



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 23, 2020

CASE NUMBER: 2019OPA-0928

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 (Training Referral)

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 (Training Referral)

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 may have made an improper warrantless entry into a residence.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the review and approval of the Office of Inspector General for Public Safety, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employees. As such, the Named Employees were not interviewed as part of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

Named Employee #1 (NE#1), Named Employee #2 (NE#2), and other officers were dispatched to a domestic violence (DV) disturbance. When the officers responded, they learned that the disturbance was between a mother and her son. The son was outside of the apartment and the mother was initially inside. The mother was yelling at her son out of a window. The son had injuries consistent with being the victim of an assault. At one point, the mother exited the apartment and spoke to the officers; however, she then reentered her apartment. After conducting a preliminary investigation, the officers determined that the mother was the primary aggressor and believed that there was probable cause to arrest her.

The officers walked to the apartment and knocked on the door. The mother opened the door but refused to exit the apartment. She told the officers that she had a witness who would support her account. The officers asked the witness to step outside of the apartment and spoke to the witness. During this time, NE#2 held the apartment door



open. The witness finished talking with the officers and then walked back into the apartment. NE#2 continued to hold the door open. NE#1 tried to convince the mother to exit her apartment in order to speak with them; however, the mother refused to do so. At that point, NE#2 entered the apartment, with NE#1 following her, and they took the mother into custody.

The arrest was later screened by a supervisor who determined that the officers may have made an improper warrantless entry into the apartment. After conferring with OPA, the supervisor made a complaint referral. This investigation ensued.

OPA's intake investigation confirmed that the officers did, in fact, make an improper entry into the apartment. OPA determined that the officers did not have a warrant and that the mother did not provide consent for entry. OPA further determined that neither the community caretaking exception nor the exigent circumstances exception applied under the circumstances of this case.

The above being said, OPA agrees with the Named Employees' chain of command that this was a mistake not intentional misconduct. Indeed, OPA believes it possible that the officers were, as the chain of command opined, focused on the mandatory arrest of the mother and that this caused them to overlook the issues with the entry. OPA notes that it has seen a number of other cases with similar facts and conduct. OPA further notes that both of the Named Employees are newer officers and they have not been previously disciplined or counseled for violating this policy. Given this, OPA believes that retraining, rather than discipline, is the appropriate outcome and recommends that this allegation be Not Sustained – Training Referral as against both Named Employees.

- **Training Referral:** NE#1 and NE#2 should be retrained as to the requirements set forth in SPD Policy 6.180 and, specifically, instructed as to when a warrantless entry is permissible. This should include a discussion of *State v. Holeman*. This retraining and associated counseling should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #2 - Allegations #1

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

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral. (See Named Employee #1, Allegation #1.)

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