



CLOSED CASE SUMMARY

ISSUED DATE: JULY 17, 2019

CASE NUMBER: 2019OPA-0075

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	6.220 - Voluntary Contacts, Terry Stops & Detentions 7. Under Washington State Law, Traffic Violations Will Not Be Used as a Pretext to Investigate Unrelated Crimes	Not Sustained (Unfounded)
# 2	16.230 - Issuing Tickets and Traffic Contact Reports 3. Officers Document All Traffic Stops	Not Sustained (Training Referral)
# 3	6.120 - Impounding Vehicles TSK-2-Impounding a Vehicle for DUI Arrests	Not Sustained (Training Referral)
# 4	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	6.220 - Voluntary Contacts, Terry Stops & Detentions 7. Under Washington State Law, Traffic Violations Will Not Be Used as a Pretext to Investigate Unrelated Crimes	Not Sustained (Unfounded)
# 2	16.230 - Issuing Tickets and Traffic Contact Reports 3. Officers Document All Traffic Stops	Not Sustained (Unfounded)
# 3	6.120 - Impounding Vehicles TSK-2-Impounding a Vehicle for DUI Arrests	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 he was subjected to a pretext stop by the Named Employees and that Named Employee #1 was unprofessional towards him. It was further alleged that the Named Employees failed to complete a Traffic Contact Report for the stop, as well as that they did not comply with the notification requirements for the impoundment of a vehicle during a DUI incident.

SUMMARY OF INVESTIGATION:

The Complainant went to the West Precinct and complained to a Sergeant concerning a stop of his vehicle that had been performed by the Named Employees. The Complainant contended that Named Employee #1 (NE#1) told him that the stop was based on the fact that he did not have a license plate; however, the Complainant told the Sergeant



that he did have a temporary paper plate. The Complainant reported that the Named Employees then stated that they smelled marijuana, arrested him for DUI, and impounded his vehicle. The Complainant contended that the Named Employees conducted a pretext stop of his vehicle in order to investigate the marijuana smell, not the absence of a license. He further asserted that the officers abused their authority and embarrassed him when they required him to engage in standardized field sobriety tests (SFSTs) on a public street. The Complainant stated that he was not told where he was when he was released from the hospital or where his car had been towed to. The Sergeant referred this matter to OPA and this investigation ensued.

As part of its investigation, OPA interviewed the Complainant. The Complainant reiterated the same allegations he made to the Sergeant. He said he obtained a temporary plate in California and that, when he was stopped, it was less than 30 days after the temporary plate had been procured. The Complainant denied that he was smoking marijuana on the date in question. He stated, however, that people had been smoking marijuana in his vehicle approximately 30 minutes before he was stopped. He did not recall being given any paperwork from the officers concerning this incident and stated that he did not know where his vehicle was. He felt it was not right for the officers to simply leave him at the hospital and not tell him where to go and how to get his car back.

OPA reviewed the CAD Call Report and the General Offense Report. These documents indicated that the Named Employees stopped the Complainant's vehicle because it did not have a license plate or tabs. NE#1 reported that, when he approached the car, he "observed what appeared to be a cloud of smoke come from the vehicle" and that he recognized the "odor of the smoke as being the distinct odor of burnt marijuana." NE#1 reported that he asked the Complainant whether he was smoking marijuana and the Complainant admitted smoking a marijuana cigarette approximately 30 minutes prior. NE#1 stated that he observed a burnt marijuana cigarette in one of the front seat cup holders. NE#1 reported that, based on his observations of the Complainant's physical condition (red and glassy eyes) and the Complainant's inability to respond to NE#1's questions while looking for his registration, he believed that the Complainant was impaired. NE#1 documented that the Complainant consented to SFSTs and that the Complainant failed those tests. NE#1 then placed the Complainant under arrest for DUI and, pursuant to Hailey's Law, impounded the Complainant's vehicle. NE#1 reported that he obtained a warrant for a blood draw and the Complainant was transported to the hospital for the blood to be taken. NE#1 documented that, while at the hospital, the Complainant used expletives towards NE#1 and made statements concerning NE#1 that both NE#1 and Named Employee #2 (NE#2) believed to be threatening. Lastly, NE#1 reported that he provided the Complainant with a return of service, receipt of property taken, and a business card with the incident number on it.

OPA also reviewed both the In-Car Video (ICV) and the Body Worn Video (BWV) for this incident. The ICV reflected the initial stop of the Complainant's vehicle. No license plate was on the vehicle, but there was a trip permit in the top right corner of the back windshield. The BWV showed the officers' approach of the vehicle. NE#1's BWV depicted his initial contact with the Complainant and their preliminary discussion. OPA could not conclusively identify a cloud of smoke on the video; however, the video showed that NE#1 mentioned the smell of marijuana virtually immediately after contacting the Complainant and that the Complainant admitted to smoking marijuana 40 minutes earlier. NE#1 then explored the trip permit and the Complainant stated that it was a one trip permit that he obtained to drive from Michigan to California. NE#1 continued to interact with the Complainant and requested that he complete SFSTs. The Complainant did so. After the conclusion of the SFSTs, the Complainant was informed that he was going to be arrested for DUI. The Complainant asked that his vehicle not be impounded but NE#1 told him that it was required. The Complainant then asked where his vehicle was going to be taken to and he was told that there were two impound lots, one in north Seattle and one in south Seattle. The officers told the Complainant that the vehicle was being



impounded by Lincoln Towing. The video also depicted the interactions between the officers and the Complainant at the hospital. As NE#1 reported, the Complainant used profanity towards him, including calling him a “fucking coward.” He also referred to NE#1 as “little dude.” Further, at the time his blood was drawn, the Complainant’s demeanor changed, and he appeared to grow angry towards NE#1. After the blood was drawn, the Complainant said to NE#1: “I think I could fuck you up.” The officers exited the hospital with the Complainant and informed him that he was free to leave, returned his property to him, and told him that his license would be suspended due to his DUI arrest. When the officers were leaving the scene, the video captured the Complainant knocking on their car window in an apparent attempt to ask them a question. The officers did not roll down their window and drove away.

As part of its investigation, OPA interviewed both of the Named Employees. NE#1 reiterated that he initially stopped the vehicle for the lack of a license plate, but that he then smelled marijuana when he contacted the Complainant. NE#1 stated that he had received training on investigating DUIs and that he had processed between 50-70 DUIs during his career. NE#1 acknowledged that, had the Complainant’s trip permit been valid, it would have been acceptable for him not to have license plates. NE#1 stated that he did not ultimately determine the validity of the trip permit because he identified that the Complainant was potentially DUI and his investigation shifted. NE#1 did not end the contact concerning the trip permit and initiate a new investigation into the DUI, instead initially investigating them simultaneously and then abandoning the trip permit inquiry. NE#1 denied that the stop was based on pretext. NE#1 told OPA that he eventually issued a verbal warning for the trip permit. He acknowledged that he did not generate a Traffic Contact Report (TCR) documenting the warning. NE#1 recognized that the failure to complete a TCR was in technical violation of policy. NE#1 stated that he completed the impound tow form for the Complainant’s vehicle. NE#1 was unsure if the Complainant ever received his copy of the impound tow form and confirmed that he did not provide the Complainant with all of the information identified in SPD Policy 6.120-TSK-2. When asked why he did not stop when the Complainant knocked on the patrol vehicle’s window, NE#1 explained that he viewed the Complainant as acting in a physically aggressive manner. NE#1 additionally stated that, given the Complainant’s profanities and pejorative statements towards him at the hospital, he did not think it was a good idea to further interact with the Complainant. NE#1 reasoned that the driving away from the scene without rolling down the patrol vehicle’s window constituted de-escalation. NE#1 stated that he strived to be professional with the Complainant. He acknowledged, however, that he grew frustrated with the Complainant.

Named Employee #2 (NE#2) said that he was NE#1’s partner on the date in question and that NE#1 was the lead officer during the traffic stop. NE#2 stated that, at first, the stop was based on the lack of a license plate, but that it transitioned to a DUI investigation when NE#1 smelled marijuana. NE#2 stated that he did not know whether the trip permit was valid or not. He said that he deferred to NE#1 on this issue. NE#2 told OPA that he did not complete any paperwork for this incident and that this was NE#1’s responsibility as the primary officer. NE#2, like NE#1, denied that the stop was based on pretext. When asked about NE#1’s professionalism during this incident, NE#2 stated that he believed that NE#1 acted in compliance with policy. NE#2 noted that the Complainant’s demeanor changed at the hospital and he became aggressive towards NE#1. NE#2 believed that it was appropriate to drive away from the hospital and not stop when the Complainant knocked on their patrol vehicle’s window. NE#2 stated that, had they stopped, it could have further escalated the situation.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

6.220 - Voluntary Contacts, Terry Stops & Detentions 7. Under Washington State Law, Traffic Violations Will Not Be Used as a Pretext to Investigate Unrelated Crimes

SPD Policy 6.220-POL-7 defines as pretext stop as follows: “stopping a suspect for an infraction to investigate criminal activity for which the officer has neither reasonable suspicion nor probable cause.” While the United States Supreme Court held in *Whren v. United States*, 507 U.S. 806 (1996), that the subjective intent of an officer is not a factor in whether a stop is supported by reasonable suspicion, Washington State law and SPD policy are more restrictive. Specifically, SPD Policy 6.220-POL-7 states the following: “Under Washington State law, traffic violations will not be used as a pretext to investigate unrelated crimes.”

The Complainant alleged that the Named Employees used his trip permit as a pretext to stop him to investigate possible marijuana use. He contended that this violated policy and the law.

Based on OPA’s investigation, there is insufficient evidence in the record establishing that this was a pretext stop. Indeed, the information available to OPA indicates the opposite. From a review of the video, it appears to OPA that the officers’ intent was to stop the Complainant for the lack of a license plate. Supporting this determination is the fact that the officers made no mention of the marijuana or their intent to investigate that possible crime until after they approached the vehicle and the Complainant rolled down his window. Only at that point did NE#1 report that he smelled marijuana and begin to question the Complainant about whether he used marijuana that evening. The Complainant admitted that he had done so just 40 minutes earlier, while in his vehicle, and had a burnt marijuana cigarette in his cup holder. Notably, the Complainant denied this during his OPA interview, which causes OPA to question his credibility.

As such, the officers had a lawful basis to investigate why the Complainant had no license plates and, once NE#1 smelled marijuana coming from the vehicle, whether he was DUI. OPA accordingly finds that the stop of the Complainant’s vehicle was appropriate and was not based on pretext. For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#2.

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

Named Employee #1 – Allegation #2

16.230 – Issuing Tickets and Traffic Contact Reports 3. Officers Document All Traffic Stops

SPD Policy 16.230-POL-3 requires that a warning issued as a result of a traffic stop be documented in a TCR.

Here, NE#1 admittedly did not complete a TCR after giving a warning to the Complainant concerning the lack of a license plate. When he failed to do so, he acted contrary to policy. However, I find that this was an oversight and not intentional misconduct. As such, instead of a Sustained finding, I recommend that NE#1 receive the below Training Referral.



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- **Training Referral:** NE#1 should be retrained concerning SPD Policy 16.230-POL-3 and, specifically, regarding the requirement that he generate a TCR when issuing a warning as a result of a traffic stop. NE#1 should be counseled to more closely comply with this policy moving forward. This training and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #3

6.120 - Impounding Vehicles TSK-2-Impounding a Vehicle for DUI Arrests

SPD Policy 6.120-TSK-2 provides guidance for the impounding of a vehicle as part of a DUI arrest. Relevant to this case, this policy requires that the subject be given a copy of the impound tow form and that the subject be advised “that only another registered owner or legal owner of the vehicle may redeem the vehicle within twelve hours.” (SPD Policy 6.120-TSK-2.)

NE#1 acknowledged that he did not complete either of these steps here and, when he failed to do so, that he acted contrary to policy. However, and as with Allegation #2, I find that this was a mistake not intentional misconduct and I recommend that NE#1 receive the below Training Referral.

- **Training Referral:** NE#1 should be retrained on the elements of SPD Policy 6.120-TSK-2. NE#1 should be counseled to more closely comply with this policy moving forward. This training and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegations #4

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

The Complainant alleged that NE#1 was unprofessional towards him during this incident. The Complainant specifically pointed towards NE#1 having the Complainant perform SFSTs in a public location and that NE#1 failed to answer his questions and instead drove away.

SPD Policy 5.001-POL-10 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-10.) 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.*)

At his OPA interview, NE#1 explained that he left the scene without answering the Complainant’s questions because he felt that the Complainant’s behavior was escalating and he wanted to avoid a possible conflict. NE#1 pointed to the Complainant’s statements and actions while in the hospital. NE#1’s contentions were supported by NE#2, who similarly stated that the Complainant acted aggressively towards NE#1 while in the hospital. NE#2 viewed driving



away from the scene without engaging with the Complainant as serving to de-escalate the situation or, stated differently, as serving to ensure that it did not further escalate.

Based on OPA's review of the video, I concur that the Complainant acted increasingly aggressively towards NE#1. He used profanity towards him, repeatedly glared at him, contemplated aloud whether he could overcome NE#1 in a physical fight, and made statements that both NE#1 and NE#2 construed to be threatening. Given this, I do not believe that it was unprofessional for NE#1 to have driven away from the scene without stopping to answer the Complainant's questions. I agree with both officers that, when they did so, it ensured that the situation did not further escalate.

Moreover, with regard to the Complainant's allegations concerning the SFSTs, those tests were conducted because the officers reasonably believed that the Complainant was DUI. While OPA understands that it may have been embarrassing for the Complainant for those tests to have been administered in public, that was the only option available to the officers and was entirely appropriate and consistent with the officers' training. As such, this was not unprofessional conduct on the part of NE#1.

For the above reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegations #1

6.220 - Voluntary Contacts, Terry Stops & Detentions 7. Under Washington State Law, Traffic Violations Will Not Be Used as a Pretext to Investigate Unrelated Crimes

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 #2 - Allegation #2

16.230 - Issuing Tickets and Traffic Contact Reports 3. Officers Document All Traffic Stops

NE#1, not NE#2, was responsible for the documentation of this incident given his role as the primary officer. As such, NE#2 was not required to complete the TCR for this incident and does not bear any culpability for the failure to do so. Moreover, NE#1, not NE#2, was obligated to provide the Complainant with a copy of the impound tow report and to comply with the requirements of SPD Policy 6.120-TSK-2. Again, NE#2 does not bear responsibility for the fact that this policy was not complied with completely in this case.

For the above reasons, I recommend that both Allegation #2 and Allegation #3 be Not Sustained – Unfounded as against NE#2.

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



Named Employee #2 - Allegation #3

6.120 - Impounding Vehicles TSK-2-Impounding a Vehicle for DUI Arrests

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

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