



## CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 1, 2024

FROM: DIRECTOR GINO BETTS, JR.   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2024OPA-0069

### Allegations of Misconduct & Director's Findings

#### Named Employee #1

Allegation(s):		Director's Findings
# 1	6.150 - Advising Persons of Miranda and the Right to Counsel, 6.150-POL-1 Advising Miranda Rights, 2. Miranda Warnings Must Precede Custodial Interview.	Not Sustained - Unfounded
# 2	6.290 - Juvenile Investigations and Arrests 3. Sworn Employees Will Use the Juvenile Miranda Language	Not Sustained - Unfounded
# 3	6.220 - Voluntary Contacts, <i>Terry</i> Stops & Detentions 6.220-POL-4 Documenting a <i>Terry</i> Stop 1. Officers Will Document All <i>Terry</i> Stops	Sustained

#### Imposed Discipline

Resigned Prior to Proposed Discipline

#### Named Employee #2

Allegation(s):		Director's Findings
# 1	6.150 - Advising Persons of Miranda and the Right to Counsel, 6.150-POL-1 Advising Miranda Rights, 2. Miranda Warnings Must Precede Custodial Interview.	Not Sustained - Unfounded
# 2	6.290 - Juvenile Investigations and Arrests 3. Sworn Employees Will Use the Juvenile Miranda Language	Not Sustained - Unfounded
# 3	6.220 - Voluntary Contacts, <i>Terry</i> Stops & Detentions 6.220-POL-4 Documenting a <i>Terry</i> Stop 1. Officers Will Document All <i>Terry</i> Stops	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:

The named employees responded to a call concerning the Complainant, who was stabbed. The named employees allegedly failed to adequately document their investigation and *Mirandize* suspects, including a juvenile.

### ADMINISTRATIVE NOTE:

On June 25, 2024, OIG certified OPA's investigation as thorough, timely, and objective.

### SUMMARY OF INVESTIGATION:



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*Incident Report*

Witness Employee #1 (WE#1) wrote the incident report for the response. In part, WE#1 indicated that officers arrived and saw a white car stopped in the Complainant's yard. WE#1 spoke with the Complainant, who said loud noises awoke him. He said he looked out his front door and saw the running white car parked in his yard and "juvenile males standing in the street." The Complainant said he confronted the group and repeatedly asked them to leave. He said a juvenile white male "wearing a black hat, mask, and slightly puffy coat" approached and told him to return to his house. The Complainant said that as he retreated, the subject followed and cornered him against a bush, raised a knife, and stabbed his side torso. Police found a broken knife blade where the Complainant said the stabbing occurred. Those pieces "were collected and entered into evidence." The Complainant told officers that the subject went eastbound on Northeast 104<sup>th</sup> Street.

Officers canvassed the area and located two suspects.<sup>1</sup> The Complainant participated in a field show-up<sup>2</sup> but did not identify either suspect as his attacker. WE#1 wrote that he gave the Complainant his business card and the case number before leaving.

*Body-Worn Video (BWV)*

*WE#1*

BWV captured WE#1 and the Complainant's conversation. The Complainant described a Black male on crutches and a White male, as described above, among the juveniles. After examining the fragmented blade, WE#1 asked whether the Complainant could identify his attacker. The Complainant replied that his attacker wore a mask and hat. WE#1 collected the Complainant's contact information and examined his yard while asking questions. WE#1 gave the Complainant a business card and told him he would write a report. WE#1 also explained that other officers were looking for subjects matching the descriptions. Minutes later, WE#1 told the Complainant that officers had suspects detained and asked whether he would participate in a field show-up. The Complainant agreed. WE#1 transported the Complainant to the show-up location and asked whether either detainee stabbed him. From the back of WE#1's police cruiser, the Complainant said it was possibly Subject 1 but definitely not Subject 2. Concerning Subject 1, the Complainant reiterated that he was unsure. WE#1 radioed, "So, those guys [were] absolutely involved. [But,] neither of them [is] definitively the suspect from the stabbing. But they were both in the [group], so we can get them and everything identified." WE#1 took the Complainant home and explained, "But as of right now, we're not giving up hope or anything. We're still checking around. So, I may give you another call to [...] do the same thing again if we find new people. So, keep your phone on you, okay?"

*Named Employee #1 (NE#1)*

NE#1's BWV showed him, driving a patrol cruiser, announcing that he spotted Subject 2, matching the described Black male on crutches. Named Employee #2 (NE#2), the front passenger, said they should check it out. NE#2 approached Subject 1, saying, "I'm going to have you stop and chat with us for a second." NE#1 stated, "You're being detained," and radioed that they detained "a couple of possibles." Subject 1 told NE#2 that he did nothing wrong and had met Subject 2, standing with crutches a few feet away, "five minutes ago." NE#2 said, "Well, we had an incident just down the road there. So, we're just coming out to chat with you guys for a minute." NE#1 radioed that they were ready for a show-up. NE#1 told Subject 2, "I remember you... You were in that other car, right? The black Yukon or whatever

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<sup>1</sup> WE#1 wrote that he deferred to the officers' supplemental reports for details about their contact with the suspects. However, OPA found no supplemental or *Terry* stop reports concerning the officers' contact with the suspects.

<sup>2</sup> A "field show-up" is an in-person identification procedure occurring shortly after a crime.



over in Sandpoint?" Subject 2 replied, "Yeah, I think." NE#1 ordered both to sit on the patrol car's bumper. Subject 1 asked to speak with his grandmother.

NE#1 asked Subject 1, "What were your other two homies doing that were walking over there?" Subject 1 denied knowing them and reiterated that he had met Subject 2 five minutes earlier. NE#1 asked where Subject 1 lived, and he replied Sandpoint. NE#1 asked, "But you just woke up five minutes ago and ended up here somehow? You like teleport over here?" NE#1 stepped away briefly to confer with another officer, then returned, saying, "You matched the description of a couple of people that [were] involved in an assault nearby. Okay? They said there were a couple of juvenile males, one with crutches. Obviously, your friend has crutches." NE#1 asked where they were coming from and asked, "What do you guys [have] planned for the rest of the morning?" Subject 1 said they were coming from a friend's house and that he was planning to visit his grandmother. Subject 2 said he planned to visit his aunt. NE#1 replied, "At eight in the morning? Okay, so that's like in four hours. So, you are gonna go see your grandmother, and you're gonna go see your aunt?" NE#1 asked what they planned to do in the meantime and what school they attended. Subject 1 said he dropped out of school, and Subject 2 provided his school's name.

WE#1 arrived with the Complainant for the show-up, and Subject 2 said, "I'm just trying to get home, man." NE#1 replied, "That's fine. Like I said, you guys match the description of two people that were involved in an assault. So, you're being detained, right? Damn, I can't believe your homies ditched you like that. Your other two homies that were with you?" Subject 2 asked the officers whether he could call his mother. NE#2 replied, "We'll get there in a minute, okay?" Subject 1 interjected, "He isn't lying, sir. You're not supposed to be asking him questions." NE#1 replied, "That's fine. I'll ask you questions then." WE#1 departed with the Complainant, and NE#1 told the suspects, "Alright since we detained you, we have to [identify] you. Do you want a business card? Do you want to speak to a supervisor? Yes or no?" Subject 1 provided his name and an August 21, 2004 birthdate, but Subject 2 declined. NE#1 indicated that he had Subject 2's identifying information from a prior theft arrest. NE#2 fist-bumped the suspects, and they were allowed to leave.

#### *Interviews*

OPA interviewed the Complainant on February 12, 2024. His account generally mirrored his OPA complaint.

NE#2 was interviewed on April 10, 2024. He said the suspects were detained because they matched the Complainant's descriptions. NE#2 said they were detained for a show-up. He said he knew from previous arrests that Subject 1 was not a juvenile and Subject 2 was a juvenile. NE#2 said he primarily spoke with Subject 1. He also stated that NE#1's questioning of Subject 2 was reasonably likely to elicit incriminating responses. NE#1 said he had not completed a *Terry* template since NE#1 told him he would do it.

NE#1 was interviewed on April 29, 2024. He said the suspects were located less than four blocks from the incident location and matched the Complainant's descriptions. NE#1 said he recognized both from arresting them a few weeks prior and knew Subject 1 was not a juvenile and Subject 2 was a juvenile. Concerning his questions, NE#1 said:

"I asked him where they were coming from. I think [Subject 1] mentioned that he just came from his friend's house in Magnuson Park about five minutes prior to our contact, which I thought was very odd and suspicious because Magnuson Park is a little bit further than five minutes away from where we were at, especially if he was on foot. I pretty much asked him what they were doing in the area."



NE#1 thought their explanations were suspicious since they claimed to be visiting family members at 4 AM. He said he aimed to “assist my primary officer with his investigation... just finding out where they were coming from if they were actually [going to] be truthful or not.” NE#1 suggested that the suspects were detained during his questioning but not in custody, as evidenced by their not being handcuffed. He also stated that he did not complete a *Terry* template since the detention was based on probable cause rather than reasonable suspicion, indicating that the early morning hour, proximity to the crime, and matching the victim’s descriptions established probable cause. Explaining why he did not Mirandize Subject 2, NE#1 said: “Because they were not in custody, I did not have them handcuffed; they were detained. So, because it’s a low bar, you could lose it anytime... I need custody and questions relevant to the investigation to *Mirandize* him.” NE#1 acknowledged telling NE#2 he would write the supplemental report but said he forgot to do it due to a heavy workload.

### **ANALYSIS AND CONCLUSIONS:**

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

#### ***6.150 - Advising Persons of Miranda and the Right to Counsel, 6.150-POL-1 Advising Miranda Rights, 2. Miranda Warnings Must Precede Custodial Interview.***

The Complainant alleged that NE#1 failed to apprise Subject 1 about his *Miranda* rights before questioning.

Officers must give *Miranda* warnings before questioning someone in custody. SPD Policy 6.150-POL 2. However, an officer making a *Terry* stop may ask a moderate number of questions to determine the suspect’s identity and confirm or dispel the officer’s suspicions without rendering the suspect “in custody” for *Miranda*. U.S.C.A. Const.Amends. 4, 5. *State v. Heritage*, 152 Wn.2d 210, 95 P.3d 345 (2004). *Terry* stops are brief, occur in public, and are “substantially less ‘police dominated’” than the police interrogations contemplated by [\*Miranda. Id. at 439, 86 S.Ct. 1602.\*](#)

Here, the subjects’ roughly ten-minute public detention was a *Terry* stop. It was initiated based on their generally matching the Complainant’s description, which was less than four blocks from the incident location around 4 AM. They were not handcuffed or otherwise restricted “to a degree associated with arrest” before they were questioned. *State v. Heritage*, 152 Wn.2d 210, 218, 95 P.3d 345, 349 (2004). Without a doubt, the named employees had reasonable suspicion to detain the suspects. However, despite NE#1’s contention, probable cause was not yet established. Otherwise, they would have immediately arrested the suspects instead of awaiting the Complainant’s identification confirmation.

BWV showed that NE#1 engaged the suspects most, primarily speaking with Subject 1, an adult. However, NE#1’s questions did not exceed the scope of permissible moderate questions, generally covering where the suspects were coming from and headed. While NE#1 also twice referenced their “homies,”<sup>3</sup> he did not directly probe whether they participated in the offense. Overall, NE#1 did not cross the line from moderate questioning during a *Terry* stop that would have elevated it into a custodial interrogation.

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

Recommended Finding: **Not Sustained - Unfounded**

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<sup>3</sup> The Complainant reported that his attacker was among a group of juveniles.



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

***6.290 - Juvenile Investigations and Arrests 3. Sworn Employees Will Use the Juvenile Miranda Language***

The Complainant alleged that NE#1 failed to apprise Subject 2 about his juvenile *Miranda* rights before questioning.

As stated above, Subject 2, a juvenile, was subjected to a *Terry* stop. BWV showed that NE#1's questions covered whether they previously arrested Subject 2 in Sandpoint, where Subject 2 lived, why he was at the *Terry* stop location, his plans for the rest of the day, and what school he attended. When Subject 1 suggested that NE#1 should not question Subject 2 since he was a minor, NE#1 replied, "That's fine. I'll just ask you all the questions then," and stopped questioning Subject 2. While it is well-settled that minors are more susceptible to feeling "in custody," this interaction never reached that level. The suspects sat on a police cruiser unhandcuffed during the relatively brief detention, and Subject 2 was allowed to adjust his crutches. NE#1 repeatedly informed them that they were detained and why. Most of NE#1's questions did not concern the investigated crime, and despite NE#1's pushing back on some of their answers, no line of questioning or the totality of the circumstances suggested a custodial interrogation occurred, requiring *Miranda* warnings to precede it.

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

Recommended Finding: **Not Sustained - Unfounded**

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

***6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220-POL-4 Documenting a Terry Stop 1. Officers Will Document All Terry Stops***

The Complainant alleged that NE #1 failed to document detaining the suspects.

Officers must document all Terry stops, per SPD Policy 6.220-POL-4. A sworn employee who questions a juvenile will document in Mark43. SPD Policy 6.150-TSK-1.

Both named employees indicated that NE#1 agreed to document the *Terry* stops. However, NE#1 told OPA he forgot to do it due to his workload.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

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

***6.150 - Advising Persons of Miranda and the Right to Counsel, 6.150-POL-1 Advising Miranda Rights, 2. Miranda Warnings Must Precede Custodial Interview.***

The Complainant alleged that NE#2 failed to apprise Subject 1 about his *Miranda* rights before questioning.

BWV showed that NE#2 asked Subject 1 far fewer questions than NE#1. For the reasons at Named Employee #1 – Allegation #1, OPA recommends that this allegation be Not Sustained – Unfounded.



Recommended Finding: **Not Sustained - Unfounded**

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

***6.290 - Juvenile Investigations and Arrests 3. Sworn Employees Will Use the Juvenile Miranda Language***

The Complainant alleged that NE#2 failed to apprise Subject 2 about his juvenile *Miranda* rights before questioning.

BWV showed that NE#2 generally stood by as NE#1 questioned Subject 2. For the reasons at Named Employee #1—Allegation #2, OPA recommends that this allegation be Not Sustained—Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

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

***6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220-POL-4 Documenting a Terry Stop 1. Officers Will Document All Terry Stops***

The Complainant alleged that NE#2 failed to document detaining the suspects.

For the reasons at Named Employee #1—Allegation #3, OPA recommends that this allegation be Not Sustained—Unfounded.

Recommended Finding: **Not Sustained - Unfounded**