



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 1, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2017OPA-1085

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)

Named Employee #3

Allegation(s):		Director's Findings
# 1	6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Management Action)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant, a driver of a vehicle reported stolen, alleged that the Named Employees were unprofessional and threatening when they conducted a high-risk vehicle stop of the van she was driving. She stated that SPD employees should be trained differently to prevent such incidents.

ADMINISTRATIVE NOTE:

After OPA completed its initial investigation of this case, the OPA Auditor requested additional investigation, including interviewing additional SPD employees. OPA completed the additional investigation and returned it to the OPA Auditor for certification. However, due to high caseloads at the time, OPA was unable to do so prior to the expiration of the 180-day timeline imposed by the relevant collective bargaining agreements. In addition, once the timeline lapsed, OPA's workloads required prioritization of other pending cases. As such and while unfortunate, this case is issued well outside the 180-day timeline.

SUMMARY OF INVESTIGATION:



On October 10, 2017, Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were on patrol in an SPD vehicle equipped with an Automatic License Plate Reader (ALPR). While on patrol, the Named Employees' vehicle passed a passenger van with markings of the Nature Consortium, a nonprofit, when the APLR recorded a "hit" on the van's plates. The system reported that a vehicle with that license plate was reported stolen in November of 2014. The Named Employees activated their vehicle's lights and sirens and initiated a high-risk traffic stop of the van. The Named Employees notified dispatchers of the vehicle plate, and dispatchers confirmed that the vehicle was listed as stolen. The van pulled over in a parking lot and the Named Employees commenced a variation of a high-risk felony stop, a trained tactic when making a stop of a suspected stolen vehicle.

NE#1 directed the driver, who is the Complainant in this case, to roll down her window and exit the van. NE#1 and NE#2 stood by with their firearms drawn and held in a low ready position (pointed at the ground). They handcuffed the Complainant and placed her in the back of their patrol vehicle. After placing the Complainant in the patrol vehicle, NE#1, who was the primary officer interacting with the Complainant, stated: "We will explain this in a minute, okay? We are going to place you in handcuffs, that way we can get the other person out of the car and make sure everything is safe then we will explain everything, okay?" He explained that the handcuffing was a safety measure until they could place both van occupants into custody. NE#1 and NE#2 took the other occupant of the van into custody. Backup officers responded and they searched the van. During OPA's review of the video, it appeared that both NE#1 and NE#2 remained calm throughout the interaction and periodically explained what they were doing. They did not use any derogatory or abusive language.

NE#1 and NE#2 interviewed the Complainant and the other detained individual at the scene. Both stated that they were associated with the Nature Consortium and that the van was not stolen. NE#1 and NE#2 contacted the manager of the Nature Consortium. The manager informed them that the van belonged to the organization and that the occupants were volunteers. He stated that the Nature Consortium recovered the van after it was reported stolen. At that time, the Named Employees released the Complainant and the other individual from handcuffs and informed them that they were free to go. A sworn supervisor responded to the scene of the incident and screened the incident. NE#1 and NE#2 completed Terry Templates (now referred to as Field Contact Reports) that documented the reason for the stop. They also updated the relevant database to remove the stolen vehicle flag associated with the van.

Shortly after the incident, the Complainant contacted OPA. She stated that the Named Employees did a poor job of assessing the situation and should have known that the van was not stolen. She said that she should not have been handcuffed and that the officers should be trained to conduct vehicle stops in a less intrusive manner. She stated that the van could not have been stolen because its license tabs were up to date, which would be inconsistent with a vehicle stolen a year prior. This OPA investigation ensued.

OPA interviewed the Named Employees. NE#1, the primary officer who interacted with the Complainant, stated that he did not notice the license tabs on the vehicle. He stated that his focus at the time was on the occupants of the van. He further stated that, at the time of the stop, he was attempting to determine how many individuals were inside the van. He told OPA that, in identifying the van was stolen, he relied on database information that was flagged by his vehicle's ALPR system. He explained that, based on this information, he viewed the stop as high-risk.

NE#2 stated that he and NE#1 verified by radio that the vehicle was reported stolen. Consequently, he also determined that the stop was high-risk. He told OPA that he and NE#1 later determined the vehicle was not stolen based on their conversation with the Nature Consortium manager. Like NE#1, NE#2 stated that he did not notice the license tabs.



OPA further interviewed a Lieutenant assigned to the Training Unit and the then-Assistant Chief in charge of the Patrol Operations Bureau – Named Employee #3 (NE#3). The Training Lieutenant told OPA that SPD officers are trained to conduct high-risk felony stops for crimes of violence and/or involving weapons, BARK felonies (burglary, arson, robbery, kidnapping), and vehicle thefts. The Lieutenant explained that, with regard to vehicle thefts, high-risk stops were authorized for multiple reasons. First, the vehicle, itself, is viewed as a weapon. Second, stolen vehicles are often associated with other crimes, including those of violence. Third, there are significant unknowns and potential hazards to the officers, which are significantly more expansive than those that exist during a normal traffic stop. Fourth, using a high-risk stop under these circumstances is consistent with national best practices. In a response to a follow-up question from OPA, the Lieutenant identified that he was relying on FBI data to support the conclusion that stolen vehicles may commonly be related to violent crimes.

NE#3 stated that, in his opinion, NE#1 and NE#2 acted consistent with their training and the Department's expectations during this incident. He, like the Lieutenant, asserted that a high-risk felony stop was appropriate for a stolen vehicle. Accordingly, NE#3 contended that, based on his review of this incident, NE#1 and NE#2 were warranted in removing the occupants of the van at gunpoint and handcuffing them. Given this, and as NE#3 was ultimately responsible for the actions of NE#1 and NE#2 because of his then role, he was added as an involved employee to this investigation.

OPA additionally reviewed the training provided to the Department on high-risk felony stops. The training predominantly covered tactics for how to conduct the high-risk stop. It did not, however, discuss what crimes the high-risk stop should be utilized for or specifically reference stolen vehicles. Lastly, as noted by OPA in prior cases concerning high-risk stops, there is no SPD policy governing this practice.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional at all Times

SPD Policy 5.001-POL-10 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-10.)

OPA finds that neither NE#1 nor NE#2 violated the professionalism policy based on the manner in which they conducted the stop. Based on the information they had at the time that the van was stolen, the officers acted consistent with their training when they treated the stop as high-risk. Moreover, in a high risk stop, it would be impractical for NE#1 or NE#2 to divert their focus from the occupants of the van to examine an object as small as a license tab. Doing so could arguably increase the risk that the situation would escalate, thus increasing the danger to vehicle occupants, officers, and the public. While OPA is certainly sensitive to the fact that the Complainant was thus placed in an unfamiliar and potentially frightening situation, in its judgment NE#1 and NE#2 properly exercised discretion in the manner he conducted the stop.

Further, OPA notes that the officers calmly and clearly explained the situation and reason for the stop and released the Complainant as soon as it was safe to do so. In-Car Video (ICV), which captured audio and video associated with the incident, did not record NE#1 or NE#2 making any derogatory or insulting statements.



For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#2.

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

Named Employee #2 - Allegation #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional at all Times

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

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

Named Employee #3 - Allegation #1

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.)

In assessing this allegation, OPA concludes that conducting a high-risk felony stop for a stolen vehicle was consistent with SPD training. Moreover, it was almost certainly appropriate as a matter of law. See *State v. Williams*, 102 Wn.2d 733, 740 (1987) (drawn guns and the use of handcuffs are permissible during an investigative stop if the officers have a “legitimate fear of danger”). However, as with other cases OPA has examined involving high risk stops, this incident exemplifies the need for a policy that governs such stops and provides guidance on when they should be utilized. For example, the policy could address whether a high-risk stop is appropriate for all stolen vehicles and, if not, it could outline those circumstances that may warrant the use of the tactic. Indeed, OPA has reviewed cases where officers responded to or pulled over a suspected stolen vehicle and did not use the tactic, raising the question of consistency among officers. Again, OPA feels that a policy with express guidance this is especially warranted with high-risk stops given the significant imposition on a person’s liberty often based on a reasonable suspicion standard.

Accordingly, OPA renews its prior Management Action Recommendation on this topic and again calls for a policy to be developed.

Recommended Finding: **Not Sustained (Management Action)**