



## CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 6, 2019

CASE NUMBER: 2019OPA-0397

### 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	6.220 – Voluntary Contacts, Terry Stops & Detentions POL – 2 (1) Terry Stops are Seizures Based Upon Reasonable Suspicion	Not Sustained (Lawful and Proper)
# 3	6.220 – Voluntary Contacts, Terry Stops & Detentions POL – 3 (2) Officers Can Detain Subjects to Identify Them	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)
# 2	6.220 – Voluntary Contacts, Terry Stops & Detentions POL – 2 (1) Terry Stops are Seizures Based Upon Reasonable Suspicion	Not Sustained (Lawful and Proper)
# 3	6.220 – Voluntary Contacts, Terry Stops & Detentions POL – 3 (2) Officers Can Detain Subjects to Identify Them	Not Sustained (Lawful and Proper)

***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 were unprofessional during the stop of the Subject and questioned him after he asked to speak with his parents. The Complainant also alleged that the stop was improper.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegations #1**

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

The Complainant alleged that the Named Employees stopped the Subject, a juvenile male, for jaywalking. She said that the stop may not have been supported by reasonable suspicion. She also said that, during that stop, the Named Employees asked him “unconstitutional” questions. In addition, the Complainant believed that other questions concerning what the Subject was drinking and whether he was intoxicated were “harassing, badgering, and improper.” Lastly, the Complainant alleged that the Named Employees continued to ask the Subject questions after he asked to speak with his parents and that this was also improper.



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Based on the Complainant's allegations, this investigation ensued. OPA conducted an interview of the Complainant. OPA also reviewed the Body Worn Video (BWV) and In-Car Video (ICV) for this incident and the relevant paperwork.

The ICV for this incident confirmed that the Subject walked across the street and against the light. The video indicated that he walked directly in front of oncoming traffic and placed himself in potentially danger. The Subject then proceeded to a bus stop, where he sat down. The BWV captured the Named Employees' contact with the Subject and their subsequent interaction. The Named Employees approached the Subject at the bus stop. Named Employee #2 (NE#2) informed the subject that the officers were audio and video recording. He told the Subject that the officers had viewed him almost get hit by a car when he walked across the street against the light. NE#2 asked the Subject, who holding a non-transparent sports drink bottle, what he was drinking. NE#2 further enquired about the bottle, itself, and whether there was alcohol inside of it. NE#2 requested the Subject's identification and the Subject said that he was underage and did not have identification. NE#2 then asked for the Subject's name and the Subject replied that he did not have to provide his name to NE#2. The Subject asked whether he could call his parents and said that he was 17 years old. Neither officer responded to the Subject's request to call his parents. The Subject then inquired of the Named Employees: "Why are you doing this to me." NE#2 responded that it was because the Subject almost got hit by a car.

Named Employee #1 (NE#1) then informed the Subject of the crime of pedestrian interference, which the Subject had been stopped for. NE#1 said to the Subject that the officers' initial intent was to educate him on the law and to send him on his way. However, NE#1 noted to the Subject that when: "you start copping an attitude about it, it kind of makes us get a little bit of an attitude." NE#1 said that they were going to run the Subject's warrant and "that's it." NE#1 commented that unless the Subject had "a warrant out of Virginia for murdering somebody," he would be released. The Subject then provided his name and NE#2 wrote it down.

The Subject discussed that he was going to be late for school. He asked the officers if they would give him a ride and NE#1 said that they would if he wanted one. The officers continued to speak with the Subject while waiting for dispatch to update them on whether he had any open warrants. The Subject asked NE#2 why he asked him what he was drinking and whether he asked that of everyone he stopped. NE#2 explained that he did so because he did not know what was in the bottle, because of the manner in which the Subject walked across the street, and due to his perception that the Subject's eyes were red. NE#1 said that individuals in that area were frequently intoxicated and the Subject asserted that those individuals were not dressed like him.

Dispatch contacted the officers and informed them that the Subject had no open warrants. NE#2 gave the Subject a business card and the case number. The Subject told the officers that he felt that he had been mistreated. The interaction ended and the officers left the scene.

OPA further interviewed NE#1. He explained that, as NE#2's Field Training Officer, it was his responsibility to monitor NE#2's handling of the detention. NE#1 recalled that the Subject asked if he could call his parents. NE#1 told OPA that did not tell the Subject that he could not call his parents and that, had the Subject tried to do so, he would not have stopped him. He further told OPA that he did not know of any caselaw or policy provision that prevented him from continuing his investigation into the infraction, including asking questions of the Subject. With regard to his comment about the Subject "copping an attitude," NE#1 said that he was trying to convince the Subject to de-escalate a little. NE#1 noted that he made this statement, in part, because he felt that the situation had been "elevating" during NE#2's conversation with the subject. NE#1 believed that his statements were effective, as the



Subject calmed down and provided his name. He similarly stated that his statement concerning a “warrant out of Virginia for murdering somebody” was purposed to explain that the officers were not concerned about minor criminal warrants. He stated that it was intentional hyperbole that was not inconsistent with policy. NE#1 asserted that he was professional during his interaction with the Subject and handled it like any other detention.

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.)

Based on OPA’s review of the evidence, including the ICV and BWV, there is insufficient evidence to establish that the Named Employees were unprofessional during their interaction with the Subject. First, OPA did not find that any of the questions asked by the Named Employees were “unconstitutional,” as the Complainant contended. As discussed more fully below (*see* Allegation #3), the officers were permitted to request the Subject’s name and date of birth in order to issue him a citation. Second, OPA does not believe that the questions concerning what was in the bottle and whether it was alcohol were unprofessional. The ICV depicted the Subject walking directly into traffic and then moving slowly across both lanes. When he did so, he placed himself in significant danger with apparently no concern. As such, OPA does not find it unreasonable that the officers questioned whether the Subject was possibly impaired and explored this issue. Third, OPA does not believe that the video supports that the officers made statements that were “harassing, badgering, and improper.” With regard to NE#1’s statements – that were discussed at his OPA interview – he explained that they were purposed to de-escalate the situation, to gain the Subject’s compliance, and to simply explain what was occurring. He stated that they worked and, from a review the video, it appeared that the situation became calmer when NE#1 began the primary communications with the Subject. Fourth, and last, OPA knows of no caselaw or policy that would have required the officers to stop the process of identifying the Subject when he mentioned that he wanted to call his parents. Moreover, neither officer prevented him from making the phone call, even though he ultimately did not do so.

For the above reasons, OPA finds that the Named Employees did not act contrary to the Department’s professionalism policy during this incident. As such, OPA recommends that this allegation be Not Sustained – Unfounded as against both officers.

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

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

##### ***6.220 - Voluntary Contacts, Terry Stops & Detentions POL – 2 (1) Terry Stops are Seizures Based Upon 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



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“[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 ICV clearly indicated that the Subject committed a criminal offense when he walked across the street against the light. It also showed that he stepped directly in front of a car that had a green light and was making a turn, as well as walked across the street into a lane of oncoming traffic before reaching the bus stop.

Based on this, the officers had reasonable suspicion to detain the Complainant to investigate pedestrian interference and to determine why he engaged in such conduct. Moreover, at that time, they had probable cause to believe that the Subject had engaged in pedestrian interference and could have issued him a citation.

For the above reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

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

***6.220 - Voluntary Contacts, Terry Stops & Detentions POL – 3(2) Officers Can Detain Subjects to Identify Them***

SPD Policy 6.220-POL-3(2) states that officers can detain subjects in order to identify them to issue a notice of infraction. The policy further explains that: “Under SMC 12A.02.140 and RCW 7.80.060, when an officer has probable cause to issue a Notice of Infraction for any City ordinance violation, the officer may detain the subject for a reasonable period of time to identify the subject.” (SPD Policy 6.220-POL-3(2).)

When the officers detained the Subject for pedestrian interference, they had the lawful authority to issue him a citation. As such, they were also permitted to seek and obtain his name and date of birth in order to cite him.

In addition, the officers were permitted to run the Subject for open warrants during the stop and that did not cause the detention to exceed a reasonable scope. *See State v. Williams*, 50 Wn. App. 696, 700, 750 P.2d 278 (1988).

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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), OPA recommends that this allegation be Not Sustained – Unfounded.

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



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

***6.220 - Voluntary Contacts, Terry Stops & Detentions POL – 2 (1) Terry Stops are Seizures Based Upon Reasonable Suspicion***

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

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

**Named Employee #2 - Allegation #3**

***6.220 - Voluntary Contacts, Terry Stops & Detentions POL – 3 (2) Officers Can Detain Subjects to Identify Them***

For the same reasons as stated above (see Named Employee #1, Allegation #3), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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