



## CLOSED CASE SUMMARY

ISSUED DATE: JUNE 23, 2018

CASE NUMBER: 2018OPA-0053

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Training Referral)
# 2	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	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Training Referral)
# 2	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:**

During a Department supervisor’s review of Body Worn Video, it was discovered that the Named Employees may have violated the Complainant’s constitutional right to be secure against an unlawful search and seizure when they arrested him while he was still within the threshold of his residence. If true, this constituted a violation of law and SPD Policy.

### **STATEMENT OF FACTS:**

The Named Employees were dispatched to a call of a disturbance at a residence. When they responded to the residence, they made contact with the individual who had called 911. The caller, who is the Complainant’s mother, claimed that she was being held in the Complainant’s apartment over a dispute concerning money. After conducting a preliminary investigation into this matter, the Named Employees determined that they had probable cause to place the Complainant under arrest.

The Named Employees knocked on the door of the Complainant’s apartment and he opened the door. The Named Employees identified themselves and spoke with the Complainant. They asked him to turn around to determine whether he had any injuries. When he did so, the Named Employees took action to place him under arrest, pulling the Complainant towards them. At the time of the arrest, the Complainant alleged that he was still within his apartment when he had been seized. Notably, the arrest was solely based on probable cause. The Named Employees were not in possession of a warrant for the Complainant’s arrest that permitted them to enter his residence.



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The Named Employees' response to the scene, discussions with the parties, and the arrest of the Complainant were all captured by Body Worn Video (BWV).

Nearly two weeks after the arrest, a Department Lieutenant was reviewing this matter due to allegations of pain that had been made by the Complainant upon his arrest. During that review, the Lieutenant watched the Named Employees' BWV and determined that they had seized the Complainant when he was still within the threshold of his residence. The Lieutenant concluded that this was a possible violation of SPD policy, as well as the Complainant's constitutional rights, and referred this matter to OPA.

Notably, even though he referred this matter to OPA, the Lieutenant also took steps to review the relevant case law with the Named Employees, discussed options for conducting arrests under similar circumstances in the future, and memorialized this retraining and counseling in PAS entries for the Named Employees.

OPA's investigation into this matter consisted of interviewing the Named Employees, as well as reviewing the BWV and the documentation generated by the Named Employees and the Lieutenant.

**ANALYSIS AND CONCLUSIONS:**

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

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

SPD Policy 5.001-POL-2 requires that Department employees adhere to laws, City policy, and Department policy. Where officers engage in activity that violates a subject's federal or state constitutional rights, they have acted contrary to this policy.

Based on a review of the Named Employees' BWV, and specifically that of Named Employee #1 (NE#1), it is clear that the Complainant was still partly within the threshold of his residence when he was taken into custody.

At NE#1's OPA interview, he stated that, at the time the arrest was made, it appeared to him that the Complainant was standing outside of his residence. He did not see any problems with the arrest at that time. It was not until later, when the issue was identified by the Lieutenant, that he realized that the Complainant's foot was still in the apartment when he was arrested. At that time, NE#1 recognized the issues with the arrest; however, it was unclear how familiar he was with the case law in this area.

Named Employee #2 (NE#2) told OPA that he, like NE#1, did not perceive the arrest as being constitutionally infirm at the time it was made. He recalled that he met with the Lieutenant after the fact and was informed of the issues. NE#2 acknowledged that the Complainant's foot was still within the threshold of the apartment at the time of the arrest. NE#2 stated that, while he understood the points made by the Lieutenant, he did not believe that it was a "wrong arrest." He asserted that what occurred here was a "commonly trained scenario" in both police academy and SPD training. NE#2 stated that, from this incident, he learned to make sure that subjects were further from their residences before placing them under arrest.

There is no evidence in the record that the Named Employees acted in bad faith or deliberately attempted to violate the Complainant's constitutional rights. Indeed, it appears that the Named Employees believed at the time that the



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arrest was valid and that the Complainant was outside of the threshold of his residence. That was proved not to be the case by the BWV. The video established that there was a technical violation of the Complainant's constitutional rights when his foot was still within the threshold of his residence when he was placed under arrest. This arrest was thus inconsistent with Article 7 of the Washington State Constitution and Washington legal precedent, most notably *State v. Holeman*, 103 Wn.2d 426 (1985).

That being said, and given that I believe that this was a good faith mistake rather than intentional misconduct, I recommend that the Named Employees receive a Training Referral rather than a Sustained finding.

- **Training Referral:** The Named Employees' chain of command should ensure that the Named Employees understand that a subject must be fully outside of the threshold of the subject's residence before an arrest can be effectuated. Given that the Lieutenant has already conducted what appears to have been a very thorough and thoughtful retraining and counseling and has documented this matter in the Named Employees' PAS, OPA does not require that any additional steps need to be taken so long as the chain of command is satisfied that this matter is fully resolved and that this will not happen again in the future.

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

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

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

This case is similar to a prior case investigated by OPA (2017OPA-1132), in which it was clear that there was a lack of understanding by officers of the nuances of and ongoing developments in search and seizure law. For example, it is unclear in this case whether the Named Employees knew that an arrest was unconstitutional when a subject's foot was still within the threshold of the residence.

Given this, I issued a Management Action Recommendation in that prior case that requested the following:

SPD should provide Department-wide training concerning search and seizure law. This training could be accomplished either through classroom trainings, e-learning, or a series of legal bulletins or other instruction provided during roll calls. While I understand that this comes at a financial cost to the Department, I request that SPD move forward with this training to ensure that its employees do not, even if inadvertently, engage in conduct contrary to the United States and Washington State Constitutions.

I reiterate that Management Action Recommendation here, and supplement it by requesting that the Department provide further training in the manner it sees fit concerning the specific issue in this case – the requirement that subjects be completely outside of the thresholds of their residences before arrests can be properly effectuated.

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



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

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that the Named Employees both receive Training Referrals rather than Sustained findings. I further refer to the Training Referral detailed above.

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

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

***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 #2), I issue a Management Action Recommendation instead of a Sustained finding. I further refer to the Management Action Recommendation Detailed above.

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