




CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 16, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0228

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.010 Arrests POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained - Unfounded

Named Employee #2

Allegation(s):		Director's Findings
# 1	6.010 Arrests POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained - Unfounded
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions Pol 4. Documenting a Terry Stop 1. Officer Will Document All Terry Stops.	Not Sustained - Training Referral
# 3	8.200 – Using Force 1. Use of Force: When Authorized	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.

ADMINISTRATIVE NOTE:

This investigation, as with all OPA investigations, was reviewed and certified by the Office of Inspector General (OIG). OIG found it timely, objective, and thorough. Additionally, the excessive force allegation against Named Employee #2 (NE#2) was classified for Expedited Investigation. That means OPA, with the Office of Inspector General's concurrence, believed it could reach and issue a recommended finding based solely on its intake investigation without interviewing the involved employees.

SUMMARY OF INVESTIGATION:

A. OPA Complaint

On July 20, 2022, at 7:15 AM, the Complainant emailed OPA regarding officers' response to "a verbal argument" with his partner. The Complainant alleged officers, particularly NE#2, confronted him with tasers aimed at his head and body prior to arresting him. That morning at 7:34 AM, the Complainant emailed OPA with more details. He stated, after arguing with his partner, he left his apartment and was confronted by officers armed with tasers aimed at him. The Complainant stated NE#2 "had his clearly out and demanded I put my property down." He also claimed he was illegally arrested and was a victim of "clear abuse of police power." That email also alleged officers "had [the



Complainant] at gunpoint.” He concluded with demands for damages, the officers’ termination, and prosecution of his neighbors who called police.

Thereafter, OPA spoke with the Complainant about his allegations.¹ He again stated NE#2 aimed a taser at his head and called unholstering it an “unlawful use of force.” The Complainant further alleged his arrest was unlawful where he was handcuffed and Mirandized prior to officers learning about his active arrest warrant.

B. Computer-Aided Dispatch (CAD) data

When 9-1-1 is called, a call taker enters information into the Computer-Aided Dispatch (CAD) system which routes the call to the appropriate sector for deployment.² A radio dispatcher communicates with first responders in the field. *Id.* CAD data for this call showed the 9-1-1 call was made on July 14, 2022, at 12:18 PM. The call taker noted:

Remarks on the call: RP HEARING NEIGHBORS ARGUING AND SCREAMING, CRYING, SOUNDS LIKE ITS GETTING PHYSICAL, NO WPNS MENTIONED

It also listed NE#2 as the primary officer with NE#1 and two other officers logged to the call.

C. General offense (GO)/incident report

NE#2 wrote the related GO report. In summary, he described responding to the call of possible domestic violence at the Complainant’s home. NE#2 wrote, “[u]pon arrival I could hear inaudible yelling from the first floor of the apartment entrance.” As the officers approached the fourth floor, NE#2 heard arguing inside the Complainant’s unit. The Complainant exited the unit while yelling at someone inside. The Complainant was detained while officers tried talking to his wife, who declined to speak about the incident. The Complainant reported their argument was “over clutter in the apartment.” The Complainant reportedly replied, “there often is with someone who has PTSD” but did not elaborate. The Complainant eventually denied a physical altercation with his wife. Nor were there visible signs of a physical altercation. Officers ran the Complainant’s name and learned he had “a failure to appear warrant for violation of no contact order [domestic violence] out of Kitsap.” They verified the warrant, arrested the Complainant, and transported him to jail.

D. Body Worn Video (BWV)

BWV captured, prior to officers entering the Complainant’s building, NE#1 ask NE#2 whether he had a taser. NE#2 confirmed he did. Upon entering the building, NE#1 stated he would “be lethal” and told NE#2 to “be taser.” As they reached the second-floor yelling is heard. Officers apparently reached the fourth floor, where the Complainant appeared at the end of the hallway. NE#1 yelled, “Show me your hands!” The Complainant, who held a bag in his right hand and a cup in his left, was ordered to drop both items. The Complainant complied. NE#1 ordered the Complainant to put his hands behind his back. The Complainant replied, “Excuse me?” NE#1 repeated the order, followed by NE#2 yelling, “Put your hands behind your back now!” The Complainant stated, apparently directed at NE#2, “Excuse me? Do not point that at me.” NE#1 repeated the order again, and the Complainant complied. NE#1 handcuffed the Complainant and told him he was detained but not under arrest. NE#1 read the Complainant *Miranda* warnings. NE#1

¹ This was not a full interview. It was a “shakeout” to gather clarity about the allegations.

² CSCC. CCCC - Police. (n.d.). Retrieved January 16, 2023, from <https://www.seattle.gov/police/about-us/about-policing/csc>



spoke with the Complainant's partner, then the Complainant, then ran his name with dispatch³. Before dispatch provided the search results, the Complainant told officers he "has a thing over in Kitsap County." He stated it was a failure to appear warrant involving a restraining order sought by an ex-girlfriend and her mother. Dispatch apparently confirmed the active warrant. The officers discussed whether the warrant constituted "a mandatory arrest." NE#1 called a supervisor for direction, who directed him to call the jail. NE#1 apparently called the jail and asked, "Do you guys take misdemeanor [domestic violence no contact order] violations on warrants?" Thereafter, NE#1 told another officer they were waiting to see whether Kitsap County would pick up the Complainant if they arrested him. Kitsap County apparently confirmed they would pick the Complainant up from the jail. The Complainant was then told he was under arrest.

E. Complainant's interview

On August 3, 2022, OPA interviewed the Complainant. The Complainant's account materially mirrored his emailed statements and OPA shakeout interview. Additionally, the Complainant stated, while at the precinct waiting for transportation to the King County Jail, officers did not allow him call someone to bail him out. He also recommended NE#2 receive retraining on taser use and "situational sensitivity."

F. NE#2's interview

On August 3, 2022, OPA interviewed NE#2. In summary, NE#2 worked at the Department for "a year and a half." He completed field training about six months prior to his encounter with the Complainant. NE#2 read a written statement, materially mirroring his GO report, to describe the incident. NE#2 also stated, "I had my Taser out and pointed—and pointed down it to the floor." NE#2 also stated, although he was listed as primary, NE#1 led their primary investigation. Specifically, NE#1 decided to handcuff the Complainant, read *Miranda* warnings, and investigated whether the warrant was extraditable. NE#2 stated the Complainant was handcuffed rather than his partner because "neighbors were proclaiming that he was the one... they said he was...possibly the one that was the aggressor..." NE#2 described the Complainant's initial detention as a *Terry* stop and stated he was handcuffed for officer safety during their domestic violence investigation. NE#2 thought the length of the Complainant's detention, about 20 minutes elapsed from when he was handcuff to when he was told he was arrested, was reasonable under the circumstances.

G. NE#1's interview

On November 4, 2022, OPA interviewed NE#1. In summary, NE#1 worked at the Department "a little over three years." NE#1 stated primary officers determine whether there is probable cause for arrest, write the GO report, and delegate tasks to other officers, but all responding officers are responsible for maintaining a safe scene. NE#1 description of the incident materially mirrored NE#2's account. Additionally, NE#1 stated:

The call [dispatcher] notated that there is an extensive history of DVs apparently the neighbors have called us multiple times. But what was significant is that in one of the updates, they said that it is worse than it has been before and some sort of quote about it being really bad. In the initial call notes, they detail that it sounds like it's physical. They're screaming, crying I don't remember any exact quotes cause other than that but responded to the scene I think it was first it was just me and the citizen rider, so we staged outside until a second officer arrived, which I believe was [NE#2].

³ NE#1 wore an earpiece, so BWV did not capture the dispatcher's statements.



NE#1 acknowledged additional officers were en route, but due to the 9-1-1 caller's description of potentially ongoing domestic violence, he and NE#2 decided against waiting. When they entered the lobby, NE#1 heard "a male voice" yelling above. When they got to the Complainant's floor, he saw "a male figure and he was facing towards an apartment and he was screaming into the apartment." NE#1 suspected that subject, the Complainant, was involved in the reported domestic violence incident. NE#1 stated the Complainant wore a "security uniform" and "a tactical belt," which suggested he was possibly armed with "pepper spray" or a baton. The nature of the call coupled with the Complainant's observed yelling and possible weapon possession led NE#1 to handcuff him during their investigation. NE#1 told the Complainant he was detained and not arrested. NE#1 explained he issued *Miranda* warnings because "we're going to be investigating the crime, we have to read the *Miranda*." NE#1 ran the Complainant's name with dispatch to see if he had active warrants or whether there was a no contact order prohibiting him from contacting the other involved party.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

A *Terry* stop is a brief, minimally intrusive seizure of a subject based upon articulable reasonable suspicion to investigate possible criminal activity. SPD Policy 6.220 - POL – 1. The subject of a *Terry* stop is not free to leave. *Id.* Reasonable suspicion exists where specific, objective, articulable facts, taken together with rational inferences, 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.* The reasonableness of a *Terry* stop is considered in view of the totality of the circumstances, the officer's training and experience, and what the officer knew before the stop. *Id.* During a stop, an officer may learn new information that can lead to additional reasonable suspicion or probable cause that a crime has occurred, but that new information cannot provide the justification for the original stop. *Id.*

Here, NE#1 stated the Complainant was handcuffed for a *Terry* stop. He claimed to reasonably suspect the Complainant committed domestic violence, based on a neighbor's 9-1-1 call suggesting prior domestic violence at the Complainant's home, that call indicating the present situation was "really bad," from the lobby hearing a male yelling several floors above, and observing the Complainant yell at someone inside his unit. NE#1 further stated based on his three years of law enforcement experience and training:

From what I understand from when I went to the police academy, the most dangerous call for a police officer to go to is domestic violence, it's one where most officers are killed or injured. We actually just for the Seattle Police Department two months ago, North Precinct officers were responding to DV Disturbance, similar to this and the suspect walked away and pulled out a gun and shot at them. There's high stakes a lot of people understand that DV laws carry a mandatory arrest with them. So, if you commit a DV crime...you know you're going to jail, therefore suspects have a higher propensity of using force against officers or the victims. So, in situations like this when you see when you're investigating an assault, and the suspect is already non-compliant, and verbally aggressive and likely armed, it's too dangerous not to detain them in handcuffs because you open yourself and your fellow officers to danger.



The totality of the circumstances suggests NE#1's suspicions were reasonable enough to justify the Complainant's *Terry* detention. However, handcuffing the Complainant requires "additional articulable justification." SPD Policy 6.220 - POL – 2. NE#1 suggested the Complainant's attire, he wore a dark uniform with a work belt, justified handcuffing him. Specifically, NE#1 indicated the Complainant's attire suggested he was a security guard who was possibly armed with pepper spray, a baton, or another weapon. However, after the Complainant was handcuffed, neither officer searched him for weapons. While his failure to frisk a subject he believed was armed and dangerous does not support NE#1's articulated justification for handcuffing him, it does not necessarily undermine it. See SPD Policy 6.220 - POL – 6 [Officers May Conduct a Frisk of Stopped Subject(s) Only if They Have an Articulable and Reasonable Safety Concern that the Person is Armed and Presently Dangerous.] Particularly, where the policy permits but does not require frisking subjects under those circumstances. Moreover, OPA found the Complainant's roughly 20-minute⁴ *Terry* detention reasonable, especially where most of that period consisted of NE#1 trying to determine whether the Complainant's warrant mandated arrest. NE#1 told the Complainant three times, if the warrant did not mandate arrest, he would release him. Once the extraditable warrant was verified, the *Terry* stop escalated to probable cause for his arrest. Further, despite the Complainant's contention, OPA does not find that handcuffing converts a *Terry* stop into an arrest. See *United States v. Bautista*, 684 F.2d 1286, 1292 (9th Cir. 1982) (Handcuffing a suspect does not necessarily indicate an arrest but was a reasonable measure to ensure the safety of the officer or the public.) Last, despite NE#1's belief, a *Terry* investigation does not mandate *Miranda* warnings. Nor does it convert a *Terry* stop into an arrest, as the Complainant suggested.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Named Employee #2 - Allegation #1

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

Here, as discussed at Named Employee #1 – Allegation #1, there was probable cause for the Complainant's arrest.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Named Employee #2 - Allegation #2

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

Officers will document all *Terry* stops on a Field Contact, regardless of the outcome of the *Terry* stop. SPD Policy 6.220-POL-4.

Here, NE#2 did not complete a Field Contact despite it being his responsibility as the primary officer. NE#2, a relatively new officer, told OPA he did not believe *Terry* stop documentation was required if it resulted in an arrest. NE#2 acknowledged and owned the oversight. Further, NE#2's supervisor (an acting sergeant), who reviewed his paperwork, apparently did not notice the oversight.

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

⁴ While there is no bright line rule, law enforcement agencies generally follow the "under 20-minute rule" for *Terry* investigations.



- **Required Training:** NE#2's chain of command should discuss OPA's findings with NE#2, review SPD Policy 6.220 POL-4 with NE#2 and provide any retraining and counseling it deems appropriate. Any retraining and/or counseling should be documented and maintained in Blue Team.

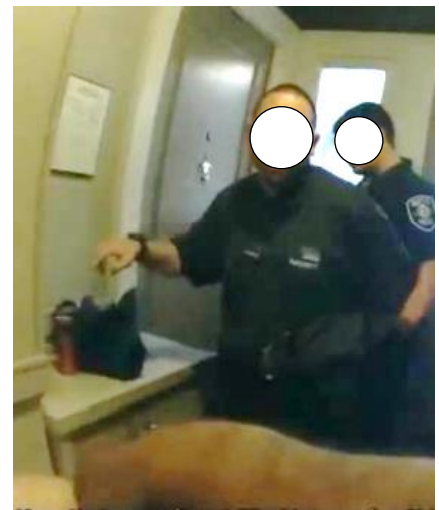
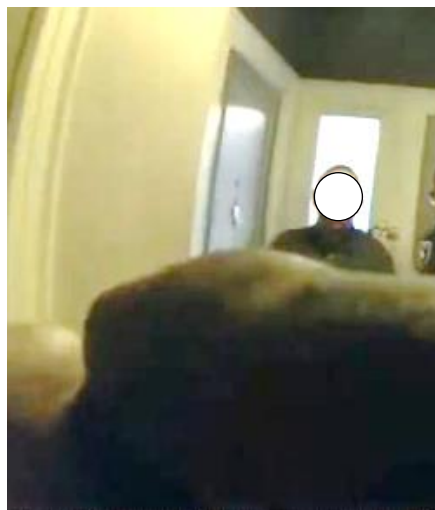
Named Employee #2 - Allegation #3

8.200 – Using Force 1. Use of Force: When Authorized

An officer will use only the force objectively reasonable, necessary, and proportional to effectively bring an incident or person under control, while protecting the life and safety of all persons. SPD Policy 8.200-POL-1. In other words, officers will only use objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective. *Id.* The force used must comply with federal and state law and Seattle Police Department policies, and rules for specific weapons and tools. See 8.300 - Use of Force Weapons and Tools. Simply displaying a weapon is not reportable force, nor is holding a firearm without aiming at a person, as with the sul and low ready positions, where the muzzle of the firearm is not pointed at any part of a person's body. SPD Policy 8.050.

Here, the Complainant alleged upon approach NE#2 aimed a TASER at his head. However, NE#2's BWV showed, while unholstered, NE#2's TASER was never raised above a low ready position.

NE#2's BWV



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

Recommended Finding: Not Sustained (Lawful and Proper)