




CLOSED CASE SUMMARY

ISSUED DATE: MARCH 12, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0295

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper (Expedited)
# 2	5.001 - Standards and Duties 5.001-POL 7. Employees Engaged in Department-Related Activities Identify Themselves When Requested	Not Sustained - Training Referral (Expedited)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220-POL-4 Documenting a Terry Stop 3. Officers Will Document All Other Detentions	Not Sustained - Unfounded
# 4	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 - Unfounded
# 5	5.001-POL 6. Employees May Use Discretion	Not Sustained - Training Referral

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper (Expedited)
# 2	5.001 - Standards and Duties 5.001-POL 7. Employees Engaged in Department-Related Activities Identify Themselves When Requested	Not Sustained - Training Referral (Expedited)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220-POL-4 Documenting a Terry Stop 3. Officers Will Document All Other Detentions	Not Sustained - Unfounded
# 4	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 - Unfounded
# 5	5.001-POL 6. Employees May Use Discretion	Not Sustained - Training Referral

Named Employee #3

Allegation(s):		Director's Findings
# 1	5.001-POL 6. Employees May Use Discretion	Not Sustained - Unfounded
# 2	6.220-POL-2 Conducting a Terry Stop 8. Supervisors Will Screen All Incidents In-Person When an Officer Places Handcuffs on a Subject.	Not Sustained - Inconclusive



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 Named Employees used excessive force to unlawfully detain her and refused to identify themselves.

ADMINISTRATIVE NOTE:

This case was designated an 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 employees. As such, OPA did not interview the involved employees in this case.

SUMMARY OF INVESTIGATION:

Named Employee #2 (NE#2) wrote the police report. In summary, it stated on September 10, 2022, around 2:00 AM, officers responded to a fight at a bar. NE#2 wrote he saw the Complainant, who was heavily intoxicated, swing her fists at several people. NE#2 noted that he intervened and separated the Complainant, but she returned and swung her fists at others again. Officers handcuffed the Complainant, and NE#3, an acting sergeant, screened the incident. NE#2 wrote the victims of the Complainant's attacks left without providing identifying information. NE#2 documented that officers uncuffed and released the Complainant but offered to transport her away from the angry crowd. NE#2 wrote the Complainant accepted the offer. NE#2 documented the Complainant stated the bar fight stemmed from others mocking her for urinating on herself. NE#2 wrote officers transported the Complainant to the West Precinct, where her friends said they were en route to pick her up. Officers did not wait for the friend's arrival.

BWV captured the Named Employees' interaction with the Complainant. BWV was generally consistent with NE#2's report. In summary, upon officers' arrival, an unidentified woman held the Complainant back from charging toward onlookers. The Complainant broke away and ran toward the antagonistic crowd. The Complainant grabbed, shoved, and struck an onlooker. She was also captured slapping a male subject who appeared to be with her group. NE#2 grabbed the Complainant's shoulder and seemed to say she was going to jail.¹ The Complainants told NE#2 someone sexually harassed her, and her friend told NE#2 someone slapped the Complainant. The Complainant walked off and reengaged with the man she slapped, who pushed her away. She charged at the man but was restrained by NE#2 and a security guard. The Complainant stumbled and fell backward on the ground. She got up and walked into NE#1, who grabbed her arms and brought her to the ground. The Complainant tried to stand again, but NE#1 held her down with his left hand. Officers handcuffed her. The group she was apparently with left the scene. Officers uncuffed her. NE#3 expressed concern about leaving the Complainant there. NE#1 asked the Complainant where she lived. She initially stated she did not know, then said Tacoma. NE#2 told her, "We're gonna take you to the precinct, and then you can find a ride from there," because the situation would escalate if she stayed at the bar.

The Complainant sat in the back of the patrol car. NE#1 radioed they were giving the Complainant a courtesy ride to the West Precinct. The Complainant told officers her phone was with her friends and asked them to call it. NE#2 complied, spoke with the Complainant's friend, and told her where they could pick her up. Officers arrived at the

¹ That statement was unclear other than "taking her to jail."



precinct and decided to have the Complainant wait outside because the doors were locked. The Complainant got out and said, "I'm sorry, you guys don't have to wait for me; you have more important stuff." NE#1 suggested they would wait, but the Complainant insisted she was okay. NE#1 stated they would remain, but the Complainant replied she did not want them to babysit her. She sat on a curb, and NE#1 called her phone again. NE#1 told the person on the other end his name and badge number and that the Complainant was outside the West Precinct. NE#1 also stated they brought the Complainant there to "take her away from a situation that was very hectic. Okay. And she's not in trouble." Officers prepared to leave and the Complainant yelled, "That's not fair! No, you guys are not allowed to leave me. You guys dropped me off here. You have to wait until my ride arrives." NE#2 replied, "You just told us to leave." She replied, "No, I didn't." NE#1 stated, "You want us to stick with you? Okay. We'll stay here until your friends show up, alright?" The Complainant replied, "Are you guys really going to leave me? It's okay if you guys have to." NE#1 stated, "Well, you just told us multiple times..." She interjected, "No, it's okay." NE#1 replied, "You sure?" The Complainant nodded yes, and the officers left. Her ride arrived about six minutes after the officers left.

OPA made several unsuccessful attempts to interview the Complainant, including calls and emails. On December 21, 2022, OPA interviewed NE#3. He said he arrived to screen the incident on the night in question. NE#3 said NE#2 briefed him about the situation. He also said the officers planned to release the Complainant and provide her with a courtesy transport away from the volatile scene at the bar to the West Precinct. NE#3 stated he concurred with that plan since it was the best option for removing the Complainant from a dangerous situation.

On January 6, 2023, OPA interviewed NE#2. NE#2's account mirrored his police report. Additionally, NE#2 stated the Complainant was detained for assault. NE#2 said she was handcuffed and walked to a patrol car. NE#2 stated a group formed near a parking lot. After the officers decided to release the Complainant, NE#2 said the crowd yelled, "we're gonna fuck you up" at the Complainant. NE#2 stated that since her friends were no longer on the scene, she was heavily intoxicated and lived in Tacoma; the safest plan was to take her to the West Precinct and arrange a ride. He also stated a Field Contact report documented the Complainant's detention, handcuffing, and the reason for relocating her from the incident location.

NE#1 was terminated from the Department on September 28, 2022, for an unrelated complaint. The Department only had his last known mailing address on file. OPA sent an interview request to that address but did not receive a response.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged NE#1 used excessive force during her detention.

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." Whether force is reasonable depends "on the totality of the circumstances" known to the officers at the time of the force 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 that should be weighed when evaluating reasonableness. *See id.* Force is necessary where "no reasonably effective alternative to the use of force

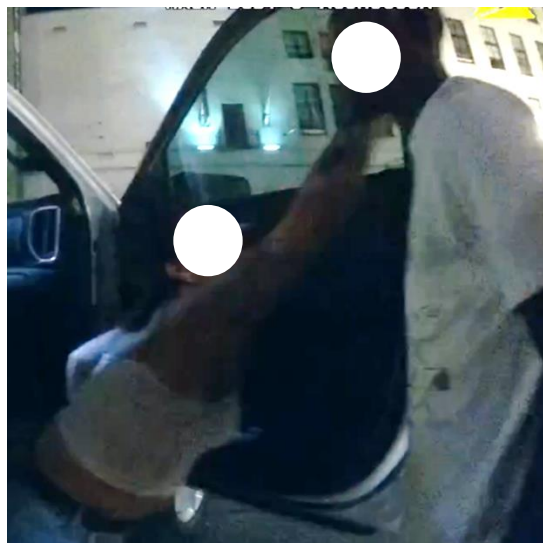


appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” *Id.* Lastly, the force used must be proportional to the threat posed to the officer. *Id.*

Here, officers found the Complainant assaulting two people. Specifically, upon officers’ arrival, she was restrained by a friend, broke away, then tangled with and struck an unidentified person:



Thereafter, BWV captured her slapping another man:



Officers’ only applications of force against the Complainant included NE#2 grabbing her shoulder as she charged toward the man she slapped and NE#1 grabbing her arm as she repeatedly pulled away.

² The Complainant was wearing a white top and blue jeans.



NE#2's Hand Grabbing the Complainant's Shoulder



NE#1 Grabbing the Complainant's Right Arm



The only other notable time officers went hands-on with the Complainant was after she fell, when they held her to the ground to overcome her attempts to get up, and when she was handcuffed. Overall, each application of force was objectively reasonable, necessary, and proportional to execute the officers' legal purpose of detaining the heavily intoxicated and volatile Complainant.

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

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 5.001-POL 7. Employees Engaged in Department-Related Activities Identify Themselves When Requested

The Complainant alleged the Named Employees refused to provide their badge numbers.

SPD employees engaged in department-related activities must “provide their name and Department serial number verbally, or in writing, if requested.” SPD Policy 5.001-POL-7.

While BWV did not capture the Complainant or anyone else request the Named Employees' badge number or any other identifier, *Terry* stops require, as early in the contact as safety permits, officers to provide their name, rank, department, and reason for the stop, and notify the subject the encounter is recorded. See SPD Policy 6.220-POL-2(4). Further, officers must give the subject a business card with the event number. Here, officers found insufficient evidence to arrest the Complainant since the victim was no longer on the scene. Although officers decided her detention fell short of an arrest, it constituted a *Terry* stop. While officers told the Complainant the reason for the stop and that the encounter was recorded, they did not provide their names, rank, department, or business card. They told OPA they omitted that information because the Complainant was too intoxicated to comprehend. However, it is difficult to reconcile that excuse with their election to leave that same heavily intoxicated person alone on a curb around 2:30 AM. Nevertheless, OPA notes NE#1 gave the Complainant's friend his name and badge number when he called to get their arrival time.

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



- **Required Training:** Had NE#1 remained with the Department, OPA would have recommended NE#1's chain of command should discuss OPA's findings with NE#1, review SPD Policy 5.001-POL-7 with NE#1, and provide any retraining and counseling it deems appropriate. The retraining and counseling should be documented and maintained in a proper database.

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

Named Employee #1 - Allegation #3

6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220-POL-4 Documenting a Terry Stop 3. Officers Will Document All Other Detentions

The Complainant alleged officers failed to properly document her detention.

Officers must document all detentions. SPD Policy 6.220-POL-4(3). Supervisors are required to ensure the correct documentation is completed. *Id.*

Here, NE#2 completed a Field Contact report, which indicated the Complainant was subject to a *Terry* stop. That report also documented why she was detained, that she received a courtesy transport to the West Precinct for her safety, and that she was ultimately released. It further noted the Complainant's birthdate and gender and that she was not frisked for weapons.

Accordingly, the Field Contact report satisfied the Department's documentation requirements for a *Terry* stop.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 - Allegation #4

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 Complainant alleged the Named Employees unreasonably exceeded the scope of a *Terry* stop by relocating her to the West Precinct.

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.* The policy lists possible actions that could indicate to a reasonable person they are being arrested. *Id.* Still, it specifies those occurrences do not necessarily convert a *Terry* stop into an arrest. *See id.*

Here, the Complainant's prolonged detention was reasonable when releasing her at the scene posed a significant safety risk. Officers removed the Complainant's handcuffs about five minutes after they were applied. However, officers devised a safety plan due to an angry crowd seeking to hurt the Complainant. Generally, *Terry* stops under 20 minutes are acceptable. Officers spent less than 30 minutes with the Complainant here, primarily transporting her to safety and arranging her ride. Within the first 10 minutes of encountering the Complainant, the handcuffs were removed, and the detention was converted to a courtesy transport to safety.



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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 - Allegation #5

5.001-POL 6. Employees May Use Discretion

The Complainant alleged the Named Employees exercised unreasonable discretion when they left her outside the West Precinct.

“Employees 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.” SPD Policy 5.001-POL-6. Further, “[d]iscretion is proportional to the severity of the crime or public safety issue being addressed.” SPD Policy 5.001-POL-6.

Here, officers devised a reasonable plan to relocate the Complainant from the dangerous scene outside the bar. Moreover, since she lived in Tacoma, they reasonably took her to the safest close destination, the West Precinct. However, leaving a combative and heavily intoxicated person on a curb at 2:30 AM was unreasonable. Even though the Complainant indicated she was okay with them leaving, she was in no condition to concur. The Complainant’s ride arrived soon after the officers left, so waiting a few minutes longer was not an apparent inconvenience. West Precinct cameras captured the Complainant walking the street after officers drove off. Luckily, she spotted her friends and was unharmed.

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

- **Required Training: Had NE#1 remained with the Department, OPA would have recommended NE#1’s chain of command should discuss OPA’s findings with NE#1, review SPD Policy 5.001-POL-6 with NE#1, and provide any retraining and counseling it deems appropriate. The retraining and counseling should be documented and maintained in a proper database.**

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

Named Employee #2 - Allegation #1

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

The Complainant alleged NE#2 used excessive force during her detention.

This allegation is Not Sustained- Lawful and Proper for the reasons outlined at Named Employee #1 – Allegation #1.

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

Named Employee #2 - Allegation #2

5.001 - Standards and Duties 5.001-POL 7. Employees Engaged in Department-Related Activities Identify Themselves When Requested

The Complainant alleged the Named Employees refused to provide their badge numbers.



This allegation is Not Sustained – Training Referral for the reasons outlined at Named Employee #1 – Allegation #2.

- **Required Training: NE#2's chain of command should discuss OPA's findings with NE#2, review SPD Policy 5.001-POL-7 with NE#2, and provide any retraining and counseling it deems appropriate. The retraining and counseling should be documented and maintained in a proper database.**

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

Named Employee #2 - Allegation #3

6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220-POL-4 Documenting a Terry Stop 3. Officers Will Document All Other Detentions

The Complainant alleged officers failed to properly document her detention.

This allegation is Not Sustained- Unfounded for the reasons outlined at Named Employee #1 – Allegation #3.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 - Allegation #4

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 Complainant alleged the Named Employees unreasonably exceeded the scope of a Terry stop by relocating her to the West Precinct.

This allegation is Not Sustained – Unfounded for the reasons outlined at Named Employee #1 – Allegation #4.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 - Allegation #5

5.001-POL 6. Employees May Use Discretion

The Complainant alleged the Named Employees exercised unreasonable discretion when they left her outside the West Precinct.

This allegation is Not Sustained – Training Referral for the reasons outlined at Named Employee #1 – Allegation #5.

- **Required Training: NE#2's chain of command should discuss OPA's findings with NE#2, review SPD Policy 5.001-POL-6 with NE#2, and provide any retraining and counseling it deems appropriate. The retraining and counseling should be documented and maintained in a proper database.**

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



Named Employee #3 - Allegation #1

5.001-POL 6. Employees May Use Discretion

The Complainant alleged the Named Employees exercised unreasonable discretion when they left her outside the West Precinct.

As discussed at Named Employee #1 – Allegation #5, the officers’ plan to transport the Complainant from the dangerous scene to the West Precinct was reasonable since she had no other viable option. However, unlike NE#1 and NE#2, there is no evidence NE#3 knew the heavily intoxicated Complainant would be left unaccompanied on a curb. Accordingly, where NE#3 merely concurred with a reasonable and solid safety plan for the Complainant, this allegation is Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #3 - Allegation #2

6.220-POL-2 Conducting a Terry Stop 8. Supervisors Will Screen All Incidents In-Person When an Officer Places Handcuffs on a Subject

The Complainant alleged NE#3 failed to screen the incident.

Supervisors must “screen all incidents in-person when an officer places handcuffs on a subject.” SPD Policy 6.220-POL-2(8).

While Department policy mandates screening handcuffed subjects, it needs to outline what that screening should look like. NE#3 told OPA screening generally consists of explaining to the subject why they were handcuffed and released. NE#3 fell short of that standard here, where he did not speak to the Complainant. Instead, he reportedly relied on the other officers to do that when BWV captured him directing NE#1 and #2 to “screen on handcuffing” and “provide her with a business card because she was detained.” Nevertheless, it is challenging to conclude NE#3 failed to satisfy an unarticulated standard.

Recommended Finding: **Not Sustained - Inconclusive**