



## CLOSED CASE SUMMARY

ISSUED DATE:     SEPTEMBER 27, 2018

CASE NUMBER:    2018OPA-0215

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

| Allegation(s): |  | Director’s Findings               |
|----------------|--|-----------------------------------|
| # 1            | 6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful | Not Sustained (Lawful and Proper) |
| # 2            | 6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops  | Not Sustained (Training Referral) |

**Named Employee #2**

| Allegation(s): |  | Director’s Findings               |
|----------------|--|-----------------------------------|
| # 1            | 6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful | Not Sustained (Lawful and Proper) |
| # 2            | 6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops  | Not Sustained (Training Referral) |
| # 3            | 5.001 - Standards and Duties 10. Employees Shall Strive to be Professional   | 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:**

It was alleged that the Named Employees may have contacted the Complainant and her boyfriend without reasonable suspicion. It was further alleged that Named Employee #2 may have engaged in unprofessional behavior towards them. Lastly, it was alleged that the Named Employees failed to complete a Terry Template.

**ADMINISTRATIVE NOTE:**

This DCM was submitted past the 180-day deadline because of heavy caseloads and multiple other DCMs due at the same approximate time.



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**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegations #1**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful***

The Named Employees reported that they were on patrol when they came across a vehicle parked in the vicinity of East Olive Way and Bellevue Avenue. Named Employee #2 (NE#2) observed what he believed to be ongoing sexual activity between two persons in the vehicle. Specifically, he asserted that he saw a woman giving a man oral sex. He described the man as leaned back in his seat and a woman moving her head up and down over the man's lap while covered by a blanket. NE#2 relayed what he observed to Named Employee #1 (NE#1).

The Named Employees then approached the vehicle and made contact with the occupants – who were later identified as the Complainant and her boyfriend. NE#2 told them that they could not be engaging in sex acts while in a vehicle parked on a public street. The occupants denied engaging such acts. NE#2 responded: “You were literally just giving him a blow job.” The occupants continued to deny engaging in sex acts. The officers asked for the occupants' names and further conducted their investigation. They ultimately did not arrest the occupants and, instead, gave them a business card and concluded the interaction. Neither officer reported the contact in either a Terry Template or a General Offense Report. They instead included the following note in the CAD Call Report: “ICV. BWV observed sexual activity in vehicle, contacted subjects and gave warning. Did not observe any indecent exposure.”

The Complainant initiated this complaint with OPA. She asserted that NE#2 was unprofessional when he accused her of giving her boyfriend a “blow job.” She was also upset that the contact was memorialized in the CAD Call Report. OPA added allegations concerning the stop, itself, as well as regarding the officers' failure to document the stop in a Terry Template.

SPD Policy 6.220-POL-1 governs Terry stops and stands for the proposition that Terry stops are seizures of an individual and, as such, must be based on reasonable suspicion in order to be lawful. SPD Policy defines a Terry stop as: “A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion in order to investigate possible criminal activity.” (SPD Policy 6.220-POL-2(b).) SPD Policy 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 provide the justification for the original stop.” (*Id.*)

At their OPA interviews, both officers asserted that, at the time they made contact with the Complainant and her boyfriend, they had probable cause to arrest. They stated that the crime they had probable cause for was lewd conduct. However, there is no such law in the City of Seattle. Moreover, at the time NE#2 observed what he believed to be a sex act, the Complainant was covered by a blanket and the Complainant's boyfriend's genitals could not be seen. As such, the officers did not have probable cause to arrest for indecent exposure.



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They did, however, have reasonable suspicion to investigate what was occurring. Given what NE#2 initially observed, there were multiple crimes that could have been at issue. Not only indecent exposure – as discussed above, but also either patronizing or soliciting prostitution (*see* RCW 9A.88.110). Neither crime was ultimately borne out by the facts, but the standard is whether the information available to the officers at the time yielded a substantial probability that this criminal conduct was ongoing. I find that such a probability existed here. As such, I conclude that the limited detention of the Complainant and her boyfriend to conduct an investigation was consistent with policy and I recommend that this allegation be Not Sustained – Lawful and Proper.

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

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

***6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops***

SPD Policy 6.220-POL-10 requires that officers document all Terry stops using a Terry Template. Within the Terry Template, officers are instructed to “clearly articulate the objective facts they rely upon in determining reasonable suspicion.” (SPD Policy 6.220-POL-10.)

The Named Employees admittedly did not complete a Terry Template. Both asserted that they did not do so because they made the stop based on probable cause, not reasonable suspicion. However, as discussed above, probable cause did not exist for this stop. At best, the officers only had reasonable suspicion. Moreover, even if the officers did have probable cause, they should have then documented the contact in a General Offense Report. They did not do this either. Indeed, the only documentation of this incident was an update to the CAD Call Log.

This lack of documentation is inconsistent with policy. I find that the Named Employees were required to complete a Terry Template. This is the case because they effectuated a Terry stop. It is irrelevant whether they believed that they had probable cause at the time of the stop.

While I find that the officers violated policy in this case, I note that OPA has seen several other cases in which officers have expressed confusion concerning whether a Terry Template is required in these types of situations. Ultimately, these cases resulted in a Management Action Recommendation and, eventually, a clarification of the policy. The current iteration of the policy makes it clear that, where a Terry stop is effectuated, a Terry Template must be completed regardless of whether the officers had reasonable suspicion or probable cause at the time. To the extent the stop develops into an arrest, only a General Offense Report need be generated. However, the failure to do either, as occurred here, remains unacceptable.

For the above reasons, and given that the Named Employees are not the first officers to express confusion with this policy, I recommend that they receive Training Referrals rather than Sustained findings.

- **Training Referral:** The Named Employees should receive training concerning both the prior and updated versions of SPD Policy 6.220-POL-10. The Named Employees should be counseled concerning this matter by their chain of command and should be informed that their failure to complete either a Terry Template or a General Offense report in this case violated policy. The Named Employees should be counseled to closely comply with the revised policy in the future and should be informed that future failures will result in a



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recommended Sustained finding. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

**Named Employee #2 - Allegations #1**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful***

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

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

***6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops***

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Training Referral.

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

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

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

SPD Policy 5.001-POL-9 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-9.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

The Complainant alleged that NE#2 was unprofessional when he accused her of engaging in a sex act. Specifically, she was insulted by his use of the term “blow job.”

At his OPA interview, NE#2 stated that he used the term “blow job” to describe the sex act because the Complainant did not seem to understand him when he was trying to explain to her what he observed. NE#2 told OPA that he tried to use a layman’s term and “blow job” was the first thing that came to mind. He denied attempting to insult the Complainant and stated that this was not his intention. He further denied that his statement was unprofessional.

NE#1 echoed NE#2’s assertions. He told OPA that NE#2 did not use the term “blow job” to be funny or immature. Instead, NE#1 believed that NE#2 was trying his best to explain to the Complainant what he reported observing.



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I find that the Named Employees' recounting of how and why the statement was made is consistent with the video. It does appear that NE#2 used the term in an attempt to explain to the Complainant and her boyfriend what he believed that they had been doing. While "oral sex" or "fellatio" would have been better terminology than "blow job," under the circumstances of this case and when applying a preponderance of the evidence standard, I do not find that NE#2 engaged in unprofessional behavior when he said this.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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