



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 12, 2022

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0289

Allegations of Misconduct & Director's Findings

Named Employee #1

| Allegation(s): | | Director's Findings |
|-----------------------|--|-----------------------------------|
| # 1 | 6.220 – Voluntary Contacts, Terry Stops & Detentions POL-2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion | Not Sustained (Lawful and Proper) |
| # 2 | 6.220 – Voluntary Contacts, Terry Stops & Detentions POL-2 Conducting a Terry Stop 2. Officers will Limit the Seizure to a Reasonable Scope | Not Sustained (Lawful and Proper) |
| # 3 | 8.300–POL-12 Use of Force - Firearms 5. An Officer May Draw their Firearm in the Line of Duty When the Officer Reasonably Believes It May Be Necessary for His or Her Own Safety or for the Safety of Others | Not Sustained (Lawful and Proper) |

Named Employee #2

| Allegation(s): | | Director's Findings |
|-----------------------|--|-----------------------------------|
| # 1 | 6.220 – Voluntary Contacts, Terry Stops & Detentions POL-2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion | Not Sustained (Lawful and Proper) |
| # 2 | 6.220 – Voluntary Contacts, Terry Stops & Detentions POL-2 Conducting a Terry Stop 2. Officers will Limit the Seizure to a Reasonable Scope | Not Sustained (Lawful and Proper) |
| # 3 | 8.300–POL-12 Use of Force - Firearms 5. An Officer May Draw their Firearm in the Line of Duty When the Officer Reasonably Believes It May Be Necessary for His or Her Own Safety or for the Safety of Others | Not Sustained (Lawful and Proper) |

Named Employee #3

| Allegation(s): | | Director's Findings |
|-----------------------|--|-----------------------------------|
| # 1 | 6.220 – Voluntary Contacts, Terry Stops & Detentions POL-2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion | Not Sustained (Lawful and Proper) |
| # 2 | 6.220 – Voluntary Contacts, Terry Stops & Detentions POL-2 Conducting a Terry Stop 2. Officers will Limit the Seizure to a Reasonable Scope | Not Sustained (Lawful and Proper) |



| | | |
|-----|--|-----------------------------------|
| # 3 | 8.300—POL-12 Use of Force - Firearms 5. An Officer May Draw their Firearm in the Line of Duty When the Officer Reasonably Believes It May Be Necessary for His or Her Own Safety or for the Safety of Others | 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:

It was alleged that Named Employee #1, Named Employee #2, and an unknown SPD employee violated SPD policies when they detained the Complainant at gunpoint.

SUMMARY OF INVESTIGATION:

On June 13, 2021, an SPD officer was tragically killed while assisting with a traffic stop on I-5. The officer's vehicle was stolen by someone on scene. Inside of the vehicle were several of the officer's possessions, including her badge and firearm. Later that day, officers, including the Named Employees, located the vehicle, which was parked in South Seattle. They began to surveil the vehicle, believing that the person who stole it could return to the scene. Named Employee #1 (NE#1) later told OPA that, at the time, they were unsure whether the officer's death was a homicide. The Named Employees also believed that the officer's firearm remained at large.

SPD officers later documented that they observed an individual – the Complainant in this case – approach the vehicle and stand by the passenger side window. They further documented that they saw the Complainant try the door. The officers believed that this conduct established reasonable suspicion to believe that the Complainant could be connected to the theft of the vehicle and/or could be unlawfully trying to access it. Given this, the officers effectuated a high risk stop of the Complainant.

During the stop, the officers drew their firearms and pointed them at the Complainant. They then handcuffed him. At that time, the Complainant told the officers that he worked in the area and that he had noticed the vehicle earlier. He denied being involved in the theft. The officers considered the Complainant's account and deemed it reasonable. They released him from the scene.

The Complainant later filed an OPA complaint in which he alleged that the officers improperly pointed firearms at him, causing him to fear for his life. He asserted that this conduct was "unreasonable," and that it was the result of a "botched and emotionally charged investigation."

OPA initiated this investigation, which included watching Body Worn Video (BWV) and In-Car Video (ICV), as well as reviewing documentation generated by officers. OPA also interviewed the Complainant and the Named Employees.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.220 – Voluntary Contacts, Terry Stops & Detentions POL-2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion

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.*)

Both NE#1 and NE#2 stated that they had reasonable suspicion to detain the Complainant and investigate his conduct. They knew that an officer had been killed during a traffic stop and they did not know whether her death was intentional or an accident. They were further aware that the officer’s vehicle and firearm were missing. When they saw the vehicle, they believed that it could contain evidence of the underlying crime, that the officer’s firearm could still be inside, and that anyone in the near vicinity of the vehicle or trying to access the vehicle could be involved. Moreover, at the time, the Complainant was in the near vicinity of the vehicle, standing by the passenger door. They asserted that all of these factors gave them a legal basis to detain the Complainant in order to investigate the incident.

In assessing this same evidence, OPA agrees that they had a lawful basis to effectuate the detention. In reaching this finding, OPA notes that reasonable suspicion is not a particularly high legal standard. Under the circumstances facing them, OPA believes that the officers had a reasonable basis to think that the Complainant could be involved in criminal activity. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper against both NE#1 and NE#2.

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

Named Employee #1 - Allegation #2

6.220 – Voluntary Contacts, Terry Stops & Detentions POL-2 Conducting a Terry Stop 2. Officers will Limit the Seizure to a Reasonable Scope

SPD Policy 6.220-POL-2(2) requires officers to limit seizures effectuated as part of a Terry stop to a reasonable scope. As part of this requirement, officers must provide additional justifications for further restrictions, such as applying handcuffs and pointing firearms.

The Named Employees explained to OPA that they drew their firearms, ordered the Complainant down to the ground, and handcuffed him for several reasons. They stated that the Complainant was in the immediate vicinity of a vehicle that was connected to a possible homicide. They said that a gun and other potential evidence was believed to be inside of the vehicle. They also explained that, pursuant to their training, they were permitted to draw their firearms



when responding to a stolen vehicle call, which is a felony crime, and this was a situation where a high-risk stop was permitted. They told OPA that, as soon as they were able to verify that the Complainant was not trying to steal the vehicle and that he was not involved in the underlying crime, they released him from custody.

As discussed above, OPA finds that the officers did not exceed a reasonable scope of the stop under the circumstances. Based on what they were aware of at the time, they felt that the Complainant was a potential felony suspect who was either seeking access to or returning to a stolen vehicle that contained a firearm. OPA believes that this was reasonable. As such, their decision to conduct a high-risk stop, including pointing their firearms at the Complainant and handcuffing him in a prone position was consistent both with policy and their training.

While OPA recognizes that the Complainant was not actually involved in any criminal activity and understands that this incident was traumatic for him, reasonable suspicion does not require perfect information or even that the officers be right. All that is required is that they act reasonably, which OPA finds that they did here. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #3

8.300–POL-12 Use of Force - Firearms 5. An Officer May Draw their Firearm in the Line of Duty When the Officer Reasonably Believes It May Be Necessary for His or Her Own Safety or for the Safety of Others

As discussed above, OPA concludes that the officers' decisions to draw their firearms during the detention of the Complainant was reasonable under the circumstances. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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

Named Employee #2 - Allegation #1

6.220 – Voluntary Contacts, Terry Stops & Detentions POL-2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion

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

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

Named Employee #2 – Allegation #2

6.220 – Voluntary Contacts, Terry Stops & Detentions POL-2 Conducting a Terry Stop 2. Officers will Limit the Seizure to a Reasonable Scope

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

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



Named Employee #2 - Allegation #3

8.300–POL-12 Use of Force - Firearms 5. An Officer May Draw their Firearm in the Line of Duty When the Officer Reasonably Believes It May Be Necessary for His or Her Own Safety or for the Safety of Others

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

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

Named Employee #3 - Allegation #1

6.220 – Voluntary Contacts, Terry Stops & Detentions POL-2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion

OPA found no evidence that an unknown SPD employee violated the policies alleged in this case. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 – Allegation #2

6.220 – Voluntary Contacts, Terry Stops & Detentions POL-2 Conducting a Terry Stop 2. Officers will Limit the Seizure to a Reasonable Scope

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

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

Named Employee #3 - Allegation #3

8.300–POL-12 Use of Force - Firearms 5. An Officer May Draw their Firearm in the Line of Duty When the Officer Reasonably Believes It May Be Necessary for His or Her Own Safety or for the Safety of Others

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

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