



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 4, 2019

CASE NUMBER: 2019OPA-0364

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Management Action)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Management Action)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Management Action)

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 effectuated a warrantless entry into an apartment based on a Non-Emergent Detention Order when the order, standing alone, did not actually provide legal authority for the officers to make that entry.

ADMINISTRATIVE NOTE:

During its review of this matter, the chain of command also identified tactical issues concerning the Named Employees’ entry into the apartment and an Acting Sergeant’s failure to identify a complaint of handcuffing discomfort made by the Subject. These matters were handled with training and counseling rather than through a full investigation.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement

The Named Employees were dispatched to the Subject's residence to assist Designated Crisis Responders (DCRs) with effectuating a detention pursuant to a Non-Emergent Detention Order. When the officers arrived, the DCRs presented the officers with the order. The DCRs further communicated that, earlier that day, the Subject acted aggressively and in a threatening manner towards them. The officers were also informed by the DCRs that the Subject was not taking his prescribed medication. The call report indicated that it was unknown whether the Subject had access to weapons. Moreover, there is no indication from the call or from the Body Worn Video (BWV) that there was any evidence suggesting that the Subject was suicidal.

Based on the information they received from the DCRs and given the order, the Named Employees determined that they would make entry into the residence. The BWV captured the officers' discussions prior to entry, as well as the entry itself and the taking of the Subject into custody. The BWV showed that, prior to making entry, Named Employee #3 (NE#3) clarified with one of the DCRs what the Subject had "done." The DCR told NE#3 that the Subject went to an appointment and terrified staff, causing them to call the police. However, the Subject left the office before police could arrive. The DCR stated that the Subject suffered from bi-polar disorder with manic/paranoid states. The DCR told NE#3 that the Subject's psychosis was growing worse.

NE#3 debriefed the information received from the DCRs with the other Named Employees. They decided to make entry and, after further conferring with the DCRs, determined that they would immediately place the Subject into handcuffs. Prior to doing so, NE#3 questioned whether they could enter the residence if the Subject said that he was not going to come out. Named Employee #2 (NE#2) stated that they could go inside because the DCRs were entering and the officers were just following the DCRs inside.

A building employee used a key to gain access to the residence and the Named Employees entered. The Subject told them to leave; however, the Named Employees did not do so. They went hands-on, handcuffed the Subject, and took him into custody. The Subject was later transported to a hospital for a mental health evaluation.

This incident was reviewed by the Named Employees' chain of command. During that review, a Lieutenant identified that the Named Employees' entry into the residence based on the order may have been improper. The Lieutenant made an OPA referral and this investigation ensued.

SPD Policy 16.110-PRO-3 references the procedure for taking a subject into custody based on a verbal or written order. The policy incorporates by reference SPD Policy 16.110-POL-5(8), which states that: "A court order for detention or verbal order from a DCR does not grant legal authority to enter a constitutionally protected area. An order may add to the overall exigency of an incident but should not be used as the only motivator to force entry into a protected area."

From a review of the BWV, it seemed that, as a general matter, the Named Employees were confused as to the scope of the order. While NE#3 stated that if the Subject did not leave the residence, they were unable to enter, NE#2 believed the contrary. Ultimately, NE#3 was correct that the order did not, by itself, allow them to enter the residence to take the Subject into custody. That being said, the officers could still have entered if they were able to demonstrate the presence of exigency or community caretaking. In their paperwork, the officers referenced community caretaking; however, they did not clearly articulate what imminent danger the Subject presented.



Based on the totality of the circumstances, it does not appear that such imminence existed. While the Subject was not taking his medication and was threatening to staff earlier that day, there was no indication that he presented an immediate threat of harm to himself or others at the time of the Named Employees' response to the residence. This is the appropriate standard under the law, not whether the Subject could potentially put staff in danger were they to later execute the order.

The above being said, the Named Employees clearly acted in good faith during this incident. While OPA concludes that they did not meet the community caretaking standard, it was a close call. Moreover, OPA recognizes that there seems to be Department-wide confusion regarding the significance and legal scope of Non-Emergent Detention Orders. Indeed, this issue has arisen in several other cases, including 2019OPA-0225, which resulted in a Management Action Recommendation requesting that the Department provide additional training and guidance in this area. OPA echoes that Management Action Recommendation here.

- **Management Action Recommendation:** SPD should provide a training update to the Patrol Bureau concerning Non-Emergent Detention Orders. Specifically, the Department should remind officers that, without additional information supporting community caretaking or exigent circumstances, these orders do not permit a warrantless entry into an otherwise constitutionally protected space. The Department should also draw the distinction between emergent detentions, Emergent Detention Orders, and Non-Emergent Detention Orders and describe the contours and legal parameters of each.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #2 - Allegations #1

6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement

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

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #3 - Allegations #1

6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement

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

Recommended Finding: **Not Sustained (Management Action)**