



## CLOSED CASE SUMMARY

ISSUED DATE: MAY 15, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER:

### 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
# 2	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	Sustained
# 3	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	Sustained
# 4	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper

#### Imposed Discipline

Written Reprimand

#### Named Employee #2

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
# 2	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

***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:

It was alleged that Named Employee #1 (NE#1) and Named Employee #2 (NE#2) unlawfully detained and handcuffed Community Member #1 (CM#1). It was also alleged that NE#1 used unauthorized force by stepping on CM#1's foot and incorrectly handcuffing him. Finally, it was alleged NE#1 was discourteous and unprofessional.



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**SUMMARY OF INVESTIGATION:**

An SPD supervisor screened this incident with OPA through the Unsubstantiated Misconduct Screening (UMS) process. See OPA Internal Operations and Training Manual, Section 8.1. OPA requested the matter be referred to OPA through Blue Team, and the supervisor complied. The complaint indicated the incident officers responded to a shoplifting call where the suspect allegedly stole a DeWalt power tool. It noted that NE#1 observed CM#1 holding a box and that Community Member #2 (CM#2)—a loss prevention officer—indicated CM#1 as the offender. The complaint noted CM#1 actively resisted detention, leading NE#1 to grab CM#1's arm and perform a "foot trap" on CM#1.<sup>1</sup> NE#2 assisted NE#1 with handcuffing CM#1. The complaint noted that NE#1 determined CM#1 did not steal the merchandise in his possession, as CM#1 had a receipt for it. CM#1 later complained about being detained, cuffed, and abused for no reason. CM#1 also indicated the officers cuffed him "really tight" and stepped on his "really bad foot really hard."

OPA opened an investigation. During its investigation, OPA reviewed the UMS and complaint. OPA also reviewed the computer-aided dispatch (CAD) data, incident report, Type II Use of Force investigation, and body-worn video (BWV). OPA interviewed two witness employees, NE#1 and NE#2. OPA called and emailed CM#1 to arrange an interview but has not received a response. However, a screening sergeant did interview CM#1 for the Type II Use of Force investigation.

*a. Computer-Aided Dispatch (CAD) Data*

The CAD call report showed the following:

On October 1, 2022, at about 7:47 PM, CM#2 called 9-1-1 to report that two males shoplifted a DeWalt power tool. CM#2 described the offenders as two white males, around twenty years old, with one wearing a long shirt and jeans. Four officers and a sergeant responded. NE#1 was the primary officer. NE#2 was the first officer to arrive, followed by NE#1, then Witness Employee #1 (WE#1) and Witness Employee #2 (WE#2). Witness Supervisor #1 (WS#1)—a supervisor—arrived last, about nine minutes after NE#1. CAD indicated a report was written, but no arrest was made.

Later, CM#1 called 9-1-1 to speak with WS#1. WS#1 met CM#1 in person.

*b. Incident Report*

NE#1 wrote the related incident report, including a Field Contact report outlining NE#1's contact with CM#1.

NE#1 wrote that upon arrival, he saw an "unknown male on a skateboard circling the parking lot in [the] proximity of another unknown male pushing a shopping car[t] with items in it." NE#1 indicated an item in the shopping cart appeared to be a "large yellow box that resembled the packaging of DeWalt equipment" but noted the entire box was not visible. NE#1 wrote that he asked dispatch to have CM#2—the 9-1-1 caller—speak with him.

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<sup>1</sup> A "foot trap" is a trained technique where an officer uses their foot to apply pressure onto a subject's foot—"trapping" the subject's foot on the ground—to prevent flight or resistance.



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NE#1 wrote that CM#2 arrived, and NE#1 “described the observed male with the package.” CM#2 “thought that it was the suspect.” NE#1 told dispatch that he and NE#2 would contact the suspect.

NE#1 wrote that he contacted CM#1, who was “uncooperative” and unwilling to “follow simple verbal commands.” NE#1 wrote that CM#1 was handcuffed and arrested for shoplifting. Following CM#1’s arrest, NE#1 found a receipt for the items in CM#1’s possession. NE#1 wrote that CM#1 was unhandcuffed, and WS#1—a sergeant—was requested. NE#1 wrote WS#1 arrived, but CM#1 declined to speak with him. NE#1 wrote that CM#1 was released and provided a business card and incident number.

NE#1 wrote that the two suspects were not located.

*c. Type II Use of Force Investigation*

WS#1 investigated the incident as a Type II Use of Force.<sup>2</sup> WS#1 documented CM#1’s detention and later called requesting to speak with a supervisor. WS#1 also documented his interview with CM#1. WS#1 wrote CM#1 reported that NE#1 “handcuffed him roughly and then stepped on his foot,” aggravating a preexisting foot injury. CM#1 also said the officers detained him for “no reason.” WS#1 indicated he explained the reasoning for the call and the stop, but CM#1 “said that he was not clear about why he was contacted and had no further issues with the reason for the officer’s contact with him.”

WS#1 photographed CM#1’s reported injuries. The photographs depicted marks on CM#1’s wrists from handcuffs and an abrasion on CM#1’s foot, which WS#1 described as “consistent with the officer’s boot rubbing against the subject’s leg when the officer performed the foot trap.”

WS#1 also conducted a recorded interview with CM#1. CM#1 reported purchasing a tool from the store. CM#1 said he noticed officers watching him after he left the store. CM#1 said he covered the box with his hoodie as he walked to the bus so others would not see what he carried. CM#1 said four officers detained him. CM#1 admitted he was uncooperative because he did not know why he was detained or arrested for theft. CM#1 said that officers released him after they saw his receipt. CM#1 suggested the officers caused his injuries. CM#1 noted he was “squirming,” and officers tried to handcuff him. CM#1 also said NE#1 tried to slam him to the ground. CM#1 said he told the officers he had a “bad foot” after an officer stood on his foot.

*d. Body-Worn Video (BWV)*

BWV showed the following:

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<sup>2</sup> A Type II Use of Force is “[f]orce that causes or is reasonably expected to cause physical injury greater than transitory pain but less than great or substantial bodily harm.” SPD Policy 8.050. It includes any force causing an abrasion, bruising, or laceration. See SPD Policy 8.400.



NE#1 arrived and radioed to have the store's loss prevention to meet him outside. CM#2 arrived, and NE#1 asked whether the suspect wore a "multicolored shirt." CM#2 responded, "Uh, I believe I have it on surveillance." NE#1 said, "Run over here and look at this guy. Big yellow box." CM#2 immediately responded, "Yes, yes." NE#1 advised dispatch, "Suspect from the number two theft is at one and Lander right now. I got eyes on him."

NE#1 and NE#2 contacted CM#1, who stood at 1<sup>st</sup> Avenue and Lander Street. CM#1 wore a multicolored/tie-dyed shirt and carried an object covered by his sweatshirt. NE#1 told CM#1, "Put it down! Put it down!" CM#1 asked, "What are you talking about?" NE#1 responded, "I'm talking about what's in your hand."

BWV showed that CM#1 held an object inside a store-branded bag and another covered by his black sweatshirt. As CM#1 started putting the items on the ground, NE#1 and NE#2 grabbed him. NE#1 grabbed CM#1's right arm, and NE#2 grabbed his left arm. As NE#1 and NE#2 pulled CM#1's arms behind his back, CM#1 said, "You guys are arresting me for no reason."

NE#1 handcuffed CM#1 and said, "We'll explain everything in a second here." CM#1 slightly pulled away from NE#1. BWV did not depict CM#1's foot, but CM#1's upper body tilted away from his right foot as he said, "You are stepping on my fucking shoe, man." NE#1 grabbed the handcuffs with his left hand, and CM#1's elbow area with his right hand moved CM#1's upper body forward with his right forearm. NE#1 told CM#1, "And I'm going to keep stepping on your foot. You understand?" CM#1 replied, "You don't have to step on my shoes, man." NE#1 said CM#1 was uncooperative. CM#1 asked, "What am I doing?"

NE#1 told CM#1 he was under arrest for theft. CM#1 asked, "What theft?" NE#1 examined the items CM#1 held and removed a store-branded bag and black hoodie from the box. The box was an orange Ridgid brand power tool. NE#1 asked CM#1, "Do you have a receipt?" CM#1 said the receipt was in his wallet. NE#1 opened CM#1's wallet and found the receipt, confirming CM#1's purchase. While looking at the receipt, NE#1 said, "That's who he pointed out."

CM#1 asked who accused him of stealing. NE#1 responded, "The guy in the store." NE#1 elaborated, "Okay. Well, you match the description, and he said that was you, so we contacted you. You start bucking up on us, and that's not cool. ... It could have gone real easy."

NE#1 returned to CM#2, who confirmed the item was in a yellow DeWalt box and the suspects were "young kids" wearing masks and hoodies. NE#1 returned to CM#1 and said it was a "mistaken identity." CM#1 was asked whether he wanted to speak with a sergeant. CM#1 declined. NE#1 uncuffed CM#1 and told him, "Alright, sorry dude. Next time the police contact you, just do what they say. It would have gone a lot slicker. I could have seen that that's a Ridgid, and he confirmed it was a DeWalt when I went back over there, alright? You're free to go. You got your card that was down there, and everything is right there. Alright, have a good night."

NE#1 told NE#2, "That pisses me off because I said, 'The guy just went out of here with a multicolored shirt, and he had a big box with him,' and he goes, 'Yeah,' so I went [*exhaling*] right after him."



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*e. OPA Interview – Witness Employees*

OPA interviewed WE#1 and WE#2.

WE#1 said he worked at SPD for fourteen years, including as an adjunct defensive tactics instructor. WE#1 said he arrived on the scene after NE#1 and NE#2 stopped CM#1. WE#1 believed there was reasonable suspicion to stop CM#1. WE#1 said he saw CM#1 kept moving his feet around, and NE#1 performed a foot trap on CM#1. WE#1 thought de minimis force was appropriate to control CM#1. WE#1 also indicated that NE#1 and NE#2 bending CM#1 over at the waist was reasonable based on CM#1's constant movement.

WE#2 said he worked at SPD for seventeen years and is an adjunct lead defensive tactics instructor. WE#2 said he arrived as NE#1, and NE#2 handcuffed CM#1. WE#2 said he did not observe the foot trap but heard NE#1 say, "I'll step on your foot."

*f. OPA Interview – Named Employee #1*

NE#1 said he worked at SPD for about eighteen years, including as a Field Training Officer.

NE#1 recalled being dispatched for a reported shoplifting. NE#1 said he was in the area and responded within a minute. NE#1 said he requested to meet the loss prevention agent outside. NE#1 saw a man on a skateboard and CM#1 exiting the store with a large covered object in a shopping cart. NE#1 said CM#1 looked back at him with an expression NE#1 interpreted as "Am I caught?" NE#1 said he asked CM#2 whether CM#1 was an offender. NE#1 said he did not remember CM#2 "directly pointing him out because he wasn't really in view at the time, but he gave me the go-ahead based on the description."

NE#1 drove towards CM#1 while radioing that he spotted a suspect. NE#1 said he and NE#2 contacted CM#1 on a street corner carrying a large box covered by a sweatshirt. NE#1 said he ordered CM#1 to put the items down, but CM#1 did not immediately comply. NE#1 did not remember whether CM#1 or an officer put the box on the ground.

NE#1 described CM#1 tensing his body and moving around as the officers tried to restrain him. NE#1 said that while attempting to handcuff CM#1, he bent CM#1 forward at the waist, and part of the handcuff got stuck on CM#1's wrist. NE#1 said he applied a foot trap on CM#1's foot while CM#1 was in a modified escort position.

NE#1 denied noticing CM#1 carried an item inside a store bag, saying he only saw the item under the sweatshirt. NE#1 said he learned CM#1 had a receipt after CM#1's detention. NE#1 said CM#2 later confirmed the stolen item was a DeWalt tool, not a Ridgid tool like CM#1 bought.

NE#1 said after speaking with CM#2, he released CM#1, gave him a business card, and offered to request a supervisor. NE#1 said CM#1 did not complain on the scene about the interaction.



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*g. OPA Interview – Named Employee #2*

NE#2 told OPA he worked at SPD for fourteen years. NE#2 said he is an adjunct defensive tactics instructor and a Field Training Officer.

NE#2 recalled backing NE#1 on the shoplifting call. NE#2 said NE#1 stated he had “eyes on the suspect.” NE#2 also said he knew that NE#1 spoke to CM#2, so NE#2 believed NE#1 had gathered “intel” from the loss prevention officer.

NE#2 saw NE#1 carrying a large item covered by a sweatshirt. NE#2 said he and NE#1 approached CM#1 and told him to put the items down, but CM#1 did not comply. NE#2 said he grabbed CM#1 and placed him in a modified escort position to apply handcuffs.

NE#2 described CM#1 as “tensing” his arms and not immediately putting them behind his back. NE#2 said he told CM#1, “We are going to figure this out,” causing CM#1 to comply with handcuffing. NE#2 denied seeing NE#1’s foot trap on CM#1. NE#2 also denied hearing CM#1 complain about pain during the encounter.

**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***

It was alleged that NE#1 unlawfully detained CM#1.

*Terry stops are seizures of an individual and must be based on reasonable suspicion to be lawful. SPD Policy 6.220-POL-2(1). A Terry stop is “A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion 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. Reasonableness is determined by “the totality of the circumstances, the officer’s training and experience, and what the officer knew before the stop.” Id. While “Information 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, NE#1 and NE#2 barely had reasonable suspicion to detain CM#1 for shoplifting. Around 7:48 PM, the 9-1-1 caller described the suspects as white males around twenty years old, with one wearing a long shirt and jeans. With that generic description, NE#1 stopped CM#1 less than ten minutes later. CM#1 carried an object—that turned out to be a power tool, like the stolen item—concealed in a long-sleeved sweatshirt. The incident report listed him as a twenty-one-year-old white male. However, it is unclear how NE#1 described CM#1 to CM#2 as wearing “a multicolored shirt” and carrying a “[big] yellow box”—which would have been consistent with DeWalt packaging—when it was dark and a sweatshirt covered the box. CM#1 was also several feet away from NE#1. Moreover, while the 9-1-1 caller described two shoplifters, CM#1 was alone.





NE#1's inaccurate description was confirmed once CM#1, wearing a blue t-shirt with white lettering, was detained, and NE#1 removed the sweatshirt covering the box to discover it was orange.



Further, NE#1 admitted to OPA that CM#1 was not within CM#2's view when CM#2 shakily identified him as a shoplifter. Overall, the only matching descriptors shared by CM#1 and the shoplifters were white men around twenty years old. Nevertheless, considering those consistencies and CM#1's leaving the store at night with a large item concealed in a sweatshirt—which he later explained was a precaution since he rode public transportation—temporarily detaining him was not unreasonable.

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 2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope***

It was alleged that NE#1 failed to limit CM#1's detention to a reasonable scope.

<sup>3</sup> This image captures NE#1's view as CM#1 returned a shopping cart and walked off. CM#1 is circled.



Officers must limit a seizure to a reasonable scope and articulate in a report the “justification for the initiation, scope, and duration of a *Terry* stop.” 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.* Actions that could indicate to a reasonable person that they are arrested includes applying handcuffs and using force, but the occurrence of either does not necessarily convert a *Terry* stop into an arrest. *See id.* Unless justified by the basis for the original stop, officers must have “additional articulable justification” to handcuff the detainee or apply force. *Id.*

Here, the named employees initiated a lawful *Terry* stop. After spotting CM#1 at a bus stop less than two blocks from the store, NE#1 exited his cruiser and ordered CM#1 to put down the items he carried. CM#1 asked, “What are you talking about?” NE#1 replied, “I’m talking about what’s in your hands.” NE#2 grabbed CM#1’s arm as CM#1 put his items on the ground. About four seconds elapsed from NE#1’s order to NE#2 grabbing CM#2. Both officers pulled CM#1’s arms behind his back for handcuffing. BWV showed, and CM#1 told OPA he slightly stiffened his arms during handcuffing. NE#1 told OPA he applied a foot trap to gain compliance. CM#1 was detained for about five minutes before being released.

However, CM#1 was detained for shoplifting, a non-violent crime. There was no indication the shoplifters were armed or dangerous. NE#1’s report cited CM#1’s minimal uncooperativeness and failure to “follow simple verbal commands” as justification for the foot trap and handcuffing. CM#1 was handcuffed less than ten seconds after the officers contacted him. While CM#1 was given less than four seconds to comply with NE#1’s order (“Put it down! Put it down!”), his hesitation was likely caused by confusion. He knew he had paid for the items in his possession and was given inadequate time to explain himself. Moreover, during the stop, NE#1 told CM#1 he was arrested for theft, which would indicate to a “reasonable person that they [were] under arrest.” SPD Policy 6.220-POL-2(2).

NE#1’s acted as if there was probable cause to arrest CM#1 when he barely had reasonable suspicion for a *Terry* stop. Mainly where there was no indication he was armed or dangerous. Further, there was no “additional articulable justification” for handcuffing CM#1. Overall, NE#1’s behavior exceeded a reasonable scope for this *Terry* stop.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

### **Named Employee #1 - Allegation #3**

***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***

It was alleged NE#1 was discourteous and professional during the *Terry* stop.

During a *Terry* stop, officers will take reasonable steps to be courteous and professional. SPD Policy 6.220-POL-2(4). Further, when reasonable, as early in the contact as safety permits, officers will tell the suspect the officer’s name and rank, that the officer is a Seattle police officer, the reason for the stop, and that the stop is being recorded. *Id.* After releasing someone from a *Terry* stop, officers must advise them they are free to leave, explain the stop, and offer a business card. *Id.*





Here, at the outset of the encounter, NE#1 did not fully tell CM#1 his name, rank, police officer status, the reason for the stop, or that the stop was recorded. NE#1 also only provided some information concerning the reason for the stop, as CM#1 was being released. After releasing CM#1, NE#1 apologized, explained there was a mistaken identity, and offered CM#1 the opportunity to speak with a supervisor. However, as described above, no apparent safety concerns prohibited NE#1 from providing that information immediately. A less confrontational approach would have likely made the encounter smoother, as evidenced by CM#1's immediate compliance once NE#2 said, "We are going to figure this out." Moreover, when CM#1 complained about NE#1's foot trap, NE#1 replied, "And I'm going to keep stepping on your foot. You understand?"

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #4**

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

It was alleged that NE#1's "foot trap" was an unauthorized use of force.

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, although given inadequate time to comply and no explanation for his detention, CM#1 was mildly uncooperative. He told OPA he was "squirming" when officers handcuffed him. So, NE#1 used a foot trap to gain compliance. Although the foot trap caused a minor abrasion—elevating it to a Type II use of force, a foot trap is typically a *de minimis* control hold.



<sup>4</sup> CM#1's foot. The small abrasion is circled.



Given CM#1's brief and mild resistance, the foot trap was reasonable, necessary, and proportional to detain him.

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

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

**Named Employee #2 - 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***

For the reasons at Named Employee #1 - Allegation #1, OPA recommends this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #2 - Allegation #2**

***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***

It was alleged that NE#2 exceeded the scope of a *Terry* stop.

However, as a backing officer, NE#2 was significantly less involved than NE#1 in the decision-making and execution of the stop. NE#2 did not speak with CM#2 and, as NE#2 explained told OPA, believed NE#1 gathered “intel” from CM#2 justifying the stop. Moreover, BWV showed NE#2 only assisted by holding CM#1's arms while NE#1 applied handcuffs. Further, unlike NE#1, NE#2 did not perform a foot trap.

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

Recommended Finding: **Not Sustained - Unfounded**