



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 15, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0192

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.220 POL – 2 Conducting a Terry Stop 5. Officers Cannot Require Subjects to Identify Themselves	Sustained
# 2	5.001 – Standards and Duties 10. Employees Will Strive to be Professional	Sustained

Imposed Discipline

Written Reprimand

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 the Named Employee violated SPD policies when he detained the Complainant.

SUMMARY OF INVESTIGATION:

Named Employee #1 (NE#1) and other officers were dispatched to a potential domestic violence (DV) incident. A male called 911 to report that his girlfriend was trying to hit him with an axe. The incident occurred on a highway on-ramp and there was a vehicle with broken windows. A witness also called 911 saying that she saw the woman try to attack the male with an axe. North Precinct dispatch was able to make contact with the 911 caller. He refused to provide his name. He said that he was okay, that he did not want contact with police, and that he did not want the female to go to jail. He also did not provide the female's information. The officers were further informed by radio that, per Washington State Patrol (WSP), the male was not cooperative, and the female should be approached with caution.

When the officers arrived on scene, they spoke with the female. She admitted causing damage to the car. She alleged that the male tried to hit her with the car, that it was a DV situation, and that she was trying to defend herself. She pointed to the opposite corner a distance away and said that the male – who she identified as "Jason" – was watching over there.

NE#1 and another officer approached a male – the Complainant in this case – who was standing at the street corner and was recording with his cell phone. There was another male standing at the opposite corner who appeared to be holding a sign. NE#1 addressed the Complainant as "Jason," but the Complainant said that this was not his name. NE#1 asked who the Complainant was, and the Complainant replied: "You don't need to worry about that." NE#1 asked the Complainant why he was filming, and the Complainant said that it was his right to do so. NE#1 told the Complainant that he was identified as the other party in the incident and again asked for his name. The Complainant replied that



NE#1 did not need to know that information. NE#1 said that he did because the Complainant was a suspect in an assault. He then told the Complainant that he was going to need the Complainant to provide identification, again citing that the Complainant was a suspect in an assault. NE#1 told the Complainant that he did not care about records but only about determining who was involved. NE#1 said that if the Complainant was not involved then it should not be a problem. NE#1 told the Complainant that the reason it may be a problem is that the Complainant was acting like a child by not providing his identification.

The Complainant asked if he was under arrest and NE#1 responded that that they could go that way if the Complainant wanted or that the Complainant could provide his identification. The Complainant asked if he was under arrest or free to go. NE#1 said that the Complainant was detained and was not free to go. NE#1 explained why the Complainant was detained and said that, if he provided his identification, NE#1 would verify his story and he would be free to go. NE#1 told the Complainant that he needed to provide identification, or he would be placed in handcuffs and identified at the jail. The Complainant said that he was going to leave, NE#1 replied no and started walking towards him. The Complainant then retrieved his identification out of his backpack and provided it to NE#1. After reviewing his identification, NE#1 determined that the Complainant was not "Jason."

The Complainant mentioned calling his lawyer. NE#1 replied that he was sure the Complainant had a great lawyer. The Complainant then referenced living in a fascist state, to which NE#1 replied: "Yeah, yeah, fascism, sounds like you clearly know the definition." NE#1 examined the identification and walked over to where WSP personnel and another SPD officer were standing. He said, referring to the Complainant: "He was being a freaking jack off." NE#1 also told the another SPD officer: "I don't think this guy was involved, but he was being a freaking jack off and wouldn't ID himself." NE#1 said that the Complainant was one of those people who believed that they knew their rights but, in actuality, did not have a clue. The officers discussed what paperwork needed to be completed. NE#1 indicated that he did not need to complete a Terry Template (the precursor to a Field Contact Report) because there was probable cause. NE#1 ultimately decided to complete a Field Contact Report. When later discussing the incident with WSP personnel, NE#1 remarked: "If he is going to act like a child, I'm going to treat him like a child."

The Complainant subsequently filed a complaint with OPA concerning this incident and OPA commenced its investigation. OPA's investigation included reviewing Body Worn Video (BWV), the Field Contact Report generated by NE#1, and the CAD Call Log. OPA also interviewed NE#1.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 – Allegation #1

6.220 POL – 2 Conducting a Terry Stop 5. Officers Cannot Require Subjects to Identify Themselves

SPD Policy 6.220-POL-2(5) prohibits officers from requiring that a subject identify him or herself during a Terry stop. SPD Policy 6.220-POL-2(5). Officers may request that a person identify him or herself but may not require a subject to comply with that request. (*Id.*)

It is undisputed that NE#1 compelled the Complainant to provide his identification. The question here is whether NE#1 had probable cause at the time – as he contended – or whether it was solely a Terry stop during which the compelling of identification was prohibited.



NE#1 told OPA that he had probable cause for DV assault. The factual basis for this was the female pointing at the Complainant and saying that he was the involved party. NE#1 acknowledged that the initial call was the female trying to assault the male with a "hatchet," but he said that additional information from 911 callers suggested that there was more to the story and a reason for why she may have acted as she did. When asked why he needed to verify the Complainant's identification if he was at probable cause, NE#1 responded:

I want to do a full investigation. And I could tell by his demeanor that he wasn't going to go, if I put him in handcuffs, he was probably going to resist. So I wanted to verify what I was going to do before any potential uses of force. So I wanted to make sure that we had as much evidence as I as I could have before anything potentially bad happened.

NE#1 said that probable cause dissipated after he examined the Complainant's identification and determined that he was not "Jason" and had no involvement in the incident.

The Field Contact Report generated by NE#1 did not assert that there was probable cause for the Complainant's arrest at the time of first contact. NE#1 wrote:

I approached the male and stated that he was named as the other party in an investigation and I would need to identify him. The male refused to give me [his] ID, and then asked if he was free to leave. I told him that he was currently being detained due to an ongoing investigation. I told him we would need to be able to identify him and verify he was not involved in the incident. He refused again, and told me he was going to leave. I told [him] again he was not free to leave, and when he attempted to leave I approached him to restrict him from leaving the scene. He then gave me his ID which did not match the name given.

In the Field Contact Report, NE#1 noted that the Complainant was positively identified as the perpetrator by the female. He wrote the following: "When asked where Jason was she pointed at a male standing at the intersection filming the interaction."

However, from OPA's review of the BWV, this identification was less definitive. First, at the time the female referenced "Jason" she was standing on a hill some distance away from where the Complainant was standing. Second, she gestured to the Complainant's approximately location and said that "Jason" was over there watching. She did not specifically identify the Complainant by his appearance or by his clothing.

Moreover, even had she pointed directly at the Complainant, OPA still does not believe that NE#1 had probable cause to arrest. At most, he was aware that the female was claiming DV assault. However, there was no supporting evidence of this claim in the form of witness accounts. In this respect, OPA is confused by NE#1's statement at his interview that other witnesses called 911 to provide additional information. As far as OPA is aware, the only witness who contacted 911 said that she saw the female trying to attack the male with an axe. While it would have been necessary to obtain the other side's account, this did not establish probable cause in and of itself. At that point, all NE#1 had was two conflicting accounts of what occurred and what precipitated that conduct. There was an insufficient legal basis to determine that the male had committed a crime.



Given this, OPA finds that NE#1 did not have a lawful basis to compel the Complainant's identification and, when he did so, he violated policy. As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 – Allegation #2

5.001 – Standards and Duties 10. Employees Will Strive to be Professional

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers" whether on or off duty. (SPD Policy 5.001-POL-10.) 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 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.*)

From OPA's review of the BWV, NE#1 made a number of statements during this incident that collectively rose to the level of a violation of SPD's professionalism policy. This included: sarcastically commenting on the quality of the Complainant's lawyer and his understanding of the definition of fascism; calling the Complainant a "freaking jack off"; and calling the Complainant a "child" both to his face and again to WSP personnel.

NE#1 explained that the statements were borne out of his frustration with the Complainant not providing his identification; however, he acknowledged that they were unprofessional.

OPA agrees and recommends that this allegation be Sustained.

Recommended Finding: **Sustained**