

Issued Date: FEBRUARY 8, 2024

From: Director Gino Betts, Office of Police Accountability



Case Number: 2023OPA-0354

Allegations of Misconduct & Director's Findings

Named Employee #1

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)
 - a. **Finding:** Not Sustained - Training Referral
2. **Allegation #2:** 6.180 – Searches-General, 6.180-POL-2 Consent Searches, 3. Third-Party Consents Are Valid Under Certain Conditions
 - a. **Finding:** Not Sustained - Training Referral

Named Employee #2

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)
 - a. **Finding:** Not Sustained - Training Referral
2. **Allegation #2:** 6.180 – Searches-General, 6.180-POL-2 Consent Searches, 3. Third-Party Consents Are Valid Under Certain Conditions
 - a. **Finding:** 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:

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) responded to a trespass call. The named employees reviewed an eviction agreement between the Complainant and property management. The named employees, with property management's consent, entered the Complainant's apartment and arrested her. It was alleged that the named employees lacked probable cause to arrest the Complainant for trespassing because the eviction agreement was not

a court order. It was also alleged that the named employees unlawfully entered the Complainant's apartment.

Administrative Note:

On January 4, 2024, the Office of Inspector General certified OPA's investigation as thorough, timely, and objective.

Summary of the Investigation:

A. OPA Complaint

On August 18, 2023, Witness Supervisor #1 (WS#1)—a sergeant—submitted a Blue Team complaint to OPA on the Complainant's behalf, writing that the named employees responded to a trespass call, reviewed an eviction agreement, entered the Complainant's apartment, and arrested her. WS#1 wrote that the named employees escorted the Complainant out of the building and trespassed her. WS#1 wrote that the named employees lacked probable cause to arrest the Complainant because the eviction agreement between the Complainant and property management was not a court order. WS#1 wrote that the named employees unlawfully entered the Complainant's apartment based on property management's consent. WS#1 wrote that he removed the Complainant's handcuffs and told her that SPD would not enforce a trespass or remove her from her apartment.

OPA investigated the complaint, reviewed the computer-aided dispatch (CAD) call report, body-worn video (BWV), incident report, and use of force reports. OPA also interviewed the named employees. OPA could not reach the Complainant for an interview.

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

On August 11, 2023, at 3:28 PM, CAD call remarks noted, "REQ[UEST] TO TRESP[ASS] FEMALE INSIDE BUILDING.. FEMALE IS BEING EVICTED. SUSP[ECT] APPEARS HIGH. NO [WEAPONS] SEEN." The call was coded as a trespass.

The named employees responded to an apartment and activated their BWV, which captured the following events. The named employees entered the apartment lobby and spoke with two apartment employees. Community Member #1 (CM#1) was the apartment manager. CM#1 said the Complainant was issued a "waste and nuisance" order for damaging her apartment. CM#1 said the Complainant needed to leave today based on a "mutual termination of tenancy" agreement. NE#1 asked whether they went through the legal process, and CM#1 nodded. CM#1 said they repeatedly warned the Complainant to leave, or they would call the police. CM#1 requested the named employees to escort the Complainant out and trespass her. The named employees reviewed the "waste and nuisance" and "mutual termination of tenancy" documents.

The named employees and CM#1 approached the Complainant's apartment. NE#1 repeatedly knocked and announced, telling her to open the door. NE#2 said, "[Complainant], if you don't open the door, we're going to come in regardless, okay?" NE#2 instructed CM#1 to open the door before the Complainant barricaded herself. CM#1 unlocked the door, then NE#1 partially opened it, which appeared to be blocked by a furniture item. The Complainant said she was moving. NE#1 asked the Complainant to open the door, saying, "We are here to take you out of the apartment." NE#2 instructed the Complainant to move the item blocking the door, or he would force entry. The Complainant refused to comply, prompting NE#2 to force entry. NE#2 said, "Okay, we need to go" and attempted to grab the Complainant's arm, but she pulled her arm away and said, "Don't touch me." The named employees grabbed the Complainant's arms and pulled her towards the door, but she resisted. The named employees maneuvered the Complainant on her stomach and handcuffed her. NE#2 trespassed the Complainant. The named employees escorted the Complainant out of the building.

WS#1 responded to the apartment and spoke with NE#1, who said CM#1 said the Complainant underwent the eviction process. NE#1 said he did not ask CM#1 whether the county evicted the Complainant. WS#1 said SPD did not execute evictions. WS#1 spoke with NE#2, who said he thought the Complainant was already evicted, so SPD was trespassing her. NE#2 said the county did not evict the Complainant. WS#1 said the county executes evictions, not SPD. WS#1 reviewed the eviction agreement, noted it was not a court order, and instructed NE#2 to inform the apartment employees that SPD could not order the Complainant out of her apartment and that they needed to take the matter to court. NE#2 removed the Complainant's handcuffs. WS#1 told the Complainant she was free to leave.

C. Incident Report and Use of Force Reports

NE#2 wrote an incident report consistent with the events captured on BWV.

Additionally, the named employees wrote Type I use of force statements consistent with the evidence summarized above. Type I is force that causes transitory pain or the complaint of transitory pain. SPD Interim Policy 8.050 (effective April 24, 2023). Type I force includes, among other things, a controlled takedown that results in a complaint of pain or causes, or is likely to cause, transient pain or disorientation. SPD Interim Policy 8.400-POL-1 (effective April 24, 2023). NE#1 wrote, "[CM#1] gave consent for us to be on the property and used her key to provide access to the [Complainant's] unit." NE#1 cited his lawful purpose for entering the Complainant's apartment as, "Trespassing an individual and escorting her from the property."

NE#2 wrote that his legal authority was based on CM#1's consent to enter the Complainant's apartment. NE#2 wrote that he thought the Complainant was already evicted based on the eviction agreement and, therefore, no longer had residency rights to the apartment. NE#2 wrote his lawful purpose was to remove the Complainant from the building and trespass her.

WS#1 wrote a Type I use of force report. WS#1 wrote that the named employees believed they could lawfully enter the Complainant's apartment based on CM#1's consent. WS#1 wrote that the named employees believed their lawful purpose was to arrest the Complainant for trespassing after refusing to vacate. WS#1 concluded, "Given that the eviction was determined to be civil and not court-ordered, the legal authority was invalid. The lawful purpose was similarly compromised." WS#1 concluded there was no probable cause for the Complainant's arrest. WS#1 documented training the named employees on landlord-tenant issues.

A lieutenant wrote a Type I use of force report, noting, "The officers lacked extensive training and experience in landlord tenant situations and believed they were dealing with a trespass situation." The lieutenant concluded, "This use of force was not consistent with policy due to the lack of Legal Authority and Lawful Purpose." The lieutenant wrote that WS#1 appropriately counselled the officers. A captain agreed with WS#1's and the lieutenant's conclusions.

D. OPA Interviews

On October 11, 2023, OPA interviewed NE#1. NE#1's statements were consistent with the evidence summarized above. NE#1 believed the Complainant was evicted based on eviction paperwork and thought he had probable cause for trespass. NE#1 denied seeing official eviction paperwork before. NE#1 believed the Complainant could no longer legally reside in her apartment based on the eviction agreement, so he thought CM#1 could consent to police entry. NE#1 said he entered the Complainant's apartment to remove and trespass her. NE#1 confirmed speaking with WS#1 about landlord-tenant issues. NE#1 acknowledged violating SPD Policy 6.010-POL-1, noting he lacked probable cause to arrest the Complainant. NE#1 also acknowledged violating SPD Policy 6.180-POL-2(3), noting his mistaken belief that the Complainant was legally evicted and lacked residency rights. NE#1 denied intentionally violating SPD policy.

On October 19, 2023, OPA interviewed NE#2. NE#2's statements were consistent with NE#1's statements.

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)

It was alleged that the named employees lacked probable cause for the Complainant's arrest.

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, the named employees arrested the Complainant based on the mistaken belief they had probable cause for trespassing. Their belief was predicated on CAD call remarks noting a request to trespass a female who was “being evicted,” CM#1 nodding to NE#1’s question about whether the apartment employees legally evicted the Complainant, and the eviction agreement signed by the Complainant. Although probable cause only requires a reasonable belief that an offense was committed, the eviction agreement should have significantly dispelled their probable cause because it was a mutual agreement between the parties, not a court-ordered eviction. The named employees also expressed some knowledge that the county—not SPD—executes evictions, yet they failed to establish whether the county evicted the Complainant. Under these circumstances, the named employees lacked probable cause to arrest the Complainant for trespassing.

However, the record reflects a minor policy violation based on a genuine misunderstanding of the facts and circumstances known to the named employees. They acknowledged violating policy based on their limited knowledge of landlord-tenant rules. They also denied ever seeing an official court-ordered eviction document, further demonstrating their limited understanding of these rules. Had the named employees consulted with a supervisor before engaging the Complainant, their entry may not have occurred. OPA concludes that there was a potential, but not willful, violation of policy that did not amount to serious misconduct based on the totality of the circumstances. Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1’s and NE#2’s chain of command should discuss with NE#1 and NE#2 (1) OPA’s findings, (2) SPD Training Digest TD14-00013 Landlord/Tenant Complaints (November 5, 2014), (3) discuss appropriate actions to take when responding to landlord-tenant disputes, (4) review third-party consent entries under SPD Policy 6.180-POL-2(3), and (5) provide any other retraining or counseling deemed appropriate. The retraining and counseling should be documented and maintained in Blue Team.

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

Named Employee #1 – Allegation #2

6.180 – Searches-General, 6.180-POL-2 Consent Searches, 3. Third-Party Consents Are Valid Under Certain Conditions

It was alleged that the named employees unlawfully entered the Complainant’s apartment.

Third-party consents are valid under certain conditions. SPD Policy 6.180-POL-2(3). Landlords cannot consent to a search if a lease or rental agreement is still valid. *Id.*

Here, CM#1 consented to the named employees' entry into the Complainant's apartment. The named employees mistakenly believed the Complainant unlawfully resided in her apartment based on an eviction agreement, so they thought CM#1 could consent to police entry. However, the eviction agreement was a contract between the parties, not a court-ordered eviction. The named employees could not establish that the Complainant's lease agreement was invalid based solely on this document. At that time, a court neither adjudicated the lease agreement as invalid nor authorized an eviction. Therefore, CM#1 could not lawfully consent to the named employees' entry.

However, for many of the same reasons articulated in Named Employee #1 – Allegation #1, the record reflects an unintentional policy violation based on a limited understanding of landlord-tenant rules and third-party consent entries. OPA concludes that there was a potential, but not willful, violation of policy that did not amount to serious misconduct based on the totality of the circumstances. Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's and NE#2's chain of command should discuss with NE#1 and NE#2 (1) OPA's findings, (2) SPD Training Digest TD14-00013 Landlord/Tenant Complaints (November 5, 2014), (3) discuss appropriate actions to take when responding to landlord-tenant disputes, (4) review third-party consent entries under SPD Policy 6.180-POL-2(3), and (5) provide any other retraining or counseling deemed appropriate. The retraining and counseling should be documented and maintained in Blue Team.

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

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)

As with Named Employee #1 – Allegation #1, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's and NE#2's chain of command should discuss with NE#1 and NE#2 (1) OPA's findings, (2) SPD Training Digest TD14-00013 Landlord/Tenant Complaints (November 5, 2014), (3) discuss appropriate actions to take when responding to landlord-tenant disputes, (4) review third-party consent entries under SPD Policy 6.180-POL-2(3), and (5) provide any other retraining or counseling deemed appropriate. The retraining and counseling should be documented and maintained in Blue Team.

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

Named Employee #2 – Allegation #2

6.180 – Searches-General, 6.180-POL-2 Consent Searches, 3. Third-Party Consents Are Valid Under Certain Conditions

As with Named Employee #1 – Allegation #2, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's and NE#2's chain of command should discuss with NE#1 and NE#2 (1) OPA's findings, (2) SPD Training Digest TD14-00013 Landlord/Tenant Complaints (November 5, 2014), (3) discuss appropriate actions to take when responding to landlord-tenant disputes, (4) review third-party consent entries under SPD Policy 6.180-POL-2(3), and (5) provide any other retraining or counseling deemed appropriate. The retraining and counseling should be documented and maintained in Blue Team.

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