



## CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 26, 2018

CASE NUMBER: 2018OPA-0648

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Allegation Removed
# 2	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 (Training Referral)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Training Referral)
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 4. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time	Not Sustained (Training Referral)

***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:**

It was alleged that the Named Employee violated several Department policies when he detained the Subject.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #1**

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. I find that the conduct in this case is better addressed by Allegations #2, 3, and 4, below. As such, I recommend that this allegation be removed as it is duplicative.

Recommended Finding: Allegation Removed

**Named Employee #1 - Allegation #2**

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



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Named Employee #1 (NE#1) was driving in his patrol vehicle when he ran the plate of the car in front of him. He received information that the registered owner of the vehicle did not have a driver's license. The vehicle pulled in a driveway, not associated with the registered owner's address, and a male occupant exited. The male – who was later identified as the Subject – began to walk away. NE#1 activated his emergency lights and sirens and instructed the Subject to stop and to return to the vehicle. At that time, NE#1 told the Subject the following: "the reason for this stop is the registered owner of this vehicle doesn't have a driver's license." The Subject replied that he was not the registered owner, who is a woman. NE#1 stated: "I didn't know that before I stopped the car." NE#1 further stated: "But the State of Washington says, if the Department of Licensing notifies us that a registered owner of a vehicle does not have a license, then we can stop that car and verify that the driver of that car has a valid license."

NE#1 determined that the Subject also did not have a valid license. At that time, the Complainant alleged that he had been stopped based on his race and that NE#1 was racially profiling him. NE#1 notified a supervisor of the allegation of biased policing and the supervisor responded to the scene. The supervisor later referred this allegation to OPA and this investigation ensued.

During its intake investigation, OPA determined that the detention of the Subject may have been invalid. As such, OPA added allegations concerning the stop to this case. This question is evaluated below.

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.*)

NE#1 initially asserted that the legal authority for his detention of the Subject stemmed from SMC 11.20.320. This ordinance permits a stop to verify a driver's license only where the officer receives a DOL notification that the license has been revoked or suspended.

At his OPA interview, NE#1 recognized, in hindsight, that the lack of a driver's license did not actually fall under this ordinance. However, he still believed that he had reasonable suspicion to effectuate the stop. He acknowledged, however, that he should have taken additional steps to verify that the Subject was not the registered owner of the vehicle and should not have asserted to the Subject that, at the time of the stop, he had the legal authority to detain him and compel his identification. When asked how he would approach this situation in the future, NE#1 stated the following:

If I was doing this stop all over again, I still think I would make that stop, however, at the point where I felt that it was manifestly evident that [the Subject] was not the registered owner of the vehicle, absent any other reasonable suspicion or probable cause for



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wrongdoing, I would tell [the Subject] that he was free to go and stop the, the contact at that point in time.

When NE#1 detained the Subject, and compelled him to provide his identification, NE#1 technically did so in violation of law. As discussed above, NE#1 recognized this at his OPA interview. That being said, for several reasons and based on the unique circumstances of this case, I believe that a Training Referral is more appropriate than a Sustained finding.

First, NE#1 accepted responsibility for his actions at his OPA interview. He admitted what he did wrong and did not make excuses. Second, in order to reach this conclusion, NE#1 took the initiative to conduct research to determine why he acted in error, which included contacting the City Attorney's Office for guidance. Third, NE#1 told the assigned OPA investigator that other officers in his precinct had similar confusion surrounding this law and that he assisted them in not making the same error that he did in this case. Fourth, from OPA's review of the record, it appears that this was a mistake on the part of NE#1, who is an excellent officer, not misconduct. OPA's expectation, and the true goal of the disciplinary system, is that officers will learn from their mistakes and will not revisit them. This appears to be the result here and, as such, further disciplinary intervention is unnecessary.

For these reasons, I recommend that NE#1 receive the below Training Referral rather than a Sustained finding.

- **Training Referral:** NE#1 should receive retraining and counseling concerning this matter. As NE#1 has already thoroughly and thoughtfully analyzed this case and his errors, any additional follow-up by his chain of command may be unnecessary. Regardless, the chain of command should document what steps it takes and this documentation should be maintained in an appropriate database. The chain of command should also ensure that other officers in the East Precinct understand what occurred in this case and do not engage in such conduct moving forward.

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

**Named Employee #1 - Allegation #3**

***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 6.220-POL-3.) In addition, SPD Policy 6.220-POL-4 requires that officers limit Terry stops to a reasonable amount of time. It instructs that "subjects may only be seized for that period of time necessary to effect the purpose of the stop" and further states that "officers may not extend a detention solely to await the arrival of a supervisor." (SPD Policy 6.220-POL-4.)

As I find that the detention of the Subject was inconsistent with policy, the stop inherently would have exceeded a reasonable scope and time. That being said, and as discussed in the context of Allegation #1, I find that a Training Referral is the appropriate result.

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



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**Named Employee #1 - Allegation #4**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 4. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time***

For the same reasons as set forth in Allegations #2 and 3, above, I recommend that this allegation be Not Sustained – Training Referral.

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