



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 6, 2022

FROM: Interim Director Gráinne Perkins
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0331

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.300 - Use of Force Tools 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 (Unfounded)
# 2	8.300 - Use of Force Tools 8.300-POL-12 Use of Force - Firearms 9. Pointing a Firearm at a Person is Type I Reportable Force	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.160 - Observation of Officers POL: A person not involved in an incident may remain in the vicinity of any stop, detention, arrest, or other incident.	Not Sustained (Unfounded)
# 2	8.300 - Use of Force Tools 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 (Unfounded)
# 3	8.300 - Use of Force Tools POL-12 Use of Force - Firearms 9. Pointing a Firearm at a Person is Type I Reportable Force	Not Sustained (Unfounded)
# 4	6.180 - Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant unless a Specific Exception Applies.	Not Sustained (Training Referral)

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, during a traffic stop, the Named Employees pointed their firearms at him and illegally searched his car. The Complainant further alleged that the Named Employees took his phone from him when he was trying to record them.



SUMMARY OF INVESTIGATION:

After receiving the complaint, OPA commenced this investigation. As part of its investigation, OPA reviewed the BWV, ICV, and documentation concerning the underlying crime and the vehicle description. OPA further interviewed NE#2. The Named Employees' BWV and ICV recorded their entire interaction with the Complainant. Accordingly, there is no dispute as to the facts set forth below.

Named Employee #1 (NE#1) and Named Employee (NE#2) were partnered together and initiated a traffic stop of the Complainant, who was driving a vehicle without license plates. NE#1 was driving and made a U-turn and attempted to pull the Complainant over. As the Named Employees' vehicle tried to get behind the Complainant's vehicle, the Complainant made a series of evasive turns and ended up on a dead-end street. The Complainant then turned his vehicle around, facing the Named Employees' vehicle, before coming to a full stop after NE#1 activated the overhead lights. The Named Employees exited their vehicle, announced their presence, and ordered the Complainant to stay in the car and hold his hands out the window.

Upon approaching the Complainant's vehicle, NE#2 stated, "Oh it's you" to which the Complainant responded, "Yes sir." As the Named Employees approached the vehicle, NE#2 observed bullet holes in the side of the vehicle. The Complainant was the only occupant in the vehicle. NE#2 removed the Complainant from the vehicle without issue and the Named Employees placed the Complainant in handcuffs. As NE#2 removed the Complainant from his vehicle, NE#2 observed a loaded firearm magazine in the Complainant's vehicle, stating "we got bullet holes and a magazine in there." NE#2 then opened the driver-side rear door of the Complainant's vehicle, then closed it shortly thereafter. The Complainant then informed the Named Employees that there was a gun in the car in the backseat. The Complainant further explained to the Named Employees that he possessed a Concealed Carry License and had recently been shot. NE#2 then re-opened the driver-side rear door of the Complainant's vehicle, recovered a firearm from the rear seat, and made the firearm safe. In his OPA interview, NE#2 stated that he did this as part of a protective sweep. NE#2 also removed loose ammunition of different calibers and magazines from the vehicle. NE#1 remained with the Complainant, who was in handcuffs, and brought him back to his vehicle to confirm details for the firearm possession. A short time later, NE#1 informed NE#2 that the Complainant did not consent to a search of his vehicle and the search ceased. The Complainant was ultimately released after it was determined that there was no probable cause for a crime and the Complainant's firearm, ammunition, and vehicle were released back to him. After being released, the Complainant retrieved license plates from his vehicle and affixed them to his vehicle.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.300 - Use of Force Tools 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

The Complainant alleged that NE#1 improperly drew his firearm.

SPD Policy commands that an officer may only 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." SPD Policy 8.300-POL-12(5). An officer that draws their firearm in the line of duty is further required to holster their firearm, when feasible, after the officer determines that the threat is over. *Id.*



ICV and BWV clearly shows that neither Named Employee unholstered—or even gestured to—their firearm.

Accordingly, OPA recommends that this allegation be Not Sustained (Unfounded).

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

Named Employee #1 - Allegation #2

8.300 - Use of Force Tools 8.300-POL-12 Use of Force - Firearms 9. Pointing a Firearm at a Person is Type I Reportable Force

The Complainant alleged that NE#1 improperly pointed his firearm at the Complainant.

SPD policy requires that officers “document all incidents where they point a firearm at a person.” SPD Policy 8.300-POL-12(9). However, “[u]nholstering or displaying a firearm – including in a sul or low-ready position – without pointing it at a person is not reportable force.” *Id.*

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 #2 - Allegation #1

5.160 - Observation of Officers POL: 2. People Have the Right to Record Police Officer Enforcement Activities

The Complainant alleged that NE#2 improperly prevented him from recording the incident with his cell phone.

SPD policy states that people may record SPD enforcement activities except in limited circumstances. However, the person recording may not “hinder, delay, or compromise legitimate police action” or “threaten the safety of the officers or members of the public.” Finally, SPD policy is clear that the safety and protection of those present are “the most important factors.” *Id.*

Review of BWV found that NE#2 took the Complainant’s cellphone away from him at the beginning of the stop. It appeared in the BWV that the Complainant was, in fact, recording the interaction. However, the Complainant was not a neutral onlooker—the Complainant was being lawfully detained after attempting to evade a vehicle stop. When NE#2 observed bullet holes in the side of the Complainant’s vehicle, NE#2 was justified in ordering the Complainant out of the vehicle and placing the Complainant in handcuffs. Allowing the Complainant to continue holding his cell phone would both hinder a legitimate police action and threaten the safety of the officers. NE#2’s actions were reasonable under these circumstances.

Accordingly, OPA recommends that this allegation be Not Sustained (Unfounded).

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



Named Employee #2 - Allegation #2

8.300 - Use of Force Tools 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 #1), OPA recommends that this allegation be Not Sustained (Unfounded).

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

Named Employee #2 - Allegation #3

8.300 - Use of Force Tools 8.300–POL-12 Use of Force - Firearms 9. Pointing a Firearm at a Person is Type I Reportable Force.

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 #2 - Allegation #4

6.180 - Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant unless a Specific Exception Applies.

The Complainant alleged that NE#1 unlawfully searched his vehicle.

SPD policy states that “[e]xcept as described in this policy, officers shall not conduct a search without a valid search warrant. In each circumstance, officers are required to document in a Report or Field Contact that an exception to the warrant requirement applies.” SPD Policy 6.180(1). Among the warrant exceptions outlined in the SPD Manual, an officer may conduct a warrantless search based on valid consent. *See* SPD Policy 6.180-POL-2. An officer is also permitted to make a “limited sweep of a vehicle” if the officer has both “reasonable suspicion that an unsecured firearm is in the vehicle, and ... [t]he vehicle will be impounded and towed from the scene.” *See* SPD Policy 6.180-POL-1(2).

Here, the initial stop of the Complainant was justified because his vehicle had no license plates. On approaching the Complainant’s vehicle, NE#2 observed bullet holes in the driver-side rear door. This provided additional articulable justification for NE#2 removing the Complainant from the vehicle and detaining the Complainant in handcuffs. Where a stop is lawful—under either reasonable suspicion or probable cause—an officer has the authority to order a driver to step out of, or remain in, a vehicle. *See State v. Kennedy*, 107 Wash.2d 1, 9 (1986) (*citing Pennsylvania v. Mimms*, 434 U.S. 106 (1977)) and *State v. Mendez*, 137 Wash.2d 208, 220 (1999), *abrogated on other grounds by Brendlin v. California*, 551 U.S. 249 (2007). *See also* SPD Manual 6.220-POL-2(2). As the Complainant exited his vehicle, NE#2 observed a loaded firearm magazine in the vehicle. *See Kennedy*, 107 Wash.2d at 10 (“if an officer, after making a lawful stop, looks into a car from the outside and sees a weapon or contraband in the car, he has not searched the car.”). NE#2 then began his search of the vehicle when he first opened the driver-side rear door of the Complainant’s vehicle.



To search the vehicle at this point, NE#2 needed either voluntary consent—which he neither sought, received, nor documented—or he needed to meet both prongs of the policy to conduct a limited sweep of a vehicle. Having observed bullet holes in the side of the vehicle and a loaded magazine inside the vehicle, NE#2 clearly had “reasonable suspicion that an unsecured firearm [was] in the vehicle.” Far less clear at this juncture, was whether the Complainant’s vehicle would be impounded and towed from the scene. Although NE#2 stated that he searched the vehicle based on his belief that the vehicle would eventually be impounded, he also admitted that this was uncertain stating, “I thought that it might be. There’s a chance that it could be.” NE#2 also offered that he “did a limited sweep of the vehicle to make the scene safe,” but stopped searching the vehicle after NE#1 informed him that the Complainant “doesn’t consent to the search now.”

As a technical matter, NE#2’s belief that the Complainant’s vehicle would possibly be impounded later does not satisfy the second prong of SPD’s policy for making a limited protective sweep of a vehicle. In fact, the Complainant’s vehicle was ultimately not impounded in this case. However, OPA believes that NE#2’s error was more of a technical nature than a willful violation of policy amounting to misconduct. Moreover, a review of the NE#2’s training records indicate that he last underwent search and seizure training in 2018. Accordingly, OPA finds that a training referral is appropriate in this instance.

While it does not appear that the search here was done to deliberately circumvent the law and SPD policy concerning protective sweeps, OPA flags two additional concerns around NE#2’s knowledge and understanding of the rules governing this interaction.

The first is that NE#2 appeared to be operating more on instinct than a reasoned assessment of whether policy permitted him to perform a search or sweep of the vehicle. During interview OPA asked NE#2, “Did you believe that you had permission to search the vehicle?” NE#2 responded, “I couldn’t tell you either way”. OPA finds this response concerning. Moreover, on being told that the Complainant “doesn’t consent to the search now” the search was immediately stopped. It appears that NE#2 may have believed that he could search the vehicle based also on implied consent when the complainant told the NE#2 that the gun was on the back seat. SPD Policy clearly prohibits warrantless searches “unless a specific exception applies.” SPD Manual 6.180(1). When an officer makes a warrantless search, that officer should be able to clearly identify which exception applies and the rules governing that exception.

Second, NE#2 stated that he conducted a sweep of the vehicle to make the scene safe. However, no one else was anywhere near the vehicle—and the Complainant was in handcuffs—at the time NE#2 began searching the vehicle. Moreover, there were other officers on scene within minutes of the stop. In short, nothing prevented NE#2 from slowing down and confirming with another officer or a supervisor that any search or sweep met the letter of SPD policy.

Accordingly, OPA recommends that this allegation be Not Sustained (Training Referral).

- **Training Referral:** NE#2’s chain of command should discuss OPA’s findings with NE#2, review SPD Policy 6.180 with NE#2, and provide any further retraining and counseling that it deems appropriate. NE#2’s chain of command should specifically review SPD Policies 6.180-POL-1(2) and 6.180-POL-2. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

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