



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 23, 2018

CASE NUMBER: 2018OPA-0480

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 POL-6.180 Searches and seizures generally must be made pursuant to a warrant | Allegation Removed |
| # 3 | 6.180 - Searches-General POL-6.180 2. There are Specific Exceptions to the Search Warrant Requirement a. Consent Searches | Allegation Removed |

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 Employee violated policy and law when he seized the Complainant from his apartment without a warrant or an exception to the warrant requirement.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

On May 28, 2018, Named Employee #1 (NE#1) was dispatched to the Complainant’s residence in response to a call concerning the violation of a court order. Upon arrival, NE#1 placed the Complainant under arrest and took him into custody. In his General Offense Report relating to this incident, NE#1 wrote the following: “I knocked on [the Complainant’s] door and he answered the door. I immediately recognized [the Complainant] from his booking photo. I placed [the Complainant] under arrest and advised him he was under arrest for violation of the anti-harassment order.”

NE#1’s supervisor screened the arrest, which included interviewing the Complainant. At that time, the Complainant told the supervisor: “your officer reached through my door to get me. That violates me.” The supervisor interpreted the Complainant to be alleging that he was seized from his residence without a warrant or an exception to the warrant requirement. As this allegation, if true, would constitute a violation of law and SPD policy, the supervisor made an OPA referral. This investigation ensued.



During its investigation, OPA reviewed NE#1's Body Worn Video (BWV), which recorded the seizure of the Complainant. It showed that the Complainant opened his door in response to the officers' knocks. When he first interacted with NE#1, the Complainant was standing at the threshold of the door but was still inside.

While NE#1 had probable cause to effectuate the arrest, it is undisputed that he did not have an arrest warrant or, for that matter, a search warrant permitting him to enter the Complainant's apartment. Pursuant to Article 7 of the Washington State Constitution and the decision in *State v. Holeman*, 103 Wn. 2d 426 (1985), pulling someone from the threshold of their residence is a seizure that must be justified by either a warrant or an exception from the warrant requirement. At his OPA interview, NE#1 explained that he realized, after the fact, that he had effectuated a warrantless seizure. He further acknowledged that there was no exception from the search warrant requirement that applied to this case to justify the seizure.

While I agree with NE#1 that the search was unjustified, I recommend that he receive a Training Referral rather than a Sustained finding. I make this recommendation for three main reasons. First, NE#1 took responsibility for his actions at his OPA interview and has clearly learned from this incident. Second, OPA has seen multiple cases where officers have engaged in similar violations. In those cases, OPA determined that the dearth of search and seizure training provided to the officers and a lack of understanding of the caselaw governing the specific scenario raised in this case, rather than intentional misconduct, was the primary cause of the violations of policy. As a result of those cases, OPA issued a Management Action Recommendation in which OPA advised the Department to provide more regular and in-depth search and seizure training to officers. (See 2018OPA-0053; see also OPA Management Action Letter, Second Quarter 2018.) Third, OPA believes that NE#1 acted in good faith here and took what he perceived to be essential law enforcement action.

As such, OPA recommends that NE#1 receive the below Training Referral.

- **Training Referral:** NE#1 should receive additional training concerning seizures at the threshold of the door to a subject's residence. His chain of command should ensure that he reviews the *Holeman* decision and any other legal authority that the chain of command deems relevant and appropriate. NE#1 should be counseled by his chain of command concerning the search he conducted in this case and how it was inconsistent with both policy and law. Lastly, NE#1's chain of command should ensure that he understands the above and does not revisit this mistake in the future. Based on NE#1's OPA interview, it appears that he does, in fact, understand this and will not do so. This re-training and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #2

6.180 - Searches-General POL-6.180 Searches and seizures generally must be made pursuant to a warrant.

This policy references the same conduct that is discussed above; namely, whether the seizure in this case was consistent with law and policy. As such, I deem this allegation to be duplicative and I recommend that it be removed.

Recommended Finding: **Allegation Removed**



Named Employee #1 - Allegation #3

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

This policy references the same conduct that this discussed above; namely, whether the seizure in this case was consistent with law and policy. As such, I deem this allegation to be duplicative and I recommend that it be removed.

Recommended Finding: **Allegation Removed**