that it was inappropriate when the Named Employees stated that they were going to de-escalate the situation by leaving the scene.

Named Employee #1 (NE#1) and Named Employee #3 (NE#3) were working off-duty at the Neptune Theater. They observed the Complainant the Subject engaged in a physical and verbal altercation with bouncers employed by the theater. The Subject was recording on her phone and held the phone in the face of both officers and bouncers. At one point, when she was holding the phone in a bouncer’s face, the bouncer grabbed her iPhone and threw it into the street. Additional officers, including Named Employee #2 (NE#2), a Sergeant, and Named Employee #4 (NE#4), responded to the scene.

The Named Employees attempted to engage in conversation with the Complainant and the Subject. However, they were both extremely upset, raising their voices, and using curse words towards the officers and the bouncers. Further, from OPA’s review of the video, both the Complainant and the Subject appeared to be intoxicated. In addition, the Named Employees unsuccessfully attempted to search for the Subject’s phone in the street. When



their interaction with the Complainant and the Subject continued to be unproductive and when the Complainant and the Subject failed to calm down, the Named Employees left the scene as an attempt to de-escalate and as further engagement with the involved parties would likely have been counterproductive.

SPD Policy 5.001-POL-9 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-9.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

NE#1 and NE#3 both stated that they tried to be professional towards the Complainant and Subject, even in light of these individuals’ anger and aggression. Both stated that they tried to help the Subject by searching for her phone. NE#2 stated that he attempted to be helpful to the Complainant and the Subject. This included searching for the Subject’s lost phone with a number of other officers. At one point, NE#2 made a comment that he was going to de-escalate by walking away. NE#2 explained that he was expressing that if he walked away then it would cause the Complainant to de-escalate because there would be no one else for him to yell at. NE#4 told OPA that he tried to treat the Complainant with respect and professionalism. He explained that, while he attempted to calm the situation down, he was unsuccessful in doing so.

From OPA’s review of the video, there is no evidence that the Named Employees engaged in behavior that violated the Department’s professionalism policy. To the contrary, the officers appeared to comply with Department policy during the incident and clearly attempted to handle a difficult situation to the best of their ability. For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against all of them.

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

Named Employee #1 - Allegation #2

5.120 - Off-Duty Employment 4. Employees Must Request Approval for all Law Enforcement Related Off-Duty Employment and Business Activities

SPD Policy 5.120-POL-4 requires any Department employee who works off-duty to have a valid and approved secondary employment permit.

During its intake investigation, OPA contacted SPD HR to determine whether NE#1 had a permit on the date in question. OPA was initially informed that he did not. As such, this allegation was classified against him. After classification, SPD HR informed OPA that NE#1 did, in fact, have a valid and approved permit on file and that the initial information that was provided to OPA was incorrect. NE#1 also brought the permit to his OPA interview.

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

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



Named Employee #1 - Allegation #3

5.120 - Off-Duty Employment 13. Employees Must Log-In at the Beginning of Their Off-Duty Shifts and Log-Off at the End of Their Shifts

SPD Policy 5.120-POL-13 requires Department employees to log-in and out at the beginning and end of off-duty shifts.

OPA's investigation, specifically the review of the CAD Call Report, indicated that NE#1 logged himself in at the beginning of his off-duty shift. It further showed that he was logged off by Dispatch and, directly afterwards, Dispatch logged NE#1 back in to a new disturbance call.

Given the above, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegations #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

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

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

Named Employee #3 - Allegations #1

5.120 - Off-Duty Employment 13. Employees Must Log-In at the Beginning of Their Off-Duty Shifts and Log-Off at the End of Their Shifts

OPA's review of the CAD Call Log indicated that NE#3 appeared to have failed to log in to his off-duty assignment. At his OPA interview, NE#3 confirmed that he did not do so and told OPA that it was a mistake.

In OPA's opinion, and when reviewing SPD Policy 5.002-POL-5, the failure to log in and out of off-duty work is minor misconduct. It is OPA's hope that, in the near future, such minor misconduct will be identified and addressed by the chain of command rather than OPA.

With regard to this allegation, OPA appreciates NE#3's acknowledgment that he made a mistake. OPA further believes that this mistake is better addressed through retraining and counseling rather than a Sustained finding. NE#3 should be on notice, however, that a future violation of this policy, even if based on a mistake, will result in a recommend Sustained finding.

- **Training Referral:** NE#3 should be reminded of the requirements under SPD Policy 5.120-POL-13 and, specifically, his responsibility to log in and out of off-duty work. NE#3 should be counseled concerning his failure to do so here and should be instructed to more closely comply with this policy moving forward. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.



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

Named Employee #3 - Allegation #2

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

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

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

Named Employee #4 - Allegations #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

The Complainant alleged that his and the Subject's detentions were not supported by reasonable suspicion.

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.*)

The evidence indicated that officers working off-duty at the Neptune Theater on-viewed a verbal and physical altercation between the Complainant, Subject, and bouncers. At that point, the officers believed that they had reasonable suspicion to detain the Complainant and Subject to investigate their involvement in the altercation.

Notably, as discussed above, reasonable suspicion is a lower standard than probable cause. It requires only sufficient facts to form "well-founded suspicion" of a "substantial possibility" that individuals have engaged or are in the process of engaging in criminal acts. Based on my review of the record, including the Department video and documentation of this incident, I find that this standard was met here.

As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #4 - 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 6.220-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." (SPD Policy 6.200-POL-3.)

This allegation was classified for investigation based on NE#4's decision to require the Subject to sit on the sidewalk curb during the detention, to handcuff her, and to frisk her.

NE#4 explained that he took the above steps for a number of reasons. First, he contended that, as he had reasonable suspicion to believe that the Subject had been involved in an assault, he was concerned that she could engage in further violence. Second, NE#4 stated that, based on his training and experience, he believed that the Subject was intoxicated. This caused him additional concern that she could engage in violence or otherwise escalate the situation with unpredictable behavior. Third, he explained that the Subject was angry, aggressive, and was largely non-compliant with the officers' directions. This was corroborated by the Department video of this incident. Fourth, he believed that handcuffing her would ensure that he would not be later required to use force if the decision was made after the preliminary investigation to place the Subject under arrest.

Based on the above, I find that the detention of the Subject did not exceed a reasonable scope. I find NE#4's reasoning for his actions to be legitimate and supported by the record. For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #4 - Allegation #3

6.220 - Voluntary Contacts, Terry Stops & Detentions 8. Officers May Conduct a Frisk or Pat-Down of Stopped Subject(s) Only if They Reasonably [...]

SPD Policy 6.220-POL-8 states that: "Officers may conduct a frisk or a pat-down of a stopped subject only if they reasonably suspect that the subject may be armed and presently dangerous." The policy explains that: "The decision to conduct a frisk or pat-down is based upon the totality of the circumstances and the reasonable conclusions drawn from the officer's training and experience." (SPD Policy 6.220-POL-8.) The policy provides a non-exclusive list of factors supporting such a search. (*Id.*)

In providing the justification for his frisk of the Subject, NE#4 stated that he believed that she could be armed because he saw an item that he thought was potentially a weapon in her pocket. This item was later identified to be one of the officers' flashlights, which had apparently been dropped when the officers were searching for the Subject's cell phone in the street. Moreover, NE#4 asserted that, based on the Subject's aggressive and angry demeanor, her verbal statements, her physical conduct, and her intoxication level, he believed that she was possibly presently dangerous. NE#1 further based this on his law enforcement training and experience.



My review of the record, again including the Department video and NE#4s OPA interview, yields the conclusion that NE#4's decision-making in this regard was reasonable. I agree that he had a legitimate basis to believe that the Subject was potentially dangerous and armed. For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #4 - Allegations #4

8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

“De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.” (SPD Policy 8.100-POL-1.)

The policy further instructs that: “When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.” (*Id.*) Officers are also required, “when time and circumstances permit,” to “consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors” such as “mental impairment...drug interaction...[and/or] behavioral crisis.” (*Id.*) These mental and behavioral factors should be balanced by the officer against the facts of the incident “when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.” (*Id.*)

The policy gives several examples of de-escalation, which include: mitigating the immediacy of the threat to give officers time to use extra resources and to call more officers or specialty units; and increasing the number of officers on scene to thus increase the ability to use less force. (*Id.*) Other examples of de-escalation include, but are not limited to:

- Placing barriers between an uncooperative subject and officers;
- Containing the threat;
- Decreasing exposure to the potential threat by using distance, cover and concealment;
- Avoidance of physical confrontation unless immediately necessary to protect someone or stop dangerous behavior;
- Using verbal techniques, such as “Listen and Explain with Equity and Dignity” (LEED) to calm an agitated subject and promote rational decision making;
- Calling extra resources, including CIT officers and officers equipped with less-lethal tools; and
- Using “any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject.

(*Id.*) De-escalation is inarguably a crucial component of the Department’s obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department’s policy and expectations.



This allegation was classified against NE#4 as he did not engage in de-escalation with the Subject prior to using force in the form of an escort hold. NE#4 explained that, at that time, he had already observed the Subject engage in aggressive physical behavior. For this reason, he did not believe that de-escalation was safe or feasible at that time. He noted that, as soon as he had the Subject under control, he did engage in de-escalation, including trying to slow the interaction down, using a calm voice, and trying to engage in LEED. Based on OPA's review of the video, NE#4's efforts were largely unsuccessful; however, this was more a result of the Subject's heightened emotional state and present condition rather than any shortcomings on the part of NE#4.

Ultimately, I agree with NE#4 that, at the time he used minimal force to control the Subject's person and to detain her, de-escalation was not safe or feasible. As such, I find that his actions in this regard were consistent with policy and, accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #4 - Allegation #5

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

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

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

Named Employee #4 - Allegation #6

6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops

SPD Policy 6.220-POL-10 requires that Terry stops be documented in a Terry Template.

Based on OPA's intake investigation, it appeared that NE#4 made the decision to detain the Subject. However, NE#4 did not document the Terry stop in a Terry Template. In explaining why he did not do so, NE#4 stated that NE#1 was the primary officer during this incident and, as such, NE#1, not NE#4, was responsible for completing a Terry Template. NE#4 is correct in this regard and, for these reasons, I recommend that this allegation be Not Sustained – Unfounded as against NE#4.

With regard NE#1's documentation or lack thereof, NE#1 told OPA that he did not complete a Terry Template because he had probable cause to believe that the Complainant and Subject had been involved in an assault based on his firsthand observations. NE#1 instead completed a General Offense Report.

While, under the circumstances of this case, completing a General Offense Report was permissible, NE#1 failed to set forth sufficient detail concerning the Terry stop. For example, while NE#1 wrote that the Subject was detained, he did not explicitly explain why the detention was effectuated. He further did not provide any information concerning why the Subject was handcuffed and frisked, both of which must be independently justified to be permissible under SPD policy.



I recommend that NE#1's chain of command discuss his report with him and provide guidance as to its shortcomings and what is expected regarding the documentation of Terry stops. I further recommended that the chain of command discuss these same issues with NE#2, who approved the report and who should have recognized its deficiencies and sent it back for further work up.

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