



## OFFICE OF POLICE ACCOUNTABILITY

### Closed Case Summary

Complaint Number 2017OPA-0272

Issued Date: 09/22/2017

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 8.400 (1) Use of Force Reporting and Investigation: Officers Shall Report All Uses of Force Except De Minimis Force (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Allegation #2	<u>Seattle Police Department Manual</u> 8.200 (1) Using Force: When Authorized (Policy that was issued 09/01/15)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Allegation #3	<u>Seattle Police Department Manual</u> 6.185-TSK-1 (4) Completing the Search Warrant (In Person, Business Hours): Leaves a copy of the warrant and return of service at the location (Policy that was issued March 1, 2016)
OPA Finding	<b>Not Sustained</b> (Training Referral)
Allegation #4	<u>Seattle Police Department Manual</u> 6.185-TSK-6 (5) Filing the Search Warrant (Superior Court): Takes the originals to the Superior Court Clerk's cashier counter located in room E609 on the 6th floor (Policy that was issued March 1, 2016)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Allegation #5	<u>Seattle Police Department Manual</u> 6.185-TSK-6 (6) Filing the Search Warrant (Superior Court): Returns the copies of the warrant to the SPD Data Center Unit for scanning (Policy that was issued March 1, 2016)

OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Final Discipline	N/A

<b>Named Employee #2</b>	
Allegation #1	<u>Seattle Police Department Manual</u> 6.010 (5) Arrests: Sergeants Must Screen All Arrests Prior to Booking or Release (Policy that was issued February 1, 2016)
OPA Finding	<b>Not Sustained</b> (Inconclusive)
Allegation #2	<u>Seattle Police Department Manual</u> 6.010 (7) Arrests: Reports Must Be Completed by End of Shift (Policy that was issued February 1, 2016)
OPA Finding	<b>Sustained</b>
Final Discipline	Oral Reprimand

<b>Named Employee #3</b>	
Allegation #1	<u>Seattle Police Department Manual</u> 8.400 (1) Use of Force Reporting and Investigation: Officers Shall Report All Uses of Force Except De Minimis Force (Policy that was issued September 1, 2015)
OPA Finding	<b>Not Sustained</b> (Inconclusive)
Allegation #2	<u>Seattle Police Department Manual</u> 8.200 (1) Using Force: When Authorized (Policy that was issued 09/01/15)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)
Final Discipline	N/A

<b>Named Employee #4</b>	
Allegation #1	<u>Seattle Police Department Manual</u> 6.020 (I) Arrests and Detentions of Foreign Nationals: Policy Identifying Foreign Nationals (Policy that was issued December 6, 2011)
OPA Finding	<b>Not Sustained</b> (Lawful and Proper)

Final Discipline	N/A
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### **INCIDENT SYNOPSIS**

The Named Employees arrested the subject, then made contact with Complainant #2 when they executed a search warrant on the subject's residence.

### **COMPLAINT**

Complainant #1 alleged the Named Employees and Unknown Employees arrested a family member (subject) and took her back to her residence. This complainant then alleged that the Named Employees and other Unknown Employees did not identify themselves to Complainant #2 who was at the residence. Both complainants then reported that the Named Employees violated policy when they escorted and handcuffed Complainant #2 causing her injuries. Complainant #2 alleged that she reported to the Named Employees that they were hurting her as this was occurring. The complainants also reported that the house was allegedly searched without a warrant and that a warrant or contact information was not left at the scene. Complainant #2 additionally reported that she was asked for a "green card" despite the fact that she was a citizen.

### **INVESTIGATION**

The OPA investigation included the following actions:

1. Review of the complaint
2. Search for and review of all relevant records and other evidence
3. Review of In-Car Video (ICV)
4. Interviews of SPD employees

### **ANALYSIS AND CONCLUSION**

Complainant #2 alleged that she was grabbed by her right hand and pulled out of her apartment by an officer. Named Employee #1 stated that he was the officer that pulled her out of the apartment. Complainant #2 was then placed into handcuffs by another officer. Complainant #2 did not assert that she felt pain or complained of pain when she was pulled out of the apartment.

At his OPA interview, Named Employee #1 stated that when he executed the warrant, he announced himself as a police officer and stated that he was in possession of a search warrant. No one immediately opened the door. At some point, the door was opened by Complainant #2. Named Employee #1 informed Complainant #2 that he had a warrant to search the apartment and that he needed her to exit the apartment and walk towards him. At first, Complainant #2 did not do so. She then moved towards him, but remained in the apartment. Named Employee #1

made the decision to physically remove her from the apartment. He told hold of her right forearm and pulled Complainant #2 towards him. Named Employee #3 then took custody of Complainant #2 from Named Employee #1. Named Employee #1 stated to OPA that he did not hear Complainant #2 make any complainants of pain.

Given that it was undisputed that Complainant #2 did not complain of pain from being pulled out of the apartment, the OPA Director found that this force was de minimis. As such, Named Employee #1 was not required to report it. The OPA Director noted that Named Employee #1, out of an abundance of caution, screened the force with Named Employee #2 after the fact. He was informed, correctly, that the force was de minimis and need not be reported.

Manual Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” The policy lists a number of factors that should be weighed when evaluating reasonableness. Force is necessary where “no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.” Lastly, the force used must be proportional to the threat posed to the officer.

Here, the OPA Director found that the force used by Named Employee #1 was reasonable, necessary, and proportional, and thus consistent with policy.

First, with regard to reasonableness, Named Employee #1 was executing a search warrant and gave Complainant #2 a lawful order to exit the apartment. When Complainant #2 failed to comply with that order, it was reasonable for Named Employee #1 to use force to remove her from the apartment.

Second, with regard to whether the force was necessary, the OPA Director found that, at the time the force was used, Named Employee #1 believed that there was no reasonably effective alternative and that the degree of force was reasonable to effect the lawful purpose of removing Complainant #2 from the apartment.

Third, with regard to the proportionality of the force, Named Employee #1 used force commensurate with the threat facing him, and only that level of force needed to get the complainant out of the apartment. As indicated above, this force was de minimis and did not result in any complaint of pain from Complainant #2.

Both complainants alleged that there was no valid search warrant and that officers did not leave the warrant or any contact information at the scene.

SPD policy requires that officers must leave the search warrant and the return of service at the location that is searched. There is no requirement in the policy that officers leave “contact information.”

Here, Named Employee #1 stated that he completed the search warrant inventory and return of service at the scene. Notably, Named Employee #1 stated that he did so while sitting next to the subject and while in the presence of Complainant #2. He also reported discussing the search warrant with the subject at that time, which was again in the presence of Complainant #2.

Named Employee #1 admitted that he did not leave the warrant and return of service at the apartment. Instead, he placed the warrant, inventory and return of service in the subject's property bag.

At his OPA interview, Named Employee #1 explained that he left the warrant in the subject's property bag rather than at the apartment for several reasons. First, the subject was the subject of the warrant and he believed that "it was better served that she got the forms and was responsible for the forms." Second, the subject was one of the lawful occupants of the residence who Named Employee #1 believed could properly take custody of the forms.

The OPA Director found that Named Employee #1 technically violated policy. However, even if ultimately incorrect, he believed in good faith that it was more effective and permissible to provide the warrant and associated documents to the subject.

SPD policy requires that, after execution of a search warrant, officers must file the original search warrant with the operative court. In this case, OPA classified SPD Policy 6.185-TSK-6 for investigation, which referenced filing search warrants with the King County Superior Court. Here, however, the warrant at issue was a King County District Court warrant and thus should have been filed in that court, not Superior Court. Regardless, from a review of the warrant, it appeared to have been filed. The copy of the warrant obtained by OPA from the District Court was stamped as "filed."

SPD policy further states that once a warrant is filed with the court, officers must return the warrant to the SPD Data Center Unit for scanning. When asked about whether the warrant was sent to the SPD Data Center Unit for scanning, Named Employee #1 stated that he thought it was not. Named Employee #1 further stated that, in his time at Narcotics, he never sent a warrant to the Data Center Unit. Named Employee #1 also indicated that he did not believe that this was a task performed by administrative personnel assigned to the unit. Lastly, Named Employee #1 stated that he did not scan the warrants himself.

In this specific case, Named Employee #1 described that he provided the warrant and associated paperwork to a Detective. He did not know what the Detective did with these documents and whether he complied with the policy.

As indicated above, Named Employee #1 is no longer employed by SPD and if he was the OPA Director would have recommended re-training on this policy. Based on Named Employee #1's statements, however, the OPA Director was concerned that the entire Narcotics Unit was not complying with SPD Policies 6.185-TSK-5, 6.185-TSK-6, and 6.185-TSK-7. If this was the

case, it may be appropriate for the entire unit to receive additional training to ensure that this policy is being complied with. The OPA Director left this, however, in the discretion of the Department and the chain of command.

SPD policy requires that Sergeants must screen all arrests prior to booking or release. Named Employee #2 reported that he screened the arrest of the subject and the temporary detention and handcuffing of Complainant #2 at the scene. However, neither Named Employee #3 nor the Sergeant observed him screen the incident. While Named Employee #1 stated that he screened his force with Named Employee #2, he did not say whether he observed Named Employee #2 screen the arrest and/or the detention and handcuffing. As discussed below, the Arrest Screening Supplemental Report was filed late and apparently only after Named Employee #2 received a notification from OPA of this complaint and the allegations herein. That certainly did not mean that NE#2 did not screen the incident, but it lessened the weight that the OPA Director placed on this report and ultimately prevented me from conclusively determining that the screening did, in fact, occur.

SPD policy further requires that “reports must be completed by the end of shift.” Named Employee #2 did not complete his Arrest Screening Supplemental Report for the arrest of the subject and the detention and handcuffing of Complainant #2 until two days after the incident. Notably, the report was electronically entered several hours after Named Employee #2 received a notice of this allegation from OPA. This raised the question of whether Named Employee #2 would have ever filed this report absent OPA’s intake investigation and later complaint notification.

At his OPA interview, Named Employee #2 stated that he thought he submitted this report. He further stated that there was a “ton of paperwork to be reviewed” and “subjects to be booked.” It was unclear what, if any, paperwork Named Employee #2 was required to complete other than his screening report. It was further unclear what paperwork was generated by other officers and needed to be reviewed by Named Employee #2 and whether other supervisory personnel, including the Sergeant, assisted in that review. Lastly, based on the OPA Director’s review of this case, it appeared that only the subject needed to be booked. Ultimately, Named Employee #2’s failure to submit this report was in violation of policy.

Complainant #2 stated that, while she was being handcuffed, she felt pain and said, “what are you doing?” She was told by an officer that she was resisting. Complainant #2 responded that she was not resisting and told the officer that he was hurting her. Complainant #2 further indicated that, at that point, an African American officer walked over and looked at the handcuffing officer as if to say “take it easy.” Complainant #2 reported suffering from rheumatoid arthritis and, as a result, having swollen hands. After the incident, Complainant #2 claimed that he observed bruising to her hands and arms. Complainant #2 told OPA that she believed the bruising to be from her handcuffing. Complainant #1 provided OPA with three photographs that purported to show the bruising sustained by Complainant #2. The photographs did not capture Complainant #2’s face and did not have a timestamp. Complainant

#1 was not present at the time the warrant was executed and had no firsthand knowledge as to the handcuffing and what, if anything, Complainant #2 said.

Named Employee #3 made the decision to place Complainant #2 in handcuffs and this decision was made in consultation with the Sergeant. He based that decision on the fact that, even when brought out of the apartment, Complainant #2 did not appear to be listening to him and “kept turning around” and “flailing her hands.” Named Employee #3 handcuffed her in order to “control the scene,” given that the officers were about to walk into an apartment that could contain numerous threats and was largely an unknown quantity. Named Employee #3 stated that, prior to handcuffing Complainant #2, he explained to her what he was doing and why. Named Employee #3 stated that he did not ever hear Complainant #2 state that the handcuffs were hurting her.

The Sergeant, who assisted in the execution of the warrant, told OPA that he witnessed the handcuffing. The Sergeant corroborated Named Employee #3’s account. He stated that Complainant #2 was handcuffed based on her non-compliance with lawful orders and her demeanor. The Sergeant indicated that he did not hear Complainant #2 make a complaint of pain, did not observe her as being in any pain, and did not believe that the force used was anything but de minimis. The Sergeant concluded by stating that had he observed anything other than de minimis force, he would have reported and documented it.

There was an obvious conflict between Complainant #2’s and the officers’ accounts. If Complainant #2 complained of pain, the force was more than de minimis and should have been reported. If she did not, it was only de minimis force and was not required to be reported under SPD policy.

Complainant #2 alleged that Named Employee #3 subjected her to unreasonable and unnecessary force when he handcuffed her.

As a starting point, Complainant #2’s handcuffing was justified as a matter of law. Here, Complainant #2 was an occupant of a residence for which the officers had a search warrant. She was not compliant with the officers’ initial requests for her to exit the apartment. Once she did exit the apartment, she was not compliant with further orders and continued to turn around and flail her hands. Based on the nature of the warrant, the fact that the officers did not know if anyone else was in the apartment and whether any such individuals were armed, and the conduct and demeanor of Complainant #2, it was reasonable for Named Employee #3 to handcuff her to control the scene and to ensure officer safety. The OPA Director further credited Named Employee #3’s account that the reasons for the handcuffing were explained to Complainant #2. For these reasons, the OPA Director found that Named Employee #3’s actions in this regard were consistent with SPD policy.

Complainant #2 alleged that during her interaction with law enforcement she was asked for her “green card.” SPD Policy 6.220(1) precludes officers from “ask[ing] for documents relating to someone’s immigration or alien status for the sole purpose of establishing their status...” Here,

Complainant #2 claimed that an officer asked her for her green card, not for her identification. Complainant #2 stated that she was a citizen of the United States and that she believed that it was inappropriate for her to be asked for citizenship documentation. Complainant #2 described the officer that requested her to produce a green card as a Caucasian female K9 officer with blond hair kept in a ponytail.

Based on Complainant #2's description of the interaction, if it in fact occurred, the request for a green card would have been in violation of policy. There was no indication that the green card was needed to determine whether Complainant #2 was a foreign national in order to make a mandatory advisement statement and Complainant #2 conclusively stated that she did not offer to show a green card to the officers. Named Employee #2 and #3, as well as the Sergeant, were asked at their OPA interviews about this allegation and all stated that they did not request that Complainant #2 produce a green card. Named Employee #1 was not asked this question at his OPA interview. Further, based on OPA's investigation, there were no SPD K9 officers, let alone a female K9 officer, that responded to the warrant. Two K9 officers from U.S. Customs and Border Control did respond to the warrant, one of which was a female officer. This individual reported to OPA that she did not interact or speak with any of the occupants of the residence during the execution of the search warrant. The OPA Director noted that OPA had no jurisdiction over the K9 officer and, as a federal employee, she was not bound by SPD policies.

Ultimately, the OPA Director could not conclusively determine whether this interaction occurred as Complainant #2 described. However, given that there was no SPD employee at the scene that matched the description provided by Complainant #2, the OPA Director could conclusively determine that no unknown SPD employee – identified here as Named Employee #4 – engaged in this conduct.

## **FINDINGS**

### **Named Employee #1**

#### Allegation #1

The weight of the evidence showed that the Named Employee #1 was not required to report the force as it was de minimis. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Use of Force Reporting and Investigation: Officers Shall Report All Uses of Force Except De Minimis Force*.

#### Allegation #2

The weight of the evidence showed that the force used by Named Employee #1 was reasonable, necessary, and proportional. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: When Authorized*.



### Allegation #3

Named Employee #1 is no longer employed by the Department. Were he still so employed, the OPA Director would have recommended that he receive additional training as to the requirements of this policy. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Completing the Search Warrant (In Person, Business Hours): Leaves a copy of the warrant and return of service at the location.*

### Allegation #4

The weight of the evidence showed that the warrant appeared to have been filed. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Filing the Search Warrant (Superior Court): Takes the originals to the Superior Court Clerk's cashier counter located in room E609 on the 6th floor.*

### Allegation #5

The evidence showed that it may be appropriate for the entire unit to receive additional training to ensure that this policy is being complied with. The OPA Director left this, however, in the discretion of the Department and the chain of command. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Filing the Search Warrant (Superior Court): Returns the copies of the warrant to the SPD Data Center Unit for scanning.*

## Named Employee #2

### Allegation #1

There was not a preponderance of the evidence either supporting or refuting the allegation. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Arrests: Sergeants Must Screen All Arrests Prior to Booking or Release.*

### Allegation #2

A preponderance of the evidence showed that Named Employee #2's failure to submit the report was in violation of policy. Therefore a **Sustained** finding was issued for *Arrests: Reports Must Be Completed by End of Shift.*

**Discipline Imposed:** Oral Reprimand

## Named Employee #3

### Allegation #1

There was not a preponderance of the evidence either supporting or refuting the allegation. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Use of Force Reporting and Investigation: Officers Shall Report All Uses of Force Except De Minimis Force.*

### Allegation #2

The weight of the evidence showed that Named Employee #3's actions in this regard were consistent with SPD policy. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Using Force: Use of Force: When Authorized.*

## **Named Employee #4**

### Allegation #1

A preponderance of the evidence showed that no unknown SPD employee – identified here as Named Employee #4 – engaged in this conduct. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Arrests and Detentions of Foreign Nationals: Policy Identifying Foreign Nationals*.

*NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.*