

Issued Date: MARCH 4, 2024

From: Director Gino Betts, Office of Police Accountability

Case Number: 2023OPA-0394



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 (Expedited)

Named Employee #2

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 & Detentions, 6.220-POL-2 Conducting a Terry Stop, 1. Terry Stops are Seizures Based Upon Reasonable Suspicion
 - a. **Finding:** Not Sustained - Lawful and Proper
3. **Allegation #3:** 6.180 – Searches-General, 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies
 - a. **Finding:** Not Sustained - Lawful and Proper

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 #2 (NE#2) detained the Complainant for allegedly possessing a stolen wallet. Named Employee #1 (NE#1)—a backing officer—arrested the Complainant for an extraditable warrant from Oregon. The Complainant alleged that the named employees were racist. It was

alleged that NE#2 lacked reasonable suspicion to detain the Complainant. It was also alleged that NE#2 unlawfully searched the wallet.

Administrative Note:

The bias allegation against NE#1 was approved for expedited investigation. That means OPA, with the Office of Inspector General's (OIG) agreement, believed it could issue a recommended finding based solely on its intake investigation without interviewing NE#1 about that allegation. As such, OPA did not interview NE#1. On October 12, 2023, OIG certified OPA's expedited investigation as thorough, timely, and objective.

All allegations against NE#2 underwent a full investigation. On February 12, 2024, OIG certified OPA's full investigation as thorough, timely, and objective.

Summary of the Investigation:

On September 7, 2023, Witness Supervisor #1 (WS#1)—a sergeant—submitted a complaint to OPA on the Complainant's behalf. WS#1 wrote that NE#2 was on foot patrol in an area known for trafficking stolen goods and narcotics activity. WS#1 wrote that NE#2 saw the Complainant—a Black man—sitting on a bench holding a wallet, which displayed a white female's driver's license. WS#1 wrote that NE#2 saw the Complainant looking through the wallet, then discarded it after seeing NE#2 and asserted it was not his. WS#1 wrote that the Complainant said it belonged to his mother but provided a name that did not match the name on the driver's license. WS#1 wrote that NE#2 detained the Complainant, who alleged that the named employees were racist. WS#1 wrote that the Complainant had a felony warrant from Oregon, so he was arrested.

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, body-worn video (BWV), and incident report. OPA also interviewed WS#1 and NE#2. OPA could not reach the Complainant for an interview.

On September 6, 2023, at 12:24 PM, CAD coded an officer-initiated "suspicious stop." NE#2's BWV captured the following events without audio. The BWV's first minute did not contain audio due to a standard buffering period. NE#2 walked on a sidewalk, then turned around. Community Member #1 (CM#1) and the Complainant sat on a bench. NE#2 began approaching when the Complainant, holding a wallet, set it on the bench. NE#2 contacted the Complainant, took out a notepad, and opened the wallet. The driver's license was sticking out of the wallet. NE#2 grabbed the wallet and looked at the driver's license, depicting a white female.

NE#2 activated his BWV, which captured the following events with audio. NE#2 documented the Complainant's information. The Complainant said NE#2 was racist. NE#2 said the Complainant possessed someone else's wallet, but the Complainant replied that he was going to put it in a mailbox. NE#2 said the Complainant was going through it on his lap. The Complainant stood up, and NE#2 ordered him to sit, saying he was detained for possessing stolen property. The Complainant sat back down. NE#1 arrived, and the Complainant said NE#1 was racist.

Dispatch radioed that the Complainant had a warrant from Oregon. NE#2 requested dispatch to verify that warrant. NE#1 and another officer handcuffed the Complainant. WS#1 arrived and screened the incident with NE#2, who described his reason for detaining the Complainant. He said he walked by and saw the Complainant going through the wallet on his lap. NE#2 said, "It's a female wallet. And the ID was falling out the side. So, I could see it wasn't him." He said he approached the Complainant, who quickly closed the wallet and placed it aside. He said the Complainant claimed it belonged to his mother but provided a name that did not match the name on the driver's license.

WS#1 interviewed the Complainant, who denied doing anything. He denied knowing who owned the wallet and believed NE#2 contacted him because he was Black. WS#1 interviewed CM#1, who believed NE#2 lacked probable cause and should have left with the wallet. CM#1 believed the Complainant called NE#2 racist because NE#2 was hostile when he approached them. CM#1 explained NE#2 was trying to look at what they were doing and denied seeing the Complainant hold the wallet. CM#1 said NE#2 was doing his job but believed NE#2 lacked probable cause, as, "the officer could have just left with the wallet."

The Complainant denied stealing the wallet, telling NE#2 he found it. NE#2 said the Complainant tried to hide it instead of turning it in. NE#2 said the Complainant possessed a wallet that did not belong to him. Dispatch verified the warrant. An officer escorted the Complainant to the back of his patrol car.

NE#2 wrote an incident report consistent with the events captured on BWV. NE#2 described his initial contact with the Complainant as follows:

Whilst walking through the 300 block of Pike St., I witnessed an unknown black male rummaging through a wallet while seated on a bench at the bust stop. As I approached, I could see that an ID belonged to a white female with blonde hair in her mid 50's early 60's hanging out the side. Seeing this and knowing that the area is a high crime area, I stopped to inquire about the ID. The suspect later identified as [the Complainant] quickly knocked it off his lap and pretended not to know anything about the wallet.

On December 11, 2023, OPA interviewed NE#2. NE#2's statements were consistent with the evidence summarized above. NE#2 said he was in a high crime area and saw the Complainant going through the wallet, which "was positioned opened and upward so that you could see the tabs on the credit cards and the ID facing upward." NE#2 said the driver's license depicted a white female while the Complainant was a Black male. NE#2 said he turned around, then saw the wallet on the bench. NE#2 said he had reasonable suspicion to detain the Complainant upon contact because he possessed stolen property. NE#2 claimed he could lawfully search the wallet because it was on the bench in plain sight with a driver's license sticking out that did not belong to the Complainant. NE#2 said he intended to identify and release the Complainant, then document the suspicious incident.

NE#2 denied engaging in bias-based policing, saying he would have treated anyone else in the same manner. NE#2 said race was considered to the extent that the Complainant's race did not match the race depicted on the driver's license. NE#2 said the Complainant did not clearly possess the wallet when it was on the bench, so he could lawfully search it to verify its contents.

On January 8, 2024, OPA interviewed WS#1. WS#1's statements were consistent with the evidence summarized above.

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 NE#1 was racist.

Biased policing means “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well as other discernible personal characteristics of an individual.” SPD Policy 5.140-POL. It includes different treatment based on race. See *id.* Officers are forbidden from making decisions or taking actions influenced by bias and expressing prejudice or derogatory comments concerning personal characteristics. See SPD Policy 5.140-POL-2. Officers may not use discernible personal characteristics in determining reasonable suspicion or probable cause, except as part of a suspect description. *Id.*

Here, NE#1 was a backing officer, arriving after NE#2 detained and questioned the Complainant about the alleged stolen wallet. NE#1 played no role in the Complainant's detainment. NE#1 assisted in arresting the Complainant after dispatch verified the Oregon warrant. Although the Complainant said NE#1 was racist, there is no evidence in the record to corroborate this allegation.

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

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

Named Employee #2 – Allegation #1

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

The Complainant alleged that NE#2 was racist.

Here, NE#2 engaged the Complainant after seeing him possess a driver's license depicting a white female in a high crime area. The Complainant was a Black male. The difference triggered

NE#2's investigation into a possibly stolen wallet in a high crime area. Under policy, NE#2 was permitted to use the differences in gender and race and the location of the incident in determining reasonable suspicion. See SPD Policy 5.140-POL-2. NE#2's actions were motivated by the evidence he gathered during his investigation into a possibly stolen wallet. NE#2's reasonable suspicion to detain the Complainant was predicated on multiple facts discussed in Named Employee #2 – Allegation #2. There is no evidence that NE#2 was influenced by bias or treated the Complainant differently because he was Black.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 – Allegation #2

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#2 lacked reasonable suspicion to detain the Complainant.

Terry stops are seizures of an individual and, as such, must be based on reasonable suspicion to be lawful. SPD Policy 6.220-POL-2(1). A *Terry* stop is a brief, minimally intrusive seizure of a subject based on reasonable articulable 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, 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.* The reasonableness of a *Terry* stop is based on 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#2's reasonable suspicion to detain the Complainant was predicated, most notably, on the following facts: (1) the Complainant was in a high crime area; (2) the Complainant—a Black man—possessed a driver's license depicting a white female; (3) the Complainant discarded the wallet after NE#2 began approaching him; and (4) the Complainant provided three inconsistent reasons for possessing the wallet. The Complainant said he was going to put the wallet in a mailbox. Then, the Complainant said it belonged to his mother but provided a name that did not match the name on the driver's license. Finally, the Complainant said he found the wallet. The totality of these facts suggests the Complainant engaged in criminal activity justifying his detainment. See RCW 9A.56.330 (criminalizing possession of another's identification as a gross misdemeanor).

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

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

Named Employee #2 – Allegation #3

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

It was alleged that NE#2 unlawfully searched the wallet.

Officers are prohibited from searching without a valid search warrant unless a specific exception applies. See SPD Policy 6.180(1). The open view doctrine applies when an officer sees contraband or evidence from a vantage point available to the public. SPD Policy 6.180-POL-4. To seize that contraband or evidence, it must be in an area open to the public and not protected by the Constitution. *Id.*

NE#2 was permitted to seize the wallet. Here, NE#2 and the Complainant were on a sidewalk open to the public. The bench was also open to the public. NE#2 walked past the Complainant and reported seeing the Complainant “rummaging through a wallet looking at credit cards and things of that nature.” NE#2 described, as he first passed the Complainant, seeing, “the wallet was out and open in his hand and I could see that there was an ID for an individual that was not [the Complainant].” Neither the Complainant nor CM#1 challenged NE#1’s description that the identification had been in open view as he walked by, nor did the Complainant claim he owned the wallet. NE#2 had reasonable suspicion to believe the wallet was stolen, especially when the Complainant discarded it after NE#2 turned around. The open view doctrine applied under these circumstances because NE#2 saw “evidence from a vantage point available to the public.” SPD Policy 6.180-POL-4. NE#2 was permitted to seize that evidence because the Complainant discarded the wallet on a bench, which was in an area open to the public. That bench was not protected by the Constitution because no reasonable expectation of privacy applied to a bench on a public sidewalk.

NE#2 was also permitted to open the wallet to retrieve the identification. This is so even considering the enhanced protection of Washington’s automatic standing rule. See *State v. Evans*, 159 Wn.2d 402, 407, 150 P.3d 105 (2007) (Washington Constitution confers automatic standing upon anyone charged with a possessory crime regardless of whether the defendant had a legitimate expectation of privacy). Under that rule, a criminal defendant could still challenge the legality of a search—even in an item or area they do not own—so long as (1) possession was an essential element of a charged offense, and (2) the defendant was *in possession* of the contraband at the time of the contested search or seizure. See *id.* According to NE#2, the Complainant both discarded the wallet on the bench and disclaimed ownership of the wallet. Under these circumstances, the Complainant most likely voluntarily abandoned the wallet and lost any standing he would have to challenge its search. Cf. *id.* at 412 (citing *United States v. Burnette*, 698 F.2d 1038, 1048 n. 19 (9th Cir. 1983) (majority of cases finding abandonment involve “both a denial of ownership or interest in the property *and* a physical relinquishment of the property.”)). Under these circumstances, NE#2’s warrantless search of the wallet was permitted under SPD policy to determine ownership of the wallet and its contents.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.
Recommended Finding: **Not Sustained - Lawful and Proper**