



## **CLOSED CASE SUMMARY**

ISSUED DATE:     APRIL 11, 2018

CASE NUMBER:    2017OPA-1284

**Allegations of Misconduct & 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	Not Sustained (Training Referral)

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

**EXECUTIVE SUMMARY:**

The Named Employee may have violated Washington State law when, during the arrest of the subject, the Named Employee reached across the threshold of the subject’s doorway to take control of the subject and pull him outside.

**ANALYSIS AND CONCLUSIONS:**

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

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

On the date in question, Named Employee #1 (NE#1) was investigating a domestic violence assault. As part of this investigation, he spoke to the victim who alleged that the subject had punched him. The victim described the subject and provided the subject’s address. NE#1 then went to the subject’s residence in order to place him under arrest.

NE#1’s Body Worn Video (BWV) captured his actions on this date, including his interaction with the victim and his eventual arrest of the subject. It recorded that, while in his patrol vehicle, NE#1 ran the subject’s name through his Mobile Data Terminal and obtained various information concerning him. Among the information apparently learned by NE#1 was that the subject had at least one open warrant.

NE#1 arrived at the subject’s residence with another officer and knocked on the door. At first, NE#1 announced himself as a Domino’s employee delivering a pizza. When that ruse did not work, NE#1 again knocked on the door and stated that the police were outside and surrounding the subject’s home. He told the subject that this was his chance to come out with his hands up. The subject opened the door and, at that time, NE#1 pulled him through the threshold of the doorway and placed him under arrest. At that moment, NE#1 informed the subject that he was being arrested for domestic violence assault.

NE#1 walked the subject to his patrol vehicle and engaged in conversation with him. During that conversation, NE#1 informed the subject that he had King County warrants and the subject contended that they were for his not paying fines.



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NE#1 documented this incident in a General Offense Report. In that report, NE#1 recounted his conversation with the victim and his learning of the subject's name, description, and arrest. He further memorialized that when he searched records concerning the subject, that search returned an open felony warrant. The warrant was issued for the subject's failure to comply with the conditions of his release. It was only extraditable for Douglas, Chelan, Grant, and Okanogan counties. However, in his report, NE#1 wrote that he "immediately arrested [the subject] for assault" and did not state that the arrest was premised on the open warrant. Moreover, in the arrest screening report completed by NE#1's sergeant, the sergeant explicitly indicated that it was *not* a warrant arrest.

Approximately six days after the incident, NE#1's supervisor, who had initially screened the arrest, filed an OPA complaint alleging that NE#1 crossed the threshold of the subject's residence to arrest him in violation of law and policy. The sergeant indicated that NE#1 recognized that he had made an error after reviewing his BWV and noted his belief that NE#1 did not know that his actions were potentially unlawful. The sergeant indicated that he counseled NE#1 and explained caselaw and policy, and stated that a PAS entry would "be forthcoming regarding this matter."

During its investigation, OPA reviewed NE#1's General Offense Report, the sergeant's OPA complaint, NE#1's BWV, and the relevant case law.

OPA further interviewed NE#1. At that interview, NE#1 stated that while he initially believed that his conduct violated the rights of the subject, after further review he had changed his mind. He stated that the fact that he had a warrant allowed him to enter the residence to effectuate the arrest of the subject and, thus, these actions did not violate either federal or Washington State law.

SPD Policy 5.001-POL-2 requires that Department employees adhere to laws, City policy, and Department policy. Here, if NE#1 arrested the subject without a legal basis to do so, he would have violated this policy.

As a threshold matter, pulling the subject from his residence absent a valid warrant would have been unlawful. See *State v. Holeman*, 103 Wn. 2d 426, 693 P.2d 89 (1985). NE#1 appears to agree with this. NE#1's reporting from the date in question indicated that the arrest was effectuated based on probable cause to believe that the subject had committed an assault, not due to the open warrant. Notably, as indicated above, the sergeant explicitly indicated that this was not a warrant arrest.

At his OPA interview, however, NE#1 newly asserted that the arrest was justified based on the existence of a felony arrest warrant. As such, even though this was admittedly not the stated reason for why he took the subject into custody (as indicated by both his General Offense Report and BWV), he asserted that the arrest was legally supported. NE#1 is largely correct. As a general matter, a felony arrest warrant would have allowed him to enter the subject's home and to take the subject into custody.

However, this does not change the fact that NE#1's original stated basis for his conduct at the time was unlawful. I further note that this is the second time in the span of months that I have evaluated a potential unlawful search and seizure perpetrated by NE#1 (see OPA case number 2017OPA-0990). Perhaps the issue is that the Department is simply not providing sufficient training in this area. This was a concern raised in a recent OPA Management Action Recommendation (see OPA case number 2017OPA-1132). It could also be that NE#1 is not thoughtfully approaching these situations and is instead acting without considering the legal basis for doing so and the potential downstream



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consequences. Ultimately, the goal of OPA's investigatory process and the disciplinary system writ large is to ensure that officers act in accordance with law and policy and that, while mistakes are understandable and a reality of police work, they should not be repeated. I hope that NE#1 learns from this and his prior case and takes greater pains to ensure that his actions are consistently constitutional and proper.

For these reasons, I recommend that NE#1 receive a Training Referral.

- **Training Referral:** NE#1's chain of command should counsel him that he should more thoughtfully consider the constitutionality of a search and/or seizure prior to taking action. He should familiarize himself with the caselaw in this area and should be careful to ensure that he does not engage in unlawful searches and seizures. To the extent a PAS entry has already been generated by his supervisor concerning this incident, an additional entry is unnecessary. However, if this has not yet been done, NE#1's chain of command should memorialize this counseling in a PAS entry.

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