



## CLOSED CASE SUMMARY

ISSUED DATE: APRIL 22, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0352

### Allegations of Misconduct & Director's Findings

#### Named Employee #1

Allegation(s):		Director's Findings
# 1	6.220-POL-2 Conducting a <i>Terry</i> stop 1. <i>Terry</i> Stops are Seizures based Upon Reasonable Suspicion	Not Sustained - Lawful and Proper
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Unfounded
# 3	8.400-POL-1 Use of Force Reporting and Investigation 1. Officers Will Document in a Use of Force Report All Uses of Force Except <i>De Minimis</i> Force	Not Sustained - Training Referral
# 4	5.140-POL- Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded

#### Named Employee #2

Allegation(s):		Director's Findings
# 1	6.180 Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant Unless a Specific Exception Applies	Not Sustained - Unfounded

#### Named Employee #3

Allegation(s):		Director's Findings
# 1	6.220-POL-2 Conducting a <i>Terry</i> stop 1. <i>Terry</i> Stops are Seizures based Upon Reasonable Suspicion	Not Sustained - Lawful and Proper
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Unfounded
# 3	5.140-POL- Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded

#### Named Employee #4

Allegation(s):		Director's Findings
# 1	5.001-POL- Standards and Duties 10. Employees Will Strive to be Professional	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.***



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**EXECUTIVE SUMMARY:**

The Complainant alleged Community Member #1 (CM#1)—the Complainant’s son—was pulled over while driving her car. The Complainant also alleged the named employees illegally searched the car and returned it in an altered state. Last, the Complainant alleged that Named Employee #4—an unknown officer—refused to tell her why CM#1 was pulled over, or her car was impounded.

**ADMINISTRATIVE NOTE:**

The Office of Inspector General certified this investigation as thorough, timely, and objective.

**SUMMARY OF INVESTIGATION:**

The Complainant sent an online complaint to the King County Sheriff’s Office, which was forwarded to OPA. It alleged CM#1 was racially profiled, subjected to excessive force, and unlawfully arrested. The complaint also alleged her tires were rotated without her permission. OPA opened an investigation, reviewing computer-aided dispatch data, body-worn videos, in-car videos, incident and supplemental reports, and a police bulletin. OPA also interviewed the named employees. OPA tried to interview the Complainant, but no calls were returned.

Computer-aided dispatch (CAD) records showed two calls related to the complaint: a July 7, 2022, armed carjacking and a July 13, 2022, traffic violation<sup>1</sup> resulting in an arrest and impounded car. Witness Employee #1 (WE#1) wrote the report for the July 7<sup>th</sup> carjacking. That report indicated Community Member #2’s (CM#2) car was rear-ended by a “black sporty car.” CM#2 exited to check the damage when two white-masked offenders put guns to his head. CM#2 described them as Black males in their 20s. One took his car, and the other left in the “black sporty car.”

Named Employee #1 (NE#1) and Named Employee #3 (NE#3) were partnered and primary officers for the July 13<sup>th</sup> call. NE#3 drove, and NE#1 handled radio communications. NE#1 and NE#3 initiated that call at 11:49 PM. NE#1 updated CAD indicating a black Dodge Charger was “going to elude us.” He also included its license plate. NE#1 also wrote the related incident report. NE#1 wrote he saw two cars traveling double the speed limit: a Dodge Charger and a dark sports utility vehicle (SUV). NE#1 wrote NE#3 activated emergency lights and sirens before the Charger sped through a stop sign. NE#1 wrote the Charger went down a dead end, where they cornered it. NE#1 and NE#3 unholstered their guns. NE#1 ordered, “Get out. Get out of the fucking car.” CM#1—the driver—exited. With his gun aimed at CM#1, NE#1 ordered, “Let me see your fucking hands. Put your hands up, turn around, and walk backwards towards me.” CM#1 complied. NE#1 holstered his gun to handcuff CM#1.

CM#1 made post-*Miranda* admissions to racing the SUV and eluding officers. Witness Employee #2 (WE#2)—a sergeant—arrived and recognized the Charger matched the “black sporty car” involved in the July 7<sup>th</sup> carjacking. Specifically, WE#2 noticed it appeared to match the suspect car in a bulletin Named Employee #2 (NE#2)—an auto theft detective—created from surveillance footage of the July 7<sup>th</sup> carjacking. The bulletin showed the suspect car and offenders with white masks. From outside the car, officers saw a white mask inside the Charger CM#1 drove on July 13<sup>th</sup>. WE#2 spoke with NE#2, who ordered the car to be impounded.

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<sup>1</sup> That report’s was entitled “Eluding Police.” The dispatcher noted “RECKLESS DRIVER [SOUTHBOUND].”



Later, the Complainant—the Charger’s registered owner—contacted NE#2 and claimed the white mask belonged to her. NE#2 told the Complainant he could seek a search warrant to retrieve the mask from the car, or she could consent. The Complainant said she would confer with her husband and call back. The Complainant called back and gave recorded consent for the search. After processing the car, NE#2 ordered it to be released to a towing company.

### **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 detained CM#1.

*Terry stops are seizures based on reasonable suspicion to be lawful. SPD Policy 6.220-POL-2(1). SPD Policy defines a Terry stop as: “A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion to investigate possible criminal activity.” SPD Policy 6.220-POL-1. It further defines reasonable suspicion as: “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. Whether a Terry stop is reasonable is determined by looking at “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 justify the original stop.” Id.*

Here, NE#1 and NE#3 saw CM#1 driving at “double the speed limit.” CM#1 also ignored traffic devices and the officers’ activated lights and siren. Beyond reasonable suspicion, CM#1’s actions established probable cause for his arrest. (See RCW 46.61.024: “A driver...who willfully fails or refuses to immediately bring his or her vehicle to a stop and who drives his or her vehicle in a reckless manner while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a class C felony.”)

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

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

#### **Named Employee #1 - Allegation #2**

#### ***8.200 - Using Force (1) Use of Force: When Authorized***

The Complainant alleged NE#1 used excessive force against CM#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.” 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.* Last, the

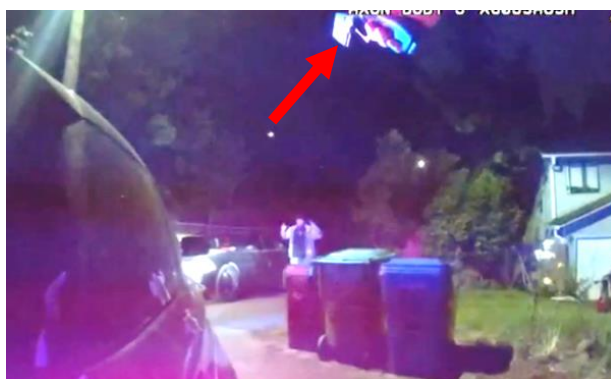


force used must be proportional to the threat posed to the officer. *Id.* “Pointing of a firearm at a subject” is Type I force.

Here, NE#1 and NE#3 described their July 13<sup>th</sup> encounter with CM#1 as a “high-risk stop.” Given CM#1’s erratic driving, including nearly colliding with their cruiser when the officers cornered him at a dead end (causing NE#1 to say, “Don’t hit us, dude. Don’t hit us”), OPA found categorizing it a high-risk stop was reasonable.



Both officers told OPA they were trained to unholster their guns during high-risk stops. NE#1 pointed his gun for about 30 seconds before CM#1 was handcuffed.



Under the circumstances, OPA does not find NE#1’s relatively low-level force objectively unreasonable, unnecessary, or disproportionate to NE#1’s lawful purpose of arresting CM#1.

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

Recommended Finding: **Not Sustained - Unfounded**

<sup>2</sup> The red arrow points to NE#1’s gun aimed at CM#1.



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

***8.400-POL-1 Use of Force Reporting and Investigation 1. Officers Will Document in a Use of Force Report All Uses of Force Except De Minimis Force***

It was alleged that NE#1 failed to report his use of force against CM#1.

As stated above, NE#1 pointing a gun at CM#1 was Type 1 force. An officer's use of force beyond de minimis force, which Type 1 is, requires documenting in a use of force report. SPD Policy 8.400-POL-1. NE#1 failed to do that here.

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

- Required Training: NE#1's chain of command should discuss OPA's findings with him, review SPD Policy 8.400-POL-1, and provide appropriate retraining and counseling. Retraining and counseling should be documented and maintained in Blue Team.

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

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

***5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing***

The Complainant alleged CM#1 was racially profiled.

Bias-based policing is prohibited. SPD Policy 5.140-POL. Bias-based policing is "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual." *Id.* It includes differential treatment based on a subject's race. See *id.*

Here, BWV did not show the named employees doing or saying anything indicating inferior treatment based on CM#1's race. Conversely, based on the reasons at Named Employee #1 – Allegation #1, there was ample justification for CM#1's arrest.

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

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #2 - Allegation #1**

***6.180 Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant Unless a Specific Exception Applies***

The Complainant alleged her car was unlawfully searched.

Officers shall not conduct a search without a valid search warrant unless an exception applies, like consent. SPD Policy 6.180. Officers conducting a consent search will ask the consenting party to sign a consent to search form, but if that form is unavailable, the office will document consent on another department-authorized recording device. SPD Policy 6.180-POL-2(1).



Here, the Complainant consented to NE#2 entering her car to retrieve the white mask. Rather than immediately granting consent, the Complainant indicated she would confer with her husband first. She later called NE#2 back and consented to a limited search. Since the Complainant's interactions with NE#2 were over the phone rather than in-person, signing a consent to search form was impossible. Therefore, NE#2 recorded her authorization.

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

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #3 - 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#3 unlawfully detained CM#1.

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

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

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

**8.200 - Using Force (1) Use of Force: When Authorized**

The Complainant alleged NE#1 used excessive force against CM#1.

Here, unlike NE#1, BWV showed NE#3 did not aim his gun at CM#1. Instead, he kept his unholstered gun in low ready, which is not a reportable force. See SPD Policy 8.050 (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.)



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

Recommended Finding: **Not Sustained - Unfounded**



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**Named Employee #2 - Allegation #3**

***5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing***

The Complainant alleged CM#1 was racially profiled.

For the reasons at Named Employee #1 – Allegation #4, OPA recommends the allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

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

***5.001 - Standards and Duties 10. Employees Will Strive to be Professional***

The Complainant alleged NE#4 was unprofessional by refusing to tell her why CM#1 was pulled over, or her car was impounded.

The Department expects all employees to treat all people with dignity. SPD Policy 5.001-POL. Further, employees must “treat everyone with respect and courtesy, guarding against employing an officious or overbearing attitude and refraining from language, demeanor, and actions that may cause the individual feeling belittled, ridiculed, or intimidated.” *Id.* Last, “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers. Employees will avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” SPD Policy 5.001-POL-10.

Here, despite several attempts, OPA was unable to interview the Complainant. Without further details about this allegation, OPA cannot determine whether she was denied information or, if so, the underlying context.

Accordingly, OPA recommends this allegation be Not Sustained - Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**