



## CLOSED CASE SUMMARY

ISSUED DATE:     SEPTEMBER 7, 2018

CASE NUMBER:     2018OPA-0244

### Allegations of Misconduct and the Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Allegation Removed
# 2	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Not Sustained (Unfounded)
# 3	6.010 - Arrests 5. Sergeants Must Screen All Arrests Prior to Booking or Release	Sustained
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	Not Sustained (Inconclusive)
# 5	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement b. Exigent Circumstances	Not Sustained (Training Referral)
# 6	6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Training Referral)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Allegation Removed
# 2	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Not Sustained (Unfounded)
# 3	6.010 - Arrests 5. Sergeants Must Screen All Arrests Prior to Booking or Release	Sustained
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	Not Sustained (Inconclusive)
# 5	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement b. Exigent Circumstances	Not Sustained (Training Referral)
# 6	6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Training Referral)

**Named Employee #3**

Allegation(s):		Director’s Findings
# 1	6.010 - Arrests 5. Sergeants Must Screen All Arrests Prior to Booking or Release	Not Sustained (Unfounded)



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**EXECUTIVE SUMMARY:**

The Complainant alleged that Named Employee #1 and Named Employee #2 made an unlawful entry into his home. It was further alleged that the officers conducted a Terry stop of the Complainant without reasonable suspicion and that they unreasonably extended that stop causing the functional arrest of the Complainant. It was also alleged that the officers failed to notify their supervisor, Named Employee #3, of this incident at the time, which may have prevented an in-person screening and that they potentially engaged in dishonestly. Lastly, it was alleged that Named Employee #3 may have failed to screen in-person the Complainant's detention, functional arrest, and release from custody.

**ADMINISTRATIVE NOTE:**

OPA initially identified another sergeant with the same last name as Named Employee #3 as the supervisor who purportedly failed to screen the arrest and release of the Complainant. This error was regrettable and unintentional and this sergeant was removed as a named employee and Named Employee #3 was added.

In the initial DCM, OPA recommended that Allegation #6, which concerned the scope of the detention of the Complainant, be Sustained against both Named Employee #1 and Named Employee #2. However, at the discipline meeting in this matter, the chain of command provided additional information, which is described more fully below, that caused OPA to amend its decision. As such, and even though I maintain my reservations concerning the scope and duration of the detention, I now recommend that this allegation be changed from Sustained to Not Sustained – Training Referral.

Lastly, OPA notes that it found Named Employee #2's joking around and making light of the situation to be inappropriate. While this incident may not have been a big deal to him, it certainly was for the Complainant and his wife, who had been scared, had their home invaded and door broken in, had been detained, and had been repeatedly accused of lying. OPA further finds Named Employee #2's remark that if he had to come back to their residence he would randomly pick which one of them would be arrested to have been even more inappropriate. Had SPD policy 5.001-POL-10, which concerns the professionalism of officers, been classified for investigation, OPA would have recommended that this allegation be Sustained based on Named Employee #2's overall demeanor and comments.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegations #1**

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

SPD Policy 5.001-POL-2 requires employees to adhere to laws, City policy, and Department policy. This allegation was classified here based on the Complainant's contention that Named Employee #1 (NE#1) and Named Employee #2 (NE#2) engaged in an unlawful entry into their home, detained the Complainant without reasonable suspicion, did not limit the seizure to a reasonable scope, and, in doing so, functionally arrested the Complainant without probable cause. Each of these allegations are discussed more fully below.



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Ultimately, I find the questions of whether NE#1 and NE#2 conducted an unlawful entry into the apartment and whether they had reasonable suspicion to detain the Complainant to be inconclusive. With regard to the scope of the Complainant's detention, however, I find that it was unreasonable, that he was functionally arrested as a result, and that this arrest was not supported by probable cause.

Given that this allegation is duplicative of those discussed below, I recommend that it be removed as against both NE#1 and NE#2.

Recommended Finding: **Allegation Removed**

**Named Employee #1 - Allegation #2**

***5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication***

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communication. This allegation was classified based on the potential that NE#1 included knowingly false information in his General Offense Report. Specifically, there appears to be two areas in which they were potentially dishonest: first, when NE#1 wrote that the officers heard a scream coming from inside of the Complainant's apartment; and, second, when NE#1 stated that they identified themselves as police officers prior to entry when they only did so after entry.

With regard to the first potential dishonesty, from my review of the Department video, I did not hear anything resembling a scream coming from the apartment or from any other apartment. However, as discussed below, I cannot conclusively find that this did not occur. Moreover, NE#1's behavior at the scene – looking left towards the apparent source of the scream and then telling NE#2 that he had heard the scream – was consistent with his account. Further, as a practical matter, the risk of fabricating this information would be so high given that NE#1 was recording Body Worn Video (BWV) and the possible discipline for dishonesty so significant, that no rational officer would have done so here. This again suggests that NE#1 was mistaken when he believed that he heard a scream instead of that he was dishonest.

With regard to the second possible dishonest statement, I find that NE#1's report was inaccurate when he wrote that, prior to kicking the door in, he identified himself as a Seattle Police Officer. NE#1 wrote the following:

I announced myself as a Seattle Police Officer. I then proceeded to kick the front door of unit 3803 in an attempt to force entry for exigent circumstances. After I kicked the door, it broke open. I again announced myself as a Seattle Police Officer and started calling out for the occupants.

The BWV, however, showed that NE#1 knocked on the door and window of the apartment multiple times and did not identify himself as a Seattle Police Officer. It further conclusively established that he did not so identify himself until the door had already been kicked open. While this is a clear inaccuracy, I do not believe that it constitutes dishonesty when applying the higher burden of proof for this allegation.

Lastly, in his report, NE#1 wrote that the incident was screened by his supervisor, Named Employee #3 (NE#3). He did not explain, however, that NE#3 was not immediately notified of the forced entry and the detention or that this



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matter was not screened with him until well after the incident. Again, while this does not rise to the level of dishonesty, NE#1's report certainly was not complete in this respect.

Had OPA classified SPD Policy 15.180-POL-5 for investigation, which sets forth the requirement for General Offense Reports to be complete, thorough, and accurate, I would have recommended that this allegation be Sustained against him. However, the allegation here is dishonesty, which requires a substantially higher burden of proof. I cannot meet this evidentiary standard and, as such, I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

**Named Employee #1 - Allegation #3**

***6.010 - Arrests 5. Sergeants Must Screen All Arrests Prior to Booking or Release***

SPD Policy 6.010-POL-5 concerns the screening of arrests by supervisors. The policy states that: "The sergeant shall screen the arrest in-person if the person detained has been handcuffed by SPD, is injured or claiming injury, or has been the subject of a reportable use-of-force." (SPD Policy 6.010-POL-5.) As the Complainant was detained in handcuffs for a period of time and as, under the circumstances of this case, he was functionally arrested, a supervisor was required to screen the detention and release.

The Named Employees admittedly did not notify their director supervisor, NE#3, of the detention and functional arrest of the Complainant. Nor did they notify NE#3 of the Complainant's release from custody. Given this oversight, NE#3 did not screen this incident in-person as the policy requires.

Both NE#1 and NE#2 indicated that they did immediately notify NE#3 of their actions because they forgot to do so. NE#3 told OPA that he did not learn of this incident until significantly later that evening. He stated that he was "a little bit shocked" by this failure. NE#3 stated that the requirement to immediately notify a supervisor of detentions such as the one in this case was clear.

NE#3 further informed OPA that he was also not immediately notified that forced entry had been made and he stated that the officers should have done so.

When NE#1 and NE#2 failed to notify NE#3 of their actions they prevented NE#3 from screening this matter in-person. Such a screening was required by policy. While both officers contended that they forgot that they had to do so, this is a fundamental requirement of policy that simply cannot be overlooked. Through their actions, NE#1 and NE#2 forced entry into the home of two entirely innocent people, without a search warrant, scared them, and detained the Complainant in handcuffs curtailing his liberty for approximately 18 minutes. This was a significant imposition on the Constitutional rights of the Complainant and his wife and actions that needed to be screened with a supervisor. To have not do so, even if because of an oversight, was inconsistent with the expectations of the Department and, as such, I recommend that this allegation be Sustained as against both NE#1 and NE#2.

Recommended Finding: **Sustained**



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**Named Employee #1 - Allegations #4**

**6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful**

SPD Policy 6.220-POL-1 governs Terry stops and stands for the proposition that Terry stops are seizures of an individual and, as such, must be based on reasonable suspicion in order to be lawful. SPD Policy defines a Terry stop as: “A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion in order to investigate possible criminal activity.” (SPD Policy 6.220-POL-2(b).) SPD Policy further defines reasonable suspicion as: “Specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging or is about to engage in criminal conduct.” (*Id.*) Whether a Terry stop is reasonable is determined by looking at “the totality of the circumstances, the officer’s training and experience, and what the officer knew before the stop.” (*Id.*) While “[i]nformation learned during the stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, it “cannot provide the justification for the original stop.” (*Id.*)

As with entry in the apartment, in determining whether the detention was justified, the most relevant fact is whether the officers heard a scream coming from the vicinity of the apartment. From a review of the BWV, there is no indication of any scream. That being said, I cannot disprove that it occurred. I further find that the officers’ reaction in the moment does not indicate that they invented this fact. Indeed, such action would have been illogical given their knowledge that they were being recorded.

If, as they stated, they did hear a scream and, as they contended, the scream reasonably appeared to be emanating from the Complainant’s apartment, I believe that this would have justified the entry and also the detention of the Complainant to investigate whether there had been an ongoing domestic violence assault. In making this determination, I also deem significant the other information available to the officers at that time – including: the complaining witness’s report to the 9-11 dispatcher where she stated that she heard a woman say “stop” and “you’re hurting me”; that she believed that there was a possible ongoing physical assault; and that she thought the incident was taking place in the apartment above her. Moreover, when the officers arrived at the front door of the Complainant’s apartment, they spoke with the complaining witness who confirmed that this was the right address.

Ultimately, it was later learned that all of this information was incorrect and the officers made a significant mistake. When OPA interviewed the complaining victim, she confirmed that she had errantly identified the Complainant’s apartment as the source of the yelling and statements, when it was actually another apartment on that floor. Unfortunately, this was simply not information that was available to the officers at that time. As such, instead of breaking up a domestic violence assault, they forced their way into an apartment in which no criminality was ongoing, terrified both the Complainant and his wife, and effectuated the detention and functional arrest of the Complainant who had engaged in no wrongdoing.

I feel terrible for both the Complainant and his wife and have great sympathy for what they experienced. However, if the officers’ account concerning the scream is true, I believe that their entry into the apartment – even if mistaken – would have been justified when applying a reasonable officer standard. Consequently, given that I would have found the entry justified under the facts relayed by the officers, I would also have deemed there to be sufficient reasonable suspicion to detain the Complainant to investigate whether he was involved in a domestic violence assault. Give, however, that I cannot conclusively prove or disprove the officers’ account and while I am not



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condoning the officers' actions in this matter and the ultimate result of those actions, I recommend that this allegation be Not Sustained – Inconclusive as against both NE#1 and NE#2.

Recommended Finding: **Not Sustained (Inconclusive)**

**Named Employee #1 - Allegation #5**

**6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement b. Exigent Circumstances**

SPD Policy 6.180-POL-2 concerns searches and seizures, including entries into residences. It specifically references the various exceptions to the search warrant requirement. One such exception is where there are exigent circumstances. (SPD Policy 6.180-POL-2(b).) With regard to this exception, the policy states the following: "Police may conduct an immediate, warrantless search or seizure under emergency conditions, if there is probable cause to believe that delay in getting a warrant would result in the loss of evidence, escape of the suspect, or harm to police or public." (*Id.*) The policy specifically references exigent circumstances in suspected domestic violence cases and instructs: "Exigent circumstances also exist if the police are responding to a domestic violence call. Entry may be made if a person's health, welfare, or safety is concerned." (*Id.*)

Whether the entry into the Complainant's apartment was justified by exigent circumstances rises and falls on whether the officers actually heard a scream coming from the apartment. As discussed above, I cannot prove or disprove whether the officers heard this scream and whether they reasonably believed that it was coming from the Complainant's apartment. At this point, well after the incident, it is clear that the scream did not come from the Complainant's apartment and, instead, was from another apartment on that floor. This was confirmed by the complaining witness during her OPA interview. However, I cannot engage in 20/20 hindsight when evaluating this case, which is what this type of analysis would constitute.

Ultimately, I find the question of whether the entry was justified under exigent circumstances to be inconclusive. However, I find that there were a number of training and tactical issues in this case that should be addressed by the Named Employees' chain of command. For example, the officers did not obtain any information from the complaining witness concerning what she heard until after the entry was made. This would have been important given that she had no concrete evidence that an assault had been occurring and it may have modulated the officers' response. The officers never indicated that they were Seattle Police Officers when they were repeatedly knocking on the apartment door and window and did not so announce themselves until NE#1 had kicked the door in. Neither officer immediately notified a supervisor that they had made forced entry into the apartment. Neither officer called the Seattle Fire Department to come to the residence and to secure the broken door. Lastly, neither officer provided any information concerning who was going to pay for the damage to the door and how the Complainant and his wife would go about being compensated for their loss.

For these reasons, I issue the below Training Referral for both NE#1 and NE#2.

- **Training Referral:** NE#1 and NE#2 should receive additional training concerning warrantless entries into homes and, particularly, when they have exigent circumstances to enter a residence. The officers' chain of command should discuss with them the training and tactical issues discussed above and should ensure that this is understood. Lastly, NE#2's chain of command should discuss with him his conduct and statements in



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this case, which OPA believes to have been unprofessional. NE#2 should be on notice that similar statements and demeanor will be investigated by OPA in the future. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #1 - Allegation #6**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope***

SPD Policy 6.200-POL-3 requires that officers limit a seizure to a reasonable scope. The policy further states that: "Actions that would indicate to a reasonable person that they are being arrested or indefinitely detained may convert a Terry stop into an arrest requiring probable cause or an arrest warrant." (SPD Policy 6.200-POL-3.)

When NE#1 and NE#2 entered the Complainant's apartment, they entered with their guns drawn and they ordered the occupants to come out into the main room. This included stating: "We have our guns drawn, don't do anything stupid." The Complainant walked out of his bedroom with his hands raised. He was in a tee-shirt and underwear and appeared, at least from OPA's review, to have just woken up. The officers repeatedly yelled at the Complainant to show his hands and to get on the ground. Prior to getting on the ground, the Complainant, who appeared to be shocked, gave his name and asked to see NE#2's badge. NE#2 yelled: "you see this, turn around now!" The officers then forced the Complainant to the ground, put him in a prone position, and handcuffed him.

The Complainant remained handcuffed for approximately 18 minutes. This was after the Complainant's wife told the officers that there was no domestic abuse, that she was not screaming and that she did not hear any screams, that her room was messy because she was hiding due to her fear, and that they did not answer the front door immediately because there had been a recent murder in the neighborhood (which NE#2 also knew about). NE#2 asked the wife whether she was injured and she said that she was not. She further showed him her arms and neck, which had no indication of injury.

The Complainant also spoke with NE#2. There were multiple officers in the apartment with the Complainant at that time and he was calm and cooperative. He remained in handcuffs even after NE#2 told the Complainant that he knew that no assault had occurred. He stated to the Complainant that he believed that he and his wife were lying. The Complainant clearly presented no threat at that time but remained in handcuffs regardless.

The officers released him, thanked him for his cooperation, and apologized (while laughing) about their door. The officers then left the residence. At that time, NE#2 spoke with the wife and stated to her that someone was lying to him – suggesting that either she or the Complainant were doing so. He further told her: "If we have to come back here tonight, I don't know who's going to have to go to jail but I'm going to have to pick somebody."

As discussed above, OPA initially recommended that this allegation be Sustained. In reaching this decision, OPA reasoned as follows:



I find that, based on the facts of this case, a reasonable person in the Complainant's place would have believed that he was functionally under arrest. As such, the officers required probable cause or an arrest warrant, they had neither. I am unclear what the safety risks were that warranted immediately handcuffing the Complainant and keeping him handcuffed for 18 minutes. He was wearing a tee-shirt and boxers and his hands were up as he slowly advanced towards the officers. He was calm and clearly terrified. Instead of taking measure of the situation and considering these facts, the officers continued full throttle. This is the case even though, aside from a virtually inaudible scream, there was no evidence of any ongoing assault, let alone probable cause to believe that the Complainant was the perpetrator.

At the discipline meeting in this matter, the officers' chain of command raised two points in support of their argument that this finding should be reversed. First, the chain of command contended that, during the time the Complainant was handcuffed, the officers were continuing to investigate the incident and the chain of command was loathe to set a hard and fast time limit during which the investigation needed to be completed. The chain of command was concerned that, if such a limit was set here, it could serve to discourage officers from completing thorough investigations. Second, the chain of command asserted that the officers' behavior in handcuffing the Complainant and keeping him handcuffed for 18 minutes during their investigation was consistent with their training and the expectations of the officers' supervisors.

Both of these arguments carry weight with OPA. As such, OPA reverses its finding on this allegation from Sustained to Not Sustained – Training Referral. In doing so, OPA is not saying that it necessarily agrees with the chain of command that the officers acted appropriately in this respect. Indeed, OPA still does not believe that to be the case. However, OPA feels that it would be unjust to discipline officers who acted consistent with their training and the expectations of their chain of command.

- **Training Referral:** NE#1 and NE#2 should receive additional training concerning the elements of SPD Policy 6.220-POL-3. Their chain of command should provide the officers with OPA's analysis of this issue and should discuss this matter with them. OPA notes that the chain of command has already provided general retraining and counseling regarding this case to both NE#1 and NE#2. To the extent the issues referenced in this Training Referral have already been discussed with the officers, no further training or counseling need be done. Any retraining and counseling that is completed should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #2 - Allegations #1**

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

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**





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**Named Employee #2 - Allegation #2**

***5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication***

Given my review of the record, I see no evidence that NE#2 generated any paperwork concerning this matter. He, like NE#1, also asserted that he heard a scream coming from the vicinity of the Complainant's apartment. As with NE#1, I cannot conclusively determine that this scream occurred. However, as discussed above, no rational officer would have made this fact up given the potential consequences that would flow from that false statement.

For these reasons, and applying the higher quantum of proof required for this allegation, I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

**Named Employee #2 - Allegation #3**

***6.010 - Arrests 5. Sergeants Must Screen All Arrests Prior to Booking or Release***

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #2 - Allegations #4**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful***

For the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

**Named Employee #2 - Allegation #5**

***6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement b. Exigent Circumstances***

For the same reasons as stated above (see Named Employee #1, Allegation #5), I recommend that this allegation be Not Sustained – Training Referral and I refer to the Training Referral above.

Recommended Finding: **Not Sustained (Training Referral)**



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**Named Employee #2 - Allegation #6**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 3. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope***

For the same reasons as set forth in the context of NE#1, I recommend that this allegation be Not Sustained and refer to the above Training Referral. (See Named Employee #1, Allegation #6.)

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #3 - Allegations #1**

***6.010 - Arrests 5. Sergeants Must Screen All Arrests Prior to Booking or Release***

SPD Policy 6.010-POL-5 requires that a sergeant screen all arrests prior to booking or release. Here, NE#3 did not screen the detention, functional arrest, and release of the Complainant. However, as discussed above, he was not notified of what had occurred until well after the incident had concluded. At that point, he was unable to screen the incident.

NE#3 recognized that NE#1's and NE#2's failure to screen this incident, as well as to notify him of the forced entry, was inconsistent with both policy and his expectations as a supervisor. At that time, however, he was an Acting Sergeant and could not enter PAS entries for the officers. He told OPA that he asked another Sergeant to do so.

As NE#3 was not aware of the detention, functional arrest, and release of the Complainant at the time those events occurred, he could not have complied with the requirements of this policy. Accordingly, I recommend that this allegation be Not Sustained – Unfounded as against him.

Recommended Finding: **Not Sustained (Unfounded)**