



## ***CLOSED CASE SUMMARY***

ISSUED DATE: JULY 31, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0060

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

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	6.220 – Voluntary Contacts, Terry Stops & Detentions POL – 4 Documenting a Terry Stop 1. Officers Will...	Not Sustained (Training Referral)
# 2	15.250 - Interpreters/Translators III. Interview and Interrogation of Non-English Speaking Persons	Not Sustained (Lawful and Proper)

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	6.220 – Voluntary Contacts, Terry Stops & Detentions POL – 4 Documenting a Terry Stop 1. Officers Will...	Not Sustained (Training Referral)
# 2	8.400 – Use of Force Reporting and Investigation 1. Officer Shall Document in a Use of Force Report All Uses of Force Except De Minimis Force	Not Sustained (Training Referral)
# 3	6.010 – Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)

***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 alleged that he was improperly arrested by Named Employee #2 and that Named Employee #2 failed to recognize and respond to his complaints of injury. The Complainant further alleged that Named Employee #1 failed to provide him with language assistance or an interpreter. Lastly, OPA alleged that both of the Named Employees failed to document the detention of another individual who was with the Complainant.

### **ADMINISTRATIVE NOTE:**

This case included reporting allegations against an Acting Sergeant and a Student Officer. Those allegations were returned to the chain of command to be handled as Supervisor Actions. In addition, the allegation that Named Employee #1 failed to obtain an interpreter or language assistance for the Complainant and that Named Employee #2 did not have probable cause to arrest the Complainant were disproved by OPA's intake investigation and were classified for Expedited Investigation.

### **SUMMARY OF INVESTIGATION:**



The Complainant filed an OPA complaint in which he alleged that he was falsely arrested for robbery. He said that during his arrest, he asked for an interpreter or for language assistance; however, it was not provided. He further contended that, while in custody, his arm was pulled up, causing him pain. However, officers did not respond to his complaint or evaluate his injury. As a result of this complaint, OPA commenced its investigation.

As part of its investigation, OPA reviewed Body Worn Video (BWV) that captured the Complainant's initial detention by police and his subsequent arrest. The BWV showed that the Complainant was reported to be the perpetrator of a robbery. It was specifically alleged by the victim that the Complainant stole money from him. The victim and another individual provided the officers with the Complainant's address and described the Complainant's vehicle. The officers went to the Complainant's residence and a vehicle matching the description pulled in. The officers approached the vehicle and detained both the Complainant and a passenger. The passenger was held at the scene for a few minutes until the officers learned that he was a mechanic who worked on the Complainant's vehicle and was not involved in the robbery. He was then told he could depart, and he did so. The victim positively identified the Complainant as the perpetrator of the robbery, and the Complainant was placed under arrest. Named Employee #2 (NE#2) was the arresting officer.

The BWV showed that the Complainant was able to speak some English, but that he stated that he preferred to communicate in Spanish. Named Employee #1 (NE#1) used the language telephone line available to SPD to obtain an interpreter. Through the interpreter, he communicated the reason for the arrest to the Complainant and answered questions posed by the Complainant. The Complainant was then transported from the scene.

From a review of the video, there was no indication that any of the involved officers used force or maneuvered the Complainant's body in a manner that would have caused injury. However, when the Complainant arrived at the King County Jail with NE#2 and a Student Officer, he made a noise that appeared to OPA to be either a grunt or "ahh." This occurred when he was removed from the patrol vehicle. The Complainant did not make any other noises that suggested pain. In addition, he did not tell the officers at any time that he was injured or that he was in pain.

OPA also reviewed the incident reports generated by the officers. While the report concerning the Complainant's arrest was complete, OPA determined that there was no documentation concerning the brief detention of the passenger in the Complainant's car.

Lastly, OPA interviewed the Complainant, NE#1, and NE#2.

#### **ANALYSIS AND CONCLUSIONS:**

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

##### ***6.220 – Voluntary Contacts, Terry Stops & Detentions POL – 4 Documenting a Terry Stop 1. Officers Will...***

SPD Policy 6.220-POL-4(1) governs the documentation required when a Terry stop is effectuated.

Here, the BWV indicated that the passenger who was in the vehicle was detained; however, neither NE#1 nor NE#2 completed a report.

At his OPA interview, NE#1 acknowledged that the passenger was detained, even if temporarily, and that a report should have been completed. He stated that it was unintentional. For his part, NE#2 said that he was unaware that



the passenger was detained that that information regarding this detention was not passed on to him. Accordingly, he did not know that the report needed to be completed.

OPA recognizes that officers are not perfect and will make mistakes. OPA further notes that neither of the Named Employees have ever been disciplined or, as far as OPA can tell, counseled in the past for non-compliance with this policy. As such, OPA recommends that this allegation be Not Sustained – Training Referral as against both Named Employees.

- **Training Referral:** Both Named Employees should be reminded that they must complete Field Contact Reports after any Terry stop. They should be informed that the future failure to do so may result in discipline. This counseling and training should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

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

***15.250 - Interpreters/Translators III. Interview and Interrogation of Non-English Speaking Persons***

SPD Policy 15.250(III) requires officers to make interpreters available for non-English speaking persons prior to interviewing or interrogating those persons.

While the Complainant said that NE#1 failed to obtain an interpreter for him, this was disputed by the BWV. The video indicated that NE#1 did, in fact, do so and that the Complainant was able to utilize the interpreter.

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

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

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

***6.220 – Voluntary Contacts, Terry Stops & Detentions POL – 4 Documenting a Terry Stop 1. Officers Will...***

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #1 – Allegation #1).

Recommended Finding: **Not Sustained (Training Referral)**

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

***6.220 – Voluntary Contacts, Terry Stops & Detentions POL – 4 Documenting a Terry Stop 1. Officers Will...***

As discussed above, the BWV indicated that, when the Subject was removed from the patrol vehicle by NE#2, he made a noise suggesting that he was in pain. However, NE#2 did not determine whether the Subject was, in fact, in pain, whether he had suffered an injury, and whether a force investigation needed to be commenced. NE#2 further did not notify his supervisor of the complaint of pain or document it in a use of force report.



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At his OPA interview, NE#2 stated that he did not engage in any actions that could have constituted a use of force or hearing anything from the Complainant that suggested injury.

SPD policy is clear that a complaint of pain needs to be evaluated and screened with a supervisor. Such a complaint, even if not accompanied by force, could be sufficient to trigger a Type I use of force investigation. Given this, NE#1 had the obligation to be observant and to discern such complaints of pain and take action on them.

That being said, the complaint here was fairly minimal and the Subject never expressly said that he was in pain to NE#2. Considering this with the fact that NE#2 has never been previously disciplined for failing to comprehend or report a complaint of pain, indicates to OPA that retraining not discipline is the appropriate result. Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2 should be reminded by his chain of command to listen for potential complaints of pain made by subjects and arrestees and that, once such complaints are made, he is required to take action on them. This counseling and training should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

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

##### ***6.010 – Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest***

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. 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 an officer's knowledge are sufficient in themselves to support a reasonable belief that an offense has been or is being committed.

OPA finds that there was clear probable cause for the Complainant's arrest. The Complainant was specifically identified as the suspect in a robbery and officers were given descriptions of his residence and vehicles. When the officers approached the residence, a car matching the description pulled up. Lastly, the Complainant was identified as the perpetrator by the victim. This evidence met the legal standard for placing the Complainant under arrest.

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

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