

**Issued Date:** JULY 21, 2023

**From:** Director Gino Betts, Office of Police Accountability 

**Case Number:** 2023OPA-0045

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

### **Named Employee #1**

1. **Allegation #1:** 6.180 - Searches-General. Officers May Only Make Searches Pursuant to a Search Warrant Unless a Specific Exception Applies
    - a. **Finding:** Not Sustained - Lawful and Proper (Expedited)
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### **Named Employee #2**

1. **Allegation #1:** 6.180 - Searches-General. Officers May Only Make Searches Pursuant to a Search Warrant Unless a Specific Exception Applies
    - a. **Finding:** Not Sustained - Lawful and Proper (Expedited)
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### **Named Employee #3**

1. **Allegation #1:** 6.180 - Searches-General. Officers May Only Make Searches Pursuant to a Search Warrant Unless a Specific Exception Applies
    - a. **Finding:** Sustained
  - **Imposed Discipline:** Oral Reprimand
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### **Named Employee #4**

1. **Allegation #1:** 6.180 - Searches-General. Officers May Only Make Searches Pursuant to a Search Warrant Unless a Specific Exception Applies
  - a. **Finding:** Not Sustained - Lawful and Proper (Expedited)

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**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 Named Employee #1 (NE#1), Named Employee #2 (NE#2), and Named Employee #4 (NE#4) entered her apartment without a warrant or announcing themselves. OPA alleged that Named Employee #3 (NE#3) ordered a warrantless search of a community member's apartment.

**Administrative Note:**

This case was approved for Expedited Investigation concerning NE#1, NE#2, and NE#4. That means OPA, with the Office of Inspector General's (OIG) agreement, believed it could reach and issue recommended findings based solely on its intake investigation without interviewing the involved employees. In this case, OPA did not interview NE#1, NE#2, and NE#4. However, the allegation against NE#3 went to full investigation.

On February 28, 2023, the Seattle Office of Inspector General (OIG) certified OPA's investigation as thorough, timely, and objective.

**Summary of the Investigation:**

During its investigation, OPA reviewed the OPA complaint, computer-aided dispatch (CAD) call report, incident report, and body-worn videos (BWV). OPA also interviewed NE#3. The Complainant did not respond to OPA's interview requests.

**A. OPA Complaint**

The Complainant called OPA and left a voicemail. The Complainant said three officers broke down her apartment door without announcing their presence.

**B. Computer-Aided Dispatch (CAD) Call Report**

On January 24, 2023, at 2:15 PM, CAD call remarks stated, "ON THIRD FLOOR, [CHECK] FOR FEMALE WHO IS STANDING ON WINDOW AND HOLDING ON, MIGHT POSSIBLY JUMP. NO [WEAPONS] SEEN." It was coded as a suicidal person and crisis call.

**C. Incident Reports**

NE#1 wrote an incident report, while NE#2 and NE#4 each wrote a supplement report. OPA found their reports were consistent with the events captured on BWV, described below.

**D. Body-Worn Videos (BWVs)**

OPA reviewed the named employees' BWV. Multiple officers—including NE#1, NE#2, and NE#4—responded to the dispatched incident location. NE#3, an acting sergeant, also responded. Upon arrival, officers saw Community Member #1 (CM#1) hanging four stories off the side of an apartment building. Officers on the ground communicated with CM#1 while other officers entered the building to locate CM#1's unit. NE#1 went to the third floor, knocked on a door, and announced, "Seattle police." Someone in that unit—later identified as the Complainant—asked, "Who is it?" NE#1 again said, "Seattle police." NE#1 heard over the radio that an officer was entering a fourth-floor unit. NE#1 said, "Disregard," and relocated to the fourth floor. Witness Employee #1 (WE#1) was inside CM#1's unit. WE#1 leaned halfway out a window and grabbed CM#1's arm to prevent CM#1 from falling. NE#1 entered CM#1's unit, and WE#1 yelled, "Hurry up! Somebody get to that unit below now!"

NE#1, NE#2, and NE#4 relocated to the third floor, the Complainant floor. Without knocking or announcing, NE#4 donkey kicked the Complainant's door open. NE#4, NE#2, and NE#1 entered the Complainant's unit. NE#1 told the Complainant, "Sorry, there's somebody hanging down the window." NE#4 reached the window, looked out, and said, "[CM#1's] down." NE#1 apologized to the Complainant again. NE#1, NE#2, and NE#4 left the Complainant's unit.

CM#1 was on the ground near the apartment building entrance screaming in pain. NE#3 and Community Member #2 (CM#2)—a purported doctor—tended to CM#1 while awaiting the Seattle Fire Department (SFD). SFD personnel arrived minutes later. While SFD personnel treated CM#1, NE#3 said, "Hey, I need someone to go up to [CM#1's] unit and take photographs of the door." NE#1 told NE#3 that the Complainant's door was also kicked in. NE#3 asked for both doors to be photographed. NE#3 also said, "Whoever goes up there, take a peek around the apartment just to see, like, was [CM#1] doing drugs, drinking, anything like that. Did she leave a note? So we have an idea."

NE#2 and NE#4 entered the apartment building and took the elevator. NE#4 exited at the third floor and knocked on the Complainant's door. The Complainant opened the door and immediately began speaking over NE#4. The Complainant said breaking someone's door down "just to look out the window" was illegal "unless you have a warrant to come in." NE#4 attempted to explain why officers broke in, saying CM#1 was hanging out the window. The Complainant spoke over NE#4, saying, "You can announce yourself more than once before you break into someone's apartment." NE#4 again attempted to explain that officers "went on exigency." NE#4 handed his business card to the Complainant, and the Complainant terminated the conversation. NE#4 then went to CM#1's unit.

NE#2 took multiple photographs of CM#1's damaged door. After NE#4 arrived, NE#2 and NE#4 searched CM#1's unit. NE#2 took photographs while searching the unit. NE#4 turned over a mattress, looked inside a backpack, and opened a cupboard door. NE#4 told NE#2, "I'm not seeing any narcotics or prescribed medication." NE#2 looked inside grocery bags and entered and photographed the bathroom. NE#2 left a business card on the counter.

## E. OPA Interview

OPA interviewed NE#3. NE#3 said he has the authority to issue directives to his subordinates, who must comply. NE#3 also said he was responsible for his subordinates' actions when they complied with his commands. NE#3 accepted full responsibility for NE#2's and NE#4's entry into CM#1's unit. NE#3 said he was the only supervisor on the scene.

When NE#3 instructed NE#2 and NE#4 to enter CM#1's unit, NE#3 intended to see if "they could get a better explanation as to what happened." NE#3 wanted to get CM#1 "the best possible treatment" by gathering information. For example, if NE#2 and NE#4 found medication, they could notify SFD so that SFD could provide better treatment to CM#1. If NE#2 and NE#4 found, for example, methamphetamine, hospital staff could provide better medical treatment knowing that this incident was a drug-induced crisis. NE#3 said there were many unanswered questions about the situation, so NE#3 believed getting as much information as soon as possible was necessary.

NE#3 said the entry into CM#1's unit "was all purely community caretaking," not a criminal investigation. Even though CM#1 was no longer in the unit, NE#3 said the entry "was still, kind of, within that whole community caretaking bubble." NE#3 said if officers found something in CM#1's unit that was criminal, he would have gotten a search warrant.

NE#3 believed he complied with Seattle Police Department (SPD) policy when he directed NE#2 and NE#4 to enter CM#1's unit to "peek around" and "take photographs." When NE#3 saw BWV of the search, NE#3 believed the search violated SPD policy. NE#3 said he should have articulated clearer instructions to NE#2 and NE#4. NE#3 acknowledged that SPD had no legal right to enter CM#1's unit to perform an "in-depth search."

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### **Analysis and Conclusions:**

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

#### **6.180 - Searches-General. Officers May Only Make Searches Pursuant to a Search Warrant Unless a Specific Exception Applies**

The Complainant alleged that NE#1 entered her apartment without a warrant. SPD Policy forbids officers from making warrantless searches unless a specific exception applies. See SPD Policy 6.180(1).

OPA concludes that NE#1 did not need a warrant to enter the Complainant's apartment unit. The community caretaking exception to the warrant requirement is derived from a police officer's community caretaking function, which permits an officer to enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent danger of death or harm. Here, the emergency was apparent—CM#1 was hanging off her apartment window and could fall at any moment. CM#1 could die or get seriously injured from a

four-story fall. While WE#1 held onto CM#1's hand, NE#1 ran downstairs and entered the Complainant's third-floor unit, directly below CM#1's. The intent was to reach out of the Complainant's window, secure CM#1, and prevent CM#1's fall. However, by the time NE#1 got to the window, CM#1 fell. OPA finds that the warrantless entry into the Complainant's unit was justified because the urgency triggered the community caretaking exception to the warrant requirement.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper (Expedited).

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

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

#### **6.180 - Searches-General. Officers May Only Make Searches Pursuant to a Search Warrant Unless a Specific Exception Applies**

For the reasons at Named Employee #1 – Allegation #1, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

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

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

#### **6.180 - Searches-General. Officers May Only Make Searches Pursuant to a Search Warrant Unless a Specific Exception Applies**

OPA alleged that NE#3 ordered an unlawful search of CM#1's apartment.

OPA concludes that NE#3 had no legal basis for ordering his subordinates to search CM#1's apartment after CM#1 fell. NE#3 did not secure a search warrant for the subsequent entry into CM#1's unit, nor did any specific exception to the warrant requirement apply.

The community caretaking exception to the warrant requirement must be divorced from a criminal investigation. See *State v. Kinzy*, 141 Wn.2d 373, 388, 5 P.3d 668, 677 (2000). Once the community caretaking exception does apply, a police officer may conduct a noncriminal investigation so long as it is necessary and strictly relevant to the performance of the community caretaking function. *Id.* The noncriminal investigation must end when the reasons for initiating an encounter are entirely dispelled. *Id.*

Here, the community caretaking exception to the warrant requirement did not apply. First, CM#1 instructed his subordinates to search for drugs, among other things, in CM#1's unit. The discovery

of drugs would likely have triggered a criminal investigation. Therefore, the community caretaking function would not be totally divorced from a criminal investigation. Second, the search was not necessary and strictly relevant to the community caretaking function because SFD personnel was already on the scene treating and about to transport CM#1 when NE#3 ordered the search. The community caretaking function was in effect when CM#1 was hanging from her window and could have fallen, rendering the warrantless entry into CM#1's unit necessary and strictly relevant to prevent her fall. Third, the reason for encountering CM#1 in her unit—to prevent her fall—was dispelled once she fell, requiring the warrantless entry to end. CM#1 was not in her unit but on the ground outside, being treated by SFD personnel. At that time, there was no lawful purpose for reentering her unit to conduct a warrantless search.

OPA observed that the search was extraordinarily invasive. NE#3 admitted, after watching BWV, that the search violated SPD policy. NE#3 acknowledged that SPD had no legal right to enter CM#1's unit to perform an "in-depth search." Although NE#3 may have wanted to provide more information to first responders and medical providers so that they could treat CM#1 more effectively, the community caretaking exception does not contemplate a wellintentioned, warrantless search.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

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#### **Named Employee #4 - Allegation #1**

##### **6.180 - Searches-General. Officers May Only Make Searches Pursuant to a Search Warrant Unless a Specific Exception Applies**

For the reasons at Named Employee #1 – Allegation #1, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

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