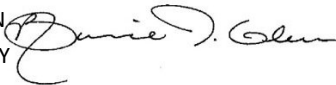




## CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 4, 2025

FROM: INTERIM DIRECTOR BONNIE GLENN  
OFFICE OF POLICE ACCOUNTABILITY 

CASE NUMBER: 2024OPA-0440

### Allegations of Misconduct & Director's Findings

#### Named Employee #1

Allegation(s):		Director's Findings
# 1	6.220 – Voluntary Contacts, Terry Stops, and Detentions, 6.220-POL-2 Conducting a Terry Stop, 1. Terry Stops are Seizures Based Upon Reasonable Suspicion	Not Sustained - Lawful and Proper
# 2	6.220 – Voluntary Contacts, Terry Stops, and 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	6.220 – Voluntary Contacts, Terry Stops, and Detentions, 6.220-POL-2 Conducting a Terry Stop, 6. Officers May Conduct a Frisk of Stopped Subject(s) Only if They Have an Articulable and Reasonable Safety Concern that the Person is Armed and Presently Dangerous	Sustained
# 4	6.010 – Arrests, 6.010-POL-1. Sworn Employees Must Have Probable Cause That a Subject has Committed a Crime in Order to Effect an Arrest	Allegation Removed

#### Proposed Discipline

Written Reprimand to 27 Hours (3 Days) Suspension

#### Imposed Discipline

18 Hours (2 Days) Suspension and Additional Training

***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:

Named Employee #1 (NE#1) contacted Community Member #1 (CM#1), suspecting CM#1 as the individual responsible for a vehicle theft (Suspect #1). NE#1 subsequently handcuffed CM#1, performed what NE#1 characterized as a frisk,



and later released him. The Complainant, an SPD captain, alleged that NE#1 executed an unlawful *Terry* stop, exceeded the scope of the *Terry* stop, exceeded the scope of a frisk, and lacked probable cause to execute an arrest

**ADMINISTRATIVE NOTE:**

On March 25, 2025, the Office of Inspector General certified OPA's investigation as thorough, timely, and objective.

**STATEMENT OF FACTS:**

A. OPA Complaint

On November 17, 2024, the Complainant submitted an OPA complaint, describing the following:

During NE#1's investigation into an unoccupied stolen vehicle, NE#1 reviewed a business security video showing Suspect #1 exiting the vehicle. Later, NE#1 observed CM#1, whom he believed was Suspect #1, walking away, so NE#1 drove to CM#1's location, engaged in a brief foot chase, and initiated a social contact with CM#1.<sup>1</sup> Although CM#1 seemed "calm and cooperative," NE#1 handcuffed him and then escorted him to the front of a patrol vehicle, where NE#1 performed a "custodial search"—which NE#1 characterized as a frisk—by lifting and manipulating CM#1's outer garments to reveal his undergarments. NE#1 also placed CM#1 in the rear of the patrol vehicle. Despite believing that the undergarments resembled those seen on video, NE#1 ultimately released CM#1.

The Complainant alleged that NE#1 lacked articulable facts justifying the *Terry* stop; that NE#1 exceeded the scope of the *Terry* stop by handcuffing CM#1, removing him from the site of the initial stop, searching him, and placing him in the rear of the patrol vehicle; that NE#1 lacked articulable and reasonable safety concerns justifying a frisk and exceeded the scope of the frisk by manipulating CM#1's outer clothing; and that NE#1 lacked probable cause to execute an arrest.

OPA investigated the complaint by reviewing the computer-aided dispatch (CAD) call report, body-worn video (BWV), in-car video (ICV), photograph, and incident report. OPA also interviewed NE#1.

B. Computer-Aided Dispatch (CAD) Call Report

On November 9, 2024, at 12:20 PM, CAD call remarks noted, "1 MIN[UTE] AGO, [REPORTING PARTY] SEEING HIS VEH[ICLE] DRIVE AWAY, UNK[NOWN] SUSP[ECT] DESC[RPTION], [LAST SEEN] DRIVING ON SENECA ST[REET], NO [WEAPONS] SEEN."

C. Body-Worn Video (BWV) and In-Car Video (ICV)

BWV or ICV captured the following:

---

<sup>1</sup> A social contact is a "voluntary and consensual encounter between the police and a subject with the intent of engaging in casual and/or non-investigative conversation. The subject is free to leave and/or decline any of the officer's requests at any point; social contacts are not seizures." SPD Policy 6.220-POL-1.



NE#1 called the registered owner, who shared information about his stolen vehicle. He was unable to provide a description of Suspect #1 and confirmed that there were no weapons inside the vehicle. He also supplied the address of the vehicle's last known location, which was determined using GPS data. NE#1 told the registered owner that officers had found the unoccupied vehicle and instructed him to meet at that location. NE#1 then drove to the site.

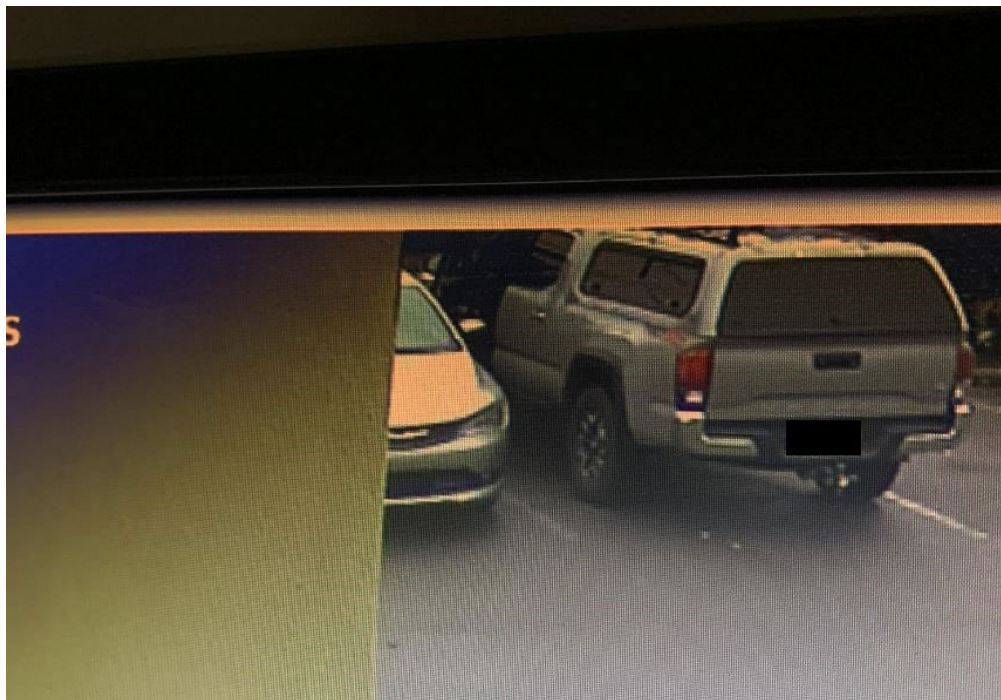
The stolen vehicle was found parked in a business parking lot across from an apartment complex. NE#1 told another officer that he was unsurprised to see the vehicle in this location, as an apartment resident was a known car thief with an outstanding warrant.<sup>2</sup> NE#1 then entered a nearby business and approached an office, where two officers were reviewing security video showing Suspect #1 exiting the stolen vehicle.



*The image above was taken from NE#1's BWV.*

An officer told NE#1 that Suspect #1 wore a black hoodie and a white face mask. NE#1 reviewed the video footage and asked whether Suspect #1 had crossed the street. An officer replied, "Yeah, he walks off down that way." NE#1 photographed the stolen vehicle and Suspect #1 using his department-issued phone, as depicted below.

<sup>2</sup> NE#1's incident report stated that he recovered multiple stolen vehicles from both this area and the nearby apartment complex.



*The image above was taken from NE#1's department-issued phone.<sup>3</sup> Suspect #1 appeared to be exiting from the driver's side of the stolen vehicle.*

NE#1 mentioned that Suspect #1 wore a white undershirt.<sup>4</sup> NE#1 then exited the business and approached the registered owner and his fiancé, explained the retrieval process to them, and requested a tow via radio.

CM#1 was walking to the right across the street when he momentarily glanced at NE#1, revealing what appeared to be a face mask.

<sup>3</sup> NE#1's incident report stated, "The photo is not the best quality, and the footage is clearer in person."

<sup>4</sup> NE#1's incident report stated, "[The video] showed a taller, skinny male wearing a face mask, black hoodie with the hood up, black pants with a distinctive bright white undershirt poking out of the back. The suspect locks the vehicle with the key fob and walks towards the apartments directly south [...]. The video is brief but some of the suspect's mannerisms can be seen."



*The image above was taken from NE#1's BWV. CM#1 is indicated by the red circle.*

CM#1 turned his face away from NE#1 and continued walking to the right.<sup>5</sup>



*The image above was taken from NE#1's BWV. CM#1 is indicated by the red circle.*

While seemingly conversing with himself, NE#1 noted that CM#1 was not wearing a white undershirt and suggested that he could have changed his attire. NE#1 radioed dispatch, asking about the color shoes Suspect #1 wore. A response was not audible, indicating that NE#1 likely wore an earpiece. NE#1 began walking toward the street and radioed, "Copy. I just had a guy walk out of those apartments, kind of head towards us, saw me. He's currently walking southbound on Rainier, but he's changed his clothes, still wearing a face mask, if it is him. But he's – he's walking away

<sup>5</sup> NE#1's incident report stated, "The male caught my attention as he matched the body type of the suspect seen in the video and was wearing a black hoodie sweatshirt with a face mask; but had on a green coat over the sweater and clean tan pants. He was using his left hand to hold up the pants and appeared to move with the same mannerisms I saw in the video. When I made eye contact with the male, he appeared startled and suddenly changed directions and stopped walking towards us."





at a good grip now. If you don't mind just doing a – a social on him, he's wearing a green jacket and tan pants, um, kind of holding his pants up right now." NE#1 also radioed CM#1's location. NE#1 then asked, "Sorry. What was that?" After listening for a reply, NE#1 added, "Ah, copy. Disregard then."<sup>6</sup> NE#1 approached his patrol vehicle and told the registered owner and his fiancé that he would speak with CM#1. NE#1 began driving out of the parking lot, pausing for about 50 seconds before merging into traffic.

NE#1 drove to CM#1's location and parked in a bus lane adjacent to an apartment building, while CM#1 was walking away from NE#1.<sup>7</sup>



*The image above was taken from NE#1's ICV. CM#1 is indicated by the red arrow.*

NE#1 exited his patrol vehicle and chased after CM#1 for about seven seconds, while simultaneously radioing, "Foot pursuit. He's going into the buildings."<sup>8</sup> CM#1 then reappeared in front of NE#1. CM#1 was holding a bottle of strawberry milk in his right hand.



*The image above was taken from NE#1's BWV.*

<sup>6</sup> NE#1 stated during his OPA interview that dispatch told him that no units were available to conduct the social contact.

<sup>7</sup> NE#1's incident report stated that CM#1 "changed directions" twice upon noticing NE#1 approaching in his patrol vehicle.

<sup>8</sup> NE#1 stated in his incident report and during his OPA interview that CM#1 ran. BWV and ICV did not support or refute this claim.



NE#1 ran toward CM#1 and radioed, "Disregard." NE#1 said to CM#1, "Hey, man. How you doing?" CM#1 replied, "Good." NE#1 radioed, "Just give me one unit routine. I'm under control with him. Social contact."<sup>9</sup> Meanwhile, CM#1 was peeling the plastic off the milk bottle as NE#1 introduced himself.



*The image above was taken from NE#1's BWV.*

NE#1 said, "So, the reason I'm talking to you is because you kind of matched the description of someone who was walking away from a stolen vehicle. I was just curious if you knew anything about that."<sup>10</sup> CM#1 replied, "No." CM#1 lowered his arms to his sides. NE#1 asked where CM#1 was located. CM#1 replied, "Just around." As CM#1 maintained his arms at his sides, with his hands positioned in front of him, NE#1 reached for CM#1's arms.

<sup>9</sup> NE#1's incident report stated, "I initially broadcasted that I was conducting a social contact but misspoke as I was actually conducting a terry stop on the male and requested an additional unit."

<sup>10</sup> NE#1's incident report stated, "As I spoke with [CM#1], I saw that underneath the black sweater he was wearing, he had a bright white shirt on."



*The image above was taken from NE#1's BWV. About 26 seconds elapsed from the moment NE#1 began the conversation with CM#1 until NE#1 reached for CM#1's arms.*

NE#1 instructed CM#1 to position his hands behind his back and told him that he was being detained. CM#1 complied, after which NE#1 handcuffed him. NE#1 asked CM#1 whether he was carrying any weapons, to which CM#1 responded no. NE#1 radioed that he had one individual detained and under control.

NE#1 escorted CM#1 to the front of his patrol vehicle. NE#1 grabbed the left pocket of CM#1's pants and then grabbed both pockets of CM#1's jacket. NE#1 then lifted CM#1's jacket from the left side, revealing CM#1's undergarments, before lowering it.



*The image above was taken from NE#1's ICV.*

NE#1 then lifted CM#1's jacket from the right side, revealing CM#1's undergarments again, before grabbing the right pocket of CM#1's pants.





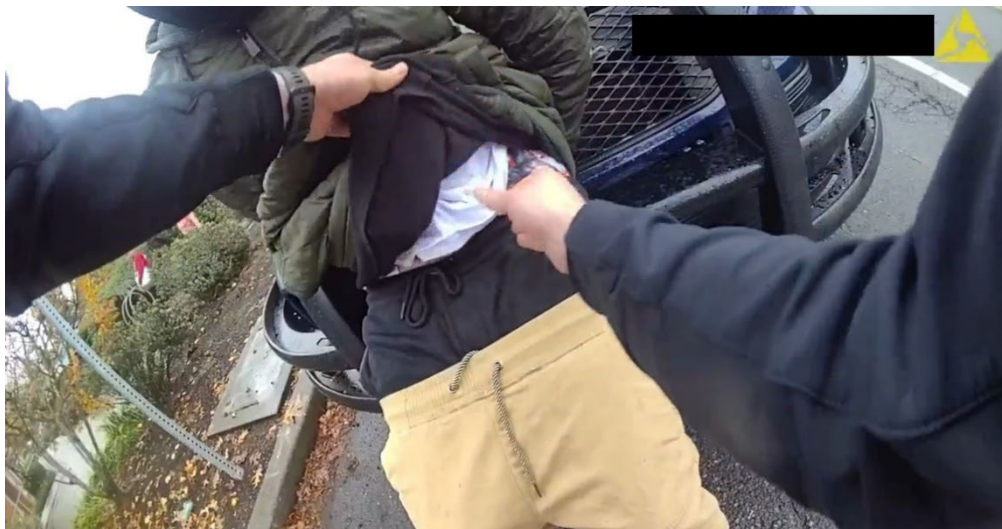
*The image above was taken from NE#1's ICV.*



*The image above was taken from NE#1's BWV.*

NE#1 lowered CM#1's jacket and then instructed CM#1 to sit on the push bar of his patrol vehicle, which CM#1 did.

NE#1 said, "So, before I continue, I'm seeing a lot of clothing now that's starting to match a little bit more of what I saw, so I'm going to advise you of your *Miranda* rights." NE#1 Mirandized CM#1 and began questioning him. NE#1 said, "So, I have you on video walking away from a car." CM#1 denied it was him. NE#1 then lifted CM#1's jacket, grabbed at CM#1's undergarments, and said, "These – these pants. Your white – your black jacket. Your undershirt."



*The image above was taken from NE#1's BWV.*

NE#1 briefly grabbed an object through the front pocket of CM#1's hoodie.



*The image above was taken from NE#1's BWV.*

NE#1 ceased grabbing CM#1's clothes and asked again about CM#1 being seen on video. CM#1 claimed to have no knowledge and denied operating a vehicle. CM#1 said he lived nearby and had "just came out" from home. NE#1 said he saw CM#1 on video exiting a stolen vehicle, a claim that CM#1 refuted. CM#1 expressed uncertainty about whether his fingerprints would be inside the stolen vehicle but then claimed that they would not be found there. While CM#1 denied having a warrant, he admitted to a prior arrest for trespassing. NE#1 asked CM#1 for the car keys. CM#1 responded that he did not know their location. NE#1 then placed CM#1 in the rear of his patrol vehicle and told CM#1 that he was being detained, not arrested.

NE#1 entered the patrol vehicle and continued to question CM#1 while checking CM#1's information through the mobile data terminal (MDT). NE#1 asked about CM#1's reason for running, an action CM#1 denied doing. CM#1 said



he was in a hurry to return home because he had forgotten something. NE#1 confirmed that CM#1 had no warrants. CM#1 said he had recently been released from jail for a parole violation. NE#1 then mentioned that CM#1 had a prior arrest for vehicle theft. NE#1 proposed a deal, saying he would cite and release CM#1 if he could provide the car keys. CM#1 again denied any involvement with the vehicle. NE#1 warned that he would arrest CM#1 later after obtaining his fingerprints from the vehicle. NE#1 advised CM#1 that his situation would improve if he produced the keys. NE#1 then removed CM#1 from the patrol vehicle and uncuffed him.<sup>11</sup> A sergeant arrived at the scene, but CM#1 declined to speak with him. NE#1 handed CM#1 a business card, after which CM#1 departed the scene.

NE#1 screened the incident with the sergeant. NE#1 said he made eye contact with CM#1 during his initial observation of CM#1, who then quickly walked away. NE#1 said, "From the video, height and hoodie matched, but nothing else did." NE#1 mentioned that after he drove to CM#1's location, CM#1 ran but immediately stopped. NE#1 said he saw CM#1 wearing a "distinctive white T-shirt" and "black sweats," as seen in the video. NE#1 said he ultimately released CM#1 after identifying him.

#### D. OPA Interview

On March 3, 2025, OPA interviewed NE#1. He clarified what he observed in the video. He said the stolen vehicle was parked facing an apartment complex known for incidents involving stolen vehicles, shootings, stabbings, narcotics, and other crimes. He described Suspect #1, who exited the stolen vehicle, as wearing a black hoodie, black pants, a white undershirt, and a surgical mask. He said Suspect #1 used a key fob to lock the vehicle before walking toward the apartment complex. He said about one hour had passed since Suspect #1 departed from the vehicle. He believed Suspect #1 was nearby and planned to return to the vehicle since he still possessed the keys.

NE#1 said he noticed many people walking around while he was waiting for a tow truck but particularly noticed CM#1, who was wearing a mask and resembled Suspect #1's build. He estimated that he was about 20 to 30 feet away from CM#1. He said CM#1's mannerisms were akin to Suspect #1's, especially in their "gait" and the way they held up their pants. He said they made eye contact, after which CM#1 displayed wide eyes and an expression of alarm, as if realizing he might be caught, and promptly left the area. He said he requested an additional unit to conduct a social contact with CM#1, as he felt he lacked sufficient grounds to initiate a *Terry* stop despite CM#1's suspicious behavior. He said no units were available, so he decided to contact CM#1 himself, believing he needed to retrieve the car keys.

NE#1 said he drove to CM#1's location, though CM#1 attempted to evade him by turning back. He said they made eye contact again once he parked his patrol vehicle, but then CM#1 immediately ran, prompting NE#1 to chase after CM#1. He believed the social contact elevated to a *Terry* stop when CM#1 elected to run. He noted that CM#1 and Suspect #1 exhibited similar body types, mannerisms, and attire, including a hoodie, mask, and white T-shirt beneath the hoodie. He said he handcuffed CM#1 due to the ongoing investigation into a felony, the area's reputation for narcotics and violent crime, CM#1's flight, and the possibility that CM#1 might attempt to run again. He felt he needed to limit CM#1's movements to conduct a more thorough investigation.

NE#1 said he escorted CM#1 to his patrol vehicle for safety reasons and to assist a backing officer in locating them. He said he frisked CM#1 for weapons, as he was investigating a felony and was concerned about CM#1 potentially being armed, particularly after CM#1 ran. He said he checked CM#1's outer pockets but noticed additional layers

<sup>11</sup> About 9 minutes and 42 seconds elapsed from the moment NE#1 began the conversation with CM#1 until NE#1 uncuffed CM#1. Additionally, NE#1's incident report stated, "I ultimately did not develop probable cause to arrest [CM#1] for the theft and released him from the scene."





underneath, prompting him to check those pockets as well. He said he exposed CM#1's waistband to confirm that no weapons were present in that area. When OPA asked why NE#1 did not frisk CM#1's arms, legs, or back, NE#1 explained that his focus was solely on the accessible areas of CM#1's body where a weapon could be concealed. OPA further questioned whether NE#1 had any concerns about a weapon being hidden in CM#1's lower back, to which NE#1 replied that it had not crossed his mind at that moment. He denied searching for car keys, insisting that his sole intention was to locate weapons. OPA asked why NE#1 grabbed at CM#1's clothing again and manipulated an object in the front pocket of CM#1's hoodie. He replied that this action was intended to demonstrate to CM#1 that his clothing resembled that of Suspect #1, although he acknowledged that he had overlooked the object during the initial frisk. He said it was not intended to be a second frisk. He said a second frisk could be warranted depending on the situation. He said he placed CM#1 in the rear of his patrol vehicle because he considered CM#1 a flight risk and wanted to prevent CM#1 from running while he checked CM#1's information through the MDT.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 – Allegation #1**

#### ***6.220 – Voluntary Contacts, Terry Stops, and Detentions, 6.220-POL-2 Conducting a Terry Stop, 1. Terry Stops are Seizures Based Upon Reasonable Suspicion***

The Complainant alleged that NE#1 lacked articulable facts justifying a *Terry* stop.

*Terry* stops are seizures of an individual and, as such, must be based on reasonable suspicion to be lawful. SPD Policy 6.220-POL-2(1). A *Terry* stop is a brief, minimally intrusive seizure of a subject based on reasonable articulable suspicion to investigate possible criminal activity. SPD Policy 6.220-POL-1. Reasonable suspicion means 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.* The reasonableness of a *Terry* stop is based on 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 justify the original stop. *Id.*

Overall, OPA finds that NE#1 had sufficient reasonable suspicion to execute a *Terry* stop for the following reasons.

While the business video footage, as viewed through NE#1's BWV, did not clearly show Suspect #1, NE#1 and two other officers were able to ascertain that Suspect #1 wore a black hoodie and a white face mask and approached an apartment complex reportedly known for its criminal activities, including vehicle theft. NE#1 claimed seeing an individual—CM#1—approaching from the apartment complex, whom he believed resembled Suspect #1. NE#1 based these similarities on physical build (height and skinniness), mannerisms (gait and the way they held up their pants), and attire (black hoodie and mask). NE#1 also claimed seeing CM#1 make eye contact with NE#1, display an alarmed expression, and change course.

However, some of NE#1's observations seemed questionable, as CM#1 was barely visible on BWV and appeared to be farther away than NE#1's estimated 20 to 30 feet. While BWV showed CM#1 briefly glancing at NE#1's direction, NE#1's claim that he could discern CM#1's "wide eyes" and alarmed expression from that distance appeared doubtful. Additionally, CM#1's tan pants and green jacket did not match Suspect #1's attire in the video, while the clothing items that did match (black hoodie and face mask) were commonly worn and spotted on CM#1 more than an hour after Suspect #1 had left the stolen vehicle. NE#1 noted the possibility that Suspect #1 could have changed clothes within





that hour. NE#1 also indicated a strong probability that Suspect #1 was in the area to return to the vehicle since he still had the car keys. Given that certain facts indicated reasonable suspicion while others did not, OPA finds that NE#1 was limited to initiating a social contact with CM#1 at this point, rather than a *Terry* stop.

When NE#1 began driving toward CM#1, NE#1 reportedly saw CM#1 make evasive maneuvers, which, if true, would have reinforced NE#1's suspicion. NE#1 then parked his patrol vehicle and reportedly saw CM#1 run away, which, if true, would have further reinforced NE#1's suspicion and, at that point, elevated the social contact to a *Terry* stop. *Cf. Illinois v. Wardlow*, 528 U.S. 119 (2000) (holding that the defendant's "headlong flight"—the "consummate act of evasion"—from officers in a heavy narcotics trafficking area supported reasonable suspicion that the defendant was involved in criminal activity and justified a stop). Here, not only was CM#1 reportedly seen running from NE#1 in an area known for criminal activity, but CM#1 partially resembled Suspect #1 based on NE#1's description. Reasonable suspicion requires at least a minimal level of objective justification for making the stop but is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence. *See id.* at 123. Although NE#1 claimed to have mistakenly radioed a social contact with CM#1, OPA finds that he had sufficient facts to execute a *Terry* stop after CM#1 reportedly ran from NE#1. OPA reaches this conclusion even without considering NE#1's questionable claim of having observed a white shirt underneath CM#1's hoodie at the time of their interaction. BWV and ICV did not support NE#1's claim, as video showed CM#1's green jacket extending past CM#1's waistline. Ultimately, other facts sufficiently supported the *Terry* stop, independent of NE#1's claim.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: Not Sustained – Lawful and Proper

Named Employee #1 – Allegation #2

*6.220 – Voluntary Contacts, Terry Stops, and 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#1 exceeded the scope of a *Terry* stop.

Officers must limit a seizure to a reasonable scope. SPD Policy 6.220-POL-2(2). Actions that indicate to a reasonable person that he or she is being arrested or indefinitely detained may convert a *Terry* stop into an arrest. *Id.* The policy lists possible actions—such as handcuffing, transporting any distance away from the scene of the initial stop, frisking for weapons, and placing a subject into a police vehicle—that could indicate to a reasonable person that he or she is being arrested. Still, it specifies that the occurrence of any one of these actions would not necessarily convert a *Terry* stop into an arrest. *See id.* Officers must have additional articulable justification for further limiting a person's freedom during a *Terry* stop unless the reasons for the initial stop justify it. *Id.*

As noted above, NE#1 had sufficient facts to execute a *Terry* stop, which meant that CM#1 was not free to leave. Shortly after NE#1 initiated the contact, NE#1 limited CM#1's freedom by handcuffing him, escorting him away from the site of the initial stop, frisking and searching him, and placing him in the rear of a patrol vehicle. OPA finds that NE#1 exceeded the scope of the *Terry* stop.

Here, because NE#1 was alone while investigating a felony in a high-crime area, he had sufficient grounds to further limit CM#1's freedom. NE#1's decision to escort CM#1 to the front of his patrol vehicle was not necessarily unreasonable. This action was a less restrictive measure, as this location was near the site of the initial stop, and their



visibility in front of NE#1's patrol vehicle would assist backing officers in locating them. Still, NE#1 could have opted for even less restrictive measures, such as instructing CM#1 to sit or move toward the corner wall of the apartment to reduce escape routes. However, NE#1's decision to handcuff CM#1 was questionable and likely unreasonable, especially since there were no specific indications that CM#1 was armed. Moreover, NE#1 placed himself into this predicament by failing to request backup before following CM#1 in his patrol vehicle and chasing CM#1 alone, leading NE#1 to confront an individual who had just run from the police.

Even assuming NE#1's decisions to handcuff CM#1 and escort him to a patrol vehicle were reasonable, NE#1's decision to frisk CM#1 while he was handcuffed exceeded the scope of the *Terry* stop. There were no indications that CM#1 was armed. The registered owner confirmed that no weapons were in his vehicle, no witnesses reported seeing CM#1 with a weapon, NE#1 did not observe any weapons in the business video, CM#1 did not attempt to hide his hands or reach for anything, CM#1 did not show any suspicious bulges in his clothing, and CM#1 denied carrying a weapon. At the time of contact, CM#1 was seen peeling the plastic off the strawberry milk bottle and lowering his arms to his sides, with his hands positioned in front of him. CM#1 also appeared calm and cooperative. Thus, frisking CM#1 was unwarranted. Even if CM#1 had been concealing a weapon, CM#1 was already handcuffed at the time of the frisk, greatly reducing the risk he could access a weapon to use against NE#1.

Even assuming NE#1's decision to frisk CM#1 was reasonable—which it was not—NE#1 further exceeded the scope of the *Terry* stop by conducting an improper frisk. This was evident when NE#1 searched CM#1 for evidence, as explained below in Named Employee #1 – Allegation #3. Rather than patting down CM#1, which would constitute a frisk, NE#1 lifted CM#1's outer clothing to expose his undergarments, intending to verify whether they matched those of Suspect #1. NE#1 again exceeded the scope of the *Terry* stop by placing CM#1 in the rear of his patrol vehicle. NE#1 could have opted to radio CM#1's information or call for backing officers to help secure CM#1 before running his information through the MDT. These actions also exceeded the scope of the *Terry* stop.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 – Allegation #3

*6.220 – Voluntary Contacts, Terry Stops, and Detentions, 6.220-POL-2 Conducting a Terry Stop, 6. Officers May Conduct a Frisk of Stopped Subject(s) Only if They Have an Articulable and Reasonable Safety Concern that the Person is Armed and Presently Dangerous*

The Complainant alleged that NE#1 lacked articulable and reasonable safety concerns justifying a frisk and exceeded the scope of the frisk.

Officers may frisk a stopped subject only if they have an articulable and reasonable safety concern that the subject is armed and presently dangerous. SPD Policy 6.220-POL-2(6). The purpose and scope of a frisk is to discover weapons or other items which pose a danger to the officer or those nearby. *Id.* It is not a generalized search of the entire person. *Id.* The decision to conduct a frisk is based upon the totality of the circumstances and the reasonable conclusions drawn from the officer's training and experience. *Id.* Generally, the frisk will be limited to a pat-down of outer clothing. *Id.* Once the officer ascertains that no weapon is present after the frisk is completed, the officer's limited authority to frisk is completed. *Id.* Officers may not frisk on a social contact or non-custodial interview or use it as a pretext to search for incriminating evidence. *Id.* The fact that a *Terry* stop occurs in a high-crime area is not, by itself, sufficient



to justify a frisk. *Id.* Frisk factors may include, but are not limited to, prior knowledge that the subject carries a weapon; suspicious behavior, such as failure to comply with instructions to keep hands in sight; and observations, such as suspicious bulges, consistent with carrying a concealed weapon. *Id.*

OPA finds that none of the frisk factors listed in SPD policy were present here. As noted above, there were no specific indications that CM#1 was armed, and NE#1 was unable to articulate any facts to the contrary. Similarly, there was no indication that NE#1 had prior knowledge—nor did OPA’s investigation reveal any indication—that CM#1 was known to carry weapons. CM#1 appeared to comply with all of NE#1’s instructions, and NE#1 did not claim to observe that CM#1 was armed, such as a bulge indicative of a firearm. OPA also finds that NE#1’s observations of CM#1 pulling up his pants and running away were insufficient, on their own, to justify a frisk under these circumstances. Furthermore, to the extent that the frisk factors listed in SPD policy are not an exhaustive list, OPA considered NE#1’s stated frisk justifications, which included his investigation into a felony, his concern about CM#1 potentially being armed, and the fact that CM#1 attempted to run. These reasons were speculative and failed to establish a clear link to whether CM#1 was indeed armed.

NE#1 also exceeded the scope of the frisk by searching for evidence. BWV and ICV showed NE#1 grabbing at several pockets of CM#1’s clothing, lifting CM#1’s jacket, and manipulating an object in the front pocket of CM#1’s hoodie. This conduct was inconsistent with a frisk, which is a limited pat-down of outer clothing. NE#1’s claim that he was frisking CM#1 for weapons was contradicted by his own failure to frisk CM#1’s arms, legs, and lower back—the only area even arguably accessible to CM#1 while handcuffed behind his back. Rather, NE#1’s actions were more consistent with a search. Although NE#1 denied searching for car keys, his repeated grabbing suggested otherwise. Furthermore, NE#1 appeared to be searching for evidence—specifically, a white undershirt and black pants—by lifting CM#1’s jacket, rather than performing a pat-down. NE#1 exposed CM#1’s waistline twice before stating, “So, before I continue, I’m seeing a lot of clothing now that’s starting to match a little bit more of what I saw, so I’m going to advise you of your *Miranda* rights.” This statement further implied that NE#1’s search was intended to uncover evidence of the original crime, and not any address any reasonable, articulable safety concern. Thus, OPA finds that NE#1 exceeded the scope of the frisk.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 – Allegation #4

*6.010 – Arrests, 6.010-POL-1. Sworn Employees Must Have Probable Cause That a Subject has Committed a Crime in Order to Effect an Arrest*

The Complainant alleged that NE#1 lacked probable cause to arrest CM#1.

Sworn employees must have probable cause that a subject committed a crime before executing an arrest. SPD Policy 6.010-POL-1. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy. Probable cause exists when the facts and circumstances within a sworn employee’s knowledge sufficiently support a reasonable belief that an offense has been or is being committed. *See State v. Fricks*, 91 Wash.2d 391, 588 P.2d 1328 (1979); *State v. Gluck*, 83 Wash.2d 424, 426–27, 518 P.2d 703 (1974).



---

Here, NE#1 concluded in his incident report, “I ultimately did not develop probable cause to arrest [CM#1] for the theft and released him from the scene.” If CM#1 had been formally arrested and charged with a crime, it would have constituted an arrest without probable cause. However, NE#1 did not formally arrest and charge CM#1 with vehicle theft. Instead, NE#1 exceeded the scope of the *Terry* stop. Although, as a technical matter, this may constitute an arrest without probable cause, OPA finds that this was adequately addressed above in Named Employee #1 – Allegation #1 and Named Employee #1 – Allegation #2.

Accordingly, OPA is removing this allegation.

Recommended Finding: **Allegation Removed**