



**Issued Date:** FEBRUARY 27, 2024

**From:** Director Gino Betts, Office of Police Accountability



**Case Number:** 2023OPA-0380

## **Allegations of Misconduct & Director's Findings**

### **Named Employee #1**

1. **Allegation #1:** 5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing
  - a. **Finding:** Not Sustained - Unfounded
2. **Allegation #2:** 6.220 - Voluntary Contacts, Terry Stops, & Definitions, 6.220- POL-2 Conducting a Terry Stop, 1. Terry Stops are Seizures Based on Reasonable Suspicion
  - a. **Finding:** Not Sustained - Unfounded
3. **Allegation #3:** 6.010 Arrests POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime to Effect an Arrest
  - a. **Finding:** Allegation Removed

---

**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:**

Named Employee #1 (NE#1) allegedly unlawfully arrested the Complainant.

### **Administrative Note:**

On January 18, 2024, the Office of Inspector General (OIG) certified this investigation as thorough and objective but found it untimely. OIG's position was based on the later issuance of NE#1's five-day notice: it was due by September 8, 2023, but sent on September 27, 2023. OPA acknowledges the delayed transmission but notes that NE#1 was not negatively impacted by it. Therefore, where OPA met all other timelines for this investigation, it respectfully disagrees with OIG's finding it untimely.

### **Summary of the Investigation:**

Computer-Aided Dispatch (CAD) records showed that on August 29, 2023, NE#1 worked undercover near Pike Street and Pine Street. He notified uniformed officers that he believed the Complainant, whom NE#1 saw exit a car and walk away, possessed a firearm unlawfully. NE#1 wrote the related incident report. In it, he wrote that the Complainant was on a public way “with a gun open carry and at one point... [the Complainant’s] jacket covered the firearm [,] concealing it.” NE#1 indicated that he followed the Complainant and saw him exit the car again without the holstered firearm. Body-worn videos (BWVs) showed the uniformed officers locating the Complainant’s car. There was a backpack inside. They ran its license plates and populated the owner’s— the Complainant — photo. Looking at the photo, Witness Employee #1 (WE#1), one of the uniformed officers, said, “I know this guy. He’s a barber. I arrested him a few times, I think, in the past. Oh, we got in a foot pursuit with him. He’s not very fast.” WE#1 also said, “We haven’t seen him down here in a long time. He is a 12th and Jackson guy.” NE#1—remote due to his undercover assignment—radioed the Complainant’s name to the uniformed officers. As the officers prepared to impound the car, the Complainant and Community Member #1— the Complainant’s female companion— approached.

Witness Employee #2 (WE#2) grabbed the Complainant’s left arm and told him the car was being towed and the Complainant was being arrested. The Complainant was handcuffed and *Mirandized*. WE#1 explained, “The reason you’re under arrest is for a weapons violation. You’re a felon, and we believe that there is a firearm in that vehicle.” The Complainant replied, “But I have all my permissions.” The Complainant repeatedly explained that his firearm possession rights were restored in court. The Complainant also acknowledged previously carrying the firearm in a holster but returned it to his car because his jacket somewhat concealed it— the Complainant did not possess a concealed carry permit. He also allowed officers to review purported court documents on his phone as proof. The uniformed officers told NE#1 they believed the Complainant’s rights were restored. NE#1 made calls to confirm the legitimacy of the Complainant’s court documents. After those documents were confirmed, the Complainant was unhandcuffed and allowed to leave.

OPA interviewed the Complainant on September 27, 2023. He told OPA that on the day in question, he openly carried a firearm but returned it to his car since his concealed carry permit had yet to arrive. The Complainant said that during the exchange, an officer aimed “an AK-47” at his head. The Complainant described the uniformed officers as courteous, rating them “a B to B+ if they were to be given a grade.” However, the Complainant graded NE#1 a “D to D-,” believing NE#1 ordered his detention because the Complainant was “a Black man with a white woman, driving a nice Mercedes.”

OPA interviewed NE#1 on December 20, 2023. He told OPA that on August 29, 2023, he worked on an undercover narcotics mission. NE#1 said a subject—later identified as the Complainant — exited a car and attached a holstered firearm at his hip. NE#1 said the Complainant’s jacket concealed the gun. NE#1 said his Washington Crime Information Center database search identified the Complainant as the car’s registered owner. NE#1 said the Complainant returned to his car and drove away. NE#1 followed him for about 20 minutes before the Complainant exited without wearing the holstered firearm. NE#1 requested uniformed officers to investigate further to

preserve his undercover status. NE#1 said he found no court record restoring the Complainant's rights but had limited access to records. NE#1 said once the Complainant showed court documents on his phone, "I wanted to give him the benefit of the doubt and independently verify this court paperwork, so I had a special prosecutor who, thankfully, was working. She, in turn, called the Washington State Patrol and obtained the actual court record and emailed it to me." NE#1 said the Complainant was released after that confirmation.

---

### **Analysis and Conclusions:**

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

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

The Complainant alleged that racial prejudice motivated NE#1 to order his arrest.

SPD prohibits biased policing, defined as "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." SPD Policy 5.140-POL. This includes different treatments based on the [EDIT AS APPLICABLE] of the subject. See *id.* Officers are forbidden from (i) making decisions or taking actions influenced by bias and (ii) expressing any prejudice or derogatory comments concerning personal characteristics. See SPD Policy 5.140 POL-2.

Here, while the Complainant was undoubtedly inconvenienced and likely embarrassed about being handcuffed while on a date with CM#1, there is no evidence that his being a Black man with a white woman motivated NE#1's actions.

Recommended Finding: **Not Sustained - Unfounded**

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

##### **6.220 - Voluntary Contacts, Terry Stops, & Definitions, 6.220-POL-2 Conducting a Terry Stop, 1. Terry Stops are Seizures Based on Reasonable Suspicion**

The Complainant alleged that NE#1 unlawfully ordered his detention and exceeded the scope of a lawful detention.

Officers must limit a seizure to a reasonable scope. SPD Policy 6.220-POL-2(2). "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.* Certain actions may indicate to a reasonable person that they are arrested—like applying handcuffs or using force—but neither necessarily convert a *Terry* stop into an arrest. See *id.* Unless justified by the basis for the original stop, the policy requires officers to have "additional articulable justification" to take either action. *Id.*

Here, the Complainant was subjected to a *Terry* stop. The Complainant was detained in handcuffs for roughly 40 minutes, far longer than typical *Terry* stops. However, most of that time was spent

verifying whether the Complainant's rights were restored. NE#1 did not have direct access to court records evidencing the Complainant's rights restoration, so he improvised and called a prosecutor who confirmed the Complainant's story. Further, reasonable belief that the Complainant was a felony unlawfully possessing a firearm justified handcuffing him during the encounter.

Recommended Finding: **Not Sustained - Unfounded**

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

#### **6.010 Arrests POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime to Effect an Arrest**

The Complainant alleged that NE #1 lacked probable cause to arrest him.

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy. Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient to support a reasonable belief that an offense has been or is being committed. See *State v. Fricks*, 91 Wash.2d 391, 588 P.2d 1328 (1979); *State v. Gluck*, 83 Wash.2d 424, 426–27, 518 P.2d 703 (1974).

Here, the Complainant was detained but not arrested. The Complainant was handcuffed during the prolonged detention, but that was due to the nature of the investigation—a felon possessing a firearm—and the officers attempting to confirm the Complainant's account. Moreover, although WE#1 initially professed an intention to arrest the Complainant and impound his car, neither manifested, as the Complainant was released without charge.

Accordingly, OPA removed this allegation.

Recommended Finding: **Allegation Removed**