



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 3, 2018

CASE NUMBER: 2017OPA-0810

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	6.220 - Voluntary Contacts, Terry Stops & Detentions 7. Officers Can Detain Subjects to Identify Them in Order to Issue a Notice of Infraction	Not Sustained (Unfounded)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 3	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)
# 4	7.060 - Releasing Evidence 1. Employees Respond to Requests to Release Property and Evidence	Not Sustained (Training Referral)
# 5	7.060 - Releasing Evidence 2. Employees Release Evidence No Longer Needed for Law Enforcement Purposes	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:

The Complainant, who had no involvement in this incident, alleged that the Named Employee was unprofessional for not returning a pistol that was allegedly unlawfully seized during a vehicle stop in 2014, despite requests from the pistol's owner, the subject, and written communication from the City Attorney's Office that the pistol was lawfully possessed. The Complainant also alleged that the Named Employee did not have proper cause to stop the vehicle, ran a stop sign, and engaged in escalating behavior with the Subject.

OPA AUDITOR’S CERTIFICATION:

At the outset, I note that I disagree with many of the conclusions reached by the OPA Auditor in his certification. The Auditor criticizes OPA’s investigation for not being objective, but it appears that this criticism is largely premised on the fact that the Interim Auditor simply draws different inferences and conclusions from the evidence. I disagree that the different factual conclusions and inferences reached by the OPA investigator assigned to this case, which I agree with and deem logical, somehow suggest that OPA was not objective.

As discussed more fully herein, NE#1 was confronted by an erratically driving car, a passenger who gave him the middle finger when NE#1 effectuated the stop and who opened his door before being directed to do so, and then who got out of the vehicle before drunkenly announcing that he was going to get his gun. Any officer would have deemed this behavior suspicious, if not dangerous. I find that, contrary to the OPA Auditor’s assertions, NE#1 acted appropriately in taking immediate and decisive action in this case. This situation could have played out very differently, and potentially fatally, had NE#1 not done so.



STATEMENT OF FACTS:

In August 2014, Named Employee #1 (NE#1) conducted a traffic stop of a vehicle that he observed crossing over lanes and driving erratically. While following the vehicle, and prior to effectuating the stop, NE#1 drove through a red light and a number of stop signs. In each instance, prior to crossing the light or stop sign, NE#1 cleared the intersection. This means that he slowed down and ensured that there was no oncoming traffic or pedestrians before driving through.

At the time he began following the vehicle, NE#1 initiated his In-Car Video (ICV). The video does not capture the conduct that may have precipitated NE#1 following the vehicle; however, it does show the vehicle later crossing over lanes and driving erratically. NE#1 continued to follow the vehicle until he got close enough to effectuate the stop. At that time, the passenger – later identified as the subject – could be seen waving his arm out of the passenger side window. When the stop was effectuated, he began to give NE#1 the middle finger with both hands. Prior to NE#1 approaching the vehicle and without being directed to do so, the passenger opened his door. NE#1 approached the vehicle and told the passenger to close the door several times. The passenger did not do so. NE#1 then spoke to the passenger and said that he could leave or he needed to close the door. The passenger said he was going to leave and stood up and got out of the vehicle. He then said that he was going to grab his “pistol” and take it with him and turned to reach back into the car. NE#1 approached the subject saying “no no,” and took him by the arm. At the time NE#1 approached the subject, he was standing fully outside of the vehicle. NE#1, who is very experienced in DUI stops and in identifying intoxicated individuals, reported determining that the subject was clearly intoxicated, based on his odor and appearance.

When he grabbed the subject’s arm, NE#1 pulled him towards the front of the patrol vehicle. NE#1 told the subject to either stay there or leave, but informed him that he was not getting the gun back. The subject eventually walked away from the vehicle. Other officers’ ICV captured him speaking with another officer and eventually again interacting with NE#1. Prior to that interaction, however, NE#1 spoke with the driver of the vehicle. The driver, who NE#1 determined was not intoxicated, explained that he was driving erratically because he did not want to damage his new car (a Ferrari). NE#1 asked him why his friend was acting like a fool, and the driver, apparently in agreement with NE#1’s statement, responded that the subject was drunk. NE#1 advised the driver that it was a bad idea to drive around with an intoxicated passenger who had an unsecured firearm, but did not cite him. NE#1 asked the driver if he could take the firearm out of his car and the driver consented. Another officer removed the firearm and took it into custody.

At that time, the subject was speaking with another officer. From a review of the ICV, he was clearly intoxicated. NE#1 and a third officer then approached them. The Complainant appeared frustrated with the officers when he learned that his gun had been seized. NE#1 asked for Complainant’s identification and the Complainant walked over to NE#1 and began to provide that information. The Complainant dropped his ID on the ground and pointed to it and said his ID was “right there.” He walked towards NE#1, moving his shoulder close to NE#1’s body. At one point, NE#1 said “get away from me.” The Complainant responded with expletives directed towards NE#1. The Complainant again moved his shoulder close towards NE#1 and NE#1 pushed him back with one arm, again telling the Complainant to stay away from him. The Complainant then called NE#1 a “fucking asshole.” The Complainant asked the other officers if he was “legally allowed to spit” on NE#1 and the officers told him that he was not and would go to jail if he did. The interactions between the Complainant and the officers continued for a few more minutes. At one point, NE#1 told the other officers the reason for the stop and one officer laughed about it. The Complainant used further expletives



towards all of the officers and then left the scene to return to the vehicle. Prior to him driving away, NE#1 informed the Complainant how he could recover his firearm.

The Complainant indicated that a couple of weeks after the incident, he spoke with NE#1 about the return of his weapon. The Complainant stated that, during this conversation, NE#1 stated that he would not see his gun again. The Complainant recalled that they may have spoken one or two other times. NE#1 did not mention any such phone conversation during his OPA interview or that he told the Complainant that he was not going to get his gun back. The Complainant emailed NE#1 approximately 15 months after the incident asking about the return of his firearm. After a back and forth, during which NE#1 explained that he was not informed of the disposition of the Complainant's case, NE#1 told the Complainant that he would follow up with the City Attorney's Office concerning the return of the weapon. It does not appear as if NE#1 ever responded to the Complainant, but the Complainant also did not follow up again concerning the return of his firearm. In November 2017, over three years later, SPD's Evidence Unit sent the Complainant a form concerning the return of his firearm; however, as of the date of this investigation, the weapon remains in evidence.

This complaint was filed with OPA one day prior to the contractual three-year statute of limitations. The individual who filed the complaint had no involvement in this case and no relationship with the Complainant. OPA's investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.220 - Voluntary Contacts, Terry Stops & Detentions 7. Officers Can Detain Subjects to Identify Them in Order to Issue a Notice of Infraction

The question before me here is whether NE#1 permissibly detained the subject to identify him in order to issue a notice of infraction. Here, however, no infraction was issued so this provision of the policy appears to be inapplicable.

However, as the subject claimed to have a CPL, NE#1 was justified in compelling his identification to verify that fact under SPD Policy 6.220-POL-6. NE#1 was further warranted in requesting the subject's identification given that he was seizing the subject's firearm and filing a general offense report with the Seattle City Attorney's Office. The subject's identification was required to proceed with that process. This was the basis that NE#1 actually provided to the Complainant for requesting his identification.

Lastly, the Complainant and the subject took issue with NE#1's decision to seize the firearm in the first place. NE#1 believed that the subject's possession of his firearm on this date was in violation of law and contrary to the restrictions of his CPL. Even if a prosecutor later disagreed with NE#1 on this point, I find that his belief was reasonable under the circumstances.

Moreover, based on my review of the video, I find it quite possible that the subject was actually in violation of law on this date. The ICV depicted the subject stepping out of the car and then stating that he was going to reach back in and retrieve his firearm. As such, and even if for an instant, the subject was outside of the vehicle while his loaded firearm was unsecured therein. The fact that the subject was ultimately prevented from returning to the inside of



the vehicle by NE#1 is immaterial. In my opinion, this conduct arguably violated both State and City law. Both statutory provisions state that an individual with a valid CPL may lawfully possess a firearm in a vehicle except where the possessor is not at all times within the vehicle where the firearm is located. Here, he was not in the vehicle with the firearm at all times. Moreover, the firearm was not secured and shielded from public view; instead, it was simply laying on the floor of the front passenger side of the vehicle.

For these reasons, and given that the section of the SPD manual alleged here is inapplicable, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

8.200 - Using Force 1. Use of Force: When Authorized

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” (8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

From my review of the video, the Complainant moved his body close to NE#1. NE#1 told him to move away from him, but the Complainant did not do so. The Complainant again moved his shoulder toward the NE#1 and NE#1 pushed him back with one hand. Given that the Complainant was intoxicated, was argumentative with the officers and was known to have recently been in possession of a weapon, I do not find it unreasonable for NE#1 to have wanted to create distance between himself and the Complainant. I also do not find it unreasonable that NE#1 used force to do so.

The force, which was de minimis and did not result in any injury or complaint of injury, was necessary to achieve NE#1’s goal of creating space between himself and the Complainant. It was further minor force that was proportional to the threat perceived by NE#1. While another officer may have handled the interaction with the Complainant differently and not pushed him back, I do not conclude that the force used by NE#1 violated SPD policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

SPD Policy 5.001-POL-9 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-9.) The policy further states that: “Employees will avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*) Lastly, the policy states the following: “Any time employees represent the Department or identify themselves as police officers or Department



employees, they shall not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*)

The individual who initiated this complaint and the Complainant both alleged that NE#1’s behavior was unprofessional. Among the behavior identified as allegedly unprofessional was: unsafe driving on the part of NE#1; taunting and insulting the Complainant; pushing the Complainant; failing to secure the return of the Complainant’s firearm, and conducting a “pretext” vehicle stop.

First, I do not agree that NE#1 drove unsafely. NE#1 observed the vehicle of which the Complainant was a passenger driving erratically. He then drove in a manner to allow him to catch up to the vehicle and stop it. This involved passing through a red light and stop signs. While the driving was claimed to have created “a safety risk” in a “crowded drinking district” when crowds were letting out, the ICV contradicts that assertion. The ICV shows minimal vehicle and virtually non-existent pedestrian traffic. Moreover, on each occasion that NE#1 approached an intersection, he made sure that there was no oncoming traffic or safety risk prior to proceeding through. Accordingly, I do not find this conduct to have been unsafe or unprofessional.

Second, while NE#1 was frustrated and likely annoyed with the Complainant, I do not think his comments directed towards him were taunting or rude. While NE#1 asked why the Complainant was acting like a “fool,” the Complainant’s behavior was, in fact, foolish. He was drunk and had an unsecured firearm with him in a vehicle. When the vehicle was pulled over, he flipped off NE#1. He then opened his car door before being instructed to do and drunkenly announced to NE#1 that he was going to get his gun. Any officer would have been alarmed by this behavior and rightfully so. I further note that, as reflected in the case summary, NE#1 referred to the Complainant repeatedly as “sir” and was largely courteous throughout their interaction. I further find no evidence that NE#1 taunted the Complainant. Another officer at the scene laughed when told about the Complainant’s actions and referred to him as a “tough guy,” but NE#1 does not bear responsibility for that behavior. Accordingly, I do not find NE#1’s conduct in this regard to have been unprofessional.

Third, as indicated above, while I may not think that it was the most optimal decision to push the Complainant back, I do not find that it was a violation of SPD’s use of force policy to do so. I similarly do not find that it constituted a violation of SPD’s professionalism policy.

Fourth, while, as indicated below, I find that NE#1 should have taken more efforts to secure the return of the Complainant’s firearm when requested, I do not believe that this constitutes unprofessionalism on his part. Moreover, I cannot conclusively determine that NE#1 ever told the Complainant that he would not get his gun back, as the Complainant alleged. I note, however, that no such language is included in the various written communications between NE#1 and the Complainant.

Fifth, and last, I find no evidence in the record establishing that the vehicle stop in this case was a pretext stop. NE#1 observed erratic driving and had the legal authority to effectuate the stop. What, if anything, preceded the stop was not captured on ICV.

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

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



Named Employee #1 - Allegation #4

7.060 - Releasing Evidence 1. Employees Respond to Requests to Release Property and Evidence

SPD Policy 7.060-POL-1 requires that employee response to requests to release property and evidence. The policy states that employees who receive a decline notice from a prosecutor must complete a form 1.17 Evidence & Property Release Authorization and send it to the Evidence Unit. (SPD Policy 7.060-POL-1.)

Here, NE#1 did respond to the Complainant's emails. However, he did not complete a form 1.17. NE#1 stated that he did not know of the disposition of the case. While there is a decline notice attached to the general offense report and addressed to NE#1, that does not definitively mean that NE#1 was actually made aware of the disposition. It is very possible that this document was added to the fact after the fact and NE#1 did not personally receive any formal or informal notification. NE#1 further indicated that he did not have experience completing a form 1.17 and that this was generally done by follow-up units instead of by patrol officers.

While I do not discount NE#1's explanations, I find that he should have facilitated the return of NE#1's property to him by completing form 1.17. That being said, I do not find that NE#1 deliberately violated policy and, as such, I believe that a training referral is the more appropriate disposition.

- **Training Referral:** NE#1 should receive additional training concerning the requirements of SPD Policy 7.060. Specifically, NE#1 should be instructed of his responsibilities to complete a form 1.17 when appropriate and should be taught how to do so. This training and associated counseling should be memorialized in a PAS entry.

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

Named Employee #1 - Allegation #5

7.060 - Releasing Evidence 2. Employees Release Evidence No Longer Needed for Law Enforcement Purposes

SPD Policy 7.060-POL-2 instructs that employees will release evidence no longer needed for law enforcement purposes. It further states that this should be accomplished using form 1.17. (SPD Policy 7.060-POL-2.)

As with Allegation #4, discussed above, I conclude that a training referral is the appropriate disposition. I further refer to the above training referral. (See Named Employee #1, Allegation #4.)

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