



## ***CLOSED CASE SUMMARY***

ISSUED DATE: FEBRUARY 15, 2020

CASE NUMBER: 2018OPA-0322

### **Allegations of Misconduct & Director's Findings**

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	Not Sustained (Lawful and Proper)
# 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 6. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop	Not Sustained (Lawful and Proper)
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 9. Under State Law, Traffic Violations May Not Be Used as a Pretext to Investigate Unrelated Crimes....	Not Sustained (Lawful and Proper)
# 5	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

***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 Subject in this case complained that he was being profiled during a traffic stop based on his race. OPA added additional allegation concerning the Terry stop effectuated by the Named Employee.

### **ADMINISTRATIVE NOTE:**

Due to heavy caseloads at the time and given a request for additional investigation by the OPA Auditor, OPA was unable to timely complete this case. As such, this DCM is submitted past the expiration of the 180-day deadline.

### **SUMMARY OF INVESTIGATION:**

Named Employee #1 (NE#1) was on patrol in an area of South Seattle designated by SPD to be a crime "hot spot" area. SPD data indicated that the area had a high incidence of vehicles discovered stolen.

While on patrol, NE#1 observed a white SUV parked on the side of the street. The SUV had a broken window and tinted glass. He ran a license plate check on the SUV and determined that the plates had been expired since 2012. NE#1 activated his emergency lights, exited his vehicle, and spoke to a man who was crouched down at the rear of the SUV with a bag of maintenance tools. NE#1 asked the man if the car was his and if he was the registered owner.



The man confirmed that the car was his, but that it was not registered to him because he recently got it from his friend. NE#1's BWV captured this interaction.

NE#1 walked to the driver's side window, where a man (referred to here as the Subject) was sitting in the driver's seat. NE#1 asked the Subject if he had his driver's license, and if he was the owner. The Subject said he was not and further confirmed that he did not have his license. NE#1 informed both individuals that the SUV's tabs expired in 2012 and stated that this was a violation of law. Notably, under SMC 11.22.070, it is unlawful for an individual to "operate any vehicle" over or along a street or alley without first obtaining a vehicle license and registration.

NE#1 asked for the Subject's name and the Subject declined to provide that information. NE#1 explained that he was not in trouble, but that as the operator of the vehicle he was required to provide his name to law enforcement when asked. This statement was supported by SMC 11.59.040. The Subject disagreed and said that, since the vehicle was parked, he could not be in a position to operate it. NE#1 notified the Subject that, when the vehicle was parked on the street, Washington law required that any individuals in control of the vehicle identify themselves. He clarified that this applied to vehicles parked on public streets as well as moving ones. The Subject expressed doubt that NE#1 was correctly stating the law. At that time, a backup officer arrived and NE#1 left to speak to the male who had been previously crouched by the SUV.

The Subject told the backup officer that he felt that NE#1 racially profiled him. The backup officer informed NE#1 of this allegation. They called a supervisor to the scene to address the bias complaint. When the supervisor arrived, the Subject reiterated his bias complaint. The supervisor explained to the Subject that NE#1's duties involved running license plates to see if they were stolen. She also said that the vehicle's appearance, including its expired tabs, tinted windows, and broken and taped over window, provided NE#1 with reasonable suspicion that the vehicle was stolen. The supervisor asked if the Subject would like to file a complaint with OPA, and the Subject declined to do so. After that conversation, NE#1 explained to the Subject and the other individual that the SUV needed to be registered and issued them warnings.

The supervisor later documented the Subject's allegation in a Bias Review. The record in the Bias Review indicated that NE#1 stopped the vehicle for suspected criminal activity, whereas NE#1's documentation (including the Traffic Contact Report) indicated that the stop was for a traffic infraction. This inconsistency raised the concern for OPA that NE#1's decision to investigate the traffic infraction was pretextual, and this OPA investigation ensued.

As part of its investigation, OPA interviewed NE#1 and his chain of command. In his interview, NE#1 stated that he was investigating the expired tabs and that he did not believe he had reasonable suspicion for any other crimes. OPA also interviewed NE#1's precinct captain. The precinct captain confirmed that the area was known by the department to have a high incidence of stolen vehicles and drug trafficking, and that he had issued orders to the precinct for officers to prioritize stops in those areas. The captain also stated that, in his opinion, expired tabs were potentially an indicator of a switched or fraudulent license plate.



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**ANALYSIS AND CONCLUSIONS:**

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

***6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful***

SPD Policy 6.220-POL-2 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 in order to be lawful. SPD Policy defines a Terry stop as: “A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion in order 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.*)

As an initial matter, OPA determines that the stop NE#1 conducted amounted to a Terry stop and therefore must have been based, at minimum, on reasonable suspicion.

When viewing the information available to NE#1 at the inception of the stop – namely, when NE#1 activated his emergency lights and made a lawful show of authority which effected a seizure of the Subject – OPA finds that he had reasonable suspicion. Notably, NE#1 observed an individual (later identified as the Subject) in the operating position of a vehicle with expired tabs, giving him probable cause to believe that an infraction was being committed. NE#1 therefore had a lawful basis to contact the Complainant and further investigate this matter.

As such, 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 & 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.)

OPA determined that the length and scope of the Subject’s detention was reasonable under the circumstances. Initially, NE#1 conducted a Terry stop during which he attempted to determine the owner of the vehicle and the identity of the operator for the purposes of investigating a traffic code violation. However, when the Subject refused to identify himself, NE#1 a lawful basis to continue the detention pursuant to SMC 11.59.040. Ultimately, the scope of the Subject’s seizure by NE#1 was therefore no greater than necessary to effect NE#1’s lawful purpose.



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Given the above, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

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

***6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop***

SPD Policy 6.220-POL-6 states that “officers cannot require subjects to identify themselves or answer questions on a Terry stop.” While officers are entitled to request this information, they cannot mandate it. (See SPD Policy 6.220-POL-6.) There is an exception to this policy, however, when the subject operates a motor vehicle. (See SMC 11.59.040). The statute makes it unlawful for the vehicle operator to refuse to produce identifying documents when directed by a law enforcement officer. *Id.*

NE#1 indicated that he made his initial contact with the Subject pursuant to SMC 11.22.070, which requires that the operator of a vehicle obtain a registration for it prior to operating it on a roadway. A related section of the Code – SMC 11.14.040 – defines an “operator” as “one who drives or is in actual physical control of a vehicle.” By its terms, this statute includes persons other than “drivers” within the definition of “operator.” Because the Subject could have reduced the vehicle to his control immediately by turning the ignition and setting it in motion, OPA interprets SMC 11.59.040 to apply to the Subject.

For this reason, OPA concludes that NE#1 would have been permitted to require the Subject to identify himself. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

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

***6.220 - Voluntary Contacts, Terry Stops & Detentions 9. Under State Law, Traffic Violations May Not Be Used as a Pretext to Investigate Unrelated Crimes....***

SPD Policy 6.220-POL-9 precludes the use of a traffic violation to investigate unrelated crimes. The policy defines “pretext” as where an officer stops “a suspect for an infraction to investigate criminal activity for which the officer has neither reasonable suspicion nor probable cause.” (SPD Policy 6.220-POL-9.) The policy explains that pretext stops are prohibited by law. (*Id.*) It further explains that: “Officers must actually, consciously, and independently determine that a traffic stop is reasonably necessary in order to address a suspected traffic infraction.” (*Id.*)

OPA finds that there is insufficient evidence to show that NE#1’s investigation of the traffic infraction was a pretext for investigating other suspected criminal activity. OPA reaches this conclusion for two main reasons: first, NE#1 independently determined that a traffic stop was necessary to investigate the infraction; second, NE#1 had reasonable suspicion to conduct a Terry stop in order to investigate the possibility that the vehicle was stolen.

Concerning the first reason, NE#1 had been ordered by his precinct captain to conduct stops within high-crime areas such as the location in which he contacted the Subject. This informs the conclusion that he would have effectuated the stop regardless of whatever other possibility criminality the SUV’s occupants could have been involved in.



With regard to the second justification, OPA believes that NE#1 had reasonable, articulable suspicion necessary to conduct a Terry stop independent of the traffic infraction. Taken together, the high crime area designation, the expired plates, the heavily tinted windows, and the broken and taped up window were all indications of a possible stolen vehicle. These factors were heightened by the frequency of stolen vehicles in that location and the fact that a male was leaning next to the vehicle with a bag of tools. As such, NE#1 had a lawful basis to effectuate a Terry stop.

As such, OPA concludes that there is no evidence that NE#1 attempted to effectuate a pretext stop and recommends that this allegation be Not Sustained – Lawful and Proper.

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

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

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

During his conversation with the sworn supervisor, the Subject alleged that he was profiled based on his race. 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 characteristics of an individual.” (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

OPA concludes that there is insufficient evidence to establish that NE#1 conducted a Terry stop of the Subject because of his race. Notably, at the time NE#1 initiated the detention, it is unlikely that he was aware there was an individual in the operator’s position of the vehicle at all, let alone that the Subject was Black. OPA reaches this conclusion based on the BWV, which showed NE#1 initially approaching the male crouched next to the SUV, not the Subject. Moreover, the vehicle’s tinted windows would have made it difficult, if not impossible, for NE#1 to have been able to discern the Subject’s personal characteristics at the time he initiated the stop. Lastly, as discussed above, NE#1 had a legitimate legal basis to effectuate the investigative stop. While this would not, in and of itself, conclusively dispel bias, when coupled with the other available evidence, OPA finds it to be dispositive.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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