



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 20, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0105

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.180 - Searches-General. Officers May Only Make Searches Under a Search Warrant Unless a Specific Exception Applies	Not Sustained - Timeliness

Named Employee #2

Allegation(s):		Director's Findings
# 1	6.180 - Searches-General. Officers May Only Make Searches Under a Search Warrant Unless a Specific Exception Applies	Not Sustained - Timeliness

Named Employee #3

Allegation(s):		Director's Findings
# 1	6.180 - Searches-General. Officers May Only Make Searches Under a Search Warrant Unless a Specific Exception Applies	Not Sustained - Timeliness

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 Force Review Board (FRB) alleged that Named Employee #2 (NE#2)—a sergeant—directed subordinates to re-enter a residence without a warrant or exceptional circumstance. OPA also alleged that Named Employee #1 (NE#1) re-entered the home without a warrant to collect evidence and that Named Employee #3 (NE#3) allowed a subordinate to re-enter and collect evidence without a warrant.

ADMINISTRATIVE NOTE:

On August 3, 2022, several officers responded to the Subject's 9-1-1 call, alleging he murdered two people. Officers used reportable force—including a 40mm less lethal launcher—to apprehend the Subject. A Type II force investigation and five Type I force investigations were conducted. FRB reviewed the incident on February 28, 2023, and submitted this OPA complaint on March 1, 2023.

The named employees are members of the Seattle Police Officers Guild, whose collective bargaining agreement ("SPOG CBA") limits OPA investigations to 180 days: "....no discipline may result from the investigation if the investigation of the complaint is not completed within one hundred eighty (180) days after the 180-day start date." SPOG CBA Section 3.6(B). The 180 "start date" is the earliest of five triggers, including "for incidents submitted to the



Chain of Command in Blue Team (or its successor), fourteen (14) days after the date on which the initial supervisor submits the incident for review to the Chain of Command.” *Id.* (emphasis added).

Here, the incident occurred on August 3, 2022. The initial supervisor—NE#2—submitted the Type II investigation to the chain of command for review on August 8, 2022, starting the 180-day period fourteen days later—August 28, 2022. Based on that timeline, the 180-day period ended February 24, 2023—four days before the incident was reviewed by FRB and five days before OPA received the complaint. Accordingly, discipline cannot result in this matter.¹

Nevertheless, even though the 180-day period expired, OPA opted to investigate this matter. OPA started its investigation on February 28, 2023—when OPA became aware of the allegations—to meet its timeliness obligations under the Accountability Ordinance. See SMC 3.29.130(B) (the 180-day period begins on the date OPA “initiates or receives a complaint”).

On July 25, 2023, the Office of Inspector General (OIG) certified OPA’s investigation of this case as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

OPA initiated an investigation based on the FRB’s complaint. During its investigation, OPA reviewed the complaint, the computer-aided dispatch (CAD) call report, the incident report, and the body-worn video (BWV). OPA also interviewed the named employees.

a. Computer-Aided Dispatch (CAD) Call Report and Incident Report

The CAD call report showed that multiple SPD officers and supervisors responded to an in-progress assault call, where the caller stated he “just killed two people” and had knives on him.

The incident report summarized the following:

After receiving the call, multiple officers gathered and coordinated their response, setting a perimeter around the Subject’s residence. The Subject held a large knife and told officers he “wanted to die.” Officers spoke with the Subject, who eventually put down the knife and exited his residence. The Subject put his hand behind his back and stated multiple times, “Want to see what I got?” The Subject was then detained.² SPD officers determined the Subject was “a danger to himself and others” and transported him to Harborview Medical Center.

b. Body-Worn Video (BWV)

BWV captured the named employees’ actions after the Subject was in custody.

¹ See also SPOG CBA Section 3.6(D) (allowing 180 Start Date Re-Calculation where a “community member” files a complaint).

² Although not documented in the incident report, BWV showed an officer shot the Subject with a 40 mm less-lethal launcher, which caused the Subject to double over. Officers then handcuffed the Subject.



Immediately after the Subject was taken into custody with six officers, NE#2 entered the Subject's residence. NE#2 and other officers searched the home, back porch, and carport. Officers radioed that the place was clear. NE#2 and the other officers left the Subject's residence. NE#2 asked whether any officer had a camera. Witness Officer #1 (WO#1) replied yes. NE#2 asked WO#1 to photograph the Subject.

WO#1 photographed the house's exterior. NE#1 asked WO#1, in NE#2's presence, "What do you want photos of, [WO#1]?" WO#1 responded, "Specifically, the house, the injuries, and everything else that goes with it." NE#1 entered the Subject's residence and took dozens of photographs, including the Subject's medical paperwork.

NE#1 exited and told NE#2 he saw a compound bow, saying, "I don't know what you want done with that stuff." NE#2 said, "Let's take a look at it. Let's open it and see if there's a bow in it. With what he was saying, the threats he made, I think we're . . . I mean, worse come to worse, they'll have to give it back to him. Let's take it. I think we're good to take that." NE#1 re-entered the house, retrieved the bow case, and brought the bow and arrows outside.



The compound bow from the Subject's residence

After the house was cleared, Witness Officer #2 (WO#2) shined her flashlight into the residence and saw a knife. WO#2 asked a supervisor, NE#3, "Do we want the knife?" NE#3 responded, "Yeah." WO#2 re-entered the residence and seized the knife.



*The knife (circled in red) was from the Subject's residence.
The yellow arrow points to WO#2's hand.*

c. Named Employee Interviews

OPA interviewed the named employees.

NE#1 said that after the Subject was in custody, he was asked to photograph the Subject, the knife, and "... the inside of the house." NE#1 described finding the compound bow. NE#1 said, "My concern at the time was the suspect/victim goes up to the hospital, and then gets released, and is still in this manic state or becomes manic again or whatever it was and has access to the bow and can harm the public." NE#1 mentioned the bow to NE#2, who told him to recover it. NE#1 also suggested that individuals, like the Subject, admitted under the Involuntary Treatment Act are often released from the hospital after "an hour or two." NE#1 said he photographed the Subject's medical records because he thought they "could possibly be relevant to assisting him in his treatment." NE#1 insisted he acted to protect the Subject rather than conducting a criminal investigation. NE#1 added, "I would just like to say that everything I did was with full intent for the, you know, positive outcome of [the Subject's] mental state and future well-being."

NE#2 said due to the nature of the call, officers had to initially enter the residence to "clear it because of the possibility of having dead bodies inside or people inside." NE#2 did not recall ordering NE#1 to take photographs but told NE#1 to re-enter the residence to take the compound bow. When OPA asked his legal authority to search the home, NE#2 responded:



Again, hindsight, at the time, I was thinking Community Caretaking, in terms of keeping his threats of killing people or having killed people. My thought was to keep him safe and others safe, to take it, but in hindsight, I probably didn't have that justification.

NE#3 noted that the Subject used a knife to “stab at windows” during the officers’ response. NE#3 described the knife as “the biggest threat to us that we could see.” NE#3 also said the Subject tossed the knife, which landed in a mudroom. NE#3 said he instructed WO#2 to take the knife since the Subject was still on the scene. NE#3 indicated that when the knife was recovered, the Subject was handcuffed but could have escaped and accessed the knife.

At NE#3’s OPA interview, a SPOG representative said that the Subject was detained under the Involuntary Treatment Act and had not committed a crime. The SPOG representative noted that officers could not apply for a warrant to seize items like the knife and compound bow absent a crime.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.180 - Searches-General. Officers May Only Make Searches Under a Search Warrant Unless a Specific Exception Applies

The Complainant alleged that NE#1 unjustifiably conducted a warrantless search.

SPD policy forbids warrantless searches unless a specific exception applies, including “community caretaking” and “exigent circumstances.” See SPD Policy 6.180(1).

Warrantless “community caretaking” searches are allowed when (1) the officer subjectively believes someone needs assistance for health or safety reasons, (2) they attempt to rouse anyone who may be unconscious before entering, (3) there is an objective need for assistance, (4) the place searched is associated with the need for the search, (5) there is an imminent threat of substantial bodily injury or substantial property damage, and (6) a specific person or property needs immediate health or safety assistance. See SPD Policy 6.180-POL-12(1).

A warrantless search based on exigency requires a subjectively and objectively reasonable belief that an exigent circumstance exists. See SPD Policy 6.180 POL 3(1). Courts consider whether (1) the crime involved is serious or violent; (2) there is a reasonable basis to believe a suspect is armed; (3) there is an objectively reasonable basis to believe a suspect committed the crime; (4) there is an objectively reasonable basis to believe a suspect is on the premises; (5) there is an objectively reasonable basis to believe that a suspect is likely to escape; (6) the police identifies themselves and allowed a suspect to surrender; and (7) the entry was made peaceably. *Id.*

However, warrantless searches must cease when the community caretaking or exigency concerns are dispelled. See, e.g., SPD Policy 6.180-POL-1(3) & (4) and 6.180-POL-3(1); see also *State v. Kinzy*, 141 Wn.2d 373, 388, 5 P.3d 668, 677 (2000) (noncriminal investigation permitted only so long as necessary and strictly relevant to the performance of the community caretaking function).

Here, the named employees faced a report that the Subject killed two people. They contacted the Subject, who was inside the home holding a knife. After the Subject’s detention, the only justification for re-entering the house was to



search for people where they would likely be found. Once the residence was cleared, the need for a search—under community caretaking or exigent circumstance—dissipated. None of the named employees were permitted to re-enter or authorize their subordinates to re-enter the home at that point.

Understandably, concerned for the well-being of the Subject and others, the named employees collected evidence they thought was helpful and secured items they determined to be threats. Nevertheless, however well-intended, the named employees were unauthorized to search the home or seize items based on speculation that the Subject could be released from the hospital without sufficient treatment and have access to dangerous items he was legally entitled to own.

Accordingly, OPA recommends this allegation be Not Sustained – Timeliness.

Recommended Finding: **Not Sustained - Timeliness**

Named Employee #2 - Allegation #1

6.180 - Searches-General. Officers May Only Make Searches Under a Search Warrant Unless a Specific Exception Applies

For the reasons at Named Employee #1 - Allegation #1, NE#2 was unauthorized to order NE#1 to re-enter the home to seize the compound bow.

OPA recommends this allegation be Not Sustained – Timeliness.

Recommended Finding: **Not Sustained - Timeliness**

Named Employee #3 - Allegation #1

6.180 - Searches-General. Officers May Only Make Searches Under a Search Warrant Unless a Specific Exception Applies

For the reasons at Named Employee #1 - Allegation #1, NE#3 was unauthorized to order WO#2 to re-enter the home to seize the knife.

OPA recommends this allegation be Not Sustained – Timeliness.

Recommended Finding: **Not Sustained - Timeliness**