



## CLOSED CASE SUMMARY

ISSUED DATE: JUNE 20, 2020

CASE NUMBER: 2020OPA-0204

### **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 (Unfounded)

#### **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 (Unfounded)

### **EXECUTIVE SUMMARY:**

The Complainant alleged that their constitutional rights were violated when Named Employees executed an Extreme Risk Protective Order against them.

### **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 March 3, 2020, the Seattle Police Department Crisis Response Unit (CRU) was contacted by a King County Deputy Prosecuting Attorney (DPA) concerning the obtaining of an Extreme Risk Protection Order (ERPO) against the Complainant. The ERPO was sought by the Complainant's sister, who stated that the Complainant was diagnosed with schizophrenia and that the Complainant was not taking medication. The Complainant's sister further indicated that the Complainant had been exhibiting psychotic behavior, as well as been making threats to his family, Jeff Bezos, and Vice President Pence. The Complainant also told his family that he could easily obtain a gun from a pawn shop. Based on these circumstances, the DPA requested that CRU obtain and serve the ERPO on the Complainant.

CRU made contact with the Complainant's sister the following day. The Complainant's sister verified the information that had been relayed to CRU by the DPA. The Complainant's sister further provided a detailed timeline of the Complainant's recent mental health issues and explained that the Complainant's mental health had quickly deteriorated. The Complainant's sister reported that, during this same timeframe, the Complainant appeared to present an increasing risk of violence.

Based on the information gathered, probable cause was found to believe that the Complainant posed a significant danger to them or others in the near future. A temporary ERPO was granted in the King County Superior Court on March 6, 2020. CRU attempted to effectuate service on the Complainant that same day but was unable to do so.

On March 9, 2020, at approximately 4 p.m., Named Employee #1 (NE#1) and Named Employee #2 (NE#2) came to the Complainant's residence with the purpose of again attempting to serve the Complainant with the temporary ERPO. The service of the ERPO was recorded on Body Worn Video (BWV). Upon arrival, the Named Employees made contact with the Complainant's landlord. The Complainant allowed the Named Employees into a common area and they approached and knocked on the Complainant's door, announcing themselves as police. The Complainant eventually answered the door. NE#2 explained why they were there and served the Complainant with the temporary ERPO. At the time of the service, the Complainant stated that the Named Employees did not have a right



to enter the house. The Named Employees clarified that they were permitted to be in the common area and noted that they did not enter the Complainant's room. They then left the area.

The Complainant later filed a complaint with OPA in which he alleged that the Named Employees violated the Complainant's constitutional rights by serving the ERPO. The Complainant further asserted that the ERPO contained private medical information, which the Complainant contended violated the Health Insurance Portability and Accountability Act (HIPAA). The Complainant also alleged that the ERPO violated *Brandenburg v. Ohio*, the Second Amendment, and the Complainant's substantive due process rights.

OPA attempted to contact the Complainant a number of times in order to conduct an interview. However, the Complainant did not respond to OPA.

SPD Policy 5.001-POL-2 requires officers to comply with City, state, and federal laws. The Complainant alleged that the Named Employees service of the ERPO violated the law and, thus, was contrary to this policy. For the reasons set forth below, OPA finds that the Complainant's allegations lack merit.

First, the Named Employees were permitted by law to serve the ERPO on the Complainant. Indeed, they were given this authority by the King County Superior Court. OPA further finds that the ERPO was supported by sufficient evidence and was properly granted.

Second, the Named Employees were granted permission by the Complainant's landlord to be in a common area outside of the Complainant's door. Notably, the Washington Supreme Court has held that "the authority over common areas is more properly characterized as common to both tenant and landlord," and that "under both the Fourth Amendment and Const. art. 1, § 7, either of two parties who have common authority over the premises may consent to an entry or search." *City of Seattle v. McCready (McCready II)*, 124 Wash.2d 300, 306, 877 P.2d 686 (1991). As such, they were allowed to be present in that location at the time of service,

Third, and last, at no point did the Named Employees enter the Complainant's room or any other space in which they were not legally permitted to be. This was confirmed by a review of BWV.

Given the above, it is clear that the Named Employees did not violate the Complainant's constitutional rights or any other laws or policies. As such, OPA recommends that this allegation be Not Sustained – Unfounded as against both Named Employees.

Recommended Finding: **Not Sustained (Unfounded)**

**Named Employee #2 - Allegation #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), OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**