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From: Director Gino Betts, Office of Police Accountability



Case Number: 2023OPA-0410

Allegations of Misconduct & Director's Findings

Named Employee #1

1. **Allegation #1:** 6.180 – Searches-General, 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies
 - a. **Finding:** Not Sustained - Training Referral

Named Employee #2

1. **Allegation #1:** 6.180 – Searches-General, 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies
 - 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) performed a welfare check at the Complainant's apartment. The Complainant alleged that the named employees unlawfully entered his apartment by placing their feet in the doorway, preventing him from closing the door.

Administrative Note:

During its investigation, OPA noted that the named employees may have unprofessionally engaged with the Complainant. OPA returned these allegations to the named employees' chain of command for Supervisor Action. Supervisor Action generally involves a minor policy violation or performance issue that is best addressed through training, communication, or coaching by the employee's supervisor. See OPA Internal Operations and Training Manual section 5.4(B)(ii).

On December 15, 2023, the Office of Inspector General certified OPA's investigation as thorough, timely, and objective.

This is an amended DCM. OPA originally recommended that the allegations against both named employees be sustained. A discipline meeting was scheduled for February 2, 2024. However, while preparing for the discipline meeting, the named employees' chain of command noticed that the Supervisor Actions OPA issued to the named employees counselled them concerning placing their feet inside the Complainant's doorway and the potential violation of SPD Policy 6.180. Although OPA intended the Supervisor Actions to address the allegations of professionalism only, OPA recognizes that its administrative error resulted in corrective action for the search violation as well. Accordingly, OPA amended its findings to Not Sustained – Training Referral and directs no further action from the chain of command.

Summary of the Investigation:

A. OPA Complaint

On August 9, 2023, the Complainant filed an online OPA complaint, writing that on August 5, 2023, SPD officers performed a welfare check at his apartment. The Complainant wrote that he tried to end the conversation by closing the door, but the two officers became "physically aggressive" by "pushing the door" and "wedg[ing] their feet in the door" to resume the conversation.

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, body-worn video (BWV), cellphone video recording, and incident report. OPA also interviewed the Complainant and named employees.

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

On August 5, 2023, at 8:54 PM, CAD call remarks noted, "[REPORTING PARTY] SEES MALE WITH 16 [YEARS OF AGE] FEMALE SPD TOLD [REPORTING PARTY] TO CALL IF HE SAW THESE SUBJECTS TOGETHER, NO WEAP[O]NS SEEN."

The named employees responded to an apartment and activated their BWV, which captured the following events. The named employees discussed not knowing what they were responding to but decided to perform a welfare check on Community Member #1 (CM#1)—a minor female allegedly residing with the Complainant. Community Member #2 (CM#2)—the 9-1-1 caller met the named employees outside. CM#2 said an officer asked him to call 9-1-1 if he saw the Complainant and CM#1 together. NE#2 said he could only perform a welfare check on CM#1 based on the available information. CM#2 escorted the named employees into the apartment building.

The named employees approached the Complainant's apartment. NE#1 knocked and announced, "Seattle police." The Complainant opened the door. NE#1 said they were there for a welfare check. The Complainant replied, "Everybody's fine," then began closing the door when NE#1 asked about CM#1. The Complainant said they could observe from the doorway and began closing the door. NE#2 said that would not work and they needed to see CM#1. The Complainant asked if they had a warrant. NE#2 said they wanted to make sure CM#1 was okay. The

Complainant said they did not have the right to knock on his door to harass him and began closing the door. NE#2 placed his foot in the doorway, preventing the door from fully closing. An audible thud could be heard. The Complainant, unable to close the door, opened it and said, "Hey." NE#2 asked, "Hey, so is [CM#1] here?" The Complainant replied, "I don't answer questions." NE#2 said they would have exigent circumstances to enter if they did not see CM#1. The Complainant claimed they violated his rights. NE#2 said they only needed to know whether CM#1 was okay and said, "The longer that you decline this, the longer this goes." NE#2 said they could not leave.

The Complainant said he did not answer questions, goaded them to stand there, and said, "Excuse me. Get your foot out of my door." The Complainant began closing the door. NE#2 maintained his foot in the doorway. Both named employees pressed their left hand against the door, preventing it from closing.



Still image of the named employees pushing their hands against the door, preventing the Complainant from closing the door.

The Complainant opened the door, looked down, and repeatedly said, "Get your foot out of my door." NE#2 replied, "Sir, don't crush my foot." NE#2 repeatedly asked about CM#2, citing a welfare check, then threatened to charge the Complainant with third-degree assault for striking NE#2's foot. The Complainant said he would challenge that.

The Complainant said, "Get the fuck out of here" and began closing the door. NE#1 extended his left arm to prevent the door from closing and placed his foot in the doorway. In his OPA interview, NE#1 said he placed his foot in the doorway when the Complainant went to grab his cellphone. NE#1's foot placement was not captured on BWV. The Complainant walked away to grab his cellphone while NE#2 extended his left arm to prop open the door. NE#2 asked, "Is she here? Is she okay? If those answers are 'yes,' we literally walk away." The Complainant returned and said, "The fact that you're at my door is the issue. In fact, you've got your foot in my door is an issue" and pointed to it. The Complainant asked why he was not yet charged with assaulting NE#2 for

closing the door on his foot. NE#2 asked, “Do you want to go down that route?” The Complainant replied, “Double dog dare you.” The Complainant left a voicemail for, presumably, his lawyer.

NE#2 asked about CM#1 again. The Complainant said he did not answer questions and repeatedly said, “Get your foot out of my door.” NE#1 replied, “That’s not going to happen.” The Complainant raised his phone and began recording the named employees. NE#2 repeatedly asked whether all parties inside were safe. The Complainant replied, “Again, as far as you can observe, everybody is fine.” NE#2 asked for verification, which the Complainant declined. The Complainant repeatedly said, “Get your foot out of my door.” NE#2 asked about everyone’s wellbeing. The Complainant replied, “Well, everybody is okay.” NE#1 said, “Thank you. That was it. Alright, you have a good night.” The named employees were about to walk away when the Complainant asked for an incident card, which NE#2 provided. After a brief argument, the Complainant closed his door.

The Complainant sent OPA his cellphone video recording, which captured the following:



Still image of the named employees placing their feet in the doorway, preventing the Complainant from closing the door.

C. Incident Report

NE#2 wrote an incident report consistent with the events captured on BWV. NE#2 documented his and NE#1’s foot placement as follows:

At this time while standing at the door way speaking to [the Complainant], he began to shut the door while the front of officers boot was placed on the door frame, crushing the

exterior of the boot against the frame pinching it in place unable to move. At this [the Complainant] began to state officers were making unlawful entry in to his unit without a warrant. Officers stated to release the door to allow avoid injuring officers. [The Complainant] complied and stated officers were unable to keep their foot in the doorway, officers again explained the reason for contact being to ensure the safety of occupants within and officers would depart with any form of affirmation from [the Complainant]. [The Complainant] again stated he did not answer questions for officers and began placed a call to a lawyer and left a voicemail.

D. OPA Interviews

On August 25, 2023, OPA interviewed the Complainant. The Complainant described the incident consistent with the evidence summarized above. The Complainant characterized the named employees as aggressively harassed him for about ten minutes, even though he repeatedly said everyone was fine. The Complainant said the named employees failed to articulate exigent circumstances, and the conversation was unproductive.

On October 31, 2023, OPA interviewed NE#2. NE#2 described the incident consistent with the evidence summarized above. NE#2 described learning about the Complainant's and CM#1's history before responding to the apartment, noting a significant age gap between the Complainant and CM#1 and prior domestic violence (DV) and overdose incidents. NE#2 said he aimed to ensure CM#1's safety. NE#2 described the Complainant as hostile and argumentative upon contact. NE#2 acknowledged the Complainant repeatedly said everyone was fine but wanted to visually confirm that CM#2 was fine. NE#2 cited their DV history as a reason for not terminating the contact despite the Complainant's assurances that everyone was fine. NE#2 said he wanted to hear directly from CM#1 due to the power imbalance of their relationship. NE#2 said he lacked exigency to enter based on his interaction with the Complainant.

NE#2 said his foot placement in the doorway was unintentional and he did not intend to enter. NE#2 said he kept the door open when the Complainant went to grab his cellphone to maintain contact and a visual inside. NE#2 said he terminated the welfare check after the Complainant's final assurance to deescalate the situation. NE#2 believed he both complied with and violated SPD policy. NE#2 said he complied with policy by intending to maintain contact and a visual inside the apartment, not entering it. NE#2 said he violated policy by technically breaching an invisible line at the Complainant's door.

On November 9, 2023, OPA interviewed NE#1. NE#1 described the incident consistent with the evidence summarized above. NE#1 said he and NE#2 responded to the Complainant's apartment to perform a community caretaking check on CM#1. NE#1 said he did not comprehend the Complainant's statement that everyone was fine because NE#1 was concerned about CM#1 and wanted to visually confirm that CM#1 was safe. NE#1 said he looked inside for signs of a struggle. NE#1 thought the quietness of the Complainant's apartment was unusual, given CM#1's young age. NE#1 believed he had exigency—which he described as weak—to enter the Complainant's

apartment to ensure CM#1's safety based on CM#2's 9-1-1 call and the Complainant refusing to show CM#1.

NE#1 said he pressed his hand against the door when the Complainant tried closing it to prevent it from smashing NE#2's foot and to see signs that CM#1 was safe inside. NE#1 said he placed his foot in the doorway and used his hand to keep the door open when the Complainant went to grab his cellphone. NE#1 said he terminated the community caretaking check after the Complainant's final assurance to deescalate the situation. NE#1 denied violating policy, saying he could enter without a warrant based on community caretaking or exigency. NE#1 denied entering the apartment. NE#1 acknowledged his foot passed the threshold when he placed it in the doorway, but his intent was to look for signs of CM#1 or a struggle.

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

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. See 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. See 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 physically prevented the Complainant from closing his door on two separate occasions. First, NE#2 placed his foot in the doorway to prevent the door from closing. Second, the named employees extended their arms to prevent the door from closing. When the Complainant went to grab his cellphone, each named employee had his foot in the doorway. Under Washington State law, police officers enter a person's home by crossing the doorway, which is considered the threshold of the home. "[T]he Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." *State v. Holean*, 103 Wn.2d 426, 429, 693 P.2d 89, 91 (1985) (citing *Payton v. New York*, 445 U.S. 573, 590 (1980)). There is no dispute that the named employees crossed that threshold—even if only technically—when they placed their feet in the doorway and extended their arms to prevent the door from closing.

Both named employees acknowledged breaching that threshold but believed it was legally permissible. They were mistaken. First, the named employees lacked consent, demonstrated by

the Complainant saying, “Get the fuck out of here” and “get your foot out of my door.” Second, the named employees lacked exigent circumstances. SPD Policy 6.180-POL-3 articulates several factors an officer must consider for an exigent circumstance entry, but nearly all factors indicate a lack of exigency in this circumstance. The named employees did not respond to investigate a crime. In fact, they expressed confusion as to why they were there before engaging the Complainant. Additionally, there was no basis to believe that the Complainant committed a crime, was armed, or would flee.

Third, the named employees could not justify entry based on community caretaking grounds. SPD Policy 6.180-POL-1 articulates the factors warranting a community caretaking entry, but nearly all factors indicate a community caretaking entry would be inappropriate under the circumstances. CM#2 called 9-1-1 to report seeing CM#1 and the Complainant together, not to report an in-progress assault. The named employees had no reason to believe CM#1 was in specific danger based on this call. In fact, their concern for CM#1’s safety arose from a prior DV incident and the questionable relationship between the Complainant and CM#1. They had no specific information suggesting any disturbance at the time that they responded to the Complainant’s apartment. They also had no specific information confirming that CM#1 was actually inside the apartment, undermining their need to search it. Finally, they had no information suggesting an imminent threat of substantial bodily injury to CM#1 or that CM#1 needed immediate help for health or safety reasons. The named employees’ generalized concern for CM#1’s welfare, however understandable, was insufficient to justify a warrantless community caretaking search in this instance.

The named employees exceeded the scope of their authority during a welfare check by refusing to leave, questioning the Complainant despite his stated refusal to answer questions, physically preventing the Complainant from closing the door using their arms and feet, and crossing the threshold of the door. The Complainant repeatedly said everyone was fine and told the named employees to leave, yet they continued demanding assurances that CM#1 was safe. While their concern for CM#1 was understandable, the named employees lacked the legal authority to breach the threshold of the Complainant’s home.

For these reasons, OPA originally recommended that this allegation be Sustained. However, as discussed above in the administrative note, the violation of SPD Policy 6.180(1) was already addressed with both named employees through a Supervisor Action. Accordingly, OPA now recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** On or about October 19, 2023, a supervisor conducted a Supervisory Counseling Session with both NE#1 and NE#2. During this session, the supervisor and named employees discussed, “exigency when it came to crossing the threshold of residences and what needed to be present to have exigency.” The supervisor noted that both officers participated in the discussion and were in agreement with the ideas and or counseling is required.

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

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

For the same reasons articulated above at Named Employee #1 – Allegation #1, OPA originally recommended this allegation be Sustained. OPA now recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** On or about October 19, 2023, a supervisor conducted a Supervisory Counseling Session with both NE#1 and NE#2. During this session, the supervisor and named employees discussed, “exigency when it came to crossing the threshold of residences and what needed to be present to have exigency.” The supervisor noted that both officers participated in the discussion and were in agreement with the ideas and requirements that were covered. As this matter was already discussed with both officers, no further training or counseling is required.

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