



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 25, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0284

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 2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained - Lawful and Proper
# 2	6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220 - POL - 2 Conducting a Terry Stop 4. During all Terry Stops, Officers Will Take Reasonable Steps to Be Courteous and Professional	Not Sustained - Unfounded
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Unfounded (Expedited)
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220 - POL - 4 Documenting a Terry Stop 1. Officers Will Document All Terry Stops	Not Sustained - Training Referral
# 5	5.001 - Standards and Duties 5.001-POL 6. Employees May Use Discretion	Not Sustained - Unfounded (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 Complainants alleged Named Employee #1 (NE#1) was unprofessional, unlawfully detained them, and failed to properly document a *Terry* stop. The Complainants also alleged NE#1 pointed his firearm at Complainant #1 and their dog.

ADMINISTRATIVE NOTE:

The Complainants alleged NE#1 unnecessarily aimed his firearm at Complainant #1 and their dog. OPA classified those allegations under SPD's use of force and discretion policies. Those allegations were approved for Expedited Investigation. That means OPA, with the Office of Inspector General's review and agreement, believed it could reach and issue recommended findings based solely on its intake investigation, without interviewing the involved employee. As such, OPA did not interview the involved employee about those allegations.



SUMMARY OF INVESTIGATION:

The Complainants reported the allegations to an SPD supervisor (Witness Supervisor #1 or WS#1), who submitted an OPA complaint via Blue Team. That complaint stated NE#1 responded to a 9-1-1 call reporting a woman inside a van was being held down and injected with an unknown substance. Per that complaint, NE#1 was first to arrive on scene. It further stated NE#1 drew his firearm, held it in sul position,¹ and ordered the occupants out of the van. Complainant #1 (a male) and Complainant #2 (a female) were inside the van. According to the complaint, the officers' investigation determined the Complainants argued but there was insufficient evidence of violence. Neither Complainant was arrested.

WS#1 stated the Complainants told him they wanted to make a complaint. The Complainants alleged NE#1 was unprofessional and "out of control." The Complainants alleged NE#1 escalated the situation by producing a firearm and aiming it at their dog.

OPA opened an investigation. During its investigation, OPA reviewed the complaint, Computer-Aided Dispatch (CAD) data, incident report, body-worn video (BWV), and in-car video (ICV). OPA also interviewed the Complainants, NE#1, and Witness Employees (WE#1 and WE#2).

a. SPD Documents

The CAD data showed a 9-1-1 call was received at 9:56 AM for a domestic violence argument/disturbance. The CAD included a priority remark noting "Bowie knife." The 9-1-1 call taker also noted:

Female inside whi[te] van screaming for assistance. Male appears to be holding arm and injecting her with unk[nown] substance.

NE#1 was the first officer on scene.

OPA also reviewed the incident and supplemental reports. WE#2 wrote the incident report. WE#2 wrote she responded to the CAD dispatch described above. WE#2 wrote, upon arrival, she spoke with the Complainants who were uninjured and stated they were only arguing. WE#2 also documented speaking to the 9-1-1 caller, who clarified he only reported the female screamed for help. WE#2 wrote the 9-1-1 caller denied stating the female was held down and injected.

WE#2 also authored a Field Contact Report. In that report, WE#2 listed NE#1 as a backing officer and noted ICV and BWV captured for the incident. The Field Contact Report's narrative mirrored the incident report's narrative. In the "Stop Narrative" section, which directed the officer completing the Field Contact Report to "Describe why you had reasonable suspicion to believe the subject was involved in criminal activity," WE#2 wrote, "both subjects were inside a vehicle that matched the description on the call." WE#2 wrote neither Complainant was frisked. The Field Contact

¹ Sul position is an extended ready position that is non-threatening, offers good weapon retention and awareness, and keeps the gun pointed in a safe direction (typically down.)



Report listed Complainant #1 as a “suspicious” subject type and Complainant #2 as an “other” subject type. A supervisor approved the Field Contact Report the next day.

b. Body Worn Video and In-Car Video

OPA reviewed NE#1’s BWV and ICV. BWV captured NE#1’s entire interaction with the Complainants. NE#1’s ICV also captured a wide angle of the interaction.

BWV showed NE#1 arrive on scene and approach the Complainants’ van. The Complainants’ dog, which was tied to the van, jumped towards NE#1. NE#1 drew his firearm with his left hand and kept it pointed towards the ground in sul position. In a calm voice, NE#1 stated, “Hi puppy, hey.” NE#1 then asked Complainant #2, also in a calm voice, “Can you come out of the car for me please ma’am.” When Complainant #1—who was inside the van behind Complainant #2—entered the frame, NE#1 ordered the Complainants out of the van. Maintaining a calm voice, NE#1 explained, “just step out, both of you guys, we got a call and we’re just concerned for everybody’s welfare, okay?” NE#1 also directed Complainant #1 to keep his hands visible.

NE#1 then order the Complainants to step over to his vehicle and asked, “is it just the two of you guys and your puppy?” The Complainants asked NE#1 to explain what was happening. NE#1 responded he would explain everything once backing officers arrived. Complainant #1 stopped short of NE#1’s vehicle and asked NE#1, “what did I do?” NE#1 responded, “we’ll get that all figured out in a sec.” NE#1 told the Complainants, “I need you to sit on the bumper, do it now.” Complainant #1 protested, stating there was “no reason...” NE#1 interjected, “you’re being detained, when we figure it out, you’ll be free to go with your puppy, alright? But right now I need you to sit on the bumper of my car, okay.” Complainant #1 asked, “for what?” NE#1 responded, “Because we got a call. I will, I will, when I feel safe. Okay?” NE#1 again instructed Complainant #1 to keep his hands visible and repeatedly ordered him to sit on the patrol car’s bumper. NE#1 then used his right hand to grab Complainant #1’s raised left wrist and slowly guided him toward the patrol car’s bumper. NE#1 then stated, “everything is going to be fine, okay?”

As other officers arrived, NE#1 used his right hand to lift Complainant #1’s shirt to expose his waistline. NE#1 used the back of his right hand to pat down Complainant #1’s front pant pockets. At some point, while NE#1 spoke with the Complainants near the patrol car, NE#1 holstered his firearm. As other officers engaged the Complainants, NE#1 inspected the exterior of the Complainants’ van and, from about five to ten feet away, appeared to look through the open door.

NE#1 returned to Complainant #1 and explained, “So the reason we came out here, sir, is ‘cause somebody called and said they heard a female screaming and they saw a male holding her down inside of a van parked at this location.” Complainant #1 denied that allegation. NE#1 replied, “so we’ve had quite a few kidnappings in the area recently, stuff like that, ok, so it’s our duty to come out here and investigate and try to figure out what’s going on.” Complainant #1 expressed dissatisfaction with not immediately being told why he was stopped. NE#1 responded, due to Complainant #1’s uncooperativeness, he was unable to provide an immediate explanation. NE#1 and Complainant #1 disagreed



about whether Complainant #1 complied with NE#1's instructions. After further discussion, NE#1 requested Complainant #1's name and birthdate. NE#1 entered his police car and typed on the mobile data terminal.

At the end of the encounter, Complainant #2 asked to speak with NE#1. Complainant #2 stated she understood why the situation was investigated but stated NE#1 did not have to draw his gun. Complainant #2 also accused NE#1 of aiming his gun at her dog and Complainant #1, stating "you know what, I'm filing a report on your ass, and we're going to figure it out. Okay? Because what you did was absolutely fucking despicable." At the end of their conversation, NE#1 asked Complainant #2 if she wanted to speak with a supervisor. Complainant #2 accepted the offer. A supervisor was requested, and NE#1 disengaged with the Complainants.

NE#1's total interaction with the Complainants was roughly seventeen minutes.

c. OPA Interview – Complainants

OPA contacted the Complainants by phone. The Complainants preferred to interview together, which OPA accommodated.

Complainant #2 stated she and Complainant #1 lived in their immobile van. Complainant #2 stated neighbors took issue with them living on that street. Complainant #2 stated a neighbor called the police to report Complainant #1 assaulted her. Complainant #2 stated six police cars arrived, but NE#1 arrived first. Complainant #2 stated, with his gun unholstered, NE#1 ordered them out the van and to put their hands behind their heads. Complainant #2 stated Complainant #1 attempted to calm their upset dog, but NE#1 kept ordering them to sit on his vehicle. Complainant #2 alleged NE#1 pointed the gun at their dog and Complainant #1, was being aggressive, and refused to tell them why they were detained. Complainant #2 also alleged NE#1's tone was unprofessional, condescending, and undermining.

Complainant #1's account was consistent with Complainant #2's but added NE#1 screamed at the Complainants and created a hostile environment.

d. OPA Interview – Named Employee #1

NE#1 told OPA he worked at SPD for two years and had no prior law enforcement experience.

NE#1 recalled the incident was originally dispatched as a "priority 1" call, which is the highest priority. NE#1 stated multiple officers responded to the call. NE#1 recalled the call notes stated a female screamed for help and a male held and injected her with an unknown substance. NE#1 stated he arrived first but was not the primary officer.

NE#1 stated, since the call noted someone screamed for help, he checked the scene before other officers arrived. NE#1 recalled encountering the Complainants and a dog. NE#1 said he spoke with the Complainants and directed them to sit on his bumper. NE#1 recounted Complainant #1 was resistant but eventually complied. NE#1 stated when other officers arrived, the Complainants were separated while they investigated. NE#1 stated the Complainants alleged the 9-1-1 caller made prior false reports about them, so it took additional time to investigate the situation.



NE#1 explained his gun was drawn because he was alone and responding to a potential felony offense involving two people. NE#1 stated he kept his firearm in sul position or by his hip the entire time it was unholstered. NE#1 stated denied pointing his firearm at the dog or Complainant #1.

NE#1 recalled Complainant #2 was compliant, but Complainant #1 only moved a short distance before asking why he was being detained. NE#1 explained he wanted the Complainants to move away from the van due to uncertainty about what was inside it. NE#1 said he asked the Complainants to sit on his patrol car because they matched the description from the call, and there was reasonable suspicion to detain them. NE#1 also stated he wanted to remove them from proximity to the dog, which NE#1 considered a possible threat.

NE#1 admitted not immediately telling the Complainants the reason for their detention. NE#1 explained it was because he was alone, Complainant #1 was noncompliant, and too many unknowns made the scene unsafe. NE#1 said he told the Complainants they were detained, and he would explain after they followed his directions. NE#1 recalled Complainant #1 was still near the dog, so he did not think it was safe to explain the reason for the stop at that time. NE#1 said he did not recall when he told the Complainants the reason for the stop, but believed it was later. NE#1 recalled Complainant #2 was very upset and said she would file a complaint. NE#1 stated Complainant #2 seemed uninterested in hearing NE#1's perspective, so he requested a supervisor to come to scene.

NE#1 admitted he did not document the *Terry* stop because WE#2, the primary officer, completed the Field Contact Report. NE#1 did not recall whether he participated in preparing the Field Contact Report.

e. OPA Interviews – Witness Employee #1 and Witness Employee #2

OPA interviewed WE#1. WE#1 was a backing officer. WE#1 recalled it as a “priority 1” assault call involving someone in danger. WE#1 recounted, when he arrived, NE#1 had the Complainants detained. WE#1 recalled the Complainants appeared upset and Complainant #2 yelled at NE#1. WE#1 stated WE#2 was the “primary” officer. WE#1 explained the “primary” officer is the person in charge of the investigation, decides how to resolve the call, writes the report, and usually is the first officer to arrive.

OPA interviewed WE#2. WE#2 recalled the situation was under control when she arrived. WE#2 stated she spoke to the Complainants and determined no crime occurred. WE#2 explained she was the primary officer and explained the primary officer decides how to handle the call and writes the reports thereafter.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainants alleged NE#1 exceeded the scope of a *Terry* stop by drawing his weapon and ordering them to sit on his police vehicle.



Officers must limit a seizure to a reasonable scope. SPD Policy 6.220-POL-2(2). Further, “Actions that would indicate to a reasonable person that they are being arrested or indefinitely detained may convert a Terry stop into an arrest.” *Id.* Moreover, unless justified by the articulable reasons for the original stop, officers must have additional articulable justification for further limiting a person’s freedom during a *Terry* stop, like ordering a motorist to exit a vehicle, directing a person to sit on a patrol car bumper, pointing a firearm at a person, and frisking for weapons. *Id.*

Here, NE#1’s actions were lawful and proper. NE#1 responded alone to a reportedly violent felony call. That call noted the possible involvement of a “bowie knife” and alleged the assailant was armed with a syringe. When NE#1 contacted the Complainants, he was unable to meaningfully see inside their van to determine whether there were potential threats inside it. NE#1 also encountered a sizeable dog which the Complainants described as upset. To manage and secure the scene, NE#1 calmly ordered the Complainants out the van and onto his patrol vehicle’s bumper. Those directions were minimally intrusive under the circumstances and delivered with a calm even tone. Moreover, NE#1’s concern about the Complainants’ dog being a potential threat was not unreasonable. NE#1 also clearly told the Complainants they were only detained and “when we figure it out, you’ll be free to go with your puppy.”

Similarly, NE#1 drawing his firearm as he approached the van was also reasonable. Particularly where he anticipated encountering an armed and violent subject. Although Complainant #2 alleged NE#1 drawing his gun in the presence of their agitated dog was unreasonable, quite the opposite is true. The potential threat posed by the dog further justified NE#1’s decision to draw his firearm and maintain it in sul position.

Finally, NE#1 conducted a limited frisk of Complainant #1. The search was limited to slightly lifting Complainant #1’s shirt to expose his waistband and gliding the back of his hand against Complainant #1’s front pockets. Although the search occurred somewhat later in the response, it was still reasonable because the call was under investigation (the Complainants or the 9-1-1 caller were not interviewed at that time.) Overall, NE#1 had reasonable suspicion, based on the 9-1-1 call and the Complainants matching the description, to believe Complainant #1 was possibly armed with a knife and/or syringe. Ordering the Complainants out the van and Complainant #1’s limited frisk was reasonable under the circumstances.

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

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #1 - Allegation #2

6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220 - POL – 2 Conducting a Terry Stop 4. During all Terry Stops, Officers Will Take Reasonable Steps to Be Courteous and Professional

The Complainants alleged NE#1 was unprofessional and refused to tell them why they were detained.

During a *Terry* stop, officers will take reasonable steps to be courteous and professional. SPD Policy 6.220-POL-2(4). The policy further states, when reasonable, as early in the contact as safety permits, officers will tell the suspect the officer’s name, the officer’s rank or title, that he/she is a Seattle police officer, the reason for the stop, and that the stop is being recorded, if applicable. *Id.*



Here, BWV did not show NE#1 saw or do anything unprofessional. Contrarily, NE#1 remained calm during a chaotic contact and repeated instructions with a firm but even tone. NE#1 also attempted to reassure the Complainants, stating: “when we figure it out, you’ll be free to go with your puppy, alright?” and “everything is going to be fine, okay?”

Although NE#1 did not immediately inform the Complainants why they were detained, he told them on scene, and OPA during his interview, the situation was unsafe, and he planned to explain once they complied with his instructions. Moreover, OPA notes NE#1 did initially provide a limited explanation for the Complainants’ detention, stating: “just step out, both of you guys, ***we got a call and we’re just concerned for everybody’s welfare***, okay?” (Emphasis added) and later reaffirming the stop was “Because we got a call.” Further, once the situation settled, NE#1 told the Complainants the reason for the stop. Under the circumstances, NE#1 reasonably delayed a detailed explanation for the stop based on safety concerns.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 - Allegation #3

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

The Complainants alleged NE#1 pointed his firearm at Complainant #1.

An officer’s use of force must be reasonable, necessary, and proportional. SPD Policy 8.200(1). Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” *Id.* Whether force is reasonable depends “on the totality of the circumstances” known to the officer when force is used and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” SPD Policy 8.050. The policy lists several factors to weigh when evaluating reasonableness. *See id.* Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” *Id.* Last, the force used must be proportional to the threat posed to the officer. *Id.*

BWV and ICV showed NE#1 did not point his firearm at Complainant #1. Instead, NE#1 kept his firearm pointed in sul position, aimed at the ground.

NE#1’s only application of force was briefly grabbing Complainant #1’s arm to guide him to the patrol car. That was *de minimis* force and was reasonable, necessary, and proportional after Complainant #1 repeatedly refused compliance.

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

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



Named Employee #1 - Allegation #4

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

It was alleged NE#1 did not complete a Field Contact Report.

Officers must document all *Terry* stops in a Field Contact report. SPD Policy 6.220-POL-4(1). In Field Contact reports, officers are instructed to “clearly articulate the objective facts they rely upon in determining reasonable suspicion.” SPD Policy 6.220-POL-4(1).

Here, NE#1 failed to document the *Terry* stop in a Field Contact report. NE#1 admitted that failure to OPA, but explained it was because WE#2 was the primary officer. WE#2 completed a Field Contact report.

While SPD policy requires the completion of a Field Contact report, it does not specify the responsible officer. Here, the report was completed by WE#2, the primary officer, so OPA cannot sustain the allegation against NE#1.

However, OPA notes NE#1 was the most involved officer concerning the scope and reasoning for the *Terry* stop. NE#1 should have written the Field Contact report, provided a supplemental report, or at least conferred with WE#2 to ensure it was accurate. Here, it was not. First, and most importantly, the Field Contact report incorrectly stated no frisk occurred. Second, the narrative—a copy of the incident report’s narrative—failed to clearly articulate the elements required under SPD Policy 6.220-POL-4. Notably, it did not articulate the justification for frisking Complainant #1, nor did it explain NE#1’s concern about the dog that supported his decision to have the Complainants sit on the bumper. Finally, the policy requires officers “use a separate Field Contact for each person seized during a *Terry* stop.” That was not done here.

Overall, OPA found a possible, but unwilful, violation of policy that did not rise to the level of misconduct. Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1’s chain of command should discuss OPA’s findings with NE#1, review SPD Policy 6.220-POL-4 with NE#1, and provide any further retraining and counseling it deems appropriate. Any retraining and/or counseling should be documented and maintained in an appropriate database.

Recommended Finding: **Not Sustained - Training Referral**

Named Employee #1 - Allegation #5

5.001 - Standards and Duties 5.001-POL 6. Employees May Use Discretion

The Complainants alleged NE#1 unjustifiably aimed his firearm at their dog.

SPD Policy 5.001-POL-6 states, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” That policy further instructs, “[d]iscretion is proportional to the severity of the crime or public safety issue being addressed.” SPD Policy 5.001-POL-6.



Here, BWV and ICV established NE#1 did not point his firearm at the Complainants' dog. Moreover, to the extent the Complainants alleged NE#1 used improper discretion by drawing his firearm, that was addressed at Allegation #1 and found to be lawful and proper.

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

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