



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 22, 2019

CASE NUMBER: 2019OPA-0308

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force - 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force - 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	6.180 - Searches-General - 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Management Action)

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 Named Employee #1 and Named Employee #2 subjected her to excessive force when they handcuffed her when taking her into custody pursuant to the Involuntary Treatment Act (ITA). It was also alleged that the entry into the Complainant’s residence to effectuate the ITA may not have been supported by an exception to the warrant requirement.

ADMINISTRATIVE NOTE:

The allegations of excessive force against Named Employee #1 and Named Employee #2 were classified for expedited investigation. This means that OPA, with the review and approval of the Office of Inspector General for Public Safety, believed that it could issue findings based on its intake investigation and without interviewing these Named Employees as to those allegations. The allegation against Named Employee #3 was subject to a full investigation.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

8.200 - Using Force - 1. Use of Force: When Authorized

The Complainant asserted that the Named Employee came to her residence based on a false report that she was trying to harm herself. She stated that she opened her door and, at the officers’ request, showed them her wrists and confirmed that she had not harmed herself. She then closed the door. She recounted that, a short time later,



the officers returned to her front door and, when she opened the door, they shoved her inside. She stated that Named Employee #1 (NE#1) and Named Employee #2 (NE#2) used excessive force when they handcuffed her. Specifically, she asserted that they used unreasonable force when they grabbed her arms and forcefully pulled them behind her back.

The entry into the residence by NE#1 and NE#2 and the force they used to handcuff the Complainant was fully captured on Body Worn Video (BWV). The BWV does not support a finding that the force was excessive. The officers entered the residence and took hold of both of the Complainant's hands. After making the decision to place the Complainant into handcuffs, the officers moved her arms behind her back. The Complainant initially resisted their attempts to do so, but the officers were able to secure and double lock the handcuffs. During this time, the officers spoke with the Complainant calmly and respectfully. They informed her what they were doing and why.

For the above reasons, I find that the force used to handcuff the Complainant was reasonable, necessary, and proportional and, thus, consistent with policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegations #1

8.200 - Using Force - 1. Use of Force: When Authorized

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

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

Named Employee #3 - Allegations #1

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

The Complainant recounted that the entry into her apartment and the taking her into custody was directed by a senior officer. OPA determined that she was referring to Named Employee #3 (NE#3), who was an acting sergeant during this incident.

BWV indicated that NE#3 did, in fact, make the decision to enter the residence and take the Complainant into custody. Prior to making that decision, NE#3 spoke with the Complainant's family members. One told him that the Complainant had been flailing a knife around and was threatening to kill herself. NE#3 was also informed by NE#1 and NE#2 that they previously entered the residence, saw no signs of injury to the Complainant, and withdrew when they were told to leave. NE#3 told NE#2 to start dialogue with the Complainant. Prior to doing so, they discussed whether the officers would make entry into the residence. NE#3 confirmed that they would go in to effectuate the ITA. The Complainant opened the door and began speaking with the officers. NE#3 then stated: "get her...just get her." NE#1 and NE#2 entered the residence and took the Complainant into custody.

When interviewed by OPA, both NE#1 and NE#2 confirmed that NE#3 directed them to enter the residence. Both officers believed that the entry was justified under the community caretaking exception to the warrant requirement.



NE#3 told OPA that he did not believe that he needed a warrant or an exception to the warrant requirement to enter the Complainant's residence and detain her. He stated that, based on his training and experience, he was permitted to take her into custody to effectuate the ITA under an emergent detention theory.

SPD Policy 6.180-POL-2(b) permits an entry based on exigent circumstances; however, while the policy states that this exception applies to "emergency conditions," it expressly limits it to cases where "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." This is synonymous with the "hot pursuit" exception recognized in Washington State law.

The community caretaking exception (also referred to as the Emergency Doctrine) is different and applies where the need to protect or preserve life, avoid serious injury or protect property in danger of damage justifies an entry that would otherwise be illegal absent an emergency. This exception does not necessarily need to be supported by facts amounting to probable cause – it simply requires the officer's perceiving of a need to render aid or assistance. Further, while this exception permits the entry, it does not provide an additional basis for a search once inside of the residence.

Under caselaw, a warrantless entry to effectuate an ITA is permissible where the premises contain a person in imminent danger of death or harm. *See, e.g., State v. Loewen*, 97 Wn.2d 562, 568, 647 P.2d 489 (1982). Imminent danger is further defined in the RCW as the "state or condition of being likely to occur at any moment or near at hand, rather than distant or remote." RCW 71.05.020(20).

Whether warrantless entry into the residence to take the Complainant into custody was legally permissible is a close question. Ultimately, when evaluating the information available to the officers and the time they had to make the decision on whether to enter, I find that it was reasonable for them to believe that their actions were in conformance with law. However, as noted by OPA in earlier cases (*see* 2018OPA-0353), current SPD policy does not designate community caretaking as an acceptable exception to the warrant requirement. As such, even though the entry was likely legal, it was technically inconsistent with policy. OPA believes this to be an illogical result and, as such, previously made a Management Action Recommendation to the Department to modify this policy to specifically reference community caretaking. Moreover, based on the facts of this case, OPA suggests that the Department make specific mention of community caretaking and warrantless entries in the context of ITAs.

- **Management Action Recommendation:** SPD should modify SPD Policy 6.180-POL-2 to include the community caretaking/Emergency Doctrine exception to the search warrant requirement. The Department should define this exception as set forth in caselaw. The Department should also include guidance concerning community caretaking and warrantless entries in the context of ITAs. That language should be placed in both SPD Policy 6.180 and SPD Policy 16.110.

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