



CLOSED CASE SUMMARY

ISSUED DATE: JULY 27, 2018

CASE NUMBER: 2018OPA-0118

Allegations of Misconduct & Director's Findings

Named Employee #1

| Allegation(s): | | Director's Findings |
|-----------------------|--|-----------------------------------|
| # 1 | 5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times | Not Sustained (Inconclusive) |
| # 2 | 5.001 Standards and Duties 14. Employees Obey any Lawful Order Issued by a Superior Officer | Not Sustained (Unfounded) |
| # 3 | 5.001 - Standards and Duties 16. Employees May Object to Orders Under Certain Conditions | Not Sustained (Unfounded) |
| # 4 | 5.001 - Standards and Duties 13. Retaliation is prohibited | Not Sustained (Inconclusive) |
| # 5 | 6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest | Not Sustained (Lawful and Proper) |
| # 6 | 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 (Lawful and Proper) |

Named Employee #2

| Allegation(s): | | Director's Findings |
|-----------------------|--|-----------------------------------|
| # 1 | 6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement b. Exigent Circumstances | Not Sustained (Management Action) |
| # 2 | 5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times | Not Sustained (Inconclusive) |
| # 3 | 5.001 Standards and Duties 14. Employees Obey any Lawful Order Issued by a Superior Officer | Not Sustained (Unfounded) |
| # 4 | 5.001 - Standards and Duties 16. Employees May Object to Orders Under Certain Conditions | Not Sustained (Unfounded) |

Named Employee #3

| Allegation(s): | | Director's Findings |
|-----------------------|---|------------------------------|
| # 1 | 5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times | Not Sustained (Inconclusive) |
| # 2 | 5.001 - Standards and Duties 16. Employees May Object to Orders Under Certain Conditions | Not Sustained (Inconclusive) |
| # 3 | 5.001 - Standards and Duties 13. Retaliation is prohibited | Not Sustained (Inconclusive) |
| # 4 | 5.001 - Standards and Duties 3. Employees Must Attend All Mandatory Training | Not Sustained (Inconclusive) |
| # 5 | 5.001 Standards and Duties 14. Employees Obey any Lawful Order Issued by a Superior Officer | Not Sustained (Inconclusive) |



Named Employee #4

| Allegation(s): | | Director's Findings |
|----------------|--|-----------------------------------|
| # 1 | 6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement b. Exigent Circumstances | Not Sustained (Management Action) |
| # 2 | 5.001 Standards and Duties 14. Employees Obey any Lawful Order Issued by a Superior Officer | Not Sustained (Unfounded) |
| # 3 | 5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times | Sustained |
| # 4 | 6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest | Not Sustained (Lawful and Proper) |
| # 5 | 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 (Lawful and Proper) |

Imposed Discipline

Oral Reprimand

Named Employee #5

| Allegation(s): | | Director's Findings |
|----------------|--|-----------------------------------|
| # 1 | 5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times | Sustained |
| # 2 | 5.001 Standards and Duties 14. Employees Obey any Lawful Order Issued by a Superior Officer | Not Sustained (Training Referral) |
| # 3 | 5.001 - Standards and Duties 16. Employees May Object to Orders Under Certain Conditions | Not Sustained (Unfounded) |
| # 4 | 6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest | Not Sustained (Lawful and Proper) |
| # 5 | 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 (Lawful and Proper) |

Imposed Discipline

Oral Reprimand

Named Employee #6

| Allegation(s): | | Director's Findings |
|----------------|--|-----------------------------------|
| # 1 | 6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement b. Exigent Circumstances | Not Sustained (Lawful and Proper) |
| # 2 | 5.001 Standards and Duties 14. Employees Obey any Lawful Order Issued by a Superior Officer | Not Sustained (Unfounded) |
| # 3 | 5.001 - Standards and Duties 16. Employees May Object to Orders Under Certain Conditions | Not Sustained (Unfounded) |
| # 4 | 5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times | Not Sustained (Unfounded) |

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:

The Complainant alleged that the Named Employees were unprofessional and insubordinate. She further alleged that they entered and searched a residence without a lawful basis to do so. OPA added additional allegations concerning the validity of the arrest of one male and the stop and detention of another.

STATEMENT OF FACTS:

On January 30, 2018, the Named Employees responded to a call concerning a vacant home. The caller stated that there were three individuals in the home and asked that officers "move" the individuals "along." The caller indicated that there did not appear to be any weapons involved. Moreover, while not contained in the CAD Call Log, the caller further told the 911 dispatcher that he knew that the house was vacant because he and his mother had just moved out. It does not appear that the officers were aware of this information at the time of their response. The officers did not conduct any search to determine the owner of the residence or verify its status as vacant prior to taking law enforcement action.

The officers responded to the residence. Named Employee #4 (NE#4) reported that, when the officers arrived, they saw a vehicle parked with a clear visual on the front of the house. The driver was inside and the vehicle was running. There was another person standing near the subject vehicle. Both appeared, according to NE#4, to be watching the residence. Both doors that accessed the front of the home were open and lights were on inside. When the officers neared the residence, the subject vehicle drove away.

NE#4 and Named Employee #2 (NE#2) approached the front of the residence. Named Employee #1 (NE#1) and Named Employee #5 (NE#5) went towards the south and southeast corner of the residence, respectively. NE#1 and NE#5 stationed themselves in those locations.

NE#4 wrote that he knocked on the front door of the residence and, while doing so, noticed that the doorknobs on both doors were missing. A male came to the door and spoke with NE#4. NE#4 asked the male whether he lived at the residence and he said that he did not. The male said that he was visiting a friend who was downstairs. NE#4 asked the male whether he could ask his friend to come to the front door to verify who lived at the home and the male said that he would. The male then walked into the house and disappeared from view. NE#4 noted in his report that the house appeared disorganized. This was corroborated by the Body Worn Video (BWV) from this incident.

NE#4 waited at the front of the home until he heard noise coming from the south side. He looked around the house and saw the male that he had just been speaking to at the rear with the other officers. NE#4 wrote in his report that the male was being detained for investigation of trespass and attempting to flee the police; however, NE#1 told OPA that the male was being detained for investigation of a possible in-progress residential burglary.

NE#1 was the officer that viewed the male coming out of the back of the house. NE#1 recounted that the male had his hands in his pockets. NE#1 asked the male to remove his hands from his pockets and he did; however, he put them back in shortly thereafter. NE#1 again asked the male to remove his hands from his pockets and the male was "hesitant and standoffish." NE#1 then made the decision to pat down the male for possible weapons. The male mentioned a warrant and the officers ran the male's name. They discovered that he had an open DOC warrant. The officers went



over the radio and indicated that they had arrested the male. Notably, at the time of his detention and arrest, the male told the officers that the house was vacant and that he knew that he was not supposed to be inside. Based on NE#2's OPA interview, this information was known to the officers prior to their entry into the home.

At this time, the Complainant, who was the Named Employees' sergeant, was at the South Precinct monitoring the officers' response to the call. She was aware that the officers had responded to a vacant home with people possibly therein and heard that one individual was under arrest. She told OPA that, based on the arrest, she began considering whether she would have to go to the scene to screen the arrest or whether she would do so at the precinct. She then heard the officers call for backing officers to conduct a full building search. She again reviewed the call and became concerned that the prospective search was potentially unlawful. This was particularly the case given that the call was a priority 3 nuisance with no victim, no complainant, and an anonymous caller. The Complainant was concerned that the entry and search of the house was impermissible where there was no victim, the house was vacant, no homeowner was present, and there was no apparent exigency.

The Complainant then went over the radio and asked for the primary officer to call her. No one did. Dispatch also went over the radio and requested that the primary officer call the Complainant. Again, there was no response. The Complainant called NE#4, who was the primary officer, on his cell phone and he did not answer. Knowing that a number of officers were at the scene, the Complainant again went over the radio asking for an officer to call her. NE#5 heard this communication and was captured on video stating: "is she serious right now." NE#1, who was standing next to NE#5, did not respond. NE#5 also stated: "is she coming here, ah no, she can wait." NE#5 then went over the radio and stated to the Complainant: "We're a little busy right now, we will contact you in a minute."

At around the same time as NE#5's statement to the Complainant, NE#4 stated to the other officers: "here she goes" and "here we go." NE#4 also stated: "after we're done clearing I'll call her." NE#4 told the other officers: "she wants me to call her, but I think we should make sure we're good." NE#4 then stated: "here she is calling me, my phone is in the car, I'll call her, when I get back to the car." NE#4 mentioned that his phone was in the car. Lastly, NE#4 stated: "oh, I'm going to hear about this." However, at no point did he call the Complainant.

Notably, during this entire time, the scene was static. The male who had exited the residence was in custody. NE#2 was standing at the front door of the home. None of the officers were moving quickly or with any apparent exigency. There was no discussion of any possible imminent harm to anyone in the home. Moreover, the officers had no evidence that the homeowner was actually in the home. Indeed, the information available to the officers was that the home was vacant and, from their conversations, they clearly believed that the only people inside were "squatters."

Named Employee #3 (NE#3) arrived at the scene and set up on the perimeter. NE#2 then entered the home and began to conduct a protective sweep with the purpose of clearing the house. NE#4 and Named Employee #6 (NE#6) also entered the house. The officers walked through the house with their guns drawn and pointed in front of them. Ultimately, they found another male that was sleeping in a bedroom. He clearly appeared, from OPA's review of the video, to be squatting in the residence. NE#2 and NE#4 told this other male that he needed to leave the house and led him outside. The other male was not arrested and was later released from the scene.

While the search was being conducted, the Complainant left the precinct and went to the scene. She first saw NE#3 and stated: "these guys better have more than an anonymous caller on this one." NE#3 told her that he had just arrived on the scene and did not know. The Complainant then interacted with NE#5. The full recitation of their



conversation is set forth in the Case Summary (see pp. 10-11). The Complainant asked NE#5 whether a homeowner or a representative of the property was at the scene. NE#5 stated that there was not. The Complainant then started to say: "So if I say over the air, I need to speak to a primary..." NE#5 interrupted and stated that she was not the primary officer. The Complainant continued: "it's for a reason, it's because you have no legal authority to enter the house." The Complainant further stated to NE#5: "If you ever tell me again over the air in a non-exigent situation to hold on again, I'm writing you up for insubordination." When the Complainant asked what the exigency was that prevented the officers from calling her, NE#5 responded: "Because we were all tied up, I don't know. They went into the house. Everybody didn't have any hands ma'am." During this conversation, the Complainant raised her voice but, from OPA's review of the BWV, did not appear to yell. The Complainant was clearly frustrated with NE#5 and her responses. The Complainant then walked away.

The Complainant spoke to multiple other officers, including NE#2 and NE#4. She explained to them what she believed was the problem with their entry and search of the house. She expressed that this was why she wanted the officers to call her back when she originally requested such contact over the radio. NE#2 questioned the Complainant's statement that they did not have a lawful basis to enter the residence. The Complainant told him: "We don't search squatter houses anymore...that's stuff that we did five, ten years ago. We need a lawful authority, a complainant. We need a victim, we need a representative of this property." NE#2 did not further argue the point. NE#4 did not, at that time, contradict the Complainant. The Complainant then asked the officers: "Do you all understand the problems if you had a giant use of force in there without any legal authority, no victim, and no complainant?" NE#4 stated that he did. The discussion concerning the lawfulness of the search ended at that point and the Complainant continued to screen the incident. While the Complainant was, again, clearly frustrated and, at times, raised her voice, she did not yell at the officers. Moreover, from my review of the video, there were no civilians or witnesses in the near vicinity watching this interaction.

At one point, during the Complainant's conversation with NE#4 and NE#2, NE#5 was captured on her BWV stating to other officers: "I don't know, [you] should have just seen the big mouth she had upfront, yelling at me and everything, she told me, if you tell me, I'm writing you up for insubordination." Shortly thereafter, the officers returned to the precinct.

While the above facts are not in dispute, given that this portion of the incident was captured in its entirety on BWV, what occurred next is disagreed upon and characterized differently by the involved parties.

At the precinct, the Complainant discussed the search with NE#4 and engaged in some retraining with him. She recalled that NE#4 was confused as to what he had done wrong, stated that he followed NE#2 into the house, and could not articulate the basis for the search. She did not remember whether anyone else was in the near vicinity when she conducted the retraining. This retraining and counseling was documented by the Complainant in a PAS entry.

The following day, the Complainant met with NE#5 and a lieutenant. The Complainant stated that, at this meeting, she reiterated her expectation that NE#5 would not repeat the conduct she engaged in the previous day. The Complainant also raised her belief that NE#5's behavior was borderline insubordinate. The Complainant recounted that there was no substantive response requested from NE#5. NE#5 recalled this discussion similarly.

The Complainant told OPA that she later learned that an unknown officer had called another sergeant, complaining about the Complainant's conduct. That sergeant, in turn, called the lieutenant. The Complainant asserted that the



unknown officer told the sergeant that a “mutiny” was brewing against the Complainant and that it had been building for a long time. The Complainant thought that NE#3 made this phone call to the sergeant. She believed this behavior and NE#3’s purported statements to be inappropriate. NE#3 acknowledged that he had this conversation with the sergeant when they were both off-duty. NE#3 reported that he raised concerns about the Complainant and asked for advice about what to do. The sergeant said that he felt required to notify the lieutenant. NE#3 told OPA that he explicitly told the sergeant that the situation was not a mutiny. He stated that this call was not meant to humiliate or retaliate against the Complainant, but was simply purposed for him to seek guidance.

The Complainant stated that she took the next five days off and when she returned things were very tense. She recalled at one point telling NE#3 that he needed to attend a training and that NE#3 responded that he would not go to the training unless the call load was low. The Complainant told NE#3 that the call load was irrelevant and that he needed to go to the training. NE#3 ultimately did not attend the training. NE#2 recalled this conversation, but stated that he did not believe that NE#3 received a direct order to go to the training. NE#3 also remembered this conversation. He stated that when the Complainant told him that call loads do not matter, he thought she was joking. He did not believe that he ever personally received a direct order to attend the training. He further recalled that, at the time of the training, he was requested to assist on another call, which he did. When he was asked by the Complainant whether he attended the training, he told her about the call. She responded: “nobody should have been on that call.”

The Complainant recounted that she then had a meeting with NE#1 and NE#2. She told OPA that she felt that these officers were confronting her and believed that they had been chosen as the representatives of the remainder of the officers in her squad. NE#1 and NE#2 told the Complainant that they thought she had been unprofessional and that she owed an apology to NE#4 and NE#5. NE#2 also told the Complainant that he was going to file a grievance against her for conduct unbecoming. The Complainant stated that she attempted to explain why she believed the search to be lawful and NE#2 argued with her. She stated that NE#2 “demanded” that she document in writing that they were no longer allowed to search vacant houses. She did not do so. The Complainant characterized this interaction and the officers’ behavior as “confrontational, demanding, disrespectful, and insubordinate.” NE#1 described this conversation differently. He did not think that either he or NE#2 acted inappropriately. They believed, as the senior officers in the squad, that it was important for them to address the situation with the Complainant. NE#1 acknowledged that he told the Complainant that he believed that she owed an apology to NE#4 and NE#5. He further recalled that NE#2 did tell the Complainant that he was going to file a grievance against her; however, he believed that NE#2 planned to do so regardless of their conversation. NE#2 generally had a similar recollection to NE#1. He stated that the Complainant told them that she was right and that he was welcome to file a complaint against her. NE#2 told OPA that he asked the Complainant to put in writing an order that he could not search vacant buildings. She refused to do so.

The Complainant described one more incident involving NE#1, in which NE#1 called her to screen an accident and asked what he should cite an involved individual for. The Complainant stated that she gave NE#1 two options, but that he chose another third option. The Complainant told OPA that NE#1 conveyed that the remainder of the squad had agreed on this third option. The Complainant believed that this was unprofessional and intentionally disregarded her direction. NE#1 remembered that he discussed this matter with the Complainant and that she gave him two citation options. He stated that he also asked his squad what they thought and one of the officers also brought up inattention as a possibility. He told OPA that he researched all of the potential citations and decided that inattention was the best



option. NE#1 did not believe that the Complainant had given him an order on how to cite the driver and stated that, if she had, he would have complied with that order.

As a result of all of the above, the Complainant filed the OPA complaint that initiated this matter. NE#1, NE#3, and NE#5 all filed EEO complaints against the Complainant for hostile work environments. NE#2 filed an OPA complaint against the Complainant. The Complainant is no longer supervising this squad.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

It was alleged that NE#1 was unprofessional in his interactions with the Complainant. Specifically, the Complainant asserted that the conversation that NE#1 and NE#2 had with her at the precinct was aggressive, disrespectful, and lacked professionalism.

SPD Policy 5.001-POL-9 instructs that SPD employees shall strive to be professional at all times. It further states the following: "Regardless of duty status, employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-9.) Officers "will avoid unnecessary escalation of events even if those events do not end in reportable uses of force." (*Id.*)

As a starting point, while I find that other officers' conduct towards the Complainant prior to her arriving on the scene was unprofessional, I do not find that NE#1 directly participated in any of that conduct. For example, while NE#1 heard the Complainant's request for an officer to call her, that request was primarily directed to the primary officer and, at the time, he was focused on and dealing directly with the male who had fled the residence. Moreover, he did not respond to that request in a disparaging manner like NE#4 or NE#5. I further find that NE#1 was not directly or indirectly rude or inappropriate to the Complainant at the scene.

While the Complainant asserted that the later conversation that she had with NE#1 and NE#2 at the precinct was unprofessional, these officers deny that this was the case. The lieutenant observed the interaction, but did not recall what was said. He recalled that voices were elevated and that NE#1 was animated, but he did not deem this interaction necessarily unprofessional. I note that this is inconsistent with how the lieutenant depicted the interaction according to the OPA complaint submitted by the Complainant. In that complaint, she asserted that he told her that if the Named Employees' "behavior occurred in the private sector they would have been immediately fired." Both the lieutenant and the Named Employees' captain believed that it was inappropriate for both officers to confront the Complainant at her desk to discuss this matter. As stated by the Named Employees' captain, "When it is appropriate, the correct way to raise an issue with a supervisor is to approach the supervisor one-on-one and to ask politely to discuss the issue. The way in which multiple officers ganged up on [the Complainant] at her desk and 'demanded' that she apologize was disrespectful and out of line."

Lastly, the Complainant asserted that the Named Employees conspired together to undermine her leadership and to get back at her for her perceived rudeness to NE#4 and NE#5. She stated that this belief was supported by NE#3 calling another sergeant and mentioning a "mutiny," as well as the lieutenant's comment that the Named Employees were in the parking lot "planning something." The Named Employees, including NE#1, denied doing so



and stated that they simply sought to address what they believed to have been a negative interaction for which the Complainant was primarily at fault. However, I cannot determine which account is accurate given the disputes between the parties.

Ultimately, there was no recording of the interaction of the conversation that was had between the parties and the lieutenant's account does not, in my opinion, resolve the dispute of fact. Moreover, I cannot prove by a preponderance of the evidence that the Named Employees conspired to undermine the Complainant. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #2

5.001 Standards and Duties 14. Employees Obey any Lawful Order Issued by a Superior Officer

SPD Policy 5.001-POL-14 requires employees to obey any lawful order issued by a superior officer. The failure to do so constitutes insubordination.

As discussed above, the Complainant made multiple requests for officers at the scene to call her. These requests were directed to the primary officer – NE#4, but were heard by all of the officers at the scene. None of the officers called the Complainant pursuant to her request.

The Named Employees argue that the requests for a call were not a direct order. While mostly a question of semantics and phrasing, the officers are technically correct. This does not mean that it was appropriate for none of the officers to call her; however, I do not find that the officers violated this policy when they failed to do so. Moreover, I find this conduct better addressed by the professionalism policy.

Lastly, it was suggested in the record that the Complainant issued an order to the Named Employees to not search the residence. While she might have done so had the Named Employees called her as she requested, I find no evidence of such an order. As such, none of the Named Employees violated an order that was never issued.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 16. Employees May Object to Orders Under Certain Conditions

As I find that the requests for a call were not technically orders, I do not find that the Named Employees either objected to these orders or violated this policy. Moreover, as discussed above, I find no evidence that the Complainant ever issued an order to not search the residence, let alone that the officers ever objected to such an order.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.



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

Named Employee #1 - Allegation #4

5.001 - Standards and Duties 13. Retaliation is prohibited

As discussed above, the Complainant alleged that the Named Employees, including NE#1, conspired together after the incident to undermine the Complainant. The Named Employees all denied doing so. Ultimately, the evidence in the record is inconclusive on this question.

Given the above, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #5

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

NE#1 stated that, during the detention of the male, he learned that the male potentially had an open warrant. When the officers ran a search on the male's name they discovered the he did, in fact, have an open DOC escape warrant. Given this, they placed the Complainant under arrest.

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy.

The open warrant for the male's arrest conclusively established probable cause. As such, the officers acted consistent with this policy when they took the male into custody and I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #6

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

NE#1 and NE#5 effectuated the stop and detention of the male. Prior to doing so, they were aware of the nature of the call; namely, that there were three individuals inside of a vacant home. NE#1 stated that he was stationed at the rear of the residence when he heard NE#2 and NE#4 make contact with someone at the front. NE#1 indicated that, a short time thereafter, he saw a male come out of the back of the home. NE#1 described that the male exited the house as if he was trying to flee. NE#1 ordered the male to stop. NE#1 recounted that, at the time of the stop, the male stuck his hands in his pockets. NE#1 told the male to remove his hands and he did. NE#1 stated that he ordered the male to walk over to him and the male again stuck his hands in his pockets. NE#1 again directed the male to take his hands out of his pockets. When the male came closer, NE#1 notice that his pockets were bulging. Based on the circumstances, NE#1 decided to pat frisk the male. While doing so, he made the decision to, due to



safety concerns, handcuff the male. He then finished the frisk. As discussed below, the officers later discovered that the male had an open warrant and they placed him under arrest.

NE#1 indicated his belief that the officers were, at the time they detained the male, investigating a potential in-progress residential burglary.

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 wellfounded 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.*)

I find that NE#1 had reasonable suspicion to stop the male to investigate whether he had or was presently committing a crime. This was based on the fact that the officers believed that there were individuals, including the male, who were in the vacant house without permission and that they were potentially engaged in thefts therein. This reasonable suspicion was buttressed by the male's flight outside of the house only shortly after NE#2 and NE#4 had made contact with someone at the front.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #2 - Allegation #1

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

The Named Employees raised a variety of reasons for why they thought the entry and search of the residence was justified. In the General Offense Report, NE#4 wrote that: "Based on the actions of the suspect and the suspect exiting the home to the rear when admitting to officers he did not live at the home. It raised suspicion of the welfare of the home owner possibly being in the home." At his OPA interview, NE#4 reiterated his belief that he had exigent circumstances to enter the home to determine that no one was injured, even though he admitted that he had no direct evidence of any threat to safety. NE#2 stated that the entry and search was based on the fact that the officers were "investigating a burglary in progress and needed to clear the house." NE#2 opined that there were "potential victims and subjects in the house." When he discussed the search with the Complainant at the scene, NE#2 argued against the Complainant's assertion that the search of a vacant home was invalid by stating that because the residence was vacant the squatters inside had no reasonable expectation of privacy under the Fourth Amendment.

As a starting point, and as discussed above, the officers did not have any actual evidence of an imminent threat to anyone. They knew from the 911 call that the house was claimed to be vacant with three squatters inside. The



interior of the house looked disheveled and disorganized, further suggesting squatters. There was no reason to believe that the homeowner was inside or that such a search of the house was warranted under exigency or community caretaking (which is not mentioned in the SPD Manual). Moreover, the officers' own demeanor and actions at the scene undercuts any argument of exigency. The officers did not appear to be in any rush, were not moving quickly or with any urgency, and were not speaking in excited or elevated tones.

While the officers are right that squatters in a vacant home have no reasonable expectation of privacy, they cannot have it both ways when trying to articulate the basis for the search. Moreover, in analogous cases, such searches of vacant homes have been deemed invalid. *See, e.g., State v. Ibara-Raya*, 145 Wn. App. 516, 187 P.3d 301 (2008), *rev'd on other grounds by*, 172 Wn.2d 880 (2011). As such, simply because a home may be vacant does not provide unfettered access to officers.

When she arrived at the scene, the Complainant raised valid concerns. What if, as she posited, a serious use of force had occurred inside the residence? What would have been the officers' lawful purpose for being inside? Would the failure to have a concrete lawful purpose then result in subjecting the officers and the Department to significant potential liability? These are all questions that the officers apparently neglected to consider prior to taking action. This is exactly the reason why it would have been advisable for the officers to discuss this matter briefly with the Complainant prior to effectuating the search. However, as discussed above, such a consult did not occur because of the purposeful failure of the officers to call her.

Ultimately, I do not opine herein that the entry and search of the residence was invalid. Even though I do lean towards questioning the lawful basis for the search, I do so with 20/20 hindsight and with the benefit of being able to analyze multiple officer statements, the BWV, and caselaw. As such, even if I found that the search violated policy and law, I would not recommend that this allegation be Sustained against the officers and would instead recommend a Training Referral.

I note that on the BWV, the Complainant asserted that the Department's practice was to no longer search vacant homes and that such searches had not been regularly conducted for five to ten years. The officers vehemently disagreed with this contention, with NE#2 doing so at the scene. There appears to be a disconnect on this issue. I can see why the Department would advise against such searches given the potential liability and dangers that could flow. However, if this is the Department's position, that should be communicated to the officers that are in the field engaging in this work. As such, I issue the following Management Action Recommendation.

- **Management Action Recommendation:** The Department should clarify its position on warrantless searches of vacant homes. If the Department no longer wishes for such searches to occur, it should communicate those expectations to its officers. If such searches are permissible, but only when coupled with specified steps taken by officers or under certain circumstances, that should also be communicated. This could occur either in an e-learning or via a roll call training.

Recommended Finding: **Not Sustained (Management Action)**



Named Employee #2 - Allegation #2

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

It was alleged that NE#2, like the other Named Employees, was unprofessional in his interactions with the Complainant. Specifically, the Complainant asserted that the conversation that NE#1 and NE#2 had with her at the precinct was aggressive, disrespectful, and lacked professionalism.

Based on my review of the BWV, I found no evidence that NE#2 made any disparaging statements towards the Complainant either before or after she arrived on the scene. Moreover, even though NE#2, like the other officers, did not call the Complainant, I find that he was largely focused on securing the front of the residence at that time.

While NE#2 did, at one point, engage in an animated discussion with the Complainant concerning the lawful basis to enter and search the residence and argued this point with her, I do not find this to have been unprofessional. Instead, I believe it was the airing of a legitimate difference in point of view. Once it was clear that the Complainant did not agree with him, NE#2 dropped the issue while in the field.

NE#2 raised this matter again when he engaged in the conversation with NE#1 and the Complainant at the precinct. However, he asserted that he did so professionally. NE#2, like NE#1, denied that this conversation was unprofessional or aggressive towards the Complainant, as she asserted. NE#2 acknowledged that he asked the Complainant to put in writing her order that the officers not search vacant properties. He stated that he did not believe that this was contrary to policy or unprofessional.

I note that, as he said he would during their conversation, NE#2 filed an OPA complaint against the Complainant. This is not the first time that NE#2 has used OPA to settle a personal issue with another officer. I counsel him to try to find a more productive mechanism to resolve these conflicts in the future.

Lastly, at his OPA interview, NE#2 stated the following with regard to the Complainant: "I would just like to say I think [the Complainant] is disgraceful and has no business wearing the same uniform I wear and that's it." While I do not believe that this statement meets the standard for unprofessional conduct, I find that it was unnecessary and distasteful. These types of negative back and forth interactions between fellow officers put the whole Department in a bad light.

Ultimately, given the unresolved disputes of fact between the parties, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #2 - Allegation #3

5.001 Standards and Duties 14. Employees Obey any Lawful Order Issued by a Superior Officer

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Unfounded.

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



Named Employee #2 - Allegation #4

5.001 - Standards and Duties 16. Employees May Object to Orders Under Certain Conditions

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - Allegation #1

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

NE#3 had little to no interaction with the Complainant when she arrived at the scene. Moreover, from my review of the BWV, he did not make any statements during the incident that were unprofessional. While NE#3 also did not call the Complainant in response to her requests, he was one of the last of the officers to arrive on the scene and was largely unfamiliar with the call. As such, I find that he bore less of the responsibility for failing to contact her.

After the incident, NE#3 called another sergeant to discuss his concerns about the Complainant's behavior during the incident. While I do not find that this necessarily violated any policy or constituted unprofessional conduct, I find that this was inappropriate. Notably, NE#3's captain did as well. He wrote the following: "It is also not appropriate to 'sergeant shop.'"

Lastly, if as the Complainant contended, NE#3 directly refused her lawful order to attend Department training, this would constitute unprofessional behavior as it undermines the Department and its chain of command. However, NE#3 denied that he did so.

Ultimately, I find that whether NE#3 violated this policy is inconclusive. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #3 - Allegation #2

5.001 - Standards and Duties 16. Employees May Object to Orders Under Certain Conditions

The Complainant stated that she ordered NE#3 to attend Department training and that, in response, NE#3 stated that he would do so depending on call volume. NE#3 did not attend the training, which the Complainant interpreted as a direct violation of a lawful order. Moreover, there was no basis for NE#3 to refuse that order.

For his part, NE#3 believed that the Complainant was asking him to attend the training, not ordering him. Some of the other Named Employees stated that they perceived the Complainant's statements in this regard similarly. When asked about the Complainant's comments that the call volume did not matter, NE#3 stated that he believed that the Complainant was joking. NE#3 noted that he was never officially registered to attend the training.

Based on this dispute of fact between NE#3 and the Complainant, I cannot conclusively determine whether NE#3 disregarded a direct lawful order from the Complainant (which this would have been), and, if he did disregard that



order, whether he had a valid reason to do so. As such, I recommend that this allegation be Not Sustained – Inclusive.

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

Named Employee #3 - Allegation #3

5.001 - Standards and Duties 13. Retaliation is prohibited

The Complainant asserted that NE#3 called another sergeant and discussed that there was a “mutiny” in her squad. NE#3 stated that this was inaccurate. NE#3 instead recalled that he expressly told the other sergeant that there was not a mutiny. The other sergeant was interviewed by OPA and stated that he did not recall the term “mutiny” ever being mentioned, which is at odds with the accounts of both the Complainant and NE#3. Regardless, even if inappropriate, the call made by NE#3 to the other sergeant did not constitute retaliation.

With regard to whether NE#3, along with the other Named Employees, engaged in a conspiracy to undermine the Complainant, I find that this issue is inconclusive based on the dispute of fact between the parties.

Given the above, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #3 - Allegation #4

5.001 - Standards and Duties 3. Employees Must Attend All Mandatory Training

As discussed above, while the Complainant stated that she ordered NE#3 to attend a training and that his attendance was mandatory, NE#3 and other of the Named Employees disagreed with this characterization. Moreover, NE#3 noted that he was never officially registered for this training.

Ultimately, the dispute of fact between NE#3 and the Complainant prevents me from reaching a conclusive determination. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #3 - Allegation #5

5.001 Standards and Duties 14. Employees Obey any Lawful Order Issued by a Superior Officer

For the same reason as stated above (see Named Employee #3, Allegation #2), I recommend that this allegation be Not Sustained – Inconclusive.

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



Named Employee #4 - Allegation #1

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 #2, Allegation #1), I issue a Management Action Recommendation for this allegation.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #4 - Allegation #2

5.001 Standards and Duties 14. Employees Obey any Lawful Order Issued by a Superior Officer

As discussed above (see Named Employee #1, Allegation #2), I agree that the Complainant technically did not issue any formal orders to NE#2. As such, the failure to call the Complainant did not violate this policy.

Moreover, while I find that NE#2 made the deliberate decision to not call the Complainant and that this decision was inappropriate, I conclude that this conduct is better evaluated under the professionalism policy.

Accordingly, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #4 - Allegation #3

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

Based on my review of the record, I find that NE#4's conduct at the scene violated the Department's professionalism policy. In reaching this finding, I am less concerned with his exact words and his demeanor than I am with the fact that he deliberately did not respond to multiple requests for contact from his supervisor. He failed to so respond when he knew that she almost certainly wanted to speak with him concerning the call he was on and, specifically, his decision to imminently search the residence. Indeed, she had serious concerns of the legality of this search and wanted to share those concerns with NE#4 and his fellow officers. However, she was unable to do so because NE#4 could not take what would have been just minutes to call her back. Notably, the BWV establishes that there was no exigency at that time that would have prevented a brief call. I find this conduct to have undermined the Complainant's role as a supervisor and prevented her from conducting the supervisory duties entrusted in her by the Department.

Similarly, problematic in my mind were NE#4's dismissive statements towards the Complainant prior to her arrival on the scene and while she was trying to contact him. Those statements, which are discussed above, were recorded on BWV and reflected poorly both on NE#4 and the Department as a whole.

The Department has a chain of command for a reason. Sergeants are entrusted to lead officers and to ensure that they do not violate law or policy and act consistent with their training and tactics. Officers are required to treat sergeants with respects, to not undermine them, and to follow their instructions and comply with their requests



unless unlawful or contrary to policy. NE#4 deliberately did not do so in this case and, as such, undermined the Department.

Lastly, I note that I view the Complainant's demeanor towards and statements to the Named Employees at the scene much differently than they did. The Named Employees characterized the Complainant's behavior at the scene as extreme, demeaning, and very unprofessional. When I watch the video, I see a sergeant who was incredibly frustrated that her officers conducted what she perceived was an unlawful search that she was trying to stop. She was also rightfully annoyed that her officers did not return her multiple requests for contact even though there was no exigency that would have prevented them from doing so. While perhaps a conversation behind closed doors would have been preferable, I believe that the Complainant was entirely justified in using strong words to voice her displeasure. I do not find that her behavior was unprofessional.

For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #4 - Allegation #4

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

NE#4 did not make the decision to arrest the male; however, as the primary officer on the call, the arrest was ultimately assigned to him. Regardless, for the same reasons as stated above (see Named Employee #1, Allegation #5), I find that the male's arrest was supported by probable cause. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #4 - Allegation #5

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

Regardless of whether the officers had a lawful basis to search the residence in the first place, during that search, they found an individual residing in a bedroom therein. When they asked that individual whether he lived at the home, he stated that he was not. At that point, they had reasonable suspicion to detain him to determine whether he had a lawful right to be there and, if not, whether he was engaging in any criminality within the residence. Ultimately, this individual was released from police custody once the Complainant arrived on the scene.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**



Named Employee #5 – Allegation #1

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

From my review of the evidence, and most notably the BWV, I found NE#5's conduct to be by far the most egregious and unprofessional of all of the Named Employees. She was blatantly disrespectful to the Complainant both prior to and after her arrival at the scene. Her comments, while not made in the direct presence of the Complainant, were recorded.

Notably, before she told the Complainant that the officers were "a little busy right now" and could not call her, NE#5 stated "is she serious right now" and "is she coming here, ah no, she can wait." This, in OPA's opinion, evinced clear intent to not call the Complainant regardless of the circumstances. Indeed, at that time, there was no exigency that prevented such a call. There were no emergent threats, the one suspect within view of the officers was in custody and handcuffs, and there were a number of officers at the scene.

Indeed, when she was questioned at the scene by the Complainant concerning what the exigency was that prevented the officers from calling her, NE#5 had no legitimate answer. She asserted that it was based, in part, on the fact that NE#2, NE#4, and NE#6 were about to search the house, but this was the whole purpose for why the Complainant wanted a return call in the first place – to determine whether to prevent the search from occurring.

As stated by NE#5's captain, "SPD is a paramilitary organization that relies on a chain of command" and, as such, "when a supervisor requests a response via radio, unless there is an emergency preventing [an officer's] response, [the officer] will answer radio without delay." Here, NE#5 made the deliberate decision to not call the Complainant back even though such a request was made by her direct supervisor. In doing so, she was disrespectful and rude towards the Complainant and undercut her role as the officers' sergeant. Such conduct is simply inappropriate and served to undermine the functioning of the Department, the Department itself, and NE#5 and her fellow officers.

For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #5 – Allegation #2

5.001 Standards and Duties 14. Employees Obey any Lawful Order Issued by a Superior Officer

In my opinion, out of all of the Named Employees, NE#5's conduct came the closest to insubordination. As discussed above, not only did I find that her verbal disregarding of the Complainant's requests for a call were disrespectful and unwarranted under the objective facts of this case, but that it also served to undermine the chain of command that is central to the functioning of the Department.

The only reason that I do not recommend that this allegation be Sustained is because, as explained more fully herein, I agree with the Named Employees that the Complainant's requests for a call did not technically constitute orders. As discussed above, I have no difficulty finding that her conduct was clearly unprofessional.

For these reasons, instead of sustaining this allegation, I recommend that NE#5 receive a Training Referral.



- **Training Referral:** NE#5 should be reminded that it is inappropriate to disregard a supervisor's direct and clear request, unless it is otherwise unlawful or contrary to policy. NE#5 should be counseled concerning her inappropriate conduct in this case and instructed to avoid engaging in such behavior in the future. NE#5 should be informed that similar conduct will not be viewed as kindly by OPA if it occurs a second time. This counseling and any associated retraining should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #5 – Allegation #3

5.001 - Standards and Duties 16. Employees May Object to Orders Under Certain Conditions

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #5 - Allegation #4

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

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

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #5 - Allegation #5

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 #6), I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #6 – Allegation #1

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

While NE#6 assisted NE#2 and NE#4 in the search of the residence, he stated that he did so because he was asked for help. He did not know what the officers' basis for the search was and apparently assumed that it was reasonable. Which I find that the search was likely technically unlawful, I believe that it was reasonable for NE#6 to believe, at the time and based on his lack of knowledge concerning the situation, that there was a permissible basis being relied



upon by NE#2 and NE#4. As such, I recommend that this allegation be Not Sustained – Lawful and Proper as against him.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #6 – Allegation #2

5.001 Standards and Duties 14. Employees Obey any Lawful Order Issued by a Superior Officer

NE#6 told OPA that he heard the Complainant go over the radio and ask for an officer to call her. However, at that time, he was on his way to the scene and had not yet arrived. As such, he reasonably did not believe that this request for a call was directed to him. Moreover, he distinguished the request for a call from an order that officers call the Complainant. Lastly, he denied ever being aware that the Complainant ordered the officers to not search the residence. Indeed, as discussed above, she never issued this order because no officer at the scene ever called her.

Given the above, I find that there was no order that NE#6 was required to respond to. For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against NE#6.

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

Named Employee #6 – Allegation #3

5.001 - Standards and Duties 16. Employees May Object to Orders Under Certain Conditions

For the same reasons as stated above (see Named Employee #6, Allegation #2), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #6 - Allegation #4

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

NE#6 stated that he had extremely limited interactions with the Complainant at the scene. He recounted that she asked him where the primary officer was and he pointed in NE#4's direction. He stated his belief that, at all times, he was professional during this incident.

Moreover, as discussed above, he denied either refusing to respond to the Complainant's calls or disregarding her direct order to not search the residence, both of which would have constituted unprofessional behavior. Lastly, the BWV indicated that he did not disparage the Complainant at any time before she arrived at the scene or after.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against NE#6.

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



Seattle Office of Police Accountability

November 29, 2018

Chief Carmen Best
Seattle Police Department
PO Box 34986
Seattle, WA 98124-4986

Dear Chief Best:

Please see the below Management Action Recommendation.

Case Number(s)

- 2018OPA-0118

Topic

- Searches

Summary

- It was alleged that the Named Employees violated SPD Policy 6.180 – *Searches-General* by performing a warrantless search of a vacant home.

Analysis

- The Named Employees raised a variety of reasons for why they thought the entry and search of the residence was justified, including that the squatters living inside had no reasonable expectation of privacy under the Fourth Amendment.
- The Complainant asserted that the Department's practice was to no longer search vacant homes and that such searches had not been regularly conducted for five to ten years. The officers vehemently disagreed with this contention.
- In analogous cases, searches of vacant homes have been deemed invalid (*State v. Ibara-Raya*). A home being vacant does not grant officers unfettered access.
- Overall, it is unclear whether SPD finds warrantless searches of vacant homes appropriate.

Recommendation(s)

- Clarify and communicate to officers (via e-learning or a roll call training) whether warrantless searches of vacant homes are permissible and, if so, under what circumstances.

Thank you for your consideration of this matter. I look forward to your response.

Sincerely,

AM

Andrew Myerberg
Director, Office of Police Accountability