



## ***CLOSED CASE SUMMARY***

ISSUED DATE: JANUARY 29, 2024

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0344

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

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	6.010 – Arrests, 6.010-POL-1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest (Effective July 26, 2019)	Not Sustained - Lawful and Proper (Expedited)
# 2	6.180 – Searches-General, 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies	Not Sustained - Lawful and Proper

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	6.010 – Arrests, 6.010-POL-1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest (Effective July 26, 2019)	Not Sustained - Lawful and Proper (Expedited)
# 2	7.010 – Submitting Evidence, 7.010-POL-1. Employees Secure Collected Evidence	Not Sustained - Training Referral
# 3	6.180 – Searches-General, 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies	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:**

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) responded to a domestic disturbance call and entered the Complainant's apartment, finding no one. NE#2 and two witness officers later returned to the apartment building and arrested the Complainant for an unrelated assault. After the arrest, NE#2 placed the Complainant's identification (ID) in the front pocket of his external police vest but lost it afterward. The Complainant alleged that the named employees unlawfully entered his apartment. The Complainant also alleged that the named employees lacked probable cause to arrest him. Finally, the Complainant alleged that NE#2 failed to secure his ID.

### **ADMINISTRATIVE NOTE:**

The allegations concerning probable cause were approved for expedited investigation. That means OPA, with the Office of Inspector General's (OIG) agreement, believed it could issue recommended findings based solely on its intake



investigation without interviewing the named employees about those allegations. As such, OPA did not interview the named employees about the probable cause allegations. On September 20, 2023, OIG certified OPA's expedited investigation as thorough, timely, and objective.

The remaining allegations underwent a full investigation. On December 15, 2023, OIG certified OPA's full investigation as thorough, timely, and objective.

### **SUMMARY OF INVESTIGATION:**

#### **A. OPA Complaint**

On August 9, 2023, the Complainant filed an online OPA complaint, writing that on June 16, 2023, SPD officers kicked down his apartment door, unlawfully entered, and arrested him for a reason unrelated to their "illegal entry."

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, body-worn video (BWV), incident report, photograph, and 9-1-1 audio recordings. OPA also interviewed the Complainant, named employees, and Witness Officer #1 (WO#1).

#### **B. Computer-Aided Dispatch (CAD) Call Report and Body-Worn Video (BWV)**

On June 16, 2023, at 2:56 AM, CAD call remarks noted, "[REPORTING PARTY ADVISING] ONGOING [DOMESTIC VIOLENCE] ISSUES IN UNIT. NOW CAN HEAR [FEMALE] YELLING TO STOP AND GET OFF HER, MALE SAYING TO SHUT UP AND YELLING FOR HER TO GIVE HIM A PASSWORD TO HER PHONE. SOUNDS LIKE HE MAY BE HITTING HER AS WELL. NO MENTION OF WEAPONS."

The named employees and WO#1 responded to an apartment and activated their BWV, which captured the following events. The Complainant's vehicle was parked outside. NE#1 told NE#2 and WO#1 that, absent exigency, they would perform a welfare check on the female (Community Member #1 or CM#1), who was a missing person. NE#1 said the Complainant held CM#1 against her will, and there was probable cause to arrest the Complainant for a prior assault. Community Member #2 (CM#2) and the Complainant's neighbor opened the front entrance door, letting the officers in, and said he heard screaming, though the Complainant may have left.

The officers approached the Complainant's apartment. NE#1 covered the peephole and listened but heard nothing. NE#1 knocked and announced, "Seattle police. Open up or we're gonna bust down the door for a welfare check." A dog could be heard barking, but no one responded. NE#1 and NE#2 discussed exigency, noting that CM#2 heard a disturbance, someone could be injured inside, and the Complainant's car was outside. NE#1 removed the peephole. NE#2 looked through it and noted items on the floor but no person. The named employees announced several warnings of police entry but received no response. WO#1 approached CM#2, who documented the disturbance on his phone. CM#2 showed WO#1 the notes on his phone. WO#1 approached the named employees and said, "I think we got exigency." NE#2 kicked the door open. The officers drew their firearms and searched the apartment, finding no one. The apartment was in disarray.

NE#1 exited the Complainant's apartment, then entered CM#2's apartment. CM#2 described to NE#2 what he heard, prompting a 9-1-1 call. CM#2 said he heard a door slamming and the Complainant yelling at CM#1. CM#2 said he heard what sounded like the Complainant throwing CM#1 around and hitting her. CM#2 said he heard CM#1 crying



and saying, "Please, stop." CM#2 showed NE#1 the notes on his phone. NE#1 photographed those notes. NE#1 returned to the Complainant's door and left a business card. The officers performed an area check for the Complainant and CM#1, finding no one.

At 3:37 AM, CAD noted, "[REPORTING PARTY] ON THE LINE SAYING [SUSPECT] JUST CAME BACK."

NE#2, WO#1, and Witness Officer #2 (WO#2) responded to the apartment and activated their BWV, which captured the following events. The Complainant opened the door to exit the apartment building. NE#2 and WO#1 approached and handcuffed the Complainant. WO#2 Mirandized and questioned the Complainant. WO#1 said officers responded to the Complainant's apartment due to a disturbance call.<sup>1</sup> The Complainant denied anyone was in his apartment and asked why officers entered without a warrant. WO#1 said officers entered due to exigency based on a 9-1-1 caller hearing a fight and a female calling for help. The Complainant said no one was home. NE#2 screened the incident with a sergeant, then told the Complainant he was under arrest for an unrelated assault. NE#2 placed the Complainant in the back of WO#1's patrol car and handed the Complainant's wallet, cellphone, and keys to WO#1, who put them in a paper bag. NE#2 said he would take the Complainant's ID for logging purposes, then placed it in a front pocket on his external police vest.

WO#1 transported the Complainant to the West Precinct. A sergeant screened the arrest while the Complainant remained in the back of WO#1's patrol car. The sergeant said the Complainant was under arrest for assaulting a security guard. WO#1 transported the Complainant to the King County Jail (KCJ).

### **C. Incident Report, Photograph, and 9-1-1 Audio Recordings**

NE#1 wrote an incident report consistent with the events captured on BWV. NE#1 wrote, "Based on the information given by [CM#2], officers decided to make entry based on community caretaking of a person in imminent danger of harm." Additionally, CM#2's notes—photographed by NE#1—and 9-1-1 calls were consistent with what CM#2 reported to the responding officers.

### **D. OPA Interviews**

On August 25, 2023, OPA interviewed the Complainant. The Complainant said officers unlawfully kicked down his door when no one was home. The Complainant said he was unsure why officers responded to his apartment, denying involvement with what they were investigating. The Complainant said his arrest was unlawful because he was arrested for an unrelated incident and was never charged. The Complainant said NE#1<sup>2</sup> stole his ID by placing it in the pocket of his external police vest. The Complainant said the Evidence Unit did not have his ID, and NE#1 did not return his call.

On October 12, 2023, OPA interviewed NE#2. NE#2's statements were consistent with the evidence summarized above. NE#2 believed officers had exigency to enter the Complainant's apartment based on CM#1's substance abuse and mental health issues, CM#1 being injured or incapacitated, CM#1 being held against her will, and no one being seen exiting the building. NE#2 said CM#2 was a reliable witness who knew about prior disturbances at the Complainant's apartment. NE#2 said he looked through the peephole and saw items sprawled on the floor, indicating

<sup>1</sup> During questioning, NE#2 spoke with CM#2, who reported that CM#1 was not with the Complainant when he returned home.

<sup>2</sup> The Complainant was mistaken. NE#2, not NE#1, placed the Complainant's ID in the pocket of his external police vest.



a disturbance. NE#2 said after entry, officers performed a community caretaking search for CM#1 and looked for signs of a disturbance, like broken glass or blood, to see whether CM#1 needed medical aid or police protection.

NE#2 said he placed the Complainant's ID in a secure pocket on his external police vest. NE#2 said he retained the ID to document the Complainant on the West Precinct's login sheet, which is his standard practice. NE#2 said after documentation, he returns the ID to the arrestee's property. NE#2 said he lost the ID, could not recall where it went, and had no reason to keep it or enter it into evidence. NE#2 thought the ID was placed in the Complainant's personal property and transported to KCJ. NE#2 could not recall whether he logged in the Complainant at a West Precinct holding cell. NE#2 said he no longer maintains this practice because he wears a new vest that has a different pocket.

On October 17, 2023, OPA interviewed NE#1. NE#1's statements were consistent with the evidence summarized above. NE#1 said officers' warrantless entry into the Complainant's apartment was based on community caretaking exigent circumstances. NE#1 said officers had information that someone was possibly injured or helpless inside. NE#1 said CM#2 was a reliable witness because he lived next door to the Complainant's residence and noted a history of disturbances at the Complainant's apartment. NE#1 said CM#2 expressed concern about this incident, believing that CM#1 was assaulted. NE#1 said officers searched the Complainant's apartment for anyone who was injured and described the search as a brief sweep, not a search for evidence. NE#1 described prior contacts with the Complainant and CM#1, saying that he was concerned about prior disturbances and their questionable relationship.

On November 20, 2023, OPA interviewed WO#1. WO#1's statements were consistent with the evidence summarized above. WO#1 said CM#2 was a reliable witness and believed officers had exigency to enter the Complainant's apartment based on an assault. WO#1 believed someone could be injured or unconscious inside. WO#1 described their entry as a community caretaking search. WO#1 said NE#2 retained the Complainant's ID after his arrest but could not recall why or what NE#2 did with it.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 – Allegation #1**

##### ***6.010 – Arrests, 6.010-POL-1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest (Effective July 26, 2019)***

The Complainant alleged that the named employees lacked probable cause to arrest him for assault.

Officers must have probable cause to believe that a suspect committed a crime when effecting an arrest. SPD Policy 6.010-POL-1 (effective July 26, 2019). Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy. Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient in themselves to support a reasonable belief that an offense has been or is being committed. *See State v. Fricks*, 91 Wash.2d 391, 588 P.2d 1328 (1979); *State v. Gluck*, 83 Wash.2d 424, 426–27, 518 P.2d 703 (1974).

Here, NE#2 spoke with a sergeant before he arrested the Complainant for assaulting a security guard. In that unrelated incident, the Complainant allegedly punched a hospital security guard, which was witnessed by a mental health employee. A sergeant and SPD's Sexual Assault Unit screened the Complainant's arrest and recommended criminal charges to the Seattle City Attorney's Office. There was probable cause supporting the Complainant's arrest for the unrelated assault.



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

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

**Named Employee #1 – Allegation #2**

***6.180 – Searches-General, 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies***

The Complainant alleged that the named employees unlawfully entered his apartment.

Officers are prohibited from searching without a valid search warrant unless a specific exception applies. SPD Policy 6.180(1). The need to protect or preserve life, avoid serious injury, or protect property in danger of damage may justify an entry that would otherwise be illegal absent an emergency. SPD Policy 6.180-POL-1. The community caretaking exception does not require probable cause but must be motivated solely by the perceived need to render aid or assistance. *Id.* Officers may perform warrantless community caretaking searches under specific circumstances and must act under a community caretaking role in emergency action, not in their evidence gathering role. *Id.*

Here, the named employees entered the Complainant’s apartment without a warrant but claimed that a community caretaking exception applied under the circumstances. OPA concludes that the named employees lawfully performed a warrantless community caretaking search based on the factors articulated in SPD Policy 6.180-POL-1. First, the named employees, including WO#1, subjectively believed that CM#1 needed assistance for health or safety concerns. They expressed concern that CM#1 was injured or unconscious based on credible information from an identified, present, independent witness. Second, a reasonable person in their situation believed there was a need for assistance. CM#2 became so alarmed at what he heard that he called 9-1-1 and documented notes—in real time—on his phone about a possible assault and CM#1’s cries for help. CM#2 reported what he heard to the named employees, shared his notes with WO#1 and NE#1, and cooperated while officers attempted to locate CM#1. Third, there was a reasonable basis to associate the need for assistance with the place searched. CM#2 was the Complainant’s next-door neighbor and reported hearing an assault in the Complainant’s apartment. The named employees, relying on CM#2’s account, breached the Complainant’s door, believing that CM#1 could be injured or unconscious inside. Fourth, the named employees believed a specific person needed immediate help for health or safety reasons. The named employees and WO#1 unanimously stated that their community caretaking search was intended to render aid or protect CM#1 from further assaults.

The totality of these circumstances indicates that the named employees entered the Complainant’s apartment to “protect or preserve life” and to “avoid serious injury.” See SPD Policy 6.180-POL-1. Furthermore, the evidence indicates that the named employees were motivated by the perceived need to render aid or assistance. After the named employees entered the Complainant’s apartment, they searched for CM#1 and signs of disturbance, like broken glass or blood, to see whether CM#1 needed medical aid or police protection. The named employees acted under a community caretaking role in emergency action, not in their evidence-gathering role.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**



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**Named Employee #2 – Allegation #1**

***6.010 – Arrests, 6.010-POL-1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest (Effective July 26, 2019)***

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)**

**Named Employee #2 – Allegation #2**

***7.010 – Submitting Evidence, 7.010-POL-1. Employees Secure Collected Evidence***

The Complainant alleged that NE#2 failed to secure his ID.

Employees must secure collected evidence. SPD Policy 7.010-POL-1. Additionally, employees must place evidence into the Evidence Unit or an authorized evidence storage area before they end their shift. *Id.*

Here, OPA finds that NE#2 inadequately documented his handling of the Complainant's ID and possibly violated SPD's policy concerning employees' responsibilities to secure collected evidence. NE#2 explained it was his standard practice as a reason for retaining the ID because he used it to document an arrestee's information on the West Precinct's login sheet. However understandable, the better practice would have been to write down pertinent information from the Complainant's ID or otherwise record the needed information rather than retain it. NE#2 could have then kept the Complainant's ID with the rest of the Complainant's property. Notably, WO#1 appeared to express confusion about why NE#2 retained the ID or what NE#2 did with it. NE#2's handling and inadequate documentation of the custody of the Complainant's ID was careless, possibly violated SPD policy, and was likely an inconvenience to the Complainant. Ultimately, however, OPA finds that this was, more likely than not, a poor practice that is best corrected by training and counseling, and not a willful policy violation rising to the level of misconduct.

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2's chain of command should discuss OPA's findings with NE#2, review SPD Policy 7.010-POL-1 with NE#2, and provide any further retraining and counseling that it deems appropriate. This retraining and counseling should include a discussion on other ways to record needed information, such as an arrestee's identification, or the proper disposition and documentation of such property. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

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



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**Named Employee #2 – Allegation #3**

***6.180 – Searches-General, 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies***

For the reasons at Named Employee #1 – Allegation #2, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**