



## ***CLOSED CASE SUMMARY***

ISSUED DATE: NOVEMBER 24, 2024

FROM: DEPUTY DIRECTOR BONNIE GLENN, ON BEHALF OF DIRECTOR GINO BETTS, JR.  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2024OPA-0234

### **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	Not Sustained - Training Referral
# 2	5.001 – Standards and Duties, 5.001-POL-2. Employees Must Adhere to Laws, City Policy, and Department Policy	Not Sustained - Unfounded
# 3	5.002 – Responsibilities of Employees Concerning Alleged Policy Violations, 5.002-POL-6. Employees Will Report Alleged Violations	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	Not Sustained - Training Referral
# 2	5.001 – Standards and Duties, 5.001-POL-2. Employees Must Adhere to Laws, City Policy, and Department Policy	Not Sustained - Unfounded
# 3	5.002 – Responsibilities of Employees Concerning Alleged Policy Violations, 5.002-POL-6. Employees Will Report Alleged Violations	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	Not Sustained - Training Referral
# 2	5.001 – Standards and Duties, 5.001-POL-2. Employees Must Adhere to Laws, City Policy, and Department Policy	Not Sustained - Unfounded
# 3	5.002 – Responsibilities of Employees Concerning Alleged Policy Violations, 5.002-POL-6. Employees Will Report Alleged Violations	Not Sustained - Unfounded



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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:**

Named Employee #1 (NE#1), Named Employee #2 (NE#2), and Named Employee #3 (NE#3) responded to a domestic disturbance call involving Community Member #1 (CM#1), his mother (Community Member #2 or CM#2), and his girlfriend (Community Member #3 or CM#3). CM#2 consented to the named employees entering her home, but a naked CM#1, who lived in the basement, objected to their entry. The named employees entered the basement and, after a struggle, arrested CM#1. The Complainant alleged that the named employees sexually assaulted him during his arrest. It was also alleged that the named employees unlawfully entered the basement and failed to report CM#3's excessive force allegation to a supervisor or OPA.

**ADMINISTRATIVE NOTE:**

On November 1, 2024, the Office of Inspector General certified OPA's investigation as thorough, timely, and objective.

**SUMMARY OF INVESTIGATION:**

**A. OPA Complaint**

On May 28, 2024, the Complainant—a King County employee—submitted an OPA complaint on CM#1's behalf. CM#1 alleged, "I was sexually assaulted when an officer grabbed my penis. It was not accidental." CM#1 elaborated that officers "continued to touch and grope" him despite screaming at them to stop.

OPA investigated the complaint by reviewing the computer-aided dispatch (CAD) call report, body-worn video (BWV), incident and supplement reports, and use-of-force reports. OPA also interviewed the named employees. CM#1's attorney did not respond to OPA's request for an interview with CM#1.

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

On May 16, 2024, at 7:44 PM, CAD call remarks noted, "[REPORTING PARTY'S] 27 [YEAR OLD] SON IS IN A MENTAL CRISIS. SUSP[ECT] THREATEN[ED] TO HURT [REPORTING PARTY] AND GRABBED [REPORTING PARTY] 5 MIN[UTE]S AGO. NO INJ[URY]. SUSP[ECT] HAS HISTORY BI-POLAR. NO WEAP[ON]."

**C. Body-Worn Video (BWV)**

The named employees responded to the incident location and activated their BWV, capturing the following:

The named employees spoke with CM#2 at the front of her house. CM#2 said CM#1 had bipolar disorder and attention deficit hyperactivity disorder and was having a mental health episode by yelling and throwing items. CM#2 said CM#1 threatened to throw a glass bong at her and grabbed her wrists, causing them to swell. NE#2 aimed his flashlight at CM#2's wrist, and the named employees looked at it.<sup>1</sup> CM#2 declined a fire department evaluation. CM#2 said she

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<sup>1</sup> NE#2's incident report noted, "I observed swelling on [CM#2's] right wrist."



heard CM#1 yelling at his girlfriend (Community Member #3 or CM#3) and banging on the door. CM#2 said CM#3 packed a bag and heard CM#3 repeatedly say, "Let me go." CM#2 expressed fear of CM#1 hurting her or CM#3.

The named employees discussed arresting CM#1 based on CM#2's injury. NE#2 expressed concern about CM#3 being trapped and what CM#1 might have done to CM#3. NE#1 called CM#1 on the phone and asked him to step outside to speak with the officers. CM#1 appeared uncooperative, claimed he did not understand, and ended the call. With CM#2's permission, the named employees entered her house. NE#1 opened the door to the basement and called out to CM#1, saying officers wanted to speak with him. The named employees began descending when CM#1 replied, "I don't consent." NE#1 said CM#2 consented to their entry. CM#1 sat on his bed naked. NE#1 suggested CM#1 wear clothes, but he declined, said he did not want to talk, and demanded they leave. While the named employees stood at the foot of CM#1's bed, CM#1 pointed at them and said, "You are sexually assaulting me now."<sup>2</sup> CM#1 confirmed that CM#3 was present and then turned on loud music. CM#1 shouted, "Get the fuck away from me, you fucking Nazis" and repeatedly claimed they were sexually assaulting him. CM#1 knelt on his bed, extended his arm toward NE#1, and demanded NE#1's name.

NE#1 grabbed CM#1's left wrist, and NE#2 grabbed CM#1's right wrist. CM#1 laid on his back. The named employees told CM#1 he was under arrest. NE#3 told CM#1 to stop resisting and grabbed CM#1's left leg. CM#1 kicked NE#3's left jaw using his right leg, causing NE#3's BWV to fall, and said, "You're a Nazi. Get the fuck away from me." NE#1 and NE#2 held CM#1 against the bed and then CM#1 spat at NE#1's face. The named employees maintained control holds while CM#1 was on his back. NE#1 radioed, "Send us more units. Fighting one." The named employees maneuvered CM#1 to his left side, restrained his arms, and pinned him against the bed and headboard. CM#1 repeatedly shouted, "You're gonna kill me! He touched my dick!<sup>3</sup> He's raping me!" While the named employees maintained control holds, CM#1 appeared to be calming down and offered to speak with the officers, but NE#1 ordered him to roll onto his stomach. CM#1 refused and again claimed, "You touched my dick." The named employees maneuvered CM#1 to a seated position off the side of his bed, causing NE#2's BWV to fall. The named employees then raised CM#1 to a standing position. CM#1 resisted handcuffing attempts, causing NE#1's BWV to fall.<sup>4</sup>

NE#2 and NE#3 picked up their BWV. CM#1 was seated on the ground while handcuffed. NE#2 placed his hand against CM#1's upper back and Mirandized him. CM#1 consented to NE#2's request to put pants on him. NE#1 and NE#2 inserted CM#1's legs into the pants but were unable to fully cover him since CM#1 was seated. NE#2 said, "We want to stand you up," but CM#1 replied, "You guys are raping me 'cause I'm not consenting to this. This is rape." NE#2 insisted he wanted to raise CM#1 to get his pants around his waist. CM#1 repeatedly demanded, "Don't touch me" as NE#2 maintained his hand on CM#1's upper back. NE#2 replied, "I'm holding onto you to maintain control. That's all." CM#1 said, "You're maintaining control over me? So, you're raping me. You're raping me. You're a rapist." NE#2 and NE#3 stood CM#1 and then a backing officer fully raised CM#1's pants. Backing officers escorted CM#1 out.

#### **D. OPA Interviews**

On August 12, 2024, OPA interviewed NE#1, whose statements were consistent with the abovementioned evidence.

<sup>2</sup> During the conversation, NE#3 knocked on a closed door and asked CM#3 whether she was fine. CM#3 barely opened the door and appeared to indicate she was fine. CM#3 closed the door. NE#3 rejoined NE#1 and NE#2 and told them that CM#3 was not assaulted.

<sup>3</sup> BWV did not show any named employee touching CM#1's genitalia.

<sup>4</sup> At this point, every named employee's BWV fell. NE#2's use-of-force statement stated that the named employees executed a controlled takedown, handcuffed CM#1 on his stomach, and moved him to a sitting position.



Additionally, NE#1 acknowledged CM#1 objecting to police entry but cited exigency as justification for entering the basement based on concerns that CM#3 was being held against her will or may have been assaulted. NE#1 said CM#2 expressed fear that CM#1 would assault her or CM#3. NE#1 said the exigency-based entry was intended to verify CM#3's wellbeing and ensure she was not being held against her will. NE#1 acknowledged that CM#2 was unable to consent to the police entering the basement because it was a protected space, requiring either exigency or a search warrant for a lawful entry. NE#1 denied intentionally contacting CM#1's penis and denied seeing NE#2 or NE#3 contacting CM#1's penis, whether intentional or not. NE#1 also denied hearing CM#3 allege excessive force.<sup>5</sup>

On August 12, 2024, OPA interviewed NE#2. On September 17, 2024, OPA interviewed NE#3. NE#2's and NE#3's statements were consistent with NE#1's statements. In addition to citing exigency as justification for entering the basement, NE#2 and NE#3 cited community caretaking.

#### **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***

It was alleged that the named employees unlawfully entered the basement.

Officers are prohibited from searching without a valid search warrant unless a specific exception applies. SPD Policy 6.180(1).

Officers will not conduct warrantless searches or seizures unless there is both a subjective and objectively reasonable basis to believe that exigent circumstances exist. SPD Policy 6.180-POL-3(1). Officers should consider the following factors used by courts in reviewing exigency to include: (1) whether the crime involved a serious offense or crime of violence; (2) whether there is a reasonable basis to believe the suspect is armed; (3) whether there is an objectively reasonable basis to believe the suspect committed the crime; (4) whether there is an objectively reasonable basis to believe the suspect is on the premises; (5) whether there is an objectively reasonable basis to believe the suspect is likely to escape if not swiftly apprehended; (6) whether the officers identified themselves and gave the suspect a chance to surrender before entry; or (7) whether the entry was peaceful. *Id.*

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. A community caretaking search does not require probable cause but must be motivated solely by the perceived need to render aid or assistance. *Id.* Officers will act under a community caretaking role in emergency action, not in their evidence-gathering role. *Id.* An officer may conduct a warrantless community caretaking search when: (1) the officer has a subjective belief that someone likely needs assistance for health or safety concerns; (2) a reasonable person in the same situation would similarly believe there is a need for assistance; (3) there is a reasonable basis to associate the need for assistance with the place searched; (4) there is an imminent threat of substantial bodily injury to persons or substantial damage to property; or (5) a specific person or property needs immediate help for health or safety reasons. *Id.*

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<sup>5</sup> In reviewing NE#3's BWV, OIG noted that CM#3 complained about police use of excessive force. Thus, OPA classified alleged violations of 5.002-POL-6 (Employees Will Report Alleged Violations) against the named employees.



The named employees lacked adequate consent before entering the basement. CM#1's objection vetoed CM#2's consent. See SPD Policy 6.180-POL-2(3) (requiring officers to obtain the consent of all present cohabitants or roommates). In their OPA interviews, the named employees acknowledged lacking adequate consent but cited exigency and community caretaking as lawful justifications for a warrantless entry. OPA credits the officers' good faith, subjective concern. Whether there was sufficient objective evidence justifying warrantless entry—under either exigency or community caretaking—is a closer call. However, on balance, OPA concludes the officers' entry here was reasonable.

Exigent circumstances include a hot pursuit, a fleeing or escaping suspect, danger to the arresting officer or public, the mobility of a vehicle, or the mobility or destruction of evidence. See comment to Washington Pattern Jury Instructions 342.07. Of these, the only relevant concern potentially supporting exigency would be danger to CM#1 or CM#3. Considering the seven factors identified in SPD Policy 6.180-POL-3(1), the exigency here was sufficient but could have been better corroborated. The alleged crime involved domestic violence, a crime of violence; the officers reasonably believed CM#1 committed the alleged crime and was in his basement with CM#3, a potential victim; the officers also had reason to believe CM#1 could be holding CM#3 against her will; and the officers peacefully entered after NE#1 identified himself and gave CM#1 an opportunity to surrender before entry. CM#2 also acknowledged CM#1 could have access to kitchen knives. However, the officers did not observe any evidence of an in-progress disturbance or assault necessitating immediate police intervention and there was no reasonable basis to believe CM#1 would flee if not swiftly apprehended. As discussed below, the officers could have done more to attempt contact with CM#3, such as calling her on the phone or calling out to her from the top of the stairs. But there was no guarantee these efforts would have been fruitful and the officers discussed their concern for CM#3's safety before entering and immediately checked on her once they descended into the basement.

The community caretaking analysis is similar. During their OPA interviews, the named employees cited concerns about CM#3 being assaulted or held against her will. This was reasonable even if this was based on second-hand information from CM#2. CM#2 described CM#1's assaultive behavior towards herself, noted CM#1's mental health crisis, and acknowledged he could have access to kitchen knives. CM#1 also did not speak with the police over the phone or come out to talk, apparently feigning an inability to hear the officers on the phone. CM#1 expressed fear for CM#3, as she heard CM#1 screaming at CM#3, CM#3 screaming, "Let go of me," and then hearing CM#2 banging on a door to get to CM#3. CM#2 also stated she observed CM#3 had packed a bag to leave, but CM#3 was still in the basement when officers arrived. Prior to entering the basement, the officers discussed concern about what CM#1 may have done to CM#3, or whether CM#3 was trapped. After entering the basement, the officers also searched a reasonable area to locate CM#3, finding her hiding behind a closed door that was visibly damaged. Immediately after speaking to CM#3, CM#1's behavior escalated.

True, the named employees could have done more to corroborate their concerns, such as determining whether CM#2 and CM#3 had any history, asking if CM#2 saw injuries on CM#3, asking whether CM#2 heard sounds indicative of an assault (crying; sounds of pain), or attempting to contact CM#3 without entering the basement. However, based on the evidence provide, the factors indicate their warrantless entry was reasonable in this case.

Although OPA is recommending a Not Sustained finding, it is issuing a training referral for three reasons. First, as discussed, the evidence shows it is a close call in determining whether there was sufficient objective justification to enter the basement without a warrant. OPA notes that the Administrative Lieutenant who reviewed the Type II use of force believed the officers lacked exigency and should have obtained a warrant. Second, as noted, the officers could have done more to quickly determine CM#3's status before entering the basement. Third, in their use of force paperwork, all three named employees justified their legal authority to enter the basement based on CM#2's consent.



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

- **Training Referral:** The named employees' chain of command should discuss OPA's findings with them, review SPD policies 6.180-POL-1, 6.180-POL-2(3), and 6.180-POL-3(1) with them, and provide any other retraining and counseling it deems necessary. Any retraining and counseling should be documented and maintained in Blue Team.

**Named Employee #1 – Allegation #2**

***5.001 – Standards and Duties, 5.001-POL-2. Employees Must Adhere to Laws, City Policy, and Department Policy***

CM#1 alleged that the named employees sexually assaulted him.

Employees must adhere to laws, city policy, and department policy. SPD Policy 5.001-POL-2.

This allegation is unfounded. CM#1 alleged sexual assault at three different times during his contact with the named employees. First, CM#1 immediately accused the named employees of sexual assault when they descended to the basement and spoke with him near the foot of his bed. No named employee physically contacted CM#1 at the time he first alleged sexual assault. Second, CM#1 accused the named employees of "touching" his penis and "raping" him during their handcuffing attempts on the bed. These claims were inconsistent with BWV. BWV captured NE#1 and NE#2 restraining CM#1's arms and NE#3 restraining CM#1's leg before CM#1 kicked NE#3's face. BWV also captured the named employees pinning CM#1 against the bed and headboard. Although the named employees' BWV fell at different times during the struggle, there were no indications of incidental or intentional contact with CM#1's penis. BWV sounds were consistent with the named employees' attempting to restrain CM#1's movements, maneuver him to the ground, and handcuff him since he was escalated, noncompliant, and presenting high levels of resistance. Third, CM#1 accused the named employees of sexual assault when they tried to put pants on him. CM#1 also accused NE#2 of being a "rapist" for maintaining his hand on CM#1's upper back. Again, these claims were inconsistent with BWV. With CM#1's permission, the named employees tried to clothe CM#1 since he was nude. OPA found no evidence supporting the Complainant's allegations of sexual assault.

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

Recommended Finding: **Not Sustained – Unfounded**

**Named Employee #1 – Allegation #3**

***5.002 – Responsibilities of Employees Concerning Alleged Policy Violations, 5.002-POL-6. Employees Will Report Alleged Violations***

It was alleged that the named employees failed to report CM#3's excessive force allegation to a supervisor or OPA.

Employees will report alleged violations. SPD Policy 5.002-POL-6. Employees will report any alleged minor policy violation to a supervisor. *Id.* Employees will report any alleged serious violations to a supervisor or directly to OPA. *Id.* Employees who witness or learn of a violation of public trust or an allegation of a violation of public trust will take action to prevent aggravation of the incident or loss of evidence that could prove or disprove the allegation. *Id.* Any employee



who observes another employee engage in dangerous or criminal conduct or abuse will take reasonable action to intervene. *Id.*

This allegation is unfounded. CM#3's complaint about excessive force was barely audible on BWV given the contemporaneous screaming and other background noise. Also, the named employees denied hearing this complaint, but reported CM#1's allegations of sexual assault to their sergeant. Given that their use of force was already being investigated as a Type II use of force, it would be more likely that the named employees would have reported both allegations, rather than intentionally omitting the other.

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***

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

**Training Referral:** The named employees' chain of command should discuss OPA's findings with them, review SPD policies 6.180-POL-1, 6.180-POL-2(3), and 6.180-POL-3(1) with them, and provide any other retraining and counseling it deems necessary. Any retraining and counseling should be documented and maintained in Blue Team.

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

**Named Employee #2 – Allegation #2**

***5.001 – Standards and Duties, 5.001-POL-2. Employees Must Adhere to Laws, City Policy, and Department Policy***

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

Recommended Finding: **Not Sustained – Unfounded**

**Named Employee #2 – Allegation #3**

***5.002 – Responsibilities of Employees Concerning Alleged Policy Violations, 5.002-POL-6. Employees Will Report Alleged Violations***

For the reasons at Named Employee #1 – Allegation #3, 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***



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

**Training Referral:** The named employees' chain of command should discuss OPA's findings with them, review SPD policies 6.180-POL-1, 6.180-POL-2(3), and 6.180-POL-3(1) with them, and provide any other retraining and counseling it deems necessary. Any retraining and counseling should be documented and maintained in Blue Team.

Recommended Finding: Not Sustained – Training Referral

**Named Employee #3 – Allegation #2**

***5.001 – Standards and Duties, 5.001-POL-2. Employees Must Adhere to Laws, City Policy, and Department Policy***

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

Recommended Finding: **Not Sustained – Unfounded**

**Named Employee #3 – Allegation #3**

***5.002 – Responsibilities of Employees Concerning Alleged Policy Violations, 5.002-POL-6. Employees Will Report Alleged Violations***

For the reasons at Named Employee #1 – Allegation #3, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained – Unfounded**