



CLOSED CASE SUMMARY

ISSUED DATE: MAY 25, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0411

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 (Expedited)
# 2	6.150 - Advising Persons of Right to Counsel and Miranda 6.150-POL 2. Miranda Warnings Must Precede Custodial Interview	Not Sustained - Training Referral (Expedited)

Named Employee #2

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 (Expedited)
# 2	6.150 - Advising Persons of Right to Counsel and Miranda 6.150-POL 2. Miranda Warnings Must Precede Custodial Interview	Not Sustained - Training Referral (Expedited)

Named Employee #3

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 (Expedited)
# 2	6.150 - Advising Persons of Right to Counsel and Miranda 6.150-POL 2. Miranda Warnings Must Precede Custodial Interview	Not Sustained - Unfounded (Expedited)
# 3	6.120 - Impounding Vehicles 5. Officers May Impound Vehicles Without Prior Notice	Not Sustained - Lawful and Proper (Expedited)
# 4	6.120 - Impounding Vehicles 14. Vehicles Will Only be Released to Owners from the Department Contracted Tow Lot	Not Sustained - Lawful and Proper (Expedited)
# 5	6.180 - Searches-General, 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies	Not Sustained - Unfounded (Expedited)
# 6	5.001 - Standards and Duties 5.001-POL 14. Retaliation is prohibited	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 Complainant (Community Member #1 or CM#1) was the passenger in a vehicle (the Vehicle) driven by Community Member #2 (CM#2). Named Employee #1 (NE#1) and Named Employee #2 (NE#2) effected a high-risk vehicle stop of the Vehicle at the request of Named Employee #3 (NE#3), a detective in the Gun Violence Reduction Unit (GVRU). CM#1 alleged the named employees exceeded the permissible scope of the stop and failed to advise either her or CM#2 of their *Miranda* rights.

CM#1 also alleged NE#3 impounded and searched the Vehicle without consent and that the whereabouts of her vehicle were unknown. CM#1 also alleged NE#3 retaliated against her and CM#2 by releasing the Vehicle to its registered owner and not her or CM#2.

ADMINISTRATIVE NOTE:

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

An SPD Policy alleged in this case, SPD Policy 6.150, was revised on November 15, 2022, about a week after the incident at issue in this case. OPA analyzed this case under the policy in effect on November 8, 2022. All references to OPA policy in this DCM refer to that former policy, which had an original effective date of November 1, 2020.

SUMMARY OF INVESTIGATION:

CM#1 submitted a web complaint to OPA alleging that she and CM#2 were pulled over by SPD officers, placed in handcuffs, and were not sure if they were under arrest as they were not read their *Miranda* rights. CM#1 alleged that their Vehicle was then towed and searched, which prevented her from retrieving her backpack, firearm, firearm registration, and wallet from the Vehicle. CM#1 also alleged that she attempted to retrieve her Vehicle and was unable to because she could not reach NE#3. CM#1 wrote that after she attempted to file a complaint against NE#3, she learned NE#3 had released the Vehicle to its registered owner, which CM#1 alleged was retaliation.¹

OPA opened an intake investigation. During the intake, OPA reviewed the OPA Web Complaint, Computer Aided Dispatch (CAD) Call Reports, Incident Reports and Supplements, Ballistics Notification, Investigative Hold Release Documentation, and Body Worn Video (BWV). OPA also interviewed CM#1. OPA found by a preponderance of the evidence that the following occurred.

On October 7, 2022, there were multiple 9-1-1 calls concerning multiple gunshots in the vicinity of 23rd Avenue and East Union Street. A suspect vehicle description was provided of a white sedan, with mild tinted windows, and stock wheels. SPD officers investigated and recovered three nine-millimeter shell casings from the area of the shooting.

¹ CM#1 also made several allegations against CSCC 9-1-1 dispatchers. OPA forwarded these allegations to CSCC.



Additionally, several surveillance cameras were located and a nearby business (the Business) was provided with an Evidence.com link to upload relevant surveillance footage.

On November 8, 2022, at about 8:56pm, multiple callers reported hearing gunfire in the vicinity of 327 Martin Luther King Junior Way South. The suspect vehicle was described as a white Chevy Impala or Caprice. Two people were reported shot. At about 9:42pm, NE#3 documented observing the Vehicle in the vicinity of the 2000 Block of East Jefferson. NE#3 documented that the Vehicle was a white, Dodge Charger, in the area of the shooting earlier that evening. NE#3 also documented observing CM#2 exit the Vehicle and noted that CM#2 was the “suspect who I observed in the [Business]’s surveillance footage.” NE#3 requested patrol units stop the Vehicle and identify CM#2.

NE#1 and NE#2 observed the Vehicle at approximately 9:47pm. NE#1 and NE#2 confirmed the Vehicle’s license plate number with NE#3 before initiating a high-risk vehicle stop. CM#1 and CM#2 were contacted by officers with drawn firearms, individually called out of the Vehicle, placed in handcuffs, frisked for weapons, separated, and identified. CM#1 and CM#2 were detained for about twenty to twenty-five minutes.

NE#1 and NE#2 spoke with CM#1 while she was being detained. Without reading her *Miranda* rights, NE#1 spoke with CM#1 about, among other things, the Vehicle and asked if there was a gun in the Vehicle. CM#1 responded that her gun was in her purse in the Vehicle. NE#2 asked CM#1 whether she had a concealed carry permit, which CM#1 denied having. NE#1 asked whether the gun was loaded, which CM#1 confirmed. At the end of the detention, NE#2 told CM#1 that the Vehicle was going to be towed and that everything inside the Vehicle would be staying with the Vehicle.

NE#3 interviewed CM#2. Prior to the interview, Witness Officer #1 (WO#1) read CM#2 his *Miranda* warnings, which were recorded on BWV from both NE#3 and WO#1. NE#3 explained that he was contacting CM#2 about the incident at the Business. CM#2 stated he was attacked at the Business and that the people who attacked him shot at his Vehicle as they drove away in their vehicle. NE#3 asked CM#2 if there was a gun in the Vehicle. CM#2 stated CM#1 had a gun registered to her in the Vehicle. After speaking to CM#2, NE#3 told the other officers he would be towing the Vehicle.

Thereafter, CM#1 and CM#2 were released and the Vehicle was towed for further investigation. NE#3 documented that, on November 10, 2022, he served a search warrant on the Vehicle. NE#3 documented recovering, among other things, a firearm. The firearm was submitted for ballistics testing, which linked the firearm recovered from the Vehicle to the fired cartridge casings recovered during the investigation of the October 7, 2022, shooting.

After the Vehicle was searched, the Vehicle was transferred back to the towing company. NE#3 completed a Vehicle Release Form for the Vehicle to be released to its registered owner, who was not CM#1 or CM#2.

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

CM#1 alleged the named employees exceeded the reasonable scope of the *Terry* stop by, among other things, effecting a high-risk vehicle stop and handcuffing her and CM#2.



SPD Policy 6.220-POL-2(2) requires that officers limit a seizure to a reasonable scope. The policy further states that: “Actions that would indicate to a reasonable person that they are being arrested or indefinitely detained may convert a Terry stop into an arrest.” SPD Policy 6.220-POL-2(2). The policy provides a list of possible actions that could indicate to a reasonable person that they are being arrested—such as applying handcuffs or using force—but specifies that the occurrence of any one of these would not necessarily convert a Terry stop into an arrest. *See id.* Unless justified by the basis for the original stop, policy requires officers to have “additional articulable justification” to take any of these actions. *Id.*

The scope of the stop effected by the name employees was reasonable under the circumstances justifying the stop. The high-risk vehicle stop effected by NE#1 and NE#2 was extremely limiting to CM#1 and CM#2’s freedom during a brief period of their detention. Officers contacted CM#1 and CM#2 with firearms drawn and most of the factors that are noted in SPD Policy 6.220-POL-2(2) as particularly limiting on a detainee’s freedom were also present, including: (1) ordering a motorist to exit a vehicle; (2) directing a person to stand against a patrol car bumper; (3) applying handcuffs; and (4) frisking for weapons. However, CM#1 and CM#2 were in the area of a shooting that occurred less than an hour earlier, and their Vehicle matched the color and was a similar type of sedan to the suspect vehicle. More importantly, NE#3 identified the Vehicle by license plate to NE#1 and NE#2 after NE#3 identified both the Vehicle and CM#2 as involved in the October 7, 2022, shooting through surveillance footage. Given the violent nature of the calls and reasonable suspicion that there could be a firearm in the Vehicle, the high-risk vehicle stop and handcuffing were justified by the articulable reasons for the original stop. Moreover, both CM#1 and CM#2 were both clearly advised that they were not under arrest but were being detained to investigate the recent shooting.

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

6.150 - Advising Persons of Right to Counsel and Miranda 6.150-POL 2. Miranda Warnings Must Precede Custodial Interview

CM#1 alleged NE#1 failed to read her *Miranda* warnings prior to custodial interview.

On the date of this incident, SPD Policy required officers give full *Miranda* warnings prior to questioning a person who was in custody. *See* SPD Policy 6.150-POL-2 (eff. 11/01/2020).

Here, although CM#1 was not under arrest, she was in custody for *Miranda* purposes. *See Miranda v. Arizona*, 384 U.S. 436 (1966) (a custodial interrogation means questioning initiated by law enforcement officers after a person has been taken into custody ***or otherwise deprived of his freedom of action in any significant way***) (emphasis added). As discussed above at Named Employee #1, Allegation #1, this stop was highly restrictive on both CM#1 and CM#2. Given this significant deprivation of freedom, NE#1 and NE#2 should have ensured CM#1 received her *Miranda* warnings prior to questioning her about the Vehicle, the presence of firearms in the Vehicle, or whether she possessed a concealed carry license. The need to have done so is highlighted by the fact WO#1 read CM#3 his *Miranda* warnings prior to questioning him.

Ultimately, however, the circumstances at issue here concerned the legally complicated analysis of when a detainee is in “custody” for *Miranda* purposes during a *Terry* stop. Moreover, neither NE#1 nor NE#2 has any disciplinary history



related to *Miranda*. OPA finds that this was a possible, but not willful, violation of policy that did not rise to the level of serious misconduct.

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

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1, review current SPD Policy 6.150-POL-2 with NE#1, and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

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

Named Employee #2 - 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

For the same reasons articulated above at Named Employee #1, Allegation #1, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

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

Named Employee #2 - Allegation #2

6.150 - Advising Persons of Right to Counsel and Miranda 6.150-POL 2. Miranda Warnings Must Precede Custodial Interview

For the same reasons articulated above at Named Employee #1, Allegation #2, OPA recommends this allegation be Not Sustained – Training Referral (Expedited).

- **Training Referral:** NE#2's chain of command should discuss OPA's findings with NE#2, review current SPD Policy 6.150-POL-2 with NE#2, and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

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

Named Employee #3 - 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

For the same reasons articulated above at Named Employee #1, Allegation #1, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

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



Named Employee #3 - Allegation #2

6.150 - Advising Persons of Right to Counsel and Miranda 6.150-POL 2. Miranda Warnings Must Precede Custodial Interview

CM#1 alleged that NE#3 failed to provide CM#2 his *Miranda* warnings prior to a custodial interview.

BWV from both NE#3 and WO#1 showed WO#1 read CM#2 his *Miranda* warnings before he was questioned by NE#3. Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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

Named Employee #3 - Allegation #3

6.120 - Impounding Vehicles 5. Officers May Impound Vehicles Without Prior Notice

CM#1 alleged that that NE#3 impounded her Vehicle without her consent.

SPD Policy directs officers to refer to [SMC 11.30.040](#) for circumstances under which a vehicle may be impounded without prior notice. See SPD Policy 6.120-POL-5. One such circumstance is where a police officer has probable cause to believe the vehicle contains evidence of a crime and impoundment is reasonably necessary to preserve such evidence. See SMC 11.30.040.

NE#3 had probable cause to believe the Vehicle contained evidence of the October 7, 2022, shooting based on his observations that the Vehicle and CM#2 matched those depicted in the Business surveillance video. This was confirmed by the fact NE#3 was able to obtain a warrant to search the Vehicle two days after the Vehicle stop. Moreover, some of the property CM#1 specifically complained to OPA about being seized (her firearm) was the precise evidence that was linked to the October 7 shooting. NE#3 did not need CM#1's consent to impound the Vehicle under these circumstances.

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

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

Named Employee #3 - Allegation #4

6.120 - Impounding Vehicles 14. Vehicles Will Only be Released to Owners from the Department Contracted Tow Lot

CM#1 alleged that NE#3 wrongfully had her Vehicle released to the registered owner.

SPD Policy mandates that officers only release impounded vehicles from the Department-contracted tow lot. SPD Policy 6.120-POL-14. Officers must arrange transportation of impounded vehicles to the contracted lots prior to notifying the owners of release. See *id.* Vehicles may not be released directly from City processing facilities. See *id.*

Despite CM#1's claim that she had recently purchased the Vehicle from another individual and possessed a bill of sale for that purchase, SPD Policy requires officers "only" release vehicles to their "owners." Here, the Vehicle was released to the registered owner of the Vehicle, which complied with policy. It may be that CM#1 could have a civil claim against



the registered owner to recover the Vehicle, but NE#3 cannot be responsible for adjudicating that claim when complying with SPD policy governing the release of an impounded vehicle.

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

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

Named Employee #3 - Allegation #5

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

CM#1 alleged that NE#3 may have searched her vehicle without a warrant.

SPD Policy forbids an officer from making a warrantless search unless a specific Department policy permits the warrantless search. See SPD Policy 6.180(1).

NE#3 obtained a warrant prior to searching her Vehicle.

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

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

Named Employee #3 - Allegation #6

5.001 - Standards and Duties 5.001-POL 14. Retaliation is prohibited

CM#1 alleged that NE#3 engaged in retaliation by releasing her Vehicle to the registered owner and not her or CM#2.

SPD policy precludes its employees from engaging in retaliation. SPD Policy 5.001-POL-14. SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, engaging in any lawful behavior. *Id.* Retaliatory acts are defined broadly under SPD’s policy and include “discouragement, intimidation, coercion, or adverse action against any person. *Id.*

For the reasons articulated above at Named Employee #3, Allegation #4, NE#3 was required by Policy to release the Vehicle to the registered owner. NE#3’s compliance with Policy in performing a ministerial task in this instance would not constitute retaliation, even if he were aware—as CM#1 alleged—that CM#1 intended to file a complaint against him.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded (Expedited).

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