



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 15, 2018

CASE NUMBER: 2018OPA-0353

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force	Not Sustained (Training Referral)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 3	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Unfounded)
# 4	7.150 - Non-Detainee Property for Safekeeping 1. Officers May Submit Non-Detainee Property to the Evidence Unit for Safekeeping (SKO)	Not Sustained (Training Referral)
# 5	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 6	7.150 - Non-Detainee Property for Safekeeping 3. Officers Submit SKO Firearms as Evidence	Allegation Removed

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Training Referral)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 3	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Management Action)
# 4	7.150 - Non-Detainee Property for Safekeeping 1. Officers May Submit Non-Detainee Property to the Evidence Unit for Safekeeping (SKO)	Not Sustained (Training Referral)
# 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)
# 6	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 7	7.150 - Non-Detainee Property for Safekeeping 3. Officers Submit SKO Firearms as Evidence	Allegation Removed

Named Employee #3

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor	Not Sustained (Training Referral)



	Immediately, Unless Not Practical, Following any Use of Reportable Force	
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 3	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Unfounded)
# 4	7.150 - Non-Detainee Property for Safekeeping 1. Officers May Submit Non-Detainee Property to the Evidence Unit for Safekeeping (SKO)	Not Sustained (Training Referral)
# 5	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 6	7.150 - Non-Detainee Property for Safekeeping 3. Officers Submit SKO Firearms as Evidence	Allegation Removed

Named Employee #4

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force	Not Sustained (Unfounded)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 3	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Unfounded)
# 4	7.150 - Non-Detainee Property for Safekeeping 1. Officers May Submit Non-Detainee Property to the Evidence Unit for Safekeeping (SKO)	Not Sustained (Training Referral)
# 5	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 6	7.150 - Non-Detainee Property for Safekeeping 3. Officers Submit SKO Firearms as Evidence	Allegation Removed

Named Employee #5

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force	Not Sustained (Training Referral)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 3	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Management Action)
# 4	7.150 - Non-Detainee Property for Safekeeping 1. Officers May Submit Non-Detainee Property to the Evidence Unit for Safekeeping (SKO)	Not Sustained (Training Referral)
# 5	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)



# 6	7.150 - Non-Detainee Property for Safekeeping 3. Officers Submit SKO Firearms as Evidence	Allegation Removed
# 7	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Training Referral)

Named Employee #6

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force	Not Sustained (Training Referral)
# 2	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Training Referral)
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 4	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Unfounded)
# 5	7.150 - Non-Detainee Property for Safekeeping 1. Officers May Submit Non-Detainee Property to the Evidence Unit for Safekeeping (SKO)	Not Sustained (Training Referral)
# 6	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 7	7.150 - Non-Detainee Property for Safekeeping 3. Officers Submit SKO Firearms as Evidence	Allegation Removed

Named Employee #7

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force	Not Sustained (Unfounded)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 3	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Management Action)
# 4	7.150 - Non-Detainee Property for Safekeeping 1. Officers May Submit Non-Detainee Property to the Evidence Unit for Safekeeping (SKO)	Not Sustained (Unfounded)
# 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)
# 6	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 7	7.150 - Non-Detainee Property for Safekeeping 3. Officers Submit SKO Firearms as Evidence	Not Sustained (Unfounded)
# 8	16.090 - In-Car and Body-Worn Video 3. All Employees Operating ICV and/or BWV Must be in Uniform	Not Sustained (Training Referral)



# 9	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Training Referral)
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Named Employee #8

Allegation(s):		Director's Findings
# 1	1.020 - Chain of Command 6. Command Employees Take Responsibility for Every Aspect of Their Command	Not Sustained (Lawful and Proper)
# 2	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	Not Sustained (Management Action)
# 3	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Lawful and Proper)

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 engaged in multiple policy violations when they detained her from inside of her apartment, took her into custody, and seized her firearm.

STATEMENT OF FACTS:

Officers responded to a crisis call. It was reported that the Complainant was threatening to shoot herself and was in possession of a firearm. The officers arrived on scene and began engaging in tactical planning. They created a contact team and commenced communications with the Complainant. The Complainant told the officers that she would not speak with them unless they turned off their Body Worn Video (BWV) systems. The officers made the decision to do so to build rapport with the Complainant and to de-escalate the situation. Officers continued to engage with the Complainant for around an hour in order to convince her not to harm herself and to exit the apartment.

At one point, the Complainant placed her unloaded firearm outside of her door in order to convince the officers to leave her alone. She then again closed herself in the apartment. She told the officers that they could take the firearm, which they did. They continued to speak with the Complainant and tried to convince her to leave her apartment. She continually refused to do so. Given the officers' concern that the Complainant presented an ongoing threat to her own safety, the officers decided to grab the Complainant by her arms and pull her from her apartment. The officers took the Complainant into custody and handcuffed her. She was ultimately subjected to an "emergent detention." After the Complainant was taken into custody, the officers justified the warrantless seizure of the Complainant from her residence by citing to "community caretaking."

The Complainant's firearm was submitted to the Evidence Unit and was documented in the General Offense Report. The officers later sought and obtained an Extreme Risk Protection Order (ERPO), which was served on the Complainant. This was purposed to restrict her access to firearms. She later successfully challenged that order in court.

The Complainant claimed to a Department supervisor that the Named Employees engaged in multiple policy violations. The matter was referred to OPA and this investigation ensued.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force

After she was detained, the Complainant was handcuffed. Pursuant to her request, she was brought back into her apartment to get some of her things and, while inside, engaged in a continuous conversation with various officers. She became emotional at that time. At one point, the Complainant sat down on the ground. The officers continued to try to reason with her to leave the apartment. At one point, she stated: "the handcuffs, they're hurting me, they're bothering me." NE#2 responded to her and stated that he would check her handcuffs. He looked at them and said: "They're very loose, they can't be hurting you." She then told the officers that she had never been in handcuffs before. She did not complain again of pain and never complained of any injury.

NE#1, NE#2, NE#3, NE#5, and NE#6 were all in the residence at the time the Complainant stated that the handcuffs were hurting her. All of these officers were in her immediate vicinity and all, except for NE#6, acknowledged hearing the complaint at the time. However, none of these officers reported her statement to a supervisor.

NE#6 was the officer who handcuffed the Complainant. He told OPA that he recalled NE#1 reporting the complaint of pain to a supervisor. NE#1 also remembered doing so but could not identify which supervisor he reported the complaint to. NE#7 denied being aware of the complaint. OPA also interviewed the officers' Sergeant who did not recall ever being informed of the complaint of pain.

Notably, a review of the BWV indicated that NE#1 and NE#6 spoke about reporting the complaint of pain and NE#1 told NE#6 that he would report it to their Sergeant. They both approached the Sergeant, who was speaking to other officers. NE#1 then told NE#6 that they would speak to the Sergeant at the precinct. There is no indication that either officer ever later reported this complaint of pain to the Sergeant.

SPD Policy 8.400-POL-2 requires officers, including witness officers, to verbally notify a supervisor immediately, unless not practical, following any use of reportable force. For the purpose of this policy (and the Department's use of force policy, generally), a complaint of pain constitutes a Type I use of force that must be immediately reported to a supervisor.

All of these officers had an independent obligation to report this complaint of pain to a supervisor. However, none of them did so. These failures constituted violations of policy. However, for several reasons, I recommend Training Referrals rather than Sustained findings. First, whether the Complainant was actually making a complaint of pain was unclear. She stated that the handcuffs were hurting her and then quickly followed that by stating that they were bothering her. She never exclaimed in pain or repeated her complaint. Second, when NE#2 checked the handcuffs, they were clearly loose and, as a practical matter, were almost certainly not actually causing the Complainant pain. Indeed, shortly after NE#2 checked the handcuffs, she stated that she had never been in handcuffs before. I believe that the shock of being in handcuffs and the uncomfortable nature of handcuffs was what she was complaining about, not any true pain. Third, the Complainant made numerous complaints regarding the officers' conduct. As such, it would not have been unreasonable for the officers, who were continuously trying to convince her to cooperate with them, to have not registered her complaint regarding the handcuffs. I counsel these officers to



properly report such complaints moving forward. Future unexcused failures to report will likely result in Sustained findings.

- **Training Referral:** NE#1, NE#2, NE#3, NE#5, and NE#6 should receive additional training concerning SPD Policy 8.400-POL-2 and the requirement that they report complaints of pain to a supervisor. These officers should be counseled concerning their failure to do so in this case and should be instructed to more closely comply with this policy moving forward. These officers should be informed that future unexcused failures to report force and/or complaints of pain will likely result in Sustained findings. 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 #2

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

The Complainant alleged that she was subjected to excessive force. Specifically, the Complainant contended that she was shoved against a wall.

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

Based on OPA’s review of the video, there is no evidence that she was shoved against a wall or, for that matter, that she was subjected to excessive force. The only force applied was that used to grab her arms to pull her from the apartment, to handcuff her, and to hold on to her arms during portions of her detention. This force was de minimis. Moreover, as the officers made the decision to detain her for a medical evaluation, the force used to grab her arms and the application of handcuffs to secure her person while they waited for the ambulance to arrive was reasonable, necessary, and proportional, and, thus, consistent with SPD policy.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#1, NE#2, NE#3, NE#4, NE#5, NE#6, and NE#7.

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

Named Employee #1 - Allegation #3

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

NE#2 and NE#5 were the officers that effectuated the seizure of the Complainant when she was standing in the threshold of her apartment. In addition, the seizure was ordered by NE#7, and NE#8 was the on-scene supervisor



who authorized that decision. This seizure is discussed more fully in the context of those officers. NE#4 did not appear to have ever entered the apartment.

Numerous officers, including NE#1, NE#3, and NE#6 entered the Complainant's apartment. At the time that she was taken into custody, the Complainant told the officers that she wanted to put clothes on. NE#5 asked her what she needed and she asked to go inside. Those officers then went inside of the apartment with her and facilitated her getting additional clothing. They remained in the apartment with her until medical assistance arrived. During that time, they addressed her complaints, tried to reassure her that she was going to get help, and empathized with her. At one point, she told the officers that she did not have any other firearms and that they could search her residence. The officers told her that they did not want to search her personal space and, in fact, did not do so.

At their OPA interviews, several of these officers articulated that they entered the apartment based on the community caretaking exception to the search warrant. However, as discussed more fully below, that is not an exception that is recognized in the Department's policy. That being said, this issue is academic, as I find that the entry into the apartment with the Complainant was not actually a search. As such, whether the entry was justified by an exception to the search warrant is irrelevant.

As such, I recommend that this allegation be Not Sustained – Unfounded as against NE#1, NE#3, and NE#6.

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

Named Employee #1 - Allegations #4

7.150 - Non-Detainee Property for Safekeeping 1. Officers May Submit Non-Detainee Property to the Evidence Unit for Safekeeping (SKO)

SPD Policy 7.150-POL-1 states that "officers may submit non-detainee property to the Evidence Unit for safekeeping." This policy explains that: "The Evidence Unit will accept non-evidentiary items as safekeeping when the owner of the property is known but is unable to retain the property." (SPD Policy 7.150-POL-1.) SPD Policy 7.150-POL-3 sets forth when firearms are submitted to the Evidence Unit for safekeeping. The policy instructs that where this occurs, the submitting officer must complete a "1.17 Evidence and Property Release Authorization releasing the firearm to the owner at the time the firearm is submitted."

The Complainant asserted that her firearm was unlawfully seized during the incident. However, the Department video that captured this incident refutes that allegation. The video establishes that the Complainant voluntarily relinquished control over her firearm when she placed it outside of her doorway, told the officers that they could take it, and then closed her door.

The firearm was, in fact, taken into custody. This was memorialized in the General Offense Report. Moreover, the firearm was placed into safekeeping with the Evidence Unit as contemplated in SPD Policy 7.150-POL-1. While this was appropriate, none of the officers took any of the following steps: photograph the property prior to submittal as required by SPD Policy 7.150-TSK-1(2); or complete and provide the Complainant with a SKO tag after submittal as required by SPD Policies 7.150-TSK-1(3) – (4) and 7.150-POL-3.



While NE#1 completed the section of the General Offense Report concerning the submission of the firearm into evidence, neither he nor any of the other involved officers recalled who actually provided the firearm to the Evidence Unit.

Ultimately, the failure to take the steps outlined above was contrary to policy. That being said, I do not believe that this warrants a sustained finding for two main reasons. First, the non-compliance with the specific requirements of this policy constitutes a mistake instead of misconduct that is better addressed by training rather than discipline. Second, this was a unique case in that the officers served the Complainant with an Extreme Risk Protection Order (ERPO), which was purposed to restrict her access to firearms. It seems counter-intuitive that the officers would serve her with a ERPO and, at the same time, provide her with a form providing for the release of her weapon to her. Based on the above, instead of Sustained findings, I issue the below Training Referrals. Moreover, I issue these Training Referrals to NE#1, NE#2, NE#3, NE#4, NE#5, NE#6. I do not issue it against NE#7, as he was a Sergeant on the date in question, and I do not believe that there was an expectation that he would have entered the firearm into evidence.

- **Training Referral:** NE#1, NE#2, NE#3, NE#4, NE#5, and NE#6 should receive retraining from their chains of command on the elements of SPD Policies 7.150-POL-1, 7.150-POL-3, and 7.150-TSK-1. These officers should be specifically reminded of the obligations to photograph evidence that it being placed into safekeeping, as well as to complete a SKO form and to provide that form to the property owner. These officers should be counseled to more closely comply with this policy moving forward. 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 #5

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

The Complainant alleged that the Named Employees engaged in unprofessional behavior, including subjecting her to “verbal abuse.”

SPD Policy 5.001-POL-9 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-9.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

During its investigation, OPA reviewed the Department video relating to this case. From that review, there is no indication that any of the officers verbally abused the Complainant or that they engaged in any type of unprofessional behavior. To the contrary, OPA believes that the Named Employees conducted themselves commendably in a very challenging situation. For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against NE#1, NE#2, NE#3, NE#4, NE#5, NE#6, and NE#7.



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

Named Employee #1 - Allegation #6

7.150 - Non-Detainee Property for Safekeeping 3. Officers Submit SKO Firearms as Evidence

This allegation is discussed in the context of SPD Policy 7.150-POL-1. (See Named Employee #1, Allegation #4.) As such, I find that it is duplicative and I recommend that it be removed against all of the Named Employees.

Recommended Finding: **Allegation Removed**

Named Employee #2 - Allegations #1

8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

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

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

Named Employee #2 - Allegation #2

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

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

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

Named Employee #2 - Allegation #3

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

NE#2 and NE#5 were the officers who grabbed the Complainant's arms and pulled her from her apartment. They did so when they got the cue from NE#7, who was a supervisor. Moreover, as NE#8 was the overall scene commander, he was ultimately responsible for the officers' actions in this regard.

At the time she was seized, the Complainant was on the threshold of her apartment. This is established by the Department video of the incident. As such, for this seizure and the entry into the Complainant's residence to have been legal, it must have been justified by a warrant or, where no warrant existed, by an exception from the general warrant requirement. *State v. Holeman*, 103 Wn.2d 426, 693 P.2d 89 (1985). Here, it is not disputed that there was no warrant for the Complainant's seizure. Whether an exception to the warrant requirement applied is discussed below.

Here, virtually all of the Named Employees contended that the seizure was permitted based on the "community caretaking" exception to the warrant requirement. Notably, community caretaking is not mentioned in SPD Policy 6.180. However, community caretaking is specifically referenced in other portions of the SPD Manual. (See SPD Policies 5.001; 6.140-POL-5; 7.010-POL-7; 15.215-POL-3; 16.110-POL-5(4).) This suggests to OPA that the



Department made a conscious decision not to include such an exception in the policy. This is confusing given that this exception exists in Washington State law.

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.

I believe that the officers “entry” into the residence when they pulled the Complainant over the threshold would have been justified by the community caretaking exception to the warrant requirement. However, their conduct does not fit under any of the exceptions outlined in SPD’s policy. As such, even though they acted consistent with Washington State law, they technically violated Department policy. This is an unfair and illogical outcome and one that OPA refuses to countenance.

As such, instead of issuing a Sustained finding to officers who OPA believes did the right and lawful thing, I recommend that this allegation be Not Sustained – Management Action Recommendation as against NE#2, NE#5, NE#7, and NE#8.

- **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.

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

Named Employee #2 - Allegations #4

7.150 - Non-Detainee Property for Safekeeping 1. Officers May Submit Non-Detainee Property to the Evidence Unit for Safekeeping (SKO)

For the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained and refer to the above Training Referral. (*Id.*)

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



Named Employee #2 - 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

The Complainant alleged that she was unlawfully detained by the Named Employees.

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.*)

Here, the officers detained and then took the Complainant into custody because they believed that she presented an ongoing serious danger to her own safety. As such, this was a greater intrusion than a Terry stop. However, an officer is justified in effectuating a seizure under these circumstances where that officer "has reasonable cause to believe that such person is suffering from a mental disorder or substance use disorder and presents an imminent likelihood of serious harm or is in imminent danger because of being gravely disabled." RCW 71.05.153(3)(a)(ii).

Based on the Complainant's behavior, I find that there was sufficient reasonable cause to detain her pursuant to this statute. Notably, they were called to the scene because of the Complainant's threats to shoot herself, she was initially armed with a firearm and potentially had other weapons in her residence, and she appeared to be potentially bordering on crisis at the time. For these reasons, I find that the detention of the Complainant was legally justified and, accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#2 and NE#7.

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

Named Employee #2 - Allegation #6

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

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

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



Named Employee #2 - Allegations #7

7.150 - Non-Detainee Property for Safekeeping 3. Officers Submit SKO Firearms as Evidence

For the same reasons as stated above (see Named Employee #1, Allegation #6), I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #3 - Allegations #1

8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

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

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

Named Employee #3 - Allegation #2

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

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

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

Named Employee #3 - Allegation #3

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

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 - Allegations #4

7.150 - Non-Detainee Property for Safekeeping 1. Officers May Submit Non-Detainee Property to the Evidence Unit for Safekeeping (SKO)

For the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained and refer to the above Training Referral. (*Id.*)

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



Named Employee #3 - Allegation #5

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

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

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

Named Employee #3 - Allegation #6

7.150 - Non-Detainee Property for Safekeeping 3. Officers Submit SKO Firearms as Evidence

For the same reasons as stated above (see Named Employee #1, Allegation #6), I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #4 - Allegations #1

8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

From OPA's review of the BWV, NE#4 does not appear to have been in the Complainant's residence when she made the complaint of pain concerning her handcuffs. This is consistent with NE#4's assertion that he was outside of the residence of that time. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #4 - Allegation #2

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

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

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

Named Employee #4 - Allegation #3

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

From OPA's review of the BWV, NE#4 does not appear to have entered the Complainant's residence. This is consistent with NE#4's assertion that he was outside of the residence during his time at the scene. As such, I recommend that this allegation be Not Sustained – Unfounded.

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



Named Employee #4 - Allegations #4

7.150 - Non-Detainee Property for Safekeeping 1. Officers May Submit Non-Detainee Property to the Evidence Unit for Safekeeping (SKO)

For the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained and refer to the above Training Referral. (*Id.*)

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

Named Employee #4 - Allegation #5

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

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

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

Named Employee #4 - Allegation #6

7.150 - Non-Detainee Property for Safekeeping 3. Officers Submit SKO Firearms as Evidence

For the same reasons as stated above (see Named Employee #1, Allegation #6), I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #5 – Allegation #1

8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

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

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

Named Employee #5 – Allegation #2

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

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

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



Named Employee #5 – Allegation #3

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

For the same reasons as stated above (see Named Employee #2, Allegation #3), I recommend that this allegation be Not Sustained and refer to the above Management Action Recommendation. (*Id.*)

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

Named Employee #5 - Allegations #4

7.150 - Non-Detainee Property for Safekeeping 1. Officers May Submit Non-Detainee Property to the Evidence Unit for Safekeeping (SKO)

For the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained and refer to the above Training Referral. (*Id.*)

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

Named Employee #5 - Allegation #5

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

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

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

Named Employee #5 - Allegation #6

7.150 - Non-Detainee Property for Safekeeping 3. Officers Submit SKO Firearms as Evidence

For the same reasons as stated above (see Named Employee #1, Allegation #6), I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #5 - Allegations #7

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity

SPD Policy 16.090-POL-5 concerns when Department employees are required to record police activity. SPD Policy 16.090-POL-5(b) sets forth the categories of activity that must be recorded, which include: responses to dispatched calls starting before the employee arrives on the scene; traffic and Terry stops; on-view infractions and criminal activity; arrests and seizures; searches and inventories of vehicles, persons, or premises; and questioning victims, suspects, or witnesses.

During its investigation, OPA determined that NE#5 failed to record the totality of his involvement in the incident on In-Car Video (ICV). Instead, he only appeared to record a three-minute video at the conclusion of the incident. At his



OPA interview, NE#5 stated that he intended to activate his ICV and that he usually did so during his responses to calls. However, he acknowledged his apparent failure to do so here.

While the NE#5's incomplete recording of this incident constituted a technical violation of policy, I recommend that he receive a Training Referral rather than a Sustained finding for several reasons. First, NE#5 took responsibility for his failure to record at his OPA interview and did not attempt to make any excuses. Second, NE#5 did properly activate his BWV and, thus, recorded the entirety of this incident. Third, at the time of the incident, NE#5 was several floors up in an apartment building. As such, even had his ICV been activated, it would not have recorded video and the audio may likely have been incomplete given his distance from his patrol vehicle. That being said, I counsel NE#5 to ensure closer compliance with this policy moving forward.

- **Training Referral:** NE#5 should receive additional training concerning the elements of SPD Policy 16.090-POL-5. He should be reminded by his chain of command of the importance of fully recording his response to incidents on both ICV and BWV. NE#5 should also be reminded that, where he fails to do so, he must document and provide the reason for that failure pursuant to SPD Policy 16.090-POL-7. NE#5's chain of command should counsel him to comply with this policy 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 #6 – Allegation #1

8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force

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

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

Named Employee #6 – Allegation #2

8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

SPD Policy 8.400-POL-1 requires officers to report all uses of force except for de minimis force. Under SPD policy, a complaint of pain constitutes a Type I use of force that must be reported.

Neither NE#6 nor any other officer completed a Type I force report concerning the Complainant's complaint of pain from her handcuffs. As NE#6 applied the handcuffs, under the circumstances of this case, he would have been responsible for the Type I report. NE#6 stated that he spoke to his Field Training Officer, NE#3, who told him that they would screen the complaint with a Sergeant to see whether a report was needed. NE#6 told OPA that NE#3 further stated that he should hold off on from writing the report until they heard from the Sergeant. From OPA's review of the video, the Sergeant was never notified. This is consistent with what the Sergeant told OPA during his interview.



While I find that this failure to generate a report constituted a violation of policy, I recommend that NE#6 receive a Training Referral instead of a Sustained finding. I base this primarily on the fact that, at the time of the incident, NE#6 was a probationary officer and was still learning. This being said, NE#6 should be mindful to generate such reports when required in the future.

- **Training Referral:** NE#6 should receive retraining as to SPD Policy 8.400-POL-1. He should be reminded to generate use of force reports when appropriate and should be instructed that a complaint of pain constitutes a Type I use of force that must be documented. NE#6 should be counseled concerning his failure to do so here and should be informed that future incidents of non-reporting will likely result in a Sustained finding. 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 #6 – Allegation #3

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

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

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

Named Employee #6 - Allegations #4

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

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 #6 - Allegation #5

7.150 - Non-Detainee Property for Safekeeping 1. Officers May Submit Non-Detainee Property to the Evidence Unit for Safekeeping (SKO)

For the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Not Sustained and refer to the above Training Referral. (*Id.*)

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

Named Employee #6 - Allegation #6

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

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



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

Named Employee #6 - Allegations #7

7.150 - Non-Detainee Property for Safekeeping 3. Officers Submit SKO Firearms as Evidence

For the same reasons as stated above (see Named Employee #1, Allegation #6), I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #7 – Allegation #1

8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

Based on OPA's review of the video, NE#7 was not in the Complainant's residence when she complained of pain from her handcuffs. He further stated that he did not observe any injuries on the Complainant's person. NE#7 told OPA that, had he heard a complaint of pain, he would have generated a Type I force report.

As such, I recommend that this allegation be Not Sustained – Unfounded as against NE#7.

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

Named Employee #7 – Allegation #2

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

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

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

Named Employee #7 – Allegation #3

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

For the same reasons as stated above (see Named Employee #2, Allegation #3), I recommend that this allegation be Not Sustained and refer to the above Management Action Recommendation. (*Id.*)

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

Named Employee #7 - Allegations #4

7.150 - Non-Detainee Property for Safekeeping 1. Officers May Submit Non-Detainee Property to the Evidence Unit for Safekeeping (SKO)

As discussed above (see Named Employee #1, Allegation #4), while I issued a Training Referral to all of the officers involved in this matter due to their handling of the Complainant's firearm, I do not issue this same Training Referral



to NE#7. This is because he was a Sergeant on the date in question and OPA does not believe that there was an expectation that he would have taken custody of the firearm and entered it in to evidence.

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

Named Employee #7 - 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 #2, Allegation #5), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #7 - Allegation #6

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

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

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

Named Employee #7 - Allegations #7

7.150 - Non-Detainee Property for Safekeeping 3. Officers Submit SKO Firearms as Evidence

For the same reasons as stated above (see Named Employee #7, Allegation #4), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #7 - Allegation #8

16.090 - In-Car and Body-Worn Video 3. All Employees Operating ICV and/or BWV Must be in Uniform

NE#7 is a Sergeant who works on the Department's Hostage Negotiation Team. He is assigned a take-home marked patrol vehicle that is equipped with ICV. He is assigned this take-home vehicle because he is on call to the extent he is needed to respond to a hostage or negotiation situation. NE#7 told OPA that he regularly reports to such situations in plain clothes. He stated that it was advantageous to do so because, at times, the subjects were more willing to speak with non-uniformed personnel. He further reported that he would at times respond without logging into the COBAN system and, as such, without activating ICV. OPA learned that both his Lieutenant and Captain were aware of his practice; however, he stated that he never discussed his ICV usage with them.

NE#7 recounted that, here, he was dispatched to a call of a suicidal and armed woman. He stated that he responded to the incident from downtown Seattle. At the time, he was in plainclothes and drove his marked patrol vehicle. While he activated his emergency lights and siren on the way to the Complainant's residence, he did not record ICV.



He further stated that it was not practical for him to return to his office to get his equipment and log into the COBAN system.

SPD Policy 16.090-POL-3 states that all employees who operate ICV and/or BWV must be in uniform. Moreover, SPD Policy 16.090-POL-5 requires that Department video be recorded during the incident at issue in this case.

I find that SPD policy required NE#7 to record Department video during his response. He did not do so. I further conclude that there is no language in the SPD Manual that exempts NE#7 from the requirements of SPD Policy 16.090. However, I recognize the advantage of having NE#7 respond to incidents in plainclothes and also understand that he is required to respond to incidents at times when he does not have his uniform, ICV, and BWV with him and where it would be impractical to return to his office to get them and log in to COBAN.

Ultimately, given NE#7's unique role and responsibilities, I do not believe that he violated policy when he responded to the scene while using a marked vehicle equipped with ICV in plainclothes and without activating Department video. That being said, if NE#7 is going to continue to act contrary to the express language of the policy, his supervisors should seek to obtain an exception for him. As such, I issue the following Training Referral, which is directed both to NE#7 and his chain of command.

- **Training Referral:** To the extent it is the intent of NE#7 and his chain of command to continue to allow him to respond to scenes with ICV but while in plainclothes and without logging into COBAN, they should seek an exception from the requirements of SPD Policy 16.090. This will ensure that NE#7 is able to carry out the unique role and responsibilities of his assignment without violating policy each time he does so. NE#7's and his chain of command's progress in seeking this exception should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #7 - Allegation #9

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity

For the same reasons as stated above (see Named Employee #7, Allegation #8), I recommend that this allegation be Not Sustained and refer to the above Training Referral. (*Id.*)

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

Named Employee #8 - Allegation #1

1.020 - Chain of Command 6. Command Employees Take Responsibility for Every Aspect of Their Command

SPD Policy 1.020-POL-6 instructs command employees to take responsibility for every aspect of their command. The policy states that: "All sergeants and above are fully responsible and accountable for the acts or omissions of their subordinates" and that "[a]ny failure by a subordinate may be assumed to be a failure in supervision or command."

Given his role as the incident commander, NE#8 was responsible for the actions taken by his subordinates. As such, the appropriateness of the decisions to detain and involuntarily commit the Complainant, to take her firearm, and to



seize her from her home without a warrant all ultimately fall on NE#8's shoulders. At his OPA interview, NE#8 took ownership over these decisions and acknowledged that he bore responsibility for anything that fell outside of policy.

As discussed more fully herein, I find that all of these decisions were legal and consistent with the Department's policies and expectations. Accordingly, I find that NE#8 appropriately exercised his command over the situation and recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #8 - Allegation #2

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

For the same reasons as stated above (see Named Employee #2, Allegation #3), I recommend that this allegation be Not Sustained and refer to the above Management Action Recommendation. (*Id.*)

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

Named Employee #8 - Allegation #3

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity

While NE#8's dispatched response to the scene and supervision while there were indisputably law enforcement actions that needed to be recorded, NE#8 did not do so. NE#8 explained that, at the time of the incident, he was not equipped with or trained on BWV. Moreover, NE#8 told OPA that, when he was called to the scene as the incident commander, he was working a security detail with another Lieutenant at a different location. He drove that Lieutenant's car to the scene and that vehicle was not equipped with ICV. Given the exigency of the incident, NE#8 did not have time to return to the precinct, get another vehicle, log in to COBAN, and then drive to the scene.

Under the unique circumstances of this case, I find NE#8's explanations and conduct to have been reasonable. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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