



## CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 3, 2023

FROM: DEPUTY DIRECTOR BONNIE GLENN, ON BEHALF OF DIRECTOR GINO BETTS, JR.  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0156

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

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 - Unfounded
# 2	15.180 – Primary Investigations, 15.180-POL-5. Officers Shall Document all Primary Investigations on a Report	Not Sustained - Training Referral
# 3	5.001 – Standards and Duties, 5.001-POL-10. Employees Will Strive to be Professional	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	Sustained
# 2	6.220 – Voluntary Contacts, Terry Stops & Detentions, 6.220-POL-2 Conducting a Terry Stop, 2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Sustained
# 3	16.130 – Providing Medical Aid, 16.130-POL-2 Sworn Employees Providing Medical Aid, 1. Recognizing the Urgency of Providing Medical Aid and the Importance of Preserving Human Life, Sworn Employees Will Request Medical Aid, if Needed, and Render Appropriate Medical Aid Within Their Training as Soon as Reasonably Possible	Not Sustained - Training Referral
# 4	16.090 – In-Car and Body-Worn Video, 16.090-POL-1 Recording with ICV and BWV, 5. Employees Recording Police Activity, b. When Employees Record Activity	Not Sustained - Training Referral
# 5	5.140 – Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded

**Imposed Discipline**

Oral Reprimand
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***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.***



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**EXECUTIVE SUMMARY:**

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) responded to a tire slashing incident involving Community Member #1 (CM#1)—the alleged suspect—and Community Member #2 (CM#2)—the alleged victim. Led by CM#2, NE#1 and NE#2 went to a homeless encampment. NE#2 ordered four occupants to exit a tent, one of whom was CM#1. After NE#1 handcuffed CM#1, NE#2 questioned CM#1 as he was seated against an SPD vehicle.

The Complainant—CM#1’s attorney—made six allegations. First, NE#2 had no reasonable suspicion to order the occupants out of the tent. Second, NE#2 focused his attention on CM#1, who did not match CM#2’s description of the suspect. Third, NE#1 threatened to assault CM#1. Fourth, NE#2 did not *Mirandize* CM#1 before questioning him. Fifth, NE#2 did not immediately call for medical aid when CM#1 complained of a head injury. Sixth, NE#1 did not document CM#1’s version of events in her incident report. Additionally, OPA noted that two occupants may have been detained without reasonable suspicion. OPA also noted that NE#2’s rear in-car video (ICV) and body-worn video (BWV) may not have fully recorded police activity.

**ADMINISTRATIVE NOTE:**

On October 18, 2023, the Office of Inspector General (OIG) certified this investigation as thorough, timely, and objective.

In its certification, OIG noted that the Complainant made a clear allegation of bias-based policing against NE#2 but that OPA originally did not classify the allegation. OIG noted it, “made no assertion the NE acted out of bias, only that the Complainant made the allegation and OPA had not addressed it.” To ensure this allegation was investigated, OPA reclassified the allegations against NE#2 to include bias-based policing on September 20, 2023. NE#2 was re-interviewed on October 13, 2023, to respond to the allegation.

**SUMMARY OF INVESTIGATION:**

OPA received a complaint and opened an investigation. During its investigation, OPA reviewed the OPA complaint, computer-aided dispatch (CAD) call report, BWV, incident report, and email correspondence. OPA also interviewed the Complainant, NE#1, NE#2, and CM#2.

*A. OPA Complaint*

The Complainant filed a web-based complaint on April 7, 2023. The Complainant wrote that on December 15, 2022, NE#1 and NE#2 responded to a tire slashing incident involving CM#1. The Complainant wrote that NE#1 and NE#2 spoke with CM#2—the victim who described the suspect—and drove CM#2 to a homeless encampment. The Complainant wrote that NE#2 focused his attention on a different tent than the one CM#2 described; demanded, without reasonable suspicion, that the people inside exit the tent; and focused his attention on CM#1, who did not match CM#2’s description of the suspect. The Complainant wrote that when CM#2 identified CM#1 as the suspect, NE#2 drew his gun. The Complainant wrote NE#1 told CM#1 that he would be subject to “assault” by officers if he did not do exactly as she said, then handcuffed him. The Complainant wrote that NE#2 questioned CM#1 without providing *Miranda* warnings to him and did not call for medics when CM#1 complained of a head injury until after



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NE#2 finished questioning CM#1. The Complainant wrote that NE#2<sup>1</sup> did not include CM#1's version of events in his police report and incorrectly wrote that CM#1 refused to clarify his version of events.

*B. Computer-Aided Dispatch (CAD) Call Report*

On December 15, 2022, at 5:05 PM, CAD call remarks noted that a male hit the reporting party's tire with what the reporting party believed to be a knife, though the reporting party did not see the knife. CAD call remarks had a description of the suspect as an Asian male, thirty-five to forty years old, six feet tall, medium build, with a black top and black pants. CAD call remarks noted that the reporting party's husband followed the male, who refused to stop. The 9-1-1 caller advised that her husband returned and reported the suspect "tried stabbing him."

*C. Body-Worn Video (BWV) and Incident Report*

NE#1's and NE#2's BWV captured the following events on December 15, 2022. NE#1 and NE#2 were in a patrol car when CM#2 approached on foot. NE#2 stepped out to speak with CM#2. CM#2 reported that he attempted to park in a spot blocked by caution tape, but CM#1 said CM#2 could not park there.<sup>2</sup> CM#2 reported that he drove away and stopped at an intersection when CM#1 apparently followed CM#2, pulled out a knife, and stabbed CM#2's tires. CM#2 reported that he got out of his car and punched CM#1 to get him to stop, but CM#1 swung his knife at CM#2. CM#2 reported that CM#1 fled, CM#2 followed, and CM#2 saw an encampment where CM#1 was located.

NE#2 drove—with NE#1 in the passenger seat and CM#2 in the backseat—to the encampment. CM#2 alerted NE#1 and NE#2 to the last place he saw CM#1. NE#2 exited, while NE#1 and CM#2 remained in the patrol car. NE#2 approached the encampment and illuminated several tents using his flashlight. NE#2 flashed his flashlight at one specific tent, identified himself, and asked one person to step out. NE#2 asked this person to have everyone step out. NE#2 returned to his patrol car and told CM#2, "I'm going to have these guys step out of the tent. I'm going to shine my light on their faces, and you can tell me who . . ." CM#1 was the fourth person to exit the tent. CM#1 appeared to be an Asian male wearing blue jeans and what appeared to be a blue zipper hoodie/jacket. In the patrol car, CM#2 told NE#1, "That's him. That's him right there. The guy in blue." NE#1 radioed NE#2 a positive identification. NE#2 unholstered his gun and said, "My man, in the blue, you are not free to go. Okay? So put your hands behind your head and turn away from me." CM#1 turned around while NE#2 held his gun at a low ready position. NE#1, along with Witness Officer #1 (WO#1), approached CM#1. NE#1 said, "Alright, you listen to what I have to say and what I have to say only. If you do anything else, you are subject to being assaulted by officers. Okay? Do not move." NE#1 and WO#1 handcuffed CM#1. NE#1 walked over to two people who exited the tent and said, "For the time being, no one's going back in the tent. Okay? I'll let you know when it's time."<sup>3</sup>

NE#1, NE#2, and WO#1 escorted CM#1 to NE#2's patrol car. NE#2 told CM#1, "Right now, you are being detained." NE#2 and WO#1 decided to take CM#1 to WO#1's patrol car. During escort, NE#2 told CM#1, "Alright, man, so you're being detained right now. We're investigating the altercation that happened between you and [CM#2]. Okay? So, tell me everything that happened."

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<sup>1</sup> The Complainant was mistaken. NE#1 wrote the incident report, not NE#2.

<sup>2</sup> A portion of CM#2's account was not captured on NE#2's BWV because NE#2 activated his BWV mid-conversation. However, CM#2 repeated his account to NE#1 later.

<sup>3</sup> OPA would learn that these two people, while out of their tents, were with three other officers. One officer patted them down. Another officer ran a computer check of their names and dates of birth.



CM#1 asked if his head was bleeding. NE#2 and WO#1 looked but said no. NE#2 looked again and said that CM#1 may have “a little bit” of blood on top of his head. NE#2 said he would photograph it, then asked CM#1 to explain what happened. CM#1 said CM#2 nearly ran him over with CM#2’s car, which caused an argument. CM#1 said CM#2 ran over his stuff. CM#1 said CM#2 called the police to lie about CM#1 having a weapon. NE#2 asked CM#1 to “start from the beginning and walk [him] through what happened.” CM#1 repeated prior statements, while NE#2 asked clarifying questions. NE#2 asked where the knife was located. CM#1 said he lost the knife when CM#2 was beating him. CM#1 said CM#2 beat his head, which caused CM#1 to black out. NE#2 asked CM#1 several times if he popped CM#2’s tires. CM#1 repeatedly said he did not remember because CM#2 kept hitting his head. NE#2 said, “So, right now, as I’m going to write this up, okay, I’m not going to be able to put much into what you’re saying cause I. Not cause I don’t believe you. Because I, you’re not really, you’re not really putting a story together for me. Okay?” CM#1 repeated prior statements. NE#2 photographed CM#1’s head, then CM#1 said his head hurt. NE#2 asked CM#1 again if he popped CM#2’s tires. CM#1 replied that he could not remember and that his head hurt. NE#2 said that CM#1 will get checked out in a moment. NE#2 asked CM#1 again if he popped CM#2’s tires. CM#1 replied, “Maybe.” NE#1 approached and told NE#2, “We have PC.”<sup>4</sup> NE#2 told CM#1 that he was under arrest. WO#1 provided *Miranda* warnings to CM#1.

NE#1 wrote an incident report generally consistent with the events captured on BWV. However, NE#1 documented CM#1’s version of events with one sentence: “[CM#1] was unwilling to clarify his version of the events.”

#### D. OPA Interviews

##### 1. The Complainant

OPA interviewed the Complainant, who noted several “red flags.” First, NE#2 had no reasonable suspicion to order the occupants of one tent to come out because CM#2 described only a general vicinity where CM#1 was located, but nobody was in that area. The Complainant said NE#2 focused his attention on a random tent, not knowing who was in there. Second, NE#1 threatened to “assault” CM#1 when NE#2 “had a gun pointed at” CM#1, despite CM#1 not having any weapons on him. The Complainant was alarmed that NE#2 drew his gun when CM#1 exited the tent because they were far away from each other, while CM#1 had his hands up the whole time. Third, NE#2 should have *Mirandized* CM#1 before “interrogating” him because NE#2 asked “pretty specific questions.” Fourth, NE#2 should have treated CM#1 when CM#1 made frequent complaints of a head injury, instead of continually “interrogating” him. Fifth, the way CM#1’s version of events was documented in the incident report was problematic.

The Complainant noted a prior OPA complaint against NE#2 for similar behavior involving NE#2 ordering homeless people out of tents without reasonable suspicion and alleged there was a pattern with NE#2 disregarding the rights of homeless people’s constitutional rights. The Complainant expressed concern that NE#2 should have been aware of SPD policy and case law on reasonable expectation of privacy based on the prior OPA complaint.

##### 2. Named Employee #1 (NE#1)

OPA interviewed NE#1. NE#1 said she regularly partners with NE#2. NE#1 said in their partnership, NE#1 writes the reports and NE#2 drives. NE#1 said that when NE#2 interviews someone, NE#2 informs NE#1 what was said.

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<sup>4</sup> Before NE#1 approached, NE#1 was with CM#2, who was in the patrol car. CM#2 explained the incident to NE#1, who, according to her incident report, “determined that there was probable cause to arrest [CM#1] for Assault 1 and Property Damage.”



OPA asked NE#1 why she wrote in her incident report that CM#1 refused to clarify his version of events. NE#1 said she briefly stood near the questioning and heard CM#1 repeatedly say, “No” and “I don’t remember” in response to NE#2’s “very specific questions.” NE#1 said NE#2 told her that CM#1 did not have much to say, so NE#1 believed her writeup was accurate. OPA asked NE#1 why she did not include information that CM#1 reported during his questioning. NE#1 said her writeup was based on information known to her at the time, so she was not aware of CM#1’s claims like CM#2 running over CM#1’s stuff or CM#2 hitting CM#1. NE#1 could not recall if NE#2 informed her of CM#1’s claims. NE#1 said CM#1 did not explain “any part of the knife situation, which [was] what we were investigating.”

NE#1 said she did not detain the two people who exited the tent. NE#1 said she limited their freedom because the suspect reportedly had a knife either on his person or in the tent, so NE#1 did not want anyone to return to the tent for officer safety and evidence preservation. NE#1 said the two people were told not to go back into the tent, but they were free to leave.

OPA asked NE#1 about her “assault” warning to CM#1 before handcuffing him. NE#1 said she wanted CM#1 to know that if he did not listen to her, there “could be repercussions for him.” NE#1 said she did not want CM#1 to move while he was being handcuffed. NE#1 said CM#1 reportedly had a knife, so the situation could have escalated to deadly force if CM#1 presented it and resisted. NE#1 equated her “assault” warning to TASER or dog bite warnings.

### 3. *Named Employee #2 (NE#2)*

OPA interviewed NE#2. NE#2 described his partnership with NE#1 consistent with NE#1’s statements. NE#2 said he informs NE#1 of pertinent information he obtains from his interviews. NE#2 also said he is responsible for informing NE#1 so NE#1 could include pertinent information in her incident report.

NE#2 said CM#2 pointed to an encampment where CM#1 was located. NE#2 said that when he arrived, he noticed the area was “surprisingly quiet” and “not many people” there. NE#2 said there was only one occupied tent in the area that CM#2 pointed to. NE#2 said he used his flashlight to illuminate the tents in front of him to see that only one was occupied. NE#2 said he asked everyone to come out of the tent because, “more likely than not,” CM#1 would not want to come out of the tent, as demonstrated when CM#1 was the last person to step out. NE#2 said the individuals in the tent, “more likely than not,” could be associated with the crime based on the time, proximity, and CM#2’s visual observations.

NE#2 said he asked CM#1 “investigative” questions to determine whether a crime occurred because, at that time, NE#2 only knew that an incident, not a crime, occurred. NE#2 said he did not *Mirandize* CM#1 because CM#1 could have had a legitimate self-defense claim. NE#2 said CM#2 could have been the primary aggressor who ran over CM#1’s stuff and that CM#1’s slashing of CM#2’s tires could have been necessary to prevent CM#2’s car from running over CM#1. NE#2 said CM#1 could have been the victim, so NE#2 detained CM#1 to determine what happened. NE#2 characterized his multiple tire popping questions as “interview” questions, not leading questions, because NE#2 shared what he knew at the time based on what CM#2 reported. NE#2 said he did not immediately request for the Seattle Fire Department (SFD) to evaluate CM#1 when CM#1 complained of a head injury because NE#2 saw no signs indicating that CM#1 needed immediate medical care, such as loss of consciousness, bruising, bleeding, or lacerations. NE#2 also said that CM#1 did not request immediate care.



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4. *Community Member #2 (CM#2)*

OPA spoke with CM#2 over the phone. CM#2 said the caution tape was attached to the encampment's fencing, not near the tent where CM#1 was located. CM#2 said that when he first interacted with CM#1, CM#1—along with another person—stood inside the encampment next to his stove, not inside a tent. CM#2 said that when he returned to the location with NE#1 and NE#2, he did not describe a tent that CM#1 was in. CM#2 said NE#2 searched the area “tent to tent” to try to find CM#1.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 – 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***

OPA alleged that NE#1 detained community members without 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 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 information 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.*

Here, NE#1 told two community members with CM#1 that “no one’s going back in the tent.” NE#1 told OPA that the other community members were free to leave. Although other officers ran a computer check on the community members’ names and dates of birth and patted them down, BWV showed NE#1 did not order or direct these actions. There is insufficient evidence to indicate that NE#1 conducted a *Terry* stop on these two community members. NE#1’s reasonable suspicion was directed at CM#1, not the two community members, when CM#2 positively identified CM#1 as the suspect. The two community members were clearly eliminated as suspects as they exited the tent. CM#2 also reported that CM#1 wielded a knife, so NE#1’s instruction for the two community members not to reenter the tent for officer safety and evidence preservation was reasonable. NE#1 saw CM#1 exit that tent, so it was reasonable to believe the knife could be either on CM#1’s person or in the tent. NE#1’s involvement with the other community members was limited and primarily consisted of her instructing them not to reenter the tent.

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

Recommended Finding: **Not Sustained - Unfounded**





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**Named Employee #1 – Allegation #2**

***15.180 – Primary Investigations, 15.180-POL-5. Officers Shall Document all Primary Investigations on a Report***

The Complainant alleged that NE#1’s report was not complete, thorough, and accurate.

SPD Policy 15.180-POL-5 requires that officers document all primary investigations on a report. All reports must be complete, thorough, and accurate. SPD Policy 15.180-POL-5.

Here, NE#1 documented CM#1’s version of events with one sentence: “[CM#1] was unwilling to clarify his version of the events.” NE#1 said she heard CM#1 repeatedly say, “No” and “I don’t remember” in response to NE#2’s “very specific questions.” NE#1 said NE#2 told her that CM#1 did not have much to say. NE#1 said NE#2 did not inform her of CM#1’s claims but acknowledged NE#2 “probably” should have done so. NE#1 said her writeup was based on information known to her at the time, so she was not aware of CM#1’s claims. Under their partnership, NE#1 drives, while NE#2 writes the incident report. NE#2 said he is responsible for informing NE#1 of pertinent details that she should include in her incident report.

While there were some aspects to CM#1’s responses indicating that CM#1 was unwilling to clarify his version of events, NE#1 did not document any of CM#1’s statements. CM#1 made the following statements: CM#2 nearly ran him over, CM#2 ran over his stuff, CM#2 called the police to lie about CM#1 having a weapon, CM#1 lost the knife when CM#2 beat him, CM#2 repeatedly beat his head, CM#1 did not remember if he popped CM#2’s tires because he blacked out, and CM#1 “maybe” popped CM#2’s tires. The failure to document any of these statements rendered the incident report incomplete and unthorough. However, OPA recognizes that NE#1 was not present for the entire interview, NE#1 documented only what she knew at the time, and NE#2 failed to inform NE#1 of CM#1’s statements. Ultimately, NE#1 was responsible for writing the incident report, so she should have been more proactive in obtaining CM#1’s statements either from NE#2 or BWV for her incident report. The evidence suggests there was a potential, but not willful, violation of policy that did not amount to serious misconduct. Therefore, NE#1’s chain of command should provide appropriate training and counseling.

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

- **Training Referral:** NE#1’s chain of command should discuss OPA’s findings with NE#1, review current SPD Policy 15.180-POL-5 with NE#1, and provide any further retraining and counseling that it deems 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 #3**

***5.001 – Standards and Duties, 5.001-POL-10. Employees Will Strive to be Professional***

The Complainant alleged that NE#1 was unprofessional.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers”



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whether on or off duty. SPD Policy 5.001-POL-10. Additionally, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” *Id.*

Here, NE#1 told CM#1, “If you do anything else, you are subject to being assaulted by officers.” NE#1 equated her “assault” warning to TASER or dog bite warnings. CM#2 reported that CM#1 was armed with a knife, slashed his tires, and swung the knife at him. CM#2 also reported that he saw CM#1 walk away while wielding the knife. While CM#1 was compliant with officers’ commands, NE#1 did not know where the knife was located, which could very well have been hidden on CM#1’s person. Based on what NE#1 knew at the time, NE#1 was approaching a potentially dangerous person who allegedly swung a knife at someone. Because absolute compliance was essential to ensure the safety of CM#1 and officers, it was not unreasonable for NE#1 to warn CM#1 that force would be used if he did not comply. Based on the totality of the circumstances, NE#1’s assault warning was not unprofessional.

Accordingly, OPA recommends 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***

The Complainant alleged that NE#2 detained community members without reasonable suspicion.

Here, NE#2 selected a tent that was in a general area that CM#2 pointed at. The evidence indicates that CM#2 did not point at a specific tent but, rather, a general area where CM#2 last spotted CM#1. CM#2 told OPA that he did not identify a specific tent but saw NE#2 search the area “tent to tent.” When NE#2 got out of his patrol car, he noticed—and BWV corroborated—there were “not many people in that area.” NE#2 used his flashlight to illuminate the tents in front of him and saw only one occupied tent. NE#2 then ordered everyone out because, “more likely than not,” the occupants of this tent could be associated with the crime.

These facts do not support NE#2’s *Terry* stop. NE#2’s justification for selecting the occupied tent was tenuous at best. CM#2 did not specifically identify that tent, nor was there any specific information tying CM#1 to that tent. The fact that NE#2 saw occupants in that tent, without more, did not give him legal justification for ordering them out. NE#2’s belief that the occupants could be associated with the crime was also problematic as there were no specific facts supporting that belief. While NE#2 was permitted to conduct a general search of the area that CM#1 was last spotted in, NE#2 exceeded his authority when he targeted one tent without reason.

The Complainant noted that NE#2 had a prior OPA case—2018OPA-0642—that had similar facts. In that case, NE#1 searched for a rape suspect, who was known to live in a homeless encampment. NE#1 knew the general vicinity of where the rape suspect resided. While in the homeless encampment searching for the rape suspect, NE#1 ordered people out of their tents on two separate occasions and questioned them. At one point, NE#1 asked an officer if there was a way to walk through tents to see if anybody was inside. That officer responded, “Treat it like a house. It’s a house.” NE#1 also cut into several tents using a knife and looked inside. NE#1 then went to another homeless encampment, ordered an occupant out, and questioned that occupant.





OPA's decision in 2018OPA-0642 cited to *State v. Pippin*, 200 Wn. App. 826, 403 P.3d 907 (2017), which held that an occupant of a tent possessed a reasonable expectation of privacy, even if that tent were situated in a place where the occupant had no right to be, such as on public land. *Pippin* established that an officer did not have unfettered access to enter or search a tent. In 2018OPA-0642, one of the allegations against NE#1 was that he conducted a *Terry* stop without reasonable suspicion. NE#1 said that the detentions he effectuated on occupants were legally justified, arguing that he had probable cause to arrest them for trespassing. OPA responded with the following:

*Technically, NE#1 is correct. He certainly had reasonable suspicion to believe that the individuals were trespassing and, as such, had a lawful basis to detain them. However, this was not the actual reason why he did so. He ordered the individuals out of their respective tents in order to investigate their potential involvement in the assault and rape. [OPA does] not see how he had sufficient information to establish reasonable suspicion that they were involved in those crimes. Indeed, reasonable suspicion must be based on specific, objective, and articulable facts, not simply conjecture, as appeared to be the case here. Regardless, this concern is academic given the alternative legal justification for the stop.*

Ultimately, OPA did not sustain the allegation based on NE#1's "alternative legal justification" for the stop, that the individuals were "technically" trespassing. However, NE#1's argument and OPA's 2018 finding are directly undermined by *Pippin*, which clearly established that an occupant of a tent possessed a reasonable expectation of privacy, even if that tent were situated in a place where the occupant had no right to be. See *State v. Pippin*, 200 Wn. App. 826, 843–44, 403 P.3d 907, 916 (2017) (holding that "Pippin's privacy interests are not diminished by his lack of permission to camp" in a tent-like structure on public land).

Here, the facts are similar. NE#1 ordered people out of a tent, without reasonable suspicion, to search for CM#1. Like in 2018OPA-0642, OPA does not see how NE#1 had sufficient information to establish reasonable suspicion that they were involved in CM#1's alleged crimes. NE#1 was unable to articulate any specific, objective, and articulable facts that informed his reasonable suspicion belief. NE#1 cited time, proximity, and CM#2 pointing out a general area where he last saw CM#1. These facts are not specific, and OPA cannot see how they can be tied to one specific tent. Since 2018, NE#2 was on notice that ordering occupants out of a tent to question them, without reasonable suspicion, violated law and policy. Unlike in 2018OPA-0642, OPA declines to issue a Not Sustained finding based on a technicality. Based on the evidence provided, OPA finds NE#2 exceeded his legal authority to conduct *Terry* stops on the community members who stepped out of the tent because the *Terry* stops were not supported by adequate reasonable suspicion.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #2 – Allegation #2**

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

The Complainant alleged that NE#2 exceeded the scope of a *Terry* stop.



SPD Policy 6.220-POL-2(2) requires that officers limit a seizure to a reasonable scope. Actions that would indicate to a reasonable person that he or she is being arrested or indefinitely detained may convert a *Terry* stop into an arrest. SPD Policy 6.220-POL-2(2). The policy provides a list of possible actions that could indicate to a reasonable person that he or she is being arrested—such as applying handcuffs or using force—but specifies that the occurrence of any one of these actions would not necessarily convert a *Terry* stop into an arrest. *See id.* Unless justified by the basis for the original stop, policy requires officers to have “additional articulable justification” to take any of these actions. *Id.*

Here, NE#2 questioned CM#1 when CM#1 was handcuffed. NE#2 told OPA that he asked “investigative” questions to determine whether a crime occurred because, at that time, NE#2 only knew that an incident occurred. NE#2 characterized his multiple tire popping questions as “interview” questions, not leading questions. NE#2 said he did not *Mirandize* CM#1 because CM#1 could have had a legitimate self-defense claim.

Although NE#2 informed CM#1 twice that he was “being detained,” multiple facts indicated that CM#1 was arrested prior to NE#2’s statement that CM#1 was under arrest. When CM#2 positively identified CM#1 as the assailant NE#2 drew his gun and kept it at a low ready position while ordering CM#1 to turn around and place his hands on his head. CM#1 was handcuffed, escorted to WO#1’s patrol car, and directed to sit on the front push bar for questioning. Finally, NE#2’s “interview” went well beyond the short and exploratory questioning that is expected during a *Terry* stop and lasted for nearly seven minutes. OPA finds, NE#2’s questions were leading and accusatory, rather than factfinding. For example, NE#2 said, “I want to know why you popped all his tires in the middle of the intersection.” NE#2 also asked, “Where’s the knife at by the way?” NE#2 assumed the veracity of CM#2’s account while he questioned CM#1. OPA finds the totality of these circumstances would indicate to a reasonable person that he was under arrest. As such, CM#1 should have been *Mirandized* prior to questioning. OPA finds based on the evidence provided NE#2 exceeded the scope of a *Terry* stop by interrogating CM#1 without *Mirandizing* him.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

### **Named Employee #2 – Allegation #3**

***16.130 – Providing Medical Aid, 16.130-POL-2 Officers Providing Medical Aid, 1. Recognizing the Urgency of Providing Medical Aid and the Importance of Preserving Human Life, Officers Will Request Medical Aid, if Needed, and Render Appropriate Medical Aid Within Their Training as Soon as Reasonably Possible***

The Complainant alleged that NE#2 did not request medical aid as soon as reasonably possible.

SPD Policy 16.130-POL-2(1) states that employees assisting a sick or injured person will seek to determine the nature and cause of a person’s injury or illness and provide first aid or call for emergency medical services as needed, with an exception for injuries that can be treated with basic first aid. SPD Policy 16.130-POL-2(1). The policy goes on to state that “[a]fter requesting a medical aid response, officers will render aid within the scope of their training unless aid is declined.” *Id.* Officers are required to provide medical assistance consistent with their training, with priority being given to officers certified as emergency medical technicians. *Id.*

Here, NE#2 did not immediately request for SFD assistance when CM#1 complained of a head injury. BWV captured NE#2 saying there was “a little bit” of blood on top of CM#1’s head. To comply with SPD Policy 16.130-POL-2(1), NE#2 should have requested medical aid, rendered appropriate medical aid within his training “as soon as reasonably



possible,” and attempted to “determine the nature and cause of [CM#1’s] injury.” Instead, NE#2 questioned CM#1 regarding his altercation with CM#2. However, NE#2 did not see signs of loss of consciousness or bruising, bleeding, or lacerations that necessitated immediate medical aid. While CM#1 repeatedly said his head hurt, he did not request immediate medical aid. SFD eventually responded to the scene to evaluate CM#1. Later, CM#1 was denied at King County Jail due to his injuries as transported to the hospital. Under these circumstances, OPA finds that there was a potential, but not willful, violation of policy that did not amount to serious misconduct. Therefore, NE#2’s chain of command should provide appropriate training and counseling.

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

- **Training Referral:** NE#2’s chain of command should discuss OPA’s findings with NE#2, review current SPD Policy 16.130-POL-2(1) with NE#2, and provide any further retraining and counseling that it deems appropriate. The retraining and counseling should emphasize the primacy of medical aid over criminal investigation. 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 #2 – Allegation #4**

#### **16.090 – In-Car and Body-Worn Video, 16.090-POL-1 Recording with ICV and BWV, 5. Employees Recording Police Activity, b. When Employees Record Activity**

OPA alleged that NE#2 did not properly record police activity.

SPD Policy 16.090-POL-1(5)(b) states that when safe and practical, employees will record “[d]ispatched calls, starting before the employee arrives on the call to ensure adequate time to turn on cameras,” as well as “[q]uestioning [of] victims, suspects, or witnesses.” Officers are permitted to exercise reasonable discretion in not recording under certain situations. SPD Policy 16.090-POL-1(5)(c). Among the permissible exceptions is “when the respect for an individual’s privacy or dignity outweighs the need to record an event.” SPD Policy 16.090-POL-1(5)(f). That exception provides examples of where it is applicable, including “natural death scenes, death notifications, child or sexual assault victim interviews, cultural or religious objections to being recorded, and when the use of BWV would impede or limit the cooperation of a victim or witness.” *Id.*

Here, NE#2 activated his BWV five minutes after NE#1 activated hers, so NE#2’s BWV did not capture the entirety of CM#2’s reporting. Additionally, the rear ICV of NE#2’s patrol car was not activated, so CM#2’s statements made during transport—which were not clearly audible on BWV—were not captured. NE#1 and NE#2 told OPA that they did not have a process manually activating their ICV. NE#1 stated she thought the rear ICV was activated when the rear door was opened. NE#1 stated assumed that she and NE#2 did not notice that the rear ICV was not powered on or not recording. NE#2 had no explanation for why the rear ICV was not activated.

OPA emailed Witness Employee #1 (WE#1)—a civilian with expertise on the ICV system—to inquire about ICV. WE#1 wrote that the rear ICV could be activated manually or when the rear door opens, but the rear ICV must be powered on for any trigger to work. WE#1 wrote that, in this incident, he could not find rear ICV footage for the December 15, 2022, incident, which could mean that officers did not power on their ICV. WE#1 also wrote that the rear ICV did not self-report any technical errors.



Based on the evidence, NE#1 and NE#2 likely forgot to power on the rear ICV. As such, none of the triggers for automatic activation—such as opening the rear doors—worked. Neither officer manually activated the rear ICV. Importantly, NE#2 also activated his BWV a few minutes into CM#2’s reporting. NE#2 said that he activated his BWV late because the BWV did not activate automatically. NE#2 said that when he exited his patrol car, he looked down and noticed his BWV was not on, so he manually activated it. NE#2 also said that after BWV activation, he repeated what he said to CM#2. Because the evidence suggests that the failure to power on the rear ICV and the late activation of BWV were unintentional mistakes—and NE#2 has no disciplinary history for such recording failures—OPA recommends a training referral in this instance. NE#2’s chain of command should provide appropriate training and counseling.

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

- **Training Referral:** NE#2’s chain of command should discuss OPA’s findings with NE#2, review current SPD Policy 16.090-POL-2 with NE#2, and provide any further retraining and counseling that it deems 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 #2 – Allegation #5**

##### ***5.140 – Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing***

The Complainant alleged that NE#2 engaged in bias-based policing.

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” SPD Policy 5.140-POL. This includes different treatment based on the race or homelessness status of the subject. *See id.*

Here, the Complainant said that NE#2 focused his attention on CM#1 when CM#1 exited the tent. The Complainant said that CM#1 did not match CM#2’s description of the suspect. However, dispatch noted the suspect was an Asian male and noted other physical characteristics. CM#1 was the only Asian male who exited the tent, and several of his physical characteristics matched—or closely resembled—those noted by dispatch. Furthermore, CM#2 positively identified CM#1 as the suspect. There is no evidence to suggest NE#1 engaged in bias-based policing.

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

Recommended Finding: **Not Sustained - Unfounded**