



## ***CLOSED CASE SUMMARY***

ISSUED DATE: JANUARY 29, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0434

### **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 (Lawful and Proper) |

***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 Complainant alleged that the Named Employee improperly entered his residence without his consent.

### **ANALYSIS AND CONCLUSIONS:**

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

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

Officers, including Named Employee #1 (NE#1), responded to a domestic violence (DV) disturbance call. When they arrived, they made contact with a woman – the Subject – who was sitting on the front steps of the home. The officers spoke to the Subject, as well as to a male. The male – who is the Complainant in this case – disclosed that he was in a domestic relationship with the Subject. The male alleged that the Subject had assaulted him several times throughout the day. The officers conducted further investigation and ultimately concluded that the Subject was the primary aggressor and had committed DV assault.

The officers attempted to place the Subject into custody, and she began physically resisting. She also argued with and yelled at the officers. The Complainant also began engaging with the officers at that time. While this was going on, the Subject's young daughter was in the immediate vicinity.

NE#1 made the decision to walk with the daughter into the residence and spoke to her briefly. Their conversation was captured on Body Worn Video (BWV). The video indicated that he asked her questions to gauge whether she felt safe and whether she had been subjected to any harm and/or needed assistance from police. At this time, the Complainant objected to NE#1 being inside of his home and tried to enter. He was kept from entering while NE#1 finished his conversation with the daughter. NE#1 then left the residence. The Subject was subsequently transported from the scene by officers.



The Complainant later alleged that NE#1 improperly entered his residence without his consent and then failed to leave when asked to do so. This investigation ensued. As part of this investigation, OPA reviewed the BWV and the documentation generated by NE#1. OPA attempted to interview the Complainant on a number of occasions. However, he did not attend three scheduled interviews. He did send a detailed email that OPA ultimately considered to be his statement.

SPD Policy 6.180 governs warrantless entries into constitutionally protected spaces. Relevant to this case, SPD Policy 6.180-POL-1 governs entries performed under the community caretaking exception to the warrant requirement. As a general matter, community caretaking applies when: “(1) the officer subjectively believed that someone likely needed assistance for health or safety reasons; (2) a reasonable person in the same situation would similarly believe that there was a need for assistance; and (3) there was a reasonable basis to associate the need for assistance with the place searched.” *State v. Kinzy*, 141 Wn.2d 373, 386-87, 5 P.3d 338 (2000). In addition, SPD Policy 15.220, as well as RCW 13.32A.050 and RCW 13.32A.060, gives officers the lawful authority to take minor children in dangerous circumstances into custody. In determining dangerous circumstances, both policy and law give deference to the observations of the officer.

Based on OPA’s review of the BWV and an analysis of NE#1’s documented rationale, OPA finds that he permissibly entered the Complainant’s home to verify the safety of the daughter and to ensure that she did not need assistance. The daughter had almost certainly been a witness to ongoing DV assaults effected by the Subject and could have potentially been harmed or in ongoing danger. NE#1 was allowed by both law and policy to temporarily take custody over the daughter to assuage his concerns. Here, he took custody of the daughter for just minutes and, during that time, actively investigated her overall condition. In addition, he did not perform any other evidentiary search at that time and limited his entry to the parameters of community caretaking.

For these reasons, OPA finds that NE#1’s actions during this incident were appropriate and, as such, recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**