



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 5, 2019

CASE NUMBER: 2018OPA-0772

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	Allegation Removed
# 2	5.140 - Bias-Free Policing 1. Every Employee is Responsible for Knowing and Complying With This Policy	Not Sustained (Management Action)
# 3	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)

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 1. Every Employee is Responsible for Knowing and Complying With This Policy	Not Sustained (Management Action)
# 3	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)

Named Employee #3

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 1. Every Employee is Responsible for Knowing and Complying With This Policy	Not Sustained (Management Action)
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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:

The Complainants alleged that the Subject was improperly detained due, at least in part, to his race and disability status. The Complainants further alleged that, during the detention, the Named Employees used excessive force on the Subject.

SUMMARY OF INVESTIGATION:

A male called 911 and indicated that he was suicidal. The male, who claimed to be armed with a gun in his left pocket that he stated that he planned to use, identified himself as Philipiano Augustus with a September 11, 2001 birthdate.



The call was updated to report that the male's girlfriend had committed suicide the night before. Officers, including the Named Employees, were dispatched to this call, which was broadcasted as a Priority 1 (the highest priority response).

After responding to the scene, Named Employee #1 (NE#1) raised the possibility that the call was "not real"; however, the officers made the decision to take the call seriously given the information that they were aware of and the potential threat of harm and weapons. One officer was assigned to stay outside of the library and to check the perimeter. Five other officers, including the Named Employees, entered the library with their firearms unholstered.

The officers located a male who was sitting by a library window and was on his cell phone. The male was later identified as the Subject. At that time, the Subject was the only male in the library who was not library staff. The officers made contact with the Subject. Named Employee #3 (NE#3) asked the Subject what his name was. The Subject responded with his name. NE#3 did not appear to understand what he said and asked again. The Subject again provided his name. When the subject did so, he moved his left arm in front of his body. NE#3 asked him not to move his hands. At that point, Named Employee #2 (NE#2) asked if the Subject was the right person. NE#3 stated that he did not know and began to say that he was not willing to take the risk. At that point, NE#3 and NE#2 assisted the Subject in standing up. While they were holding the Subject's arms, a library staff member stated that the Subject had not done anything and that he came to the library every day. NE#3 pat frisked the Subject and stated that he did not feel anything that suggested a weapon.

NE#3 asked him if he had identification and the Subject stated that it was in his wallet. NE#2 and NE#3 then proceeded to handcuff him. The Subject had difficulty getting his right hand behind his back and the officers used two pairs of handcuffs. At that time, they told the Subject that he was not in any trouble. They asked him whether he was suicidal and he did not respond in the affirmative. They then had the Subject sit down. NE#2 asked the Subject where his identification was and he directed her to his backpack. NE#3 told the Subject that they were going to verify his identity and would then release him from handcuffs. The Subject appeared nervous at that point and was told by NE#3 that it would be ok.

They verified the Subject's identity and then helped him stand up and removed the handcuffs. NE#3 apologized to him. NE#3 informed the Subject that a Sergeant was going to come to the scene to speak with him but informed him that he was free to leave. The Subject then made a phone call and informed the person on the line that he had been handcuffed by the police. The officers spoke with library staff and attempted to explain why they detained the Subject. One staffer asked why the Subject had been targeted. NE#3 responded that he was the only male in the library that was not staff and that they received a call of a suicidal 17-year-old male. The staffer said that the Subject did not look 17 years old. The officers then left the library.

NE#1 returned to the library with a Sergeant. At that time, the Subject's mother and grandmother were with him. The Subject's mother is one of the Complainants in this case. The Complainant contended that her son was detained because he was African-American. She further contended that he had been discriminated against because of his physical condition. The Complainant questioned how any officer could have believed that the Subject was 17 years old or that he was the suicidal caller considering his disability. The Sergeant spoke to the Complainant for a period of time. He ultimately provided her with a case number and the names and badge numbers of the involved employees. At that time, Seattle Fire Department personnel responded to the library to provide medical treatment to the Subject.



He was not transported to a hospital at that time. The Sergeant continued to speak with the Complainant and, after their interaction concluded, the officers again left the library.

The Complainant and her cousin, who is the other Complainant in this case, later requested that OPA file a complaint on their and the Subject's behalf. OPA did so and this investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

8.200 - Using Force 1. Use of Force: When Authorized

NE#1 was the primary officer during this incident. In that role, he was tasked with creating the tactical plan, he interfaced with the Subject's family after the detention had concluded, and he completed the necessary paperwork. He did not, however, use force towards the Subject at any time. As such, this allegation should not have been classified for investigation against him and I recommend that it be removed.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #2

5.140 - Bias-Free Policing 1. Every Employee is Responsible for Knowing and Complying With This Policy

SPD Policy 5.140-POL-1 requires every Department employee to be familiar with and comply with the policy on bias-free policing. The policy further states that: "The Chief of Police will reinforce that bias-based policing is unacceptable through specific yearly training, regular updates, and such other means as may be appropriate." (SPD Policy 5.140-POL-1.) Lastly, the policy instructs that: "Supervisors are responsible for ensuring all personnel in their command are operating in compliance with this policy." (*Id.*)

OPA's investigation revealed that "swatting" – the phenomena of making a fake phone call to the police regarding a dangerous ongoing situation that causes officers to unknowingly wrongly subject an innocent victim to often the pointing of firearms and potentially high levels of force – has become more and more common. OPA determined that the caller who made the fake report here had made approximately 50 other calls from three different untraceable phones. OPA also learned that the Department receives around 1,000 "swatting" or fake calls per month.

This malicious and inappropriate use of law enforcement resources for nefarious purposes is exactly what happened here. The caller made a fake report of an armed and suicidal individual and, as a result, the Subject, a blameless and innocent victim, was terrified and traumatized and was placed into handcuffs and detained for a period of time.

The Named Employees were also harmed by this thoughtless act. Without intending to, they were forced to carry out the caller's inappropriate whims and to take law enforcement action against the Subject. I have no doubt from my review of their interviews that they would have preferred not to do so. However, as discussed below, they were put in an incredibly difficult situation and tried to handle it to the best of their respective abilities. Ultimately, I find that the actions that they took were based on the nature of the call and their efforts to try to rule out an armed and suicidal individual – they were not due, in OPA's opinion, to the race or disability status of the Subject.



I note that NE#1 particularly regretted that this incident occurred and that the Subject was negatively affected. Indeed, he met with the Subject, his family, their attorney, and the Chief of Police to try to explain his actions. At that meeting, which NE#1 did not have to go to and many officers would not have attended, he expressed that he was sorry for what the Subject experienced. He further told the Subject that, to the extent the Subject was afraid to go to the library, that he would go with him. In this respect, NE#1 did everything and more that the Department expects of its officers.

The issues here go well beyond the conduct of the Named Employees. This case touches on a systemic problem – the increasing use of “swatting” calls. It also raises to the forefront the issue that officers are, at times, being used to unintentionally further the systemic racism of 911 callers. SPD is not alone in confronting these problems, as this has affected police departments nationwide. OPA recommends that the Department research potential solutions to prevent officers from acting on such calls in the future and, as such, issues the below Management Action Recommendation.

- **Management Action Recommendation:** OPA requests that the Department research national best practices in dealing with “swatting” calls and determine whether there are any mechanisms being used by other Departments to weed out these false reports. If such technology exists, the Department should determine whether it also can be utilized to identify frivolous racially-motivated reports so as to limit the role law enforcement takes in unintentionally furthering systemic racism. OPA further intends to flag this issue for the Office of Inspector General for Public Safety and to ask that the OIG evaluate also taking on this project.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #1 - Allegation #3

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

As discussed above, the officers went to the library in response to a call of a suicidal male who was planning on using a firearm. This, if true, was a serious matter and presented a threat of deadly harm to both the male and other patrons of the library. The officers created a tactical plan and then entered the library. They observed the Subject sitting by the window and made the decision to detain him, which included handcuffing him and patting him down for weapons.

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.*)

At the time they entered the library, the officers believed it possible that there was an armed 17 year old suicidal male therein. Department video established that the Subject was the only male in the library who was not library staff. As



such, the officers decided to temporarily detain him to ensure that he was not the suicidal caller and that he was not armed. This was the case even though it appeared likely that he was not the individual that they were seeking. Notably, the officers were looking for a 17-year-old male. The Subject appeared older and had a full beard.

While the officers believed that the call could be false prior to entering the library and while the Subject did not appear to be a teenager, the officers did not know so definitively. Even with their preemptive doubts, they were required to take the call seriously. Indeed, the consequences for not doing so if the call did turn out to be legitimate could have been catastrophic.

As such, I find that they had a sufficient legal basis to temporarily detain the Subject to determine whether he was the armed caller. They detained the Subject for approximately two minutes and released him as soon as they identified him. While the Subject and his family have the right to be concerned and upset about this case, the officers were stuck between a rock and a hard place. The “swatting” call forced their hand and necessitated the detention of the Subject. The caller, not the officers, is the party that bears responsibility for the infringement on the Subject’s rights and the trauma that he suffered.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against all of the Named Employees.

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

Named Employee #2 - Allegations #1

8.200 - Using Force 1. Use of Force: When Authorized

NE#2 and NE#3 used force on the Complainant when they placed him into handcuffs.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. 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 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

As discussed above, the officers were responding to a possible suicidal and armed male in the library. When they entered the library, they observed the Subject, who was the only male inside who was not library staff. They thus detained the Subject to determine whether he was the caller.

Given the information concerning the handgun, the officers made the decision to handcuff the Subject in order to verify his identity while maintaining safety. I find that this force was reasonable under these circumstances. This was the case even though the officers knew that the Subject was likely not the individual they were seeking.

The force was also necessary under the circumstances. While they were not required to handcuff the Subject, doing so was consistent with their training concerning dealing with individuals who are believed to be possibly armed.



Lastly, the force was proportional. Again, while the officers believed it likely that the Subject was not the caller and while the Subject did not appear to be 17 years old, the risk of harm if the officers were wrong was substantial. The officers did not use undue force when handcuffing the subject and appeared to be mindful of his physical limitations. This included using two sets of handcuffs to ensure that no injury would be caused.

For these reasons, and under the circumstances of this case, I find that the force used was consistent with policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#2 and NE#3. In reaching this finding, I again recognize the damage this incident caused to the Subject. I also note that he sought medical treatment after the incident. I feel terrible for the Subject and his family and I wish him a full recovery.

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

Named Employee #2 - Allegation #2

5.140 - Bias-Free Policing 1. Every Employee is Responsible for Knowing and Complying With This Policy

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained and issue a Management Action Recommendation.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #2 - Allegation #3

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 #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegations #1

8.200 - Using Force 1. Use of Force: When Authorized

For the same reasons as stated above (see Named Employee #2, 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

5.140 - Bias-Free Policing 1. Every Employee is Responsible for Knowing and Complying With This Policy

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained and issue a Management Action Recommendation.

Recommended Finding: **Not Sustained (Management Action)**



Named Employee #3 - Allegation #3

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 #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

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