



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 6, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0462

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.010 - Arrests 6.010-POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained - Unfounded
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220 - POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion	Not Sustained - Lawful and Proper
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220 - POL – 2 Conducting a Terry Stop 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time	Not Sustained - Training Referral
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220 - POL – 2 Conducting a Terry Stop 5. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop	Not Sustained - Training Referral
# 5	15.270 - Trespass Warning Program 15.270-PRO-3 Issuing a Trespass Warning Per the Trespass Warning Program	Allegation Removed
# 6	16.090 - In-Car and Body-Worn Video 16.090-POL 1 Recording with ICV and BWV 5. Employees Recording Police Activity a. Notification of Recording	Not Sustained - Unfounded

Named Employee #2

Allegation(s):		Director's Findings
# 1	6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220 - POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion	Not Sustained - Lawful and Proper
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220 - POL – 2 Conducting a Terry Stop 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time	Not Sustained - Unfounded
# 3	16.090 - In-Car and Body-Worn Video 16.090-POL 1 Recording with ICV and BWV 5. Employees Recording Police Activity a. Notification of Recording	Not Sustained - Unfounded



Named Employee #3

Allegation(s):		Director's Findings
# 1	6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220 - POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion	Not Sustained - Lawful and Proper
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220 - POL – 2 Conducting a Terry Stop 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time	Not Sustained - Unfounded
# 3	16.090 - In-Car and Body-Worn Video 16.090-POL 1 Recording with ICV and BWV 5. Employees Recording Police Activity a. Notification of Recording	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 Employees may have violated various policies related to conducting a *Terry* stop and failed to provide a notification that they were recording with their Body Worn Video (BWV). It was also alleged that Named Employee #3 (NE#1) may have arrested an individual (Subject) without probable cause, improperly required the Subject to identify himself, and used improper procedure related to the Trespass Warning Program (TWP).

ADMINISTRATIVE NOTE:

This is an abbreviated Director's Certification Memorandum. Due to present OPA staff limitations, an expanded Director's Certification Memorandum is forthcoming.

ANALYSIS AND CONCLUSIONS:

Following an investigation that the Office of Inspector General certified as thorough, timely, and objective, OPA's analysis is that the preponderance of the evidence does not establish that any policy violations occurred or rose to the level of misconduct.

Named Employee #1 - Allegation #1

6.010 - Arrests 6.010-POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy. Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient in themselves to support a reasonable belief that an offense has been or is being committed.

OPA classified this allegation against NE#1 on the theory that the Subject "was arrested in part for criminal trespass" and that there was insufficient evidence to establish probable cause for criminal trespass. On further review, this allegation is unfounded. OPA finds that, more likely than not, NE#1 intended to trespass the Subject from the



Starbucks location and not effect a custodial arrest. After NE#1 received the Subject's name, she discovered that the Subject had a felony warrant for his arrest. The NE#1 arrested the Subject after that felony warrant was verified. To the extent this allegation is premised on a theory that NE#1 exceeded her authority during a *Terry* stop related to the criminal trespass—but did not have probable cause to effect an arrest on that charge—it is duplicative of allegations below related to the propriety of the *Terry* stop.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 - Allegation #2

6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220 - POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion

SPD Policy 6.220-POL-2(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-1.) 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, Named Employee #2 (NE#2), and Named Employee #3 (NE#3) stopped the Subject based on reasonable suspicion. Among other things, the 911 caller provided a description of a male and reported that the male was "making inappropriate gestures at employees from outside in front and refusing to move along, appears high[, and] has been posturing/acting like he is fighting someone that is not there." The 911 caller also reported that the male was "screaming [and] yelling" at them, demanding fentanyl, saying that he was on fentanyl, and was holding scissors or garden shears making "stabbing motions" while in front of the Starbucks on sidewalk. After arriving, the Named Employees encountered the Subject who matched the physical description provided by the 911 caller, was acting in a manner consistent with the 911 caller's report, and was still physically on scene. Moreover, after being contacted by NE#2 and NE#3, the Subject made statements appearing to acknowledge that he possessed garden shears and had an interaction with people at Starbucks. These facts were more than sufficient to establish reasonable suspicion to investigate the Subject for, at the very least, trespass, harassment, the unlawful carrying or handling of a cutting instrument, and disorderly conduct.

NE#1 subjectively believed she had probable cause to arrest the Subject for criminal trespass after she spoke to the 911 caller, a Starbucks supervisor. However, it is unclear whether NE#1's reasonable suspicion ever became probable cause for criminal trespass. Notably, NE#1 failed to clarify several issues that could have established probable cause here: (1) whether the 911 caller could identify the Subject; (2) whether the Subject ever entered the Starbucks or areas under its control; (3) what areas Starbucks had legal authority to exclude the public from, such as the doorway, sidewalk, parking lot, or drive through; and (4) when the Subject was told to leave the premises and whether he either failed to do so or re-entered the premises following those warnings. At her OPA interview, NE#1 stated that her



probable cause was based on the Subjects presence within the doorway of the Starbucks. Logically, the doorway of an establishment would typically be considered part of the establishment, but NE#1 did not clarify this issue.

NE#1's belief that she had probable cause based on the incomplete information she received from the 911 caller led her to make assumptions about the scope of her authority, discussed below at Named Employee #1, Allegations #2 and #3. However, NE#1's initial detention of the Subject was supported by reasonable suspicion.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #1 - Allegation #3

6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220 - POL – 2 Conducting a Terry Stop 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time

SPD Policy 6.220-POL-2(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.”

OPA finds that the purpose of this stop was to determine whether the Subject committed any criminal offenses, such as trespass or harassment, and then issue him either a citation or a trespass warning. Issuing the Subject a citation or trespass warning would have required the Subject's name. After arriving on scene, NE#1 obtained the Subject's name within about 15 minutes and, shortly thereafter, discovered that the Subject had an outstanding felony warrant. At this point, NE#1 had probable cause to arrest the Subject and her stop was no longer limited under *Terry*. Moreover, the approximately 20 minutes that the subject was detained before the warrant was discovered was not unreasonable based on the original purpose of the stop.

However, a stop pursuant to *Terry* may only last as long as an officer needs to establish facts for probable cause or dispel their reasonable suspicion. In this case, whether the Subject trespassed at the Starbucks was foundational. As discussed above, NE#1 did not use this time to clarify every element of criminal trespass that was necessary for her to establish probable cause. Instead, she focused too narrowly—if understandably—only on certain alleged bizarre, suspicious, or concerning behaviors of the Subject. Given NE#1's efforts to engage with both the 911 caller and the Subject, OPA finds that this constituted a possible, but not willful, policy violation not amounting to misconduct.

Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1, review SPD Policies 6.220-POL-2 and 6.220-POL-3 and RCW 12A.08.040 with NE#1, and provide any further retraining and counseling that it deems appropriate. NE#1's chain of command should review the portions of BWV showing NE#1's interactions with the 911 caller and discuss additional questions of efforts that would have been appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**



Named Employee #1 - Allegation #4

6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220 - POL – 2 Conducting a Terry Stop 5. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop

SPD Policy 6.220-POL-2(5) prohibits officers from requiring that a subject identify him or herself during a Terry stop. SPD Policy 6.220-POL-2(5). Officers may request that a person identify him or herself but may not require a subject to comply with that request. *Id.* An exception permits officers to compel identification when issuing a notice of infraction or as consistent with state and local law. See SPD Policy 6.220-POL-3.

As discussed above, NE#1's belief that she had probable cause to arrest the Subject for criminal trespass led her to assume that she could require the Subject to identify himself. Moreover, even if her detention of the Subject under *Terry* was supported by reasonable suspicion, she did not have cause to compel identification because of her incomplete investigation.

Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1, review SPD Policies 6.220-POL-2 and 6.220-POL-3 and RCW 12A.08.040 with NE#1, and provide any further retraining and counseling that it deems appropriate. NE#1's chain of command should review the portions of BWV showing NE#1's interactions with the 911 caller and discuss additional questions of efforts that would have been appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

Named Employee #1 - Allegation #5

15.270 - Trespass Warning Program 15.270-PRO-3 Issuing a Trespass Warning Per the Trespass Warning Program

SPD Procedure 15.270-PRO-3 sets forth the process for officers issuing a trespass warning per the Trespass Warning Program (TWP). In general, the officer observed a subject violating conditions of entry on a property participating in the TWP, contacts the subject to explain the prohibited behavior and point out posted signs, complete a Trespass Warning form, gives the warning to the subject, and submits the warning to a sergeant to review. (*Id.*).

NE#1 told OPA that she did not investigate this incident under SPD's TWP because the 911 caller, a Starbucks supervisor, was present on scene. NE#1's BWV supported this explanation and there was no obligation for NE#1 review this incident under the TWP. See 15.270-POL-1 ("The Trespass Warning Program does not replace law.").

Accordingly, OPA is removing this allegation.

Recommended Finding: **Allegation Removed**



Named Employee #1 - Allegation #6

16.090 - In-Car and Body-Worn Video 16.090-POL 1 Recording with ICV and BWV 5. Employees Recording Police Activity a. Notification of Recording

SPD Policy 16.090-POL-1(5)(a) requires that employees “notify persons that they are being recorded as soon as practical, and the notification will be on the recording.”

NE#1 did not immediately inform the Subject that she was audio and video recording their interaction. When NE#1 contacted the Subject, the Subject was already engaged with NE#2 and NE#3. A short time after contacting the Subject, the Subject noted both that NE#1’s BWV was activated and that NE#1 had not informed him of this fact.

In her OPA interview, NE#1 explained that she entered into an in-progress conversation between the Subject, NE#2, and NE#3 and that she did not find it “practical” to interrupt their conversation with the warning as it would have been “disruptive” and she did not want to “escalate” the Subject. OPA finds that this explanation is grounded in common sense. Moreover, NE#1 had earlier informed the 911 caller that she was being recorded and, when she contacted the Subject, NE#2 and NE#3 were already present and recording. It would have been a reasonable assumption to make that these officers had already informed the Subject he was being recorded. Finally, there was only a short period of time between NE#1 contacting the Subject and the Subject noting that NE#1 was recording.

Accordingly, in the context present here, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 - Allegation #1

6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220 - POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion

For the reasons set forth above at 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 #2

6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220 - POL – 2 Conducting a Terry Stop 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time

As discussed above at Named Employee #1, Allegation #3, the overall length of this *Terry* stop was reasonable. To the extent that the length of this stop extended beyond the scope allowed, it was due to NE#1—the primary officer—not adequately tailoring her investigation to all the relevant facts at issue. NE#2, who was outside during NE#1’s interaction with the 911 caller and who relied on NE#1 as the primary officer, would not have had any reason to presume that this particular *Terry* stop had extended for an unreasonable amount of time.

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

Recommended Finding: **Not Sustained - Unfounded**



Named Employee #2 - Allegation #3

16.090 - In-Car and Body-Worn Video 16.090-POL 1 Recording with ICV and BWV 5. Employees Recording Police Activity a. Notification of Recording

In his OPA interview, NE#2 acknowledged that he did not advise the Subject that he was recording. NE#2 notes that officers were already speaking to the Subject when he arrived and it was a few minutes before he spoke to the Subject himself. Accordingly, NE#2 noted that he assumed the Subject had already been notified or was aware that officers were recording.

BWV showed that NE#3 contacted the Subject shortly before NE#2. Neither officer notified the Subject that they were recording. As NE#2 arrived on scene after both NE#1 and NE#3, and because NE#3 contacted the Subject first, it would not have been unreasonable for NE#2 to assume that the Subject already had been told he was being recorded. Although it would have been best practice for NE#2 to provide his own advisement on this point to the Subject, under these facts, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #3 - Allegation #1

6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220 - POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion

For the reasons set forth above at 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 #3 - Allegation #2

6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220 - POL – 2 Conducting a Terry Stop 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time

As discussed above at Named Employee #1, Allegation #3, the overall length of this *Terry* stop was reasonable. To the extent that the length of this stop extended beyond the scope allowed, it was due to NE#1—the primary officer—not adequately tailoring her investigation to all the relevant facts at issue. NE#3, who was outside during NE#1's interaction with the 911 caller and who relied on NE#1 as the primary officer, would not have had any reason to presume that this particular *Terry* stop had extended for an unreasonable amount of time.

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

Recommended Finding: **Not Sustained - Unfounded**



Named Employee #3 - Allegation #3

16.090 - In-Car and Body-Worn Video 16.090-POL 1 Recording with ICV and BWV 5. Employees Recording Police Activity a. Notification of Recording

NE#3 was the first officer on scene and the first officer to contact Subject. In his OPA interview, NE#3 acknowledged that he did not advise the Subject that he was recording. NE#3 also acknowledged that he was aware of the requirement, but did not find it “prudent” to tell the Subject. NE#3 stated this was because the Subject was walking towards him, he had a lot of things on his mind, he was by himself, and he was dealing with a reportedly armed person who could be in crisis. Accordingly, NE#3 stated his concern was on de-escalation and less focused on notification of the recording.

OPA recognizes that NE#3 is in a specialty unit that may not have the same level of muscle memory with respect to given BWV notifications. OPA also appreciates the common sense, safety-focused approach NE#3 adopted. However, he was not relieved of his obligation to inform the Subject of the recording. This was especially true after NE#2—and, later, NE#1—arrived as backup. NE#3 then engaged the Subject in conversation for about three minutes before the Subject noted that NE#1 had her BWV on and had not informed him of that fact.

In light of NE#3’s assignment and well-reasoned—if out of policy—justification for not advising the Subject that he was recording, OPA finds that his failure to do so was a possible, but not willful, violation of policy not rising to misconduct. Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1’s chain of command should discuss OPA’s findings with NE#1, review SPD Policy 16.090-POL-1(5)(a) with NE#1, and provide any further retraining and counseling that it deems appropriate. NE#1’s chain of command should review his BWV from this incident with him and provide guidance on when or how he should have notified the Subject that he was recording. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**