



## CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 24, 2018

CASE NUMBER: 2018OPA-0286

### Allegations of Misconduct & Director’s Findings

#### Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Lawful and Proper)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 8. Officers May Conduct a Frisk or Pat-Down of Stopped Subject(s) Only if [...]	Not Sustained (Lawful and Proper)
# 4	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 5	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Unfounded)

#### Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Lawful and Proper)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 8. Officers May Conduct a Frisk or Pat-Down of Stopped Subject(s) Only if [...]	Not Sustained (Lawful and Proper)

### EXECUTIVE SUMMARY:

It was alleged that the Named Employees engaged in biased policing, extended the Terry stop of the Complainant beyond a reasonable scope, and impermissibly frisked the Complainant. It was further alleged that Named Employee #1 may have engaged in unprofessional behavior and may have abused his discretion when he stopped and detained the Complainant.

### ANALYSIS AND CONCLUSIONS:

#### Named Employee #1 - Allegations #1

##### ***5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal



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characteristics of an individual.” (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

Named Employee #1 (NE#1), who was a student officer on the date in question, stopped the Complainant for jay-walking. NE#1 reported that he viewed the Complainant cross a street against the traffic signal. NE#1 was with his Field Training Officer, Named Employee #2 (NE#2). At his OPA interview, NE#1 stated that NE#2 informed him of the violation and he made the stop.

Both officers were equipped with In-Car Video (ICV) and Body Worn Video (BWV). The Complainant jay-walking across the street was captured on ICV. The stop, itself, and the officers’ entire interaction with the Complainant was captured on BWV.

During the stop and detention, the Complainant alleged that the law enforcement action directed towards him was based on bias. The officers reported this allegation to a supervisor and a Bias Review was completed. The chain of command did not find any evidence of bias. Lastly, the Complainant was determined to have violated the law by jay-walking by the Seattle Municipal Court, which entered a finding of committed against him.

Both of the Named Employees denied that their actions were based on bias. They stated that, instead, they stopped and detained the Complainant solely based on the fact that he acted contrary to the law when he jay-walked.

Based on my review of the record, I find insufficient evidence to determine that the officers acted due to bias. The Department video conclusively established that the Complainant jay-walked and that, accordingly, there was a legal justification to detain him. I further note that the Complainant did not cooperate with OPA’s attempts to interview him. As such, he has proffered no evidence to prove that biased policing occurred. For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against both Named Employees.

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

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

##### ***6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope***

SPD Policy 6.220-POL-3 requires that officers limit a seizure to a reasonable scope. The policy further states that: “Actions that would indicate to a reasonable person that they are being arrested or indefinitely detained may convert a Terry stop into an arrest requiring probable cause or an arrest warrant.” (SPD Policy 6.200-POL-3.)

Here, the Complainant was detained for a fairly significant period of time, was placed into handcuffs, and was frisked by NE#1. For these actions to have been appropriate, they needed to have been justified under the circumstances.

With regard to the detention, itself, the officers were permitted to detain the Complainant based on the fact that he had committed a violation of law. While they detained him for approximately thirty minutes, I do not believe this to have been per se unreasonable. Notably, as they had a legal basis to issue him a citation, they were entitled to request his identification. When he did not provide that identification, they were permitted to detain him while



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waiting for a fingerprint scanner. He ultimately provided his identifying information, was issued a citation, and was then timely released from the scene.

I further find that it was reasonable to handcuff the Complainant. From my review of the video, he appeared to be intoxicated. His balance was off and he slurred his words. He used repeated profanity towards the officers. He also appeared to threaten to assault them, stating: “take that shit off, I’ll fuck you up” and “no, I ain’t threatening to fight you. If I met you in a parking lot, I’d have fucked your ass up by now.” NE#1 also reported, and the video corroborated, that the Complainant repeatedly raised and waved his arms, pointed his fingers towards the officers, and put his hands in his pockets even when asked not to do so. Given the totality of the Complainant’s conduct, statements, and actions, it was appropriate and warranted to handcuff him.

Lastly, I find that the protective frisk of the subject was justified in this case. As discussed above, the subject was verbally aggressive, threatened the officers, and repeatedly moved and waved his arms and pointed his fingers in a manner that a reasonable officer in the Named Employees’ place could plausibly have found to be dangerous. Moreover, based on my review of the BWV, the Complainant was wearing a loose jacket with deep pockets and a backpack. While I could not see any bulges in the Complainant’s pockets consistent with a weapon, that does not mean that the officers did not reasonably believe this to be the case in the immediacy of the moment. Ultimately, I find that the frisk of the Complainant was legally justified as the officers reasonably suspected that the Complainant could be armed and could be presently dangerous.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

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

***6.220 - Voluntary Contacts, Terry Stops & Detentions 8. Officers May Conduct a Frisk or Pat-Down of Stopped Subject(s) Only if [...]***

SPD Policy 6.220-POL-8 provides that officers may conduct a frisk or pat-down of a detained subject only if they reasonably suspect that the subject may be armed and presently dangerous.

For the same reasons as provided above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

**Named Employee #1 - Allegations #4**

***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***

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 the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity



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directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

Based on my review of the BWV, which captured the entirety of the stop and detention of the Complainant, I found no evidence that NE#1 engaged in unprofessional behavior. Notably, he was dealing with an individual who was intoxicated, belligerent, and aggressive. Under the circumstances, I find that his behavior and interactions with the Complainant were appropriate and professional. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #1 - Allegation #5**

***5.001 - Standards and Duties 6. Employees May Use Discretion***

As indicated in SPD Policy 5.001-POL-5, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-5.)

It was alleged that, in performing the stop in this case, NE#1 abused his discretion. In evaluating jay-walking cases, the question always arises of whether it is a truly necessary exercise of police authority and usage of Department resources. Such stops have been criticized as simply serving as pretext to look for other more serious crimes, such as open warrants or possession of narcotics and firearms. On the other hand, however, jay-walking is against City law, which SPD officers are sworn to uphold. Until that law changes, such stops can and will lawfully occur.

Ultimately, this is a question that is much larger than this DCM. The issue before OPA here is whether NE#1 had a lawful basis for stopping and detaining the Complainant and whether, when he did so, he properly exercised his discretion. Based on my review of the ICV, I find that he did have a legal basis for the stop. Similarly, I find that, when he effectuated the stop, he reasonably used the discretion afforded to him as a police officer.

As such, I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #2 - Allegations #1**

***5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

For the same reasons as stated above (*see* Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

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



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

***6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope***

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #2 - Allegation #3**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 8. Officers May Conduct a Frisk or Pat-Down of Stopped Subject(s) Only if [...]***

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

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