



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 17, 2019

CASE NUMBER: 2019OPA-0185

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Training Referral)
# 2	15.180 - Primary Investigations 5. All reports must be complete, thorough and accurate	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Training Referral)
# 2	15.180 - Primary Investigations - 5. All reports must be complete, thorough and accurate	Not Sustained (Training Referral)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Training Referral)

Named Employee #4

Allegation(s):		Director’s Findings
# 1	6.220 - Voluntary Contacts, Terry Stops & Detentions 4. Supervisors Will Review the Documentation of Terry Stops	Not Sustained (Lawful and Proper)
# 2	1.020 - Chain of Command 7. Command Employees Take Responsibility for Every Aspect of Their Command	Allegation Removed
# 3	6.010 - Arrests 6.010-TSK-1 Sergeant Screening and Approving An Arrest	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 Named Employee #1, Named Employee #2, and Named Employee #3 may have improperly seized narcotics from a truck. It was further alleged that the reports generated by Named Employee #1 and Named Employee #2 had multiple inconsistencies when compared to the Body Worn Video of the incident. Lastly, it was alleged that their supervisor, Named Employee #4, did not ensure that Named Employee #1 and Named Employee #2 completed Terry Templates, or that Named Employee #3 completed a felony statement. It was lastly alleged that Named



Employee #4 did not identify the inconsistencies in the officers' reports or that the seizure of the narcotics may have been improper.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement

Officers, including Named Employee #1 (NE#1), Named Employee #2 (NE#2), and Named Employee #3 (NE#3), responded to a call concerning a woman who was allegedly selling narcotics out of a car. NE#1 reported that he observed the female occupant of the car – the Subject in this case – who matched the description provided by the 911 caller. NE#1 documented that he observed the Subject engage in a hand-to-hand transaction with a male. NE#1 wrote that, when he approached the Subject and she saw him, the Subject pushed something in between the front seat. NE#1 ordered the Subject out of the car and located crumpled up money. NE#1 also reported that he viewed crack-cocaine in “open view” on the passenger door armrest. He seized the crack-cocaine. Field testing verified that it was, in fact, narcotics. The Subject was placed under arrest. NE#2 also completed a report concerning the incident. NE#2 referred to the crack-cocaine as “sitting in plain view.” There was no record of a felony statement being generated by NE#3.

NE#1's Body Worn Video (BWV) indicated that, when he approached the Subject's truck, a man was standing by the passenger's door. The door was ajar. The man backed away from the officers as they neared him. NE#1 opened the door wide and officers asked the Subject to step out. The Subject did so. The officers spoke with the Subject and told her that they were responding to a call of someone dealing drugs out of the truck. After getting the Subject's identifying information, NE#1 returned to his patrol vehicle. Several minutes later, he walked over to the truck and realized that the door was closed. NE#1 completely opened the door and shined his flashlight into the car. NE#1 and NE#2 discussed where the money was situated in the car and NE#2 stated that it was not a plain view search. NE#1 identified that there were small amounts crack-cocaine on the floor and the seat of the car. At one point, it appeared that NE#2 touched the crack-cocaine on the seat. The officers went back to speak with the Subject concerning their discovery of crack-cocaine in the car. She denied being involved in a narcotics transaction. NE#1 walked back over to the truck and spoke with NE#3, who was standing next to the front passenger's door. The door was completely shut at the time, but it did not appear to be latched. NE#1 opened the door wide and shined his flashlight at the inside of the passenger's door. He stated to NE#3, “what's that.” NE#1 and NE#3 identified that it was crack-cocaine. NE#1 remarked: “I walked up and her door was open and that was sitting right there.” The officers seized and bagged the crack-cocaine located on the door. They field tested the crack-cocaine and it tested positive. The Subject was placed under arrest and handcuffed. Later, and while she was being transported from the scene, the rear In-Car Video for the officers' patrol vehicle captured the Subject eating and swallowing narcotics.



During its intake investigation, and after reviewing the BWV, OPA believed it possible that the search of the vehicle was potentially improper. OPA specifically noted that even if the crack-cocaine was observed in open view, the officers still needed a warrant prior to seizing the narcotics from a constitutionally protected area. In reaching this conclusion, OPA relied on *State v. Jones*, 163 Wn. App. 354 (2011). In *Jones*, the subject's vehicle was stopped, and, during the detention, an officer observed white pills that he recognized were oxycodone. The officer searched the vehicle and seized the pills. The State argued that the search and seizure was supported by the open view exception to the search warrant requirement. The Court recognized that, while the open view doctrine applied "when an officer observes a piece of evidence from a non-constitutionally protected area," the doctrine did not "provide authority to enter constitutionally-protected areas to take the items without first obtaining a warrant." Indeed, in order to seize the evidence, the officer must have probable cause to believe that a crime occurred, as well as be faced with "emergent or exigent circumstances regarding the security and acquisition of incrimination evidence" to make obtaining a warrant "impracticable."

As part of its investigation, OPA interviewed all of the Named Employees. NE#1 asserted his belief that, because the door was open and he viewed the narcotics on the door, it was no longer in the interior portion of the car. As such, he concluded that he could seize the crack-cocaine. Even presupposing that he is correct, the BWV established that, immediately prior to him seizing the crack-cocaine, the door was fully closed and that, only after he opened the door, did he locate the narcotics. NE#1 noted that he had no specific training after the academy on open view and plain view and that, during this incident, he made the best decisions that he could. NE#1 said that, given what he knows now, he would have closed the door and written a warrant to seize the drugs.

NE#2 stated that, at the time, he believed that the truck was abandoned and, as such, he felt that he could lawfully seize the narcotics. He told OPA that he now understood that the truck was not abandoned and that the narcotics were in a constitutionally protected area from which they could not be seized without a warrant.

NE#3 did not believe that the search was improper. He believed that the open door from which the crack-cocaine was seized was open to the public. He asserted that this was the case even though the door had been closed and was reopened by NE#1.

Based on OPA's review of the totality of the evidence, OPA determined that: the officers were standing in a non-constitutionally protected area – outside of the truck; NE#1 opened up the closed passenger's door; and the officers then seized narcotics from the door. Moreover, officers touched other evidence that was within the truck. After a review of caselaw, OPA concludes that the passenger door was a constitutionally protected area, specifically due to the fact that the door was closed and NE#1 re-opened it. OPA further concludes that, given this, the officers needed a warrant or exigent/emergent circumstances to justify the search. They did not have either. As such the search was potentially inconsistent with policy.

The above being said, this case was a close call. OPA finds that the officers acted in good faith and in a belief that they were acting consistent with law when they seized the crack-cocaine. Specifically, it would not have been unreasonable for the officers to believe that, given the fact that the door was open, the crack-cocaine was in plain view at that time and could be seized. As a general matter, when OPA has to conduct research to conclusively determine a legal question, OPA believes it inappropriate to discipline officers given that their decisions must be made under pressure and without the benefit of a hindsight analysis. As such, OPA recommends that NE#1, NE#2, and NE#3 receive the below Training Referral.



-
- **Training Referral:** NE#1, NE#2, and NE#3 should collectively debrief this call with their chain of command. They should discuss the differences between open view and plain view, especially in the context of this case. The Named Employees should review *State v. Jones* and any other applicable caselaw. This counseling and retraining should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #2

15.180 - Primary Investigations 5. All reports must be complete, thorough and accurate

OPA's review of the BWV further indicated that there were a number of inconsistencies in the reports generated by NE#1 and NE#2. These inconsistencies are detailed more fully in the Case Summary. As such, OPA alleged that the reports may have been inconsistent with SPD Policy 15.180-POL-5.

NE#1 and NE#2 both recognized that several aspects of their reports were inconsistent with the BWV. They stated that this was a mistake that was caused by heavy workloads and time constraints.

While their reports did, in parts, contain information that was inconsistent with the BWV, OPA concludes that this was not due to any ill intent on the officers' part and was a mistake. OPA recognizes that NE#1 and NE#2 are hard-working officers that operate in one of the busiest precincts in the City and such errors do not warrant Sustained findings. As such, OPA recommends that they receive the below Training Referral.

- **Training Referral:** NE#1 and NE#2 should be reminded to endeavor to generate thorough, complete, and accurate reports of their law enforcement activity. To the extent this counseling has already occurred, no further action is required by OPA. This counseling and any associated retraining should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #2 - Allegations #1

6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement

For the same reasons as set forth above (see Named Employee #1, Allegation #1), OPA recommends that NE#1 receive a Training Referral.

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



Named Employee #2 - Allegation #2

15.180 - Primary Investigations 5. All reports must be complete, thorough and accurate

For the same reasons as set forth above (see Named Employee #1, Allegation #2), OPA recommends that NE#1 receive a Training Referral.

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

Named Employee #3 - Allegations #1

6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement

For the same reasons as set forth above (see Named Employee #1, Allegation #1), OPA recommends that NE#1 receive a Training Referral.

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

Named Employee #4 - Allegations #1

6.220 - Voluntary Contacts, Terry Stops & Detentions 4. Supervisors Will Review the Documentation of Terry Stops

SPD Policy 6.220-POL-4 requires that supervisors review the documentation of *Terry* stops. Inherent in this requirement is the expectation that supervisors ensure that this paperwork is completed by officers when appropriate.

Based on OPA's review of the evidence, it appeared that NE#1 and NE#2 initially detained the Subject and only made the decision to arrest her after discovering narcotics in the truck. As such, NE#1 and NE#2 were required by policy to complete *Terry* Templates documenting the detention, even though they later developed probable cause. Moreover, NE#4, as their supervisor, was required by policy to ensure that this was done.

At her OPA interview, NE#4 asserted that, based on the information provided to her by NE#1, she believed that the officers had probable cause at the moment they initially contacted the Subject and, as such, that no *Terry* Templates were required. She told OPA that she based this determination on the information she learned from NE#1 when she screened the Subject's arrest at the scene.

While OPA concludes that the Subject was detained for a period of time prior to the narcotics being discovered, OPA finds that it was reasonable for NE#4 to believe that the officers had probable cause at the time of the contact given the information that NE#1 was captured on video providing to her. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #4 - Allegation #2

1.020 - Chain of Command 7. Command Employees Take Responsibility for Every Aspect of Their Command

OPA concludes that this allegation is duplicative of Allegation #1 and Allegation #2. As such, OPA recommends that it be removed.

Recommended Finding: **Allegation Removed**

Named Employee #4 - Allegation #3

6.010 - Arrests 6.010-TSK-1 Sergeant Screening and Approving An Arrest

This allegation was classified for investigation against NE#4 based on her failure to: correct the inconsistencies in the reports generated by NE#1 and NE#2; identify NE#3's lack of a felony statement; and recognize that the seizure of the crack-cocaine was potentially impermissible

With regard to the inconsistencies in the reports, OPA notes that NE#4 did not and was not required to watch video. As such, OPA finds it understandable that she did not identify the inconsistencies.

However, OPA finds that NE#4 should have identified the lack of a felony statement from NE#3 during her review and approval of the arrest documentation. Moreover and as discussed above, OPA further concludes that NE#4's review of this incident should have raised questions concerning the appropriateness of the seizure of the narcotics and notes that, at her OPA interview, NE#4 continued to assert that the search was within law and policy. This being said, OPA recognizes that NE#4 expected that another sergeant was going to review and approve the reports and, when she realized that this had not been timely done, she quickly did so. For this reason, OPA believes that lack of identification of the absence of a felony statement and the questionable seizure are better addressed by training and counseling. Accordingly, OPA recommends that NE#4 receive the below Training Referral.

- **Training Referral:** As with NE#1, NE#2, and NE#3, the chain of command should debrief this call with NE#4. They should discuss the differences between open view and plain view, especially in the context of this case. NE#4 should review *State v. Jones* and any other applicable caselaw. NE#4's chain of command should further remind her to ensure that the appropriate paperwork is completed by the officers that she supervises. This counseling and retraining should be documented, and this documentation should be maintained in an appropriate database

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