




## CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 8, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0323

### 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 - Training Referral
# 2	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	Sustained
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220 - POL - 2 Conducting a Terry Stop 4. During all Terry Stops, Officers Will Take Reasonable Steps to Be Courteous and Professional	Sustained

**Proposed Discipline**

Three to Five Day Suspension

**Imposed Discipline**

Three Day Suspension

***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.***

**ADMINISTRATIVE NOTE ON PROPOSED FINDINGS:**

*When the OPA Director recommends a sustained finding for one or more allegations, a discipline committee, including the named employee's chain of command and the department's human resources representative, convenes and may propose a range of disciplinary to the Chief of Police. While OPA is part of the discipline committee, the Chief of Police decides the imposed discipline, if any. See OPA Internal Operations and Training Manual section 7.3 – Sustained Findings.*

**EXECUTIVE SUMMARY:**

The Complainant alleged Named Employee #1 (NE#1) subjected him to an unlawful Terry stop and self-identification. The Complainant also alleged NE#1 was unprofessional during the contact.

**SUMMARY OF INVESTIGATION:**

On September 30, 2022, the Complainant filed an online OPA complaint alleging NE#1 harassed him. Specifically, the Complainant wrote he assisted a woman who fell in the street. The Complainant alleged officers arrived, and NE#1



---

asked for his name and information. The Complainant wrote he refused, and NE#1 demanded his identification. The Complainant reported he lit a cigarette, which caused NE#1 to require his birthdate and suggest the Complainant looked underage. The Complainant alleged NE#1 interrogated him, ran his name, and requested a mobile fingerprint reader after failing to find the Complainant in SPD's system. The Complainant stated another officer found the Complainant in the system.

OPA opened an investigation. During its investigation, OPA reviewed the complaint, computer-aided dispatch (CAD) call report and remote log, incident report, and body-worn video (BWV). OPA also interviewed NE#1 and two witness officers. OPA unsuccessfully attempted to contact the Complainant by email and telephone. OPA sent two emails to the account listed in the Complainant's complaint. OPA also called the Complainant, which went to voicemail. OPA requested a callback but never received it.

*a. CAD Call Report, Remote Log, and Incident Report*

OPA reviewed the CAD call report. The initial call for service indicated officers spoke with or assisted the public, and there was a suspected misdemeanor violation other than an assault, theft, or property destruction. NE#1 and another officer logged the call. At 5:27 PM, NE#1 initiated the call requesting a mobile fingerprint reader. The other officer arrived at 5:37 PM and ran the Complainant's name in a computer. At 5:43 PM, the Complainant's driver's license information was added to the call. At 5:51 PM, NE#1 and the other officer were noted as in-service.

OPA also checked Witness Officer #1's (WO#1) remote log. A remote log and BWV comparison showed NE#1 used WO#1's patrol vehicle to run the Complainant's name. However, NE#1 misspelled the name the Complainant provided and spelled it for NE#1. The Complainant's last name ended in "-son," but NE#1 typed the ending as "-sin."<sup>1</sup>

NE#1 wrote the related incident report. NE#1 wrote he and Witness Officer #2 (WO#2) were working an emphasis patrol shift when they were flagged to assist a woman who fell. NE#1 wrote he asked the Complainant, who was "loitering in the area," whether he was associated with the woman. NE#1 wrote the Complainant said yes. NE#1 wrote he asked the Complainant whether the woman used drugs. NE#1 documented the Complainant "slurred something," causing NE#1 to suspect the Complainant was under the influence of alcohol or narcotics. NE#1 wrote the Complainant "looked like a minor," so he asked his age. NE#1 wrote the Complainant refused to provide the information and called him a "pig." NE#1 wrote he turned his attention to the fallen woman.

NE#1's report also documented the Seattle Fire Department arrived and attended to the woman. NE#1 wrote he saw the Complainant "took a lit cigarette from another subject on the block and took at least one puff from the cigarette:

---

<sup>1</sup> For context, OPA provides the example of an officer receiving a subject name of "John Johnson" but running the name "John Johnsinsin."



---

*I did not believe he was the minimum age to possess tobacco products, 21 years old.<sup>2</sup> I then recontacted him, as our original victim was being taken care of.*

NE#1 wrote he told the Complainant "...he was not free to leave:."

*I told him he had to identify himself to include his name and date of birth because I had to determine if he was old enough (21 years old) to smoke.*

NE#1 wrote, "[a]fter MUCH back and forth questioning the legality of my stopping him," the Complainant provided his name and a birthdate that indicated he was eighteen years old. NE#1 wrote that he ran the Complainant's information twice but could not confirm his identity through the Department of Licensing and other databases. NE#1 wrote he requested a fingerprint reader, and the officer who arrived with the reader confirmed the Complainant's identity "without using the fingerprint reader." NE#1 asked the Complainant to be cited under RCW 70.155.080.

Further, NE#1 wrote:

*[The Complainant] called me "Pig" several times, called me fat (not Phat), and told me he hopes the next person I stop shoots me in the head. [The Complainant] told me several times he was going to complain about me, and I reminded him multiple times that we (the police) were all wearing BWV that captured and recorded the entire event.*

*b. Body Worn Video*

OPA reviewed NE#1's BWV. In summary, it showed:

NE#1 and WO#2 arrived and located the fallen woman. The Complainant and others stood near the woman in the road. NE#1 approached the Complainant and said, "Dude, I got this." The Complainant stepped onto the sidewalk. NE#1 and WO#2 attended to the woman. As SFD arrived, NE#1 asked the Complainant, "Hey kid, do you know what's going on here?" The Complainant said, "she fell back," but NE#1 interrupted, "I can't hear you, come here, do you know her?" The Complainant indicated he met her before she fell. NE#1 asked whether she used drugs. The Complainant noted he did not know. NE#1 stated, "This is about her health, dude. Has she been using any drugs?" The Complainant again said he did not know. NE#1 asked the Complainant, "How old are you?" The Complainant asked,

---

<sup>2</sup> NE#1 apparently mistakenly believed twenty-one years old was the minimum age to use or possess tobacco in Washington. NE#1 cited the Complainant under RCW 70.155.080, which explicitly forbids, among other things, the purchase or possession of tobacco by a "person under the age of eighteen." In fact, the "under eighteen" limitation is provided in the title of the RCW. Separately, in 2019, Engrossed House Bill 1074 made it a gross misdemeanor to sell or give tobacco products to anyone younger than twenty-one years of age. See Washington Department of Health, Tobacco and Vapor 21, available at <https://doh.wa.gov/you-and-your-family/tobacco/tobacco-and-vapor-21>. The minimum age for tobacco possession in Washington State remained eighteen years.



“Why?” NE#1 approached the Complainant and said, “Cause either leave or answer some simple questions.” The Complainant stepped away but appeared to say something. NE#1 responded, “You’re not answering questions to try to help her. That’s why I’m asking you, ‘cause you’re acting like a child.” The Complainant appeared to say, “That has nothing to do with her health.” NE#1 replied, “Cause you’re acting like a child.” The Complainant said, “No sir, I’m not. You’re asking me unnecessary questions.” NE#1 replied, “Like, is she on drugs? How is that unnecessary?” The Complainant stated for a third time he did not know whether the woman was on drugs. NE#1 replied, “Yeah, and you’re lying, and you’re lying.”

As WO#1, WO#2, and SFD attended to the woman, NE#1 approached the Complainant and said, “I can’t hear you.” The Complainant responded, “I said you’re a pig.” Coming within inches of the Complainant, NE#1 replied, “Well, what does that mean?” The Complainant stepped away and asked others on the sidewalk, “Do you see this guy getting in my face?” NE#1 said, “Well, what does that mean? You’re free to go!” The Complainant responded, “Yeah, I’m free to stay as well.” NE#1 said, “Absolutely.” A passerby asked what happened. NE#1 responded, “Well, I don’t know. I was trying to ask him... his friend, if she’s on drugs and if that has something to do with this, but, uh, he wants to be a child.”

NE#1 returned to the fallen woman. The Complainant stayed nearby on the sidewalk. About seven minutes later, the Complainant told NE#1, “I was the only person trying to help her at the beginning.” NE#1 responded, “Why are you talking to me? Do you have any information that you need to relay to me about her medical condition? You can...I’m not going to listen to you unless it’s important.” The Complainant made other statements to NE#1 that were difficult to discern over street noise, but it sounded like he told NE#1 there was a camera in the area and he would get NE#1 in “trouble.” NE#1 responded, “Good for you. Good for you.” The Complainant requested NE#1’s name and badge number, which NE#1 provided. NE#1 asked the Complainant, “Can you remember that?” NE#1 stated, “I don’t think he can.”

NE#1’s BWV recorded the Complainant speaking with a man in an orange sweatshirt. The Complainant stood about twenty to thirty feet from NE#1.<sup>3</sup> The man in the orange sweatshirt lit a cigarette and handed it to the Complainant, who smoked it.

The Complainant approached NE#1 and requested NE#1’s name and badge number. NE#1 asked the Complainant, “How old are you?” NE#1 approached the Complainant, who raised his hands and asked NE#1 to back away. NE#1 stated, “How old are you? You have a cigarette. I’m asking you a question now because I don’t think you’re twenty-one. You need to identify yourself to me right now.” NE#1 reiterated he did not think the Complainant was “twenty-one” and said, “I need to see your ID, please, because if you’re under twenty-one, I’m going to cite you for that violation.” The Complainant questioned whether NE#1 had probable cause, and NE#1 responded, “I don’t care what you think. Now, you’re being detained. You must identify yourself because of that, right there.”

---

<sup>3</sup> That estimation was based on NE#1’s BWV.



The Complainant asked, "Can you please ask him to back up? He doesn't need to be in my face like this." NE#1 agreed to back up but again told the Complainant he "needed" to identify himself. NE#1 stated if the Complainant refused to identify himself, he would get a fingerprint reader or take the Complainant to a precinct. The Complainant asked, "Is that probable cause? Me walking with a cigarette?" NE#1 said, "Yes, and smoking it too." The Complainant again questioned whether that constituted probable cause.

While holding his palm up towards the Complainant, NE#1 approached and said, "Listen, I'm not playing around." The Complainant asked NE#1 to "Please back up." NE#1 responded, "No, you're in my custody right now." The Complainant then provided his full name, along with spelling. The Complainant denied having physical identification but stated he was eighteen years old. NE#1 said, "Okay, so you are in violation." The Complainant provided his birthdate.

The Complainant told NE#1 the interaction was being recorded. NE#1 confirmed it was. The Complainant said, "I'm glad." NE#1 replied, "And you're getting cited." NE#1 asked WO#2 to run the Complainant's information, adding, "We're gonna have to play with the name."

NE#1 told the Complainant to remove his hands from his pockets. The Complainant, who held a lighter, asked to put the lighter in his pocket. NE#1 patted the Complainant's front pockets and allowed him to reinsert his hands.

NE#1 entered an SPD vehicle to run the Complainant's information. NE#1 said over the radio, "Nothing coming back with the name." NE#1 radioed for a fingerprint reader.

NE#1 returned to the Complainant, who was with WO#1 and WO#2. NE#1 again asked the Complainant's name, which the Complainant again provided. NE#1 again requested the Complainant's birthdate. The Complainant replied, "You're doing this because you're butt hurt." NE#1 asked, "Why does my butt hurt?" NE#1 replied, "Because you're a fucking pig." NE#1 asked the Complainant to repeat himself and "Talk into the microphone. Say it again. Here, I'll back up." The Complainant again called NE#1 a "fucking pig." NE#1 said, "And, I'm 'butt hurt?'" The Complainant said, "Yeah, you're butt hurt." NE#1 replied, "And, you're smoking, and you're how old, seventeen, eighteen?" The Complainant said, "I'm eighteen years old. I'm a man. I can go to war for my country and die . . . but I cannot smoke a cigarette?" NE#1 interjected, "Are you in the military, sir?" NE#1 asked for the Complainant's military ID. When the Complainant said he was not in the military, NE#1 said, "So you're not gonna go to war for your country?"

The Complainant said whether he was not in the military did not disprove his point. NE#1 responded, "What is your point? I'm still waiting for you to make your point." The Complainant said he made a point, and NE#1 could "rewatch that shit." NE#1 responded, "Well, thank you for your permission."

The Complainant directed an ableist slur at NE#1. NE#1 said, "Again, again, right here," and tapped his BWV camera while pointing it at the Complainant, who repeated the slur, noted he had freedom of speech, and asked NE#1 to back up. NE#1 responded, "Well, no, 'cause you're being detained." The Complainant noted WO#1 and WO#2 stood several



---

feet away, as opposed to NE#1, who stood near the Complainant. The Complainant also indicated, "If I wanted to go run, I would have ran, alright?" NE#1 responded, "You're not gonna run. Look at you. Your shoes aren't even tied."

The Complainant called NE#1 a "fat fuck." NE#1 replied, "You sure talk a lot." The Complainant asked WO#1 and WO#2, "You think this is fucking professional?" while indicating NE#1. The Complainant told WO#1 and WO#2, "The way you guys talked to me was professional. This guy is a fucking prick." NE#1 said, "Yeah, well, you get what you get."

The Complainant suggested he was detained for calling NE#1 a "pig," NE#1 the altercation by getting in the Complainant's face, and that the Complainant planned to "sue."

The Complainant said, "This is fucked . . . you're fucked." NE#1 said, "Wow . . . That's some strong, strong words." The Complainant replied, "Yeah, very strong words. It gets my fucking point across, doesn't it, you fucking pig?" NE#1 said, "I'm still waiting for a point. I really am. I really, really am." The Complainant called NE#1 "slow." NE#1 replied, "I'm not the fastest guy in the world."

The Complainant and NE#1 debated whether a fingerprint reader was necessary. NE#1 referenced the Complainant not appearing in databases, "You don't exist." The Complainant said NE#1 was trying to "piss [him] off." NE#1 said, "Listen, I don't care if you're angry. I don't care if you're happy right now. It doesn't matter to me." The Complainant stated, "You're trying to fucking get me to do something I'm gonna regret." NE#1 asked, "Are you threatening me? That seems like a veiled threat."

The Complainant loudly protested his arrest and said he was stopped for cigarette smoking. NE#1 said he wanted to "move off the sidewalk." The Complainant said he wanted to stay "in the cameras." NE#1 pulled the Complainant by his jacket sleeve into a nearby alcove. The Complainant asked that the interaction be recorded. NE#1 said the Complainant was "making a scene for no reason." The Complainant said it was not for no reason. NE#1 said, "Well, that's debatable."

The Complainant accused WO#1 and WO#2 of not speaking up and said they were "following orders." NE#1 said he was "not their boss." The Complainant stated that was not what he said. NE#1 responded, "Well, okay, are you making one of those points again?" The Complainant questioned why the officers were there, stating, "You guys should be going catching fucking criminals." NE#1 retorted, "We've got a criminal right here in front of us. Smoking under twenty-one. That is a criminal violation."

The Complainant called NE#1 a "fucking piece of shit." NE#1 responded, "Wow, you're really good with your words." The Complainant said NE#1 was "trying to insult" the Complainant. The Complainant said, "I bet I can fucking spell better than you can." NE#1 responded, "I'm up for a spelling bee anytime."

NE#1 asked WO#1 and WO#2 to estimate the Complainant's height. NE#1 said the Complainant was "very slouchy, though." NE#1 noted his height was six foot three and a half inches.



The Complainant said, what sounded like, "I know how you fucking are." NE#1 responded, "You don't know me." The Complainant said, "Yeah, I do." NE#1 said, "You don't know me."

Another officer arrived and spoke with NE#1 about how to use the mobile fingerprint reader. That officer indicated it was permissible to use the fingerprint reader as long as NE#1 had probable cause or "good Terry." That officer asked NE#1, "Well, you have probable for the MIP, right?" NE#1 handed the officer a notebook in which NE#1 wrote the Complainant's information. The other officer ran the Complainant's name in his SPD computer. That officer found the Complainant in the SPD system.

NE#1 gave the Complainant a business card and explained a citation would be mailed.

*c. OPA Interview – Witness Employee #1*

OPA interviewed WO#1. WO#1 stated he worked for SPD since 2019 but worked as a municipal police officer out-of-state for nine years prior.

WO#1 stated he responded to the scene where the woman fell into the street. WO#1 said NE#1 spoke with the Complainant. WO#1 stated NE#1 asked the Complainant how old he was, but the Complainant asked why NE#1 needed that information. WO#1 said at that point, "The dynamic of the call began to change." WO#1 stated the exchange between NE#1 and the Complainant "escalated, voices raised, and [NE#1] then detained him." WO#1 stated NE#1 unsuccessfully ran the Complainant's name in the SPD computer and then requested a fingerprint reader.

WO#1 stated that, while awaiting the fingerprint reader, NE#1 and the Complainant had an "escalated verbal dispute . . . Slurs were thrown. Negative things were said. Voices were escalated." WO#1 said the Complainant was "visibly upset," cried, and tried to "garner attention."

WO#1 stated the fingerprint reader arrived, the Complainant was identified, and NE#1 was released.

WO#1 characterized the interaction between NE#1 and the Complainant as "verbal jiu-jitsu" and that the situation was a "P.O.P.: pissing off police." WO#1 defined it as, "When someone pisses you off, you seek – you seek something that you can detain them for and write an infraction, maybe even an arrest." WO#1 stated NE#1 could have allowed the Complainant to leave, but instead, the "dynamic escalated" and that the Complainant wasn't "why we're here." WO#1 stated their reason for being present was a medical call and that their primary focus was to "get aid provided to the female, and we can go about our day." WO#1 stated the Complainant's minor infraction was not a "detriment to the safety of the medics and/or us." WO#1 summarized, "It's just unnecessary. For me, it was unnecessary. That's just how I believe."

*d. OPA Interview – Witness Employee #2*

OPA interviewed WO#2. WO#2 stated she worked for SPD since 2019 and had no prior law enforcement experience.





---

WO#2 recalled working with NE#1 when they responded to the “medical emergency” of the woman in the street. WO#2 recalled that while attending to the woman, NE#1 interacted with the Complainant. WO#2 stated NE#2 stopped the Complainant for underage smoking. WO#2 said the Complainant “appeared to be underage,” based on “he was young – very young looking.”<sup>4</sup>

WO#2 stated she did not recall NE#1 being rude but stated, “If you’re asking if I heard something, although I was standing there, my focus wasn’t on what he was actually saying. It was more of our safety around us. So, I don’t recall him – what words were being used.”

*e. OPA Interview – Named Employee #1*

OPA interviewed NE#1, who worked at SPD since 1999. NE#1 stated he worked for another municipal police department for four-and-a-half years prior. NE#1 said before his interview, he reviewed his BWV, incident report, classification notice, the RCW for possession of tobacco, and “the subsequent house bill in 2020.”

NE#1 stated he worked an emphasis shift downtown with another officer on the date in question. NE#1 said he was flagged down to assist a woman who fell on the road. NE#1 stated he responded to ensure SFD was en route. NE#1 recalled people “milling around...trying to make sure she didn’t get run over before we got there.”

NE#1 stated the Complainant was among the onlookers. NE#1 said he patted the Complainant’s shoulder and said, “I got this.” NE#1 also said he directed the Complainant to move out of the street. NE#1 stated he wanted to determine what happened to the woman, so he looked around to “do a canvas of the people who were there.” NE#1 recalled asking the Complainant if he knew the woman, which the Complainant denied. NE#1 stated he asked the Complainant whether the woman used drugs. NE#1 said the Complainant “seemed slow to answer. His eyes seemed kind of glazed. Basically, he looked high to me.” NE#1 also stated, “he looked really young.”

NE#1 said he got the “quick impression” the Complainant did not want to answer questions. NE#1 said he thought the Complainant was underage and high. NE#1 said he asked the Complainant how old he was because “he looked very young to me and possibly under the influence of who knows what. That created some concern on my part because there’s a lot of – we run into a lot of juveniles who are runaways.” NE#1 stated the Complainant responded, “Why does that matter?” NE#1 said that he did not believe there was enough to stop the Complainant, so he returned his attention to the woman who fell.

NE#1 said the Complainant re-engaged “to call me names and say nasty things to me.” NE#1 noted, “[a]nd he called me fat. I’m going to say that. So that was pretty offensive.” NE#1 stated he told the Complainant he was free to leave. The Complainant responded, “I know,” but “continued to loiter in the immediate area and interject periodically mostly, I think, exclusively with me.”

---

<sup>4</sup> WO#2 did not mention whether she believed the Complainant appeared underage to possess tobacco or what she believed the legal age was.





NE#1 said he observed the Complainant “standing there, and he’s now got a cigarette in his hand, and he’s smoking a cigarette. And I had already made the assessment that I didn’t think he was an adult being eighteen.” NE#1 said the situation with the woman was under control when the Complainant “approached yet again, and at that point, I was going to be insistent on seeing if he was old enough to be smoking.” NE#1 described it as something he often did in that area as part of his “proactive duties.”

NE#1 said he wanted to get the Complainant’s information, and “if he was under eighteen, I was going to take the appropriate enforcement action.” NE#1 described a “back and forth” where the Complainant would not give his information. NE#1 stated the Complainant eventually provided his information, but NE#1 “couldn’t verify that information,” so he called for a fingerprint machine. NE#1 said the Complainant was “subsequently identified.”

OPA asked NE#1 why he indicated the minimum age for tobacco possession was twenty-one. NE#1 said there is a “gray area” in tobacco laws, and it is “unclear to [NE#1] whether it’s eighteen or twenty-one.” NE#1 stated he did not believe the Complainant was eighteen, and it “is basically irrelevant at this point because I’m there to see if he’s eighteen or older. If he showed me he’s 18 or older, he’s on his way. If he shows me that he’s not 18, then we deal with it in the fashion that I did. And I wrote a long incident report about this and requested that a citation for the RCW of a minor in possession of tobacco be mailed to him.”

NE#1 also stated he believed he ran the Complainant’s name twice because the first check did not yield a result. NE#1 said he also received no result from the second check. NE#1 stated:

*Well, following policy, I went back out there. I tried to verify the information with [the Complainant] in case, you know, I had spelled it wrong or had gotten one digit off on the birth date because things like that can sometimes throw off the information that you would get back. You know, garbage in, garbage out from the computer.*

NE#1 stated he verified the information with the Complainant and then requested the fingerprint reader. NE#1 stated the Complainant spoke with the officer who brought the fingerprint reader and was identified.

NE#1 denied that the Complainant’s insults impacted his detention. NE#1 stated it was important to note the Complainant’s insults to “give context to his overall demeanor.”

#### **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**

The Complainant alleged NE#1 detained him 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 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.*

Eighteen is the minimum age in Washington for tobacco possession. Despite NE#1’s confusion, there is no gray area. Tobacco products cannot legally be sold to persons under twenty-one.

NE#1’s legal basis for stopping the Complainant rests on whether there was reasonable suspicion to believe the Complainant was under eighteen. BWV showed the Complainant was at least six feet tall and weighed about two hundred pounds. NE#1 and WO#2 described the Complainant as young-looking. NE#1 said he thought the Complainant was under eighteen years old. Despite the Complainant’s height and weight, it was not irrational for NE#1 to subjectively suspect he was under eighteen.

However, OPA notes two unresolved issues.

First, throughout his interaction with the Complainant, NE#1 repeatedly stated his erroneous belief that the legal age for possessing tobacco was twenty-one. In fact, despite NE#1’s telling OPA had the Complainant proved he was eighteen years old, he would be “on his way,” that did not happen. NE#1 established the Complainant was eighteen years old and still cited him for possessing tobacco. Moreover, when the Complainant told NE#1 he was eighteen—but not yet twenty-one—NE#1 replied, “Okay, so you are in violation.”

Second, the Complainant provided his identifying information, including his birthdate, at which point there was sufficient information to verify his identity in the SPD vehicle’s computer. The only reason NE#1 was unsuccessful was that he twice misspelled the Complainant’s last name. NE#1’s remote log showed he entered the Complainant’s misspelled name twice around 5:23 PM. NE#1 released the Complainant about twenty-five minutes later when another officer confirmed the Complainant’s identity.

Although it would be reasonable to suspect the Complainant was younger than eighteen, OPA is concerned by NE#1’s persistent confusion about the tobacco laws and the length of time he extended this detention through his technical errors. 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 SPD Policy 6.220-POL-2(1), RCW 70.155.080, and Engrossed House Bill 1074 (2019) with NE#1, and provide any retraining and counseling it deems appropriate. Retraining should include a discussion of the distinction between RCW 70.155.080 and Engrossed House Bill 1074 (2019). It should also include Mobile Data Terminal use, specifically, how to confirm entry accuracy. Retraining and counseling should be documented and maintained in Blue Team.

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



---

**Named Employee #1 - Allegation #2**

***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***

The Complainant alleged NE#1 required him to identify himself during a *Terry* stop.

Officers are prohibited from requiring a subject to 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.

Here, NE#1 repeatedly demanded the Complainant identify himself. Under the policy, NE#1 could only make such a demand with probable cause, either for a crime per SPD Policy 6.220-POL-3(1) or to issue a Notice of Infraction per SPD Policy 6.220-POL-3(2). NE#1 did not have probable cause to believe the Complainant was under eighteen.

Moreover, OPA finds NE#1 had no reasonable, articulable basis to believe the Complainant was under eighteen beyond his appearance. While, in some cases, an officer may have—or not have—probable cause to believe a person is under the age of eighteen, that was not the case here. Despite the Complainant’s youthful appearance, he was over six feet tall and weighed about two hundred pounds. NE#1 may have had somewhat more than an “inarticulate hunch” the Complainant could be under eighteen, but his level of suspicion did not rise to probable cause. *Compare Terry v. Ohio*, 392 U.S. 1, 22 (1968) (anything less than reasonable suspicion would allow detention on nothing more than “inarticulate hunch”) with *Safford Unified School Dist. #1 v. Redding*, 557 U.S. 364, 370 (2009) (“Probable cause exists where ‘the facts and circumstances within [an officer’s] knowledge and of which [he] had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that’ an offense has been or is being committed.”) In this circumstance, NE#1 was free to request the Complainant identify himself, but he could not demand as much.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #3**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220 - POL - 2 Conducting a Terry Stop 4. During all Terry Stops, Officers Will Take Reasonable Steps to Be Courteous and Professional***

The Complainant alleged NE#1 was not courteous and professional while detaining the Complainant.

SPD Policy 6.220-POL-2(4) requires that, during a *Terry* stop, officers will take reasonable steps to be courteous and professional. The policy further states that: “When reasonable, as early in the contact as safety permits, officers will inform the suspect of the following: the officer’s name; the officer’s rank or title; that the officer is a Seattle police officer; the reason for the stop; that the stop is being recorded, if applicable.”

At its core, SPD Policy 6.220-POL-2(4) requires officers to be courteous and professional. While professionalism is defined in SPD Policy 5.001-POL-10, being courteous implies something more. By any measure—the professionalism



---

requirements in SPD Policy 5.001 or the ordinary meaning of courteous—NE#1’s words and actions fell short of Department expectations for a *Terry* stop.

NE#1 was discourteous and unprofessional with the Complainant from the start of their interaction, accusing the Complainant of lying and stating the Complainant was “acting like a child.” While, for this allegation, OPA is only evaluating NE#1’s behavior during the Complainant’s detention, OPA does find their interaction before that informs NE#1’s intent concerning his words and actions once the Complainant was detained.

Overall, NE#1 was discourteous and unprofessional while detaining the Complainant. NE#1’s level of intensity was utterly disproportionate to investigating the Complainant for a non-violent civil infraction. Among other things, NE#1 repeatedly invaded the Complainant’s personal space, frisked him for weapons, backed the Complainant up to a wall, told the Complainant he was not “playing around,” made the Complainant repeat irrelevant commentary into his BWV, accused the Complainant of making a “veiled threat,” and pulled the Complainant into an alcove when the Complainant protested his treatment. NE#1 also sarcastically, flippantly, and unnecessarily suggested the Complainant failed to make a valid point when the Complainant questioned why he could legally go to war but not possess tobacco.

Moreover, NE#1 made comments to the Complainant that were, individually and collectively, discourteous and unprofessional. Those included:

- When the Complainant called NE#1 a “fucking prick.” He replied, “Yeah, well, you get what you get.”
- When the Complainant said the officers should be out catching criminals, NE#1 responded, “We’ve got a criminal right here in front of us. Smoking under twenty-one. That is a criminal violation.”

In short, NE#1 escalated and antagonized the Complainant throughout the detention, the putative purpose of which was to issue the Complainant a civil infraction for what turned out not to be a crime. SPD Policy 6.220-POL-2(4) prohibits precisely that behavior.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**