



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 22, 2020

CASE NUMBER: 2019OPA-0526

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	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)

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 (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 Named Employee #1 (NE#1) did not have probable cause to effectuate her boyfriend's arrest and that Named Employee #2 (NE#2) unlawfully breached the door of the Complainant's apartment following a domestic violence call.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General's review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employees. As such, the Named Employees were not interviewed as part of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

On July 28, 2019, officers were dispatched to a domestic violence (DV) incident at the Complainant's apartment. The reporting party identified that three children lived in the unit. The reporting party also told police that the male and female involved in the dispute were boyfriend and girlfriend. While outside of the apartment, the officers could hear one of the children crying. Officers also heard a male and female yelling inside of the apartment. Officers, including NE#1, knocked on the door and announced their presence; however, no one responded. The officers continued unsuccessful to gain entry. NE#2, who was assigned as the Acting Sergeant during this incident, arrived on scene roughly 30 minutes later. At that point, officers still had not made any progress communicating with the occupants



and/or gaining access into the apartment. A witness officer contacted radio and was advised that there were previous DV calls at that address as well as an active no-contact order (NCO) between the boyfriend and girlfriend.

The officers discussed making entry and whether they had exigency. They decided that they had a sufficient basis to make entry given the multiple DV incidents at that location, the ongoing yelling and screaming between the involved parties, the presence of at least one crying child in the apartment, the active NCO, and their inability to gain entry. The officers engaged in tactical planning and assigned roles. The decision to make entry was screened with NE#2, who concurred with the officers' plan. The officers breached the door and, after doing so, observed a naked male. They identified the male as the subject of the NCO. He was placed under arrest.

The Complainant – who is the girlfriend – later alleged to OPA that the officers did not have probable cause to arrest the boyfriend and made an illegal entry into the apartment. This investigation ensued.

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. Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient in themselves to support a reasonable belief that an offense has been or is being committed.

As discussed above, when the officers entered the apartment, they observed the boyfriend. They identified him as the subject of the NCO and, in doing so, verified that he was acting in violation of law and that they had sufficient probable cause to take him into custody. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegations #1

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

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



Based on the facts of this case, the officers had exigent circumstances to enter the apartment. Moreover, after they unsuccessfully tried to gain access through the cooperation of the occupants, they were permitted to breach the door. The enforcement of DV crimes is a priority of the Department and, as indicated above, policy specifically permits warrantless entries in exactly the situation presented by this case.

For the above reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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