



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 14, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0257

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220 - POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion	Not Sustained - Lawful and Proper (Expedited)
# 2	6.010 Arrests 6.010-POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained - Lawful and Proper (Expedited)

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, on August 10, 2022, Named Employee #1 (NE#1) responded to a 9-1-1 call reporting a man fired a gun several times towards a local golf course. The Complainant further alleged he was unlawfully detained and later arrested without probable cause for the reported shooting.

ADMINISTRATIVE NOTE:

This case was designated an Expedited Investigation. That means OPA, with the Office of Inspector General's agreement, believed it could reach and issue recommended findings based solely on its intake investigation, without interviewing the involved employees. As such, OPA did not interview the involved employees in this case.

SUMMARY OF INVESTIGATION:

OPA reviewed the initial complaint, CAD call report, general offense (GO)/incident report, and body-worn video (BWV). Additionally, OPA interviewed the Complainant.

A. Computer-Aided Dispatch (CAD)

The CAD report stated the 9-1-1 caller described the suspect as a Black male inside a maroon van. Several others also called 9-1-1 to report several gunshots. NE#1 notified dispatch and other units that he was familiar with the van, believed it would be parked on Cheasty Blvd S, and the registered owner of the vehicle—the Complainant—had an active arrest warrant.



B. Body-Worn Video (BWV)

In relevant part, NE#1's BWV showed:

Prior to approaching the maroon van, NE#1 spoke with an eyewitness (Witness #1), who stated the suspect inside the van fired a "small caliber handgun out of the window." NE#1 briefed a supervisor on Witness #1's account and NE#1's familiarity with the Complainant.

Officers, including NE#1, parked patrol vehicles a safe distance from the Complainant's van and initiated a high-risk vehicle stop.

Officers, including NE#1, ordered the Complainant to exit his vehicle and walk toward them. The Complainant was initially noncompliant but eventually cooperated. As he approached the officers, the Complainant appeared agitated and reluctant to obey commands. Specifically, officers ordered the Complainant to lay face down multiple times. He finally complied when officers warned him with a less-lethal 40mm projectile.

Officers handcuffed the Complainant and issued *Miranda* warnings. The Complainant denied committing the reported offense. NE#1 confirmed the Complainant was the van's registered owner by referencing a photo in a police database.

Witness (Witness #2) told NE#1 he was asleep about 75 yards from the van when he heard five shots coming from its direction. However, Witness #2 stated he heard those shots five hours earlier. Witness #2 also stated, based on his military experience, he believed the shots were from a handgun. Witnesses at the golf course also told officers they heard gunshots.

C. Named Employee #1's General Offense (GO)/ Incident Report

NE#1 authored the related incident report. He wrote that, after the Complainant was detained, Witness #1 made an on-scene identification of him as the person who fired a gun from the van. Based on his primary investigation, NE#1 wrote there was probable cause for the Complainant's arrest.

NE#1 obtained a search warrant for the van. From the van, NE#1 recovered a .22 caliber bolt-action long rifle.

D. Complainant's OPA Interview

The Complainant told OPA he was falsely arrested because the judge overseeing his criminal case suggested, because a witness did not clearly see the offender's face, officers lacked probable cause.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged NE#1 unlawfully seized him.



A *Terry* stop is “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. Reasonable suspicion means “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.* 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.* 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.*

Here, OPA’s review of NE#1’s BWV showed, prior to the stop, he was familiar with the Complainant, the Complainant’s van, and likely location. He also knew the Complainant had an active arrest warrant. Further, Witness #1 reported seeing him fire a “small-caliber handgun” a van. Witness #1 also described the Complainant and the van. Additionally, there were several 9-1-1 calls made about the shooting. Clearly, NE#1 had objective, articulable facts constituting reasonable suspicion the Complainant committed a crime.

Accordingly, OPA recommends this allegation be Not Sustained - Lawful and Proper (Expedited)

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

Named Employee #1 - Allegation #2

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

The Complainant alleged he was falsely arrested by NE#1.

Officers must have probable cause that a suspect committed a crime to effect an arrest. SPD Policy 6.010-POL-1. 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 was or is being committed. *See State v. Fricks*, 91 Wash.2d 391, 588 P.2d 1328 (1979); *State v. Gluck*, 83 Wash.2d 424, 426–27, 518 P.2d 703 (1974).

Here, NE#1’s incident report documented his determination of probable cause for the Complainant’s arrest. Prior to the arrest, Witness #1 made an on-scene identification of the Complainant as the person who fired a “small-caliber handgun” from a van. In addition to Witness #1’s eyewitness account, Witness #2 reportedly heard five shots from the direction of the Complainant’s van. Moreover, NE#1’s search of the Complainant’s van recovered a .22 caliber rifle.

All in all, NE#1’s primary investigation established probable cause for the Complainant’s arrest. Even if a judge later found Witness #1’s identification insufficient to convict the Complainant beyond a reasonable doubt, that does not mean there was insufficient evidence to meet the probable cause threshold or that NE#1 knew or should have known Witness #1’s identification was questionable.

Accordingly, OPA recommends this allegation be Not Sustained - Lawful and Proper (Expedited)

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