



## CLOSED CASE SUMMARY

ISSUED DATE: MAY 17, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0028

### **Allegations of Misconduct & Director's Findings**

#### Named Employee #1

Allegation(s):		Director's Findings
# 1	6.180 - Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies, 6.180-POL-6 Search Incident to Arrest/Custodial Search.	Not Sustained - Unfounded

#### Named Employee #2

Allegation(s):		Director's Findings
# 1	6.180 - Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies, 6.180-POL-6 Search Incident to Arrest/Custodial Search.	Not Sustained - Unfounded

#### Named Employee #3

Allegation(s):		Director's Findings
# 1	6.180 - Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies, 6.180-POL-6 Search Incident to Arrest/Custodial Search.	Not Sustained - Training Referral
# 2	16.090 - In-Car and Body-Worn Video, 16.090-POL-1 Recording with ICV and BWV, 5. Employees Recording Police Activity, b. When Employees Record Activity	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:**

The Complainant alleged that the Named Employees conducted an unlawful search. The Complainant also alleged that Named Employee #3 (NE#3) failed to activate in-car and body-worn videos when safe and feasible.

### **ADMINISTRATIVE NOTE:**

The Office of Inspector General (OIG) certified OPA's investigation as thorough, timely, and objective.



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**SUMMARY OF INVESTIGATION:**

*a. Complaint*

Witness Employee #1 (WE#1)—an administrative lieutenant—submitted an OPA complaint via Blue Team following her review of the named employees' involvement in Community Member #1's (CM#1) arrest. The complaint noted CM#1 had active warrants and probable cause for resisting arrest. The named employees contacted and arrested CM#1. A loaded gun was found inside a fanny pack strapped across CM#1's chest. Suspected narcotics and paraphernalia were also recovered from CM#1. The named employees found two bicycles several feet from CM#1. They searched bags attached to each bike.

*b. Police Reports*

Named Employee #1 (NE#1) wrote a related supplemental report. He wrote that he responded to assist with a warrant pickup. The dispatch gave the subject's description and noted he was last convicted of Assault 3, which NE#1 interpreted to indicate the subject possibly fought police in the past. NE#1 identified CM#1 as the subject and his concern about the fanny packs strapped to CM#1 and CM#1's uncooperativeness. After CM#1 was handcuffed, NE#1 noted recovering a loaded 9mm handgun and suspected narcotics from CM#1's fanny packs.

NE#3 wrote the related incident report. He wrote that he responded, "to assist with a Felony Warrant Pickup." NE#3 wrote that, upon his arrival, officers were handcuffing CM#1.

*c. OPA Interviews*

NE#1 told OPA that before contacting CM#1 on the day in question, he had prior contacts with CM#1, knew CM#1 was uncooperative, and was convicted of "fighting with law enforcement." After CM#1 was arrested, NE#1 said, "...because [CM#1] was observed in direct contact with [the] bikes...[officers] needed to verify...before releasing that property to anybody...that it was safe to do so." NE#1 said he saw CM#1 and Community Member #2—CM#1's partner—walk away from the bikes but did not see either exert control over them. NE#1 said CM#2 claimed to own one of the bikes and protested officers searching either bike. NE#1 told OPA NE#3 was the primary officer and directed the backing officers to search the bikes. NE#1 told OPA after "double checking with the policy," the bike that CM#2 claimed to own should not have been searched: "...that bike should have been out of play."

NE#3 told OPA he saw CM#1 and CM#2 each "walking a bike" before contacting them. NE#3 estimated that CM#1 was arrested about 30 feet from the bikes. NE#3 said after CM#1 was arrested, he searched the black bike he saw CM#1 handling. NE#3 confirmed he decided to search both bikes and the attached bags. NE#3 believed a search warrant or consent was unrequired because the bikes were searched, incident to CM#1's arrest. NE#3 also admitted the bike CM#2 claimed to own should not have been searched. Regarding his late body-worn video activation, NE#3 said, "I just forgot."

NE#2 told OPA he responded as a backing officer. He also indicated NE#3, the primary officer, directed both bikes to be searched.



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**ANALYSIS AND CONCLUSIONS:**

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

***6.180 - Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies, 6.180-POL-6 Search Incident to Arrest/Custodial Search.***

The Complainant alleged NE#1 conducted an unlawful search.

Officers may, incident to a lawful arrest, search an arrestee's person and the area within the arrestee's immediate control. SPD Policy 6.180-POL-6. After a person is arrested out of a vehicle, officers do not have the authority to search the passenger compartment and locked or unlocked containers within the vehicle incident to arrest without consent, exigent circumstances, or unless an inventory search is performed. *Id.* Officers may only search personal items such as wallets, backpacks, or other bags if the subject had them in his or her actual and exclusive possession at or immediately preceding the time of his or her arrest. *Id.*

Here, CM#1's fanny packs strapped to his body constituted personal items subject to search incident to CM#1's arrest. However, searching either bicycle, particularly the one CM#2 claimed to own, and NE#1 saw her controlling, was inconsistent with policy. Whether bicycles are considered vehicles or personal property, a warrantless search was not lawful. If the bikes were considered vehicles, officers were unpermitted to search unlocked containers without consent, exigent circumstances, or without performing an inventory search. Nevertheless, NE#3 ordered both bikes to be searched without CM#1's or CM#2's consent. There was no apparent exigency, where although a loaded gun was recovered from CM#1, he was handcuffed during the search. Additionally, there was no indication of an inventory search, where NE#3's sole justification for the search was that a gun was found on CM#1. Conversely, if the bikes are considered personal items, a warrantless search was unjustified because NE#3 estimated they were 30 feet from where CM#1 was arrested, clearly not within his wingspan. See State v. Johnston, 107 Wash. App. 280, 285–86, 28 P.3d 775, 777–78 (2001) ["As this language clearly shows, the key question when applying *Belton* and *Stroud* is whether the arrestee had *ready access* to the passenger compartment at the time of the arrest. If he could suddenly reach or lunge into the compartment for a weapon or evidence, the police may search the compartment incident to his arrest. If he could not do that, the police may not search the compartment incident to his arrest. Sometimes, this is referred to as having "immediate control" of the compartment."]

However, although the named officers' searches were unlawful, NE#1 and NE#2 reasonably relied on NE#3's, the primary officer, direction. Both arrived after NE#3, and neither saw CM#1 and CM#2 exert control over the bikes. Instead, they relied on NE#3's observations preceding their arrival.

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

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #2 - Allegation #1**

***6.180 - Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies, 6.180-POL-6 Search Incident to Arrest/Custodial Search.***

The Complainant alleged NE#2 conducted an unlawful search.



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For the reasons at Named Employee #1 – Allegation #1, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #3 - Allegation #1**

***6.180 - Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies, 6.180-POL-6 Search Incident to Arrest/Custodial Search.***

The Complainant alleged NE#3 conducted an unlawful search.

Here, NE#3 was the primary officer who misdirected NE#1 and NE#2 into conducting an unlawful search. For the reasons at Named Employee #1 – Allegation #1, NE#3's actions were inconsistent with policy. However, since NE#3's misconduct was apparently an unwilful violation and he has no prior sustained findings for similar misconduct, OPA recommends this allegation be Not Sustained – Training Referral.

- Required Training: NE#3's chain of command shall review OPA's findings and SPD Policy 6.180-POL-6 with NE#3 and impose any retraining or counseling it deems appropriate. Retraining or counseling shall be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

**Named Employee #3 - Allegation #2**

***16.090 - In-Car and Body-Worn Video, 16.090-POL-1 Recording with ICV and BWV, 5. Employees Recording Police Activity, b. When Employees Record Activity***

The Complainant alleged NE#3 failed to activate in-car and body-worn videos timely.

Here, NE#3 admitted to OPA that he forgot to activate either device. While that excuse is unsatisfying, particularly where policy considers a failure to activate in-car video serious misconduct, there is insufficient evidence to find it was a willful violation. Further, where NE#3 has no sustained findings for similar misconduct, OPA recommends this allegation be Not Sustained —Training Referral.

- Required Training: NE#3's chain of command shall review OPA's findings and SPD Policy 16.090-POL-1 with NE#3 and impose any retraining or counseling it deems appropriate. Retraining or counseling shall be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**