



OFFICE OF POLICE ACCOUNTABILITY

Closed Case Summary

Complaint Number 2017OPA-0215

Issued Date: 09/19/2017

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 6.220 (1) Voluntary Contacts, Terry Stops & Detentions: Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful (Policy that was issued August 1, 2015)
OPA Finding	Sustained
Allegation #2	<u>Seattle Police Department Manual</u> 6.220 (3) Voluntary Contacts, Terry Stops & Detentions: During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope (Policy that was issued August 1, 2015)
OPA Finding	Sustained
Allegation #3	<u>Seattle Police Department Manual</u> 6.220 (6) Voluntary Contacts, Terry Stops & Detentions: Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop (Policy that was issued August 1, 2015)
OPA Finding	Not Sustained (Training Referral)
Allegation #4	<u>Seattle Police Department Manual</u> 5.001 (5) Standards and Duties: Employees May Use Discretion (Policy that was issued April 1, 2015)
OPA Finding	Sustained
Final Discipline	Written Reprimand

INCIDENT SYNOPSIS

The Named Employee initiated a high-risk vehicle stop on the complainant's vehicle.

COMPLAINT

The complainant alleged the Named Employee abused his discretion when he executed a high risk stop and detained the complainant's husband due to the similarity of their car to a stolen car in the area. During intake, OPA added allegations that the Named Employee executed an unlawful Terry Stop by stopping a vehicle with a back license plate that did not match the Automatic License Plate Reader (ALPR) hit and was a different color. Additionally, the Named Employee failed to articulate additional articulable justification for handcuffing the passenger of the vehicle, as well as subsequently asking the passenger for his license and identification, when he was not the driver of the car.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complaint
2. Search for and review of all relevant records and other evidence
3. Review of In-Car Video (ICV)
4. Interview of SPD employee

ANALYSIS AND CONCLUSION

On the date in question, the complainant was driving a red Honda Accord. Her husband and juvenile son were passengers in the vehicle. The complainant alleged that Named Employee #1 stopped her vehicle, ordered her husband out of the vehicle at gun point, and detained her family all without legal authority.

Named Employee #1's account was that he was on random, proactive patrol, and was utilizing an Automatic License Plate Reader (ALPR). Named Employee #1 received a hit on the front plate of a "dark" Honda Accord that was traveling in the opposite direction from where he was situated. The hit indicated that the front plate was stolen. The stolen plate was associated with a grey Honda Accord. Named Employee #1 turned his vehicle around and attempted to relocate the vehicle. Prior to turning around, Named Employee #1 noticed that a total of four vehicles had passed him. Two of the vehicles turned right and the other two continued straight on the street. Named Employee #1 drove up to both vehicles that had continued straight and determined that neither was the subject vehicle. Named Employee #1 then took a right and began driving north. On this road, Named Employee #1 observed another Honda Accord pull out in front of him and begin driving northbound. As Named Employee #1 was driving behind this vehicle, he could only observe the vehicle's rear license plate. The rear license plate of this

vehicle did not match the stolen front plate. In addition, once illuminated by the patrol car's lights, it was clear that the subject vehicle was red.

In his OPA interview, Named Employee #1 indicated that, even though the rear plate did not match the stolen front plate, he based his reasonable suspicion for the stop on the suspicious driving of the subject vehicle. In support of this contention, Named Employee #1 cited the fact that after taking a right onto a street, the vehicle pulled over without Named Employee #1 initiating a traffic stop. Named Employee #1 stated that, in his experience, this was consistent with car thieves who park and then jump out of the stolen vehicle and flee. The video indicated, however, that the road in question had vehicles parked on both sides and the reason for the subject vehicle pulling over was to allow a car coming from the opposite direction to pass. Once the oncoming vehicle passed, the subject vehicle continued driving until it pulled into an empty space on the opposite side of the street. Named Employee #1 further found this action to be suspicious. As is now known, however, the subject vehicle was simply pulling into the parking spot in front of the occupants' residence. At this point, Named Employee #1 activated his lights and sirens and initiated a high-risk vehicle stop.

Consistent with Washington state and federal law, Manual Policy 6.220 instructs that a Terry stop must be supported by reasonable suspicion that a suspect has been, is, or will be involved in the commission of a crime. It further requires that the facts underlying the reasonable suspicion be documented using specific articulable facts.

While an ALPR hit could provide the basis for the lawful stop and detention of a vehicle and its occupants to confirm or dispel the officers' suspicions that the occupants are unlawfully in possession of the vehicle or the license plates, the OPA Director found that there was no reasonable suspicion under the specific circumstances of this stop.

First, the rear plate of the subject vehicle did not match the stolen plate and was red in color. As such, aside from the fact that the subject vehicle was also a Honda Accord and was driving in the same general vicinity as the other vehicle, there was no linkage between it and the vehicle sought. Given that a Honda Accord is a relatively common vehicle, this could not, standing alone, form the basis for reasonable suspicion. Second, based on a review of the video, the OPA Director did not believe that the complainant drove her vehicle in a suspicious manner. Indeed, at all times she appeared to drive in compliance with traffic laws.

Notably, given that the plates did not match, Named Employee #1 could have taken steps to verify that the rear plate belonged to the vehicle in front of him. Had he done so, he would have realized that the vehicle was registered in the exact area in which it was driving and was, in fact, pulling up in front of the occupants' residence. However, Named Employee #1 failed to do so.

While the OPA Director believed that Named Employee #1 was acting in good faith when he initiated the stop, as articulated by the U.S. Supreme Court in *Terry v. Ohio*: "good faith on the part of the arresting officer is not enough." Named Employee #1 needed specific articulable facts together with objective and reasonable inferences to support his belief that the occupants

of the subject vehicle were engaged in criminal activity. He did not have that here. Instead, Named Employee #1 initiated a high-risk felony stop without sufficient legal justification exposing the occupants of the vehicle, his fellow officers and the community to an unwarranted risk.

During the high-risk vehicle stop, Named Employee #1 removed the front passenger from the vehicle at gun point, handcuffed him, and patted him down for weapons. During intake of this complaint, OPA added the allegation that Named Employee #1 exceeded the scope of the stop when he did so.

Manual Policy 6.220(3) requires that, during a Terry stop, officers limit the seizure to a reasonable scope. Where an officer orders a subject from a vehicle, handcuffs a subject, points a firearm, or frisks a subject for weapons, the officer “must have additional articulable justification for further limiting a person’s freedom...”

Here, Named Employee #1 and other officers engaged in a high-risk vehicle stop. This procedure involved drawing weapons, calling occupants out of a vehicle, and placing those individuals in handcuffs for officer safety.

As explained above, the vehicle stop itself was not supported by reasonable suspicion. As such, in this circumstance, any conduct that followed was also not legally justified. Moreover, aside from indicating that the high-risk vehicle stop was a trained procedure, Named Employee #1 failed to articulate the additional justification for pointing a firearm at the subject, ordering him out of the vehicle, handcuffing him, and conducting a pat frisk. Importantly, there was no reasoning for this conduct set forth in the General Offense Report associated with this incident. The OPA Director further recommended that Named Employee #1 receive additional training as to the requirements and elements of high-risk vehicle stops.

Manual Policy 6.220(6) states that “officers cannot require subjects to identify themselves or answer questions on a Terry stop.”

While SPD policy prohibits an officer from requiring that identification be produced during a Terry stop, it does not necessarily preclude an officer from asking for identification. Here, Named Employee #1 asked the passenger of the vehicle for his identification, which the passenger provided without objection. While the video did not yield the reason for why the identification was requested at that time, it established that Named Employee #1 did not require or compel the passenger to produce identification. In addition, it did not appear that Named Employee #1 extended the stop to obtain identification. Notably, the request was made after the passenger was taken out of handcuffs and was no longer detained. That being said, based on the fact that the passenger had just been in handcuffs and had just had a firearm pointed at him, he may have felt that compliance with Named Employee #1’s request was not optional.

While the OPA Director did not find that there was a technical violation of policy, he did find the request for identification to be questionable.

Manual Policy 5.001(5) provides that “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.”

As stated above, the OPA Director did not believe that Named Employee #1 was acting in bad faith; however, he ultimately engaged in a high-risk vehicle stop based on unsubstantiated presumptions and without legal justification. While the stop did not result in physical harm to any individual, there were easily contemplated scenarios in which it could have. Moreover, the stop was likely frightening and concerning to the occupants of the car, which included a juvenile child.

Given that the OPA Director found that the stop was not justified and was a mistake of judgement, the OPA Director further concluded that Named Employee #1 did not use his discretion in a reasonable manner and thus violated SPD policy.

FINDINGS

Named Employee #1

Allegation #1

A preponderance of the evidence showed that Named Employee #1 initiated a high-risk felony stop without sufficient legal justification exposing the occupants of the vehicle, his fellow officers and the community to an unwarranted risk. Therefore a **Sustained** finding was issued for *Voluntary Contacts, Terry Stops & Detentions: Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful.*

Allegation #2

A preponderance of the evidence showed that the vehicle stop itself was not supported by reasonable suspicion, and as such, any conduct that followed was also not legally justified. Therefore a **Sustained** finding was issued for *Voluntary Contacts, Terry Stops & Detentions: During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope.*

Allegation #3

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Voluntary Contacts, Terry Stops & Detentions: Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop.*

Recommended Training: The OPA Director recommends that Named Employee #1 receive additional training as to the requirements of Manual Policy 6.220, as well as the specific provisions concerning when it is appropriate to further limit an individual’s liberty and to request identification.

Allegation #4

A preponderance of the evidence showed that Named Employee #1 did not use his discretion in a reasonable manner and thus violated SPD policy. Therefore a **Sustained** finding was issued for *Standards and Duties: Employees May Use Discretion*.

Discipline Imposed: Written Reprimand

NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.