



OFFICE OF PROFESSIONAL ACCOUNTABILITY

Closed Case Summary

Complaint Number OPA#2016-1064

Issued Date: 07/10/2017

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 6.010 (2) Arrests: When Taking a Suspect Into Custody, Officers Must Identify Themselves, Inform the Suspect that He or She is Under Arrest, and State the Reason for the Arrest As Early as Practical (Policy that was issued February 1, 2016)
OPA Finding	Not Sustained (Inconclusive)
Allegation #2	<u>Seattle Police Department Manual</u> 6.010 (3) Arrests: Officers Shall Advise All Arrestees of Their Full Miranda Rights (Policy that was issued February 1, 2016)
OPA Finding	Not Sustained (Inconclusive)
Allegation #3	<u>Seattle Police Department Manual</u> 6.010 (4) Arrests: Officers are Required to Report Arrests (Policy that was issued February 1, 2016)
OPA Finding	Sustained
Allegation #4	<u>Seattle Police Department Manual</u> 6.180 (POL-6.180. b.) Searches-General: Exigent Circumstances (Policy that was issued January 1, 2015)
OPA Finding	Not Sustained (Lawful and Proper)

Allegation #5	<u>Seattle Police Department Manual</u> 8.400 (1) Use of Force Reporting and Investigation: Officers Shall Report All Uses of Force Except De Minimis Force (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Inconclusive)
Allegation #6	<u>Seattle Police Department Manual</u> 8.400 (2. b.) Use of Force Reporting and Investigation: Officers Who Use Reportable Force While Exercising Police Authority in all Other Circumstances Shall Call... (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Inconclusive)
Allegation #7	<u>Seattle Police Department Manual</u> 5.001 (5) Standards and Duties: Employees May Use Discretion (Policy that was issued April 1, 2015)
OPA Finding	Sustained
Allegation #8	<u>Seattle Police Department Manual</u> 5.001 (9) Standards and Duties: Employees Shall Strive to be Professional at all Times (Policy that was issued April 1, 2015)
OPA Finding	Allegation Removed
Final Discipline	4 Day Suspension

INCIDENT SYNOPSIS

The Named Employee was on a ride along with his brother, who was an officer in another city. The Named Employee's brother decided to serve an arrest warrant on a subject with the help of the Named Employee.

COMPLAINT

The complainant, the Office of Professional Accountability, received information from an outside police department that the Named Employee engaged in police activity while off-duty; specifically, that the Named Employee executed a warrant with one of their officers, and may have used force without reporting it as required by SPD Force Reporting policies. Intake review of the information provided indicated the Named Employee may have violated additional policies by unlawfully seizing the subject absent exigent circumstances, not informing the subject they were under arrest, not advising the subject of their Miranda Rights, and not reporting the arrest to a supervisor. Additionally, the entirety of the situation created by the Named Employee potentially undermined public trust in the Department and raised concerns regarding the use of discretion on the part of the Named Employee.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complaint
2. Search for and review of all relevant records and other evidence
3. Review of external investigation documents
4. Interviews of SPD employees

ANALYSIS AND CONCLUSION

The preponderance of the evidence supported the conclusion that the Named Employee took hold of the subject, restricted his freedom of movement and physically moved him from the area near the doorway of the subject's apartment to a nearby wall. The Named Employee told OPA he did not take hold of the subject but merely lured him out of the apartment. The other officer told OPA it was him and not the Named Employee who placed the subject up against the wall, but he (the other officer) also said he did not see what happened between the Named Employee and the subject at the door of the apartment. The subject and the other persons inside the apartment at the time told OPA that the Named Employee reached into the apartment and pulled the subject out and then pushed the subject up against a nearby wall. A witness standing outside on a deck with a clear view to the front door of the apartment and the landing outside it told OPA she saw a man in a dark shirt pull someone out of the subject's apartment and then a second man, a police officer, ran up the stairs and helped the first man put the subject up against a wall.

The evidence also showed that the Named Employee knew of the existence of an arrest warrant for the subject and, in concert with his (the Named Employee's) brother (an on-duty officer in an outside police department), took action to arrest the subject on that warrant. SPD Policy §6.010(2) states that, "when taking a suspect into custody, Officers must identify themselves, inform the suspect that he or she is under arrest, and state the reason for the arrest as early as practical." None of these witnesses heard the Named Employee identify himself as a Seattle Police Officer, tell him he was under arrest and the reason for the arrest. The Named Employee confirmed to OPA that he did not do this. All agreed it was the other officer who told the subject he was under arrest for a warrant.

Because the Named Employee clearly was the first to arrest the subject and take him into physical custody, he had an obligation to identify himself, inform the subject that he was under arrest, and state the reason for the arrest. This was important because neither the subject nor the others inside the apartment with him had any idea who the Named Employee was and why he was pulling the subject out of the apartment. Some thought the subject was being kidnapped and was in great danger. Had one of the occupants of the apartment had ready access to a firearm or other weapon, they may have shot the Named Employee in defense of the subject. Once having established the identity of the subject, the Named Employee should either have

called for the other officer to come up to the doorway to make the arrest, or identified himself as a Seattle Police Officer and told the subject he was under arrest for a warrant.

During the Discipline Meeting for this case, the group discussed the fact that the subject said in his interview that, after grabbing the subject, the Named Employee said something about being under arrest for a warrant. There was no evidence in the OPA investigation to show whether or not the Named Employee actually identified himself to the subject, or if he did, when that was done. Upon reflection and in light of the discussion at the Discipline Meeting, the OPA Director found a lack of preponderance of evidence to either prove or disprove this allegation.

There was not a preponderance of evidence to either prove or disprove the allegation the Named Employee failed to advise the subject of his full Miranda rights. It seemed clear from the evidence that either the Named Employee or the other officer probably advised the subject of his rights, but it was not clear who did this.

SPD Policy §6.010(4) states that "Officers are required to report arrests." The language of this entire section of the policy makes it clear that the Department expects its officers to report all arrests to a SPD supervisor, both those made on-duty and those made off-duty. The preponderance of the evidence from this investigation showed that the Named Employee did not report his arrest of the subject to any supervisor at SPD prior to being notified of the OPA complaint in connection with this matter.

The preponderance of the evidence showed that the Named Employee entered the subject's apartment in order to take him into custody. While the Named Employee disputed this and told OPA he never entered the apartment, the OPA Director found the statements of the subject and other witnesses credible. The weight of the evidence supported the conclusion the Named Employee either reached into or stepped into the apartment while taking the subject into custody. When the Named Employee made this warrantless entry into the apartment, he knew the subject had a valid warrant for his arrest. The Named Employee had been told by the other officer that the subject resided there and he confirmed the identity of the subject. Under these circumstances, the Named Employee had the authority to enter the apartment without a search warrant and take the subject into custody.

There was no preponderance of evidence to show whether or not the force used by the Named Employee to pull the subject out of the apartment and move him over to and against the wall was reportable or de minimis force.

SPD Policy 5.001(5) - Officers May Use Discretion, says, "Officers are authorized and expected to use discretion in a reasonable manner consistent with the mission of the Department and duties of their office and assignment. The scope of discretion is proportional to the severity of the crime or public safety issue being addressed."

In this incident, the Named Employee chose to get personally involved in an operation to take a person into custody for a bench warrant. The Named Employee put himself, the subject and the

occupants of the apartment at risk by his actions. As stated above, the subject and his family had no idea who it was that was pulling the subject out of the apartment. The Named Employee had no idea of the background and activities of those inside the apartment. Had they been armed and had they believed the subject was being kidnapped for some reason, this incident could have resulted in serious injuries or death to one or more of those involved. Risks such as were taken in this incident by the Named Employee hardly seemed justified by the arrest of the subject on a bench warrant.

The Named Employee's actions became known to the Chief and other employees of the outside police department. The Named Employee acted without the knowledge of the outside police department, other than his brother who was on-duty and acting on his own as well. It was clear from the OPA Director's conversation with the outside police department's Chief of Police when he called to notify SPD of the Named Employee's actions, that the outside police department was unhappy with the Named Employee's actions in their jurisdiction. Clearly this reflected badly on the Named Employee and the Seattle Police Department. The subject and his family also learned that the person who pulled the subject from the apartment was a SPD Officer. SPD Policy §5.001(9) says, in part, "regardless of duty status, employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers. Employees will avoid unnecessary escalation of events even if those events do not end in reportable uses of force." The OPA Director found the Named Employee's actions in this incident undermined public trust and his reaching in to the apartment to pull the subject out by force unnecessarily escalated the event by striking fear and anxiety in the subject and his family.

During the Discipline Meeting for this case, those in attendance fully discussed the evidence from the investigation having to do with the professionalism of the Named Employee. At the end of that discussion, it was agreed that the actions of the Named Employee relating to professionalism were best addressed in Allegation #7 (Use of Discretion). It was believed that Allegation #8 (Professionalism) addressed the same actions and decisions as Allegation #7. Following the meeting and upon reflection, the OPA Director decided that Allegation #8 was redundant and unnecessary. As a result, the OPA Director decided to remove the allegation and make no finding recommendation with regard to it.

FINDINGS

Named Employee #1

Allegation #1

There was not a preponderance of the evidence either supporting or refuting the allegation. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Arrests: When Taking a Suspect Into Custody, Officers Must Identify Themselves, Inform the Suspect that He or She is Under Arrest, and State the Reason for the Arrest As Early as Practical.*

Allegation #2

There was not a preponderance of the evidence either supporting or refuting the allegation. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Arrests: Officers Shall Advise All Arrestees of Their Full Miranda Rights.*

Allegation #3

A preponderance of the evidence showed that the Named Employee did not report his arrest of the subject to any supervisor at SPD prior to being notified of the OPA complaint in connection with this matter. Therefore a **Sustained** finding was issued for *Arrests: Officers are Required to Report Arrests.*

Allegation #4

The weight of the evidence showed that the Named Employee had the authority to enter the apartment without a search warrant and take the subject into custody. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Searches-General: Exigent Circumstances.*

Allegation #5

There was not a preponderance of the evidence either supporting or refuting the allegation. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Use of Force Reporting and Investigation: Officers Shall Report All Uses of Force Except De Minimis Force.*

Allegation #6

There was not a preponderance of the evidence either supporting or refuting the allegation. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Use of Force Reporting and Investigation: Officers Who Use Reportable Force While Exercising Police Authority in all Other Circumstances Shall Call...*

Allegation #7

A preponderance of the evidence showed that the Named Employee put himself, the subject and the occupants of the apartment at risk by his actions. Therefore a **Sustained** finding was issued for *Standards and Duties: Employees May Use Discretion.*

Allegation #8

This allegation was removed.

NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.