



## CLOSED CASE SUMMARY

ISSUED DATE: JULY 2, 2019

CASE NUMBER: 2018OPA-1088

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	6.010-POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 2	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Not Sustained (Training Referral)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	6.010-POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	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, a reporter, alleged that he was falsely arrested and that the documentation generated by Named Employee #1 was inaccurate.

**SUMMARY OF INVESTIGATION:**

It was alleged that the Named Employees falsely arrested the Complainant, who is a reporter employed by BuzzFeed News. In a news article, the Complainant’s employer stated that the arrest was: “an outrageous and disproportionate response to a reporter doing his job.” The Complainant’s employer further disputed SPD’s “account of what transpired.” Given these comments, OPA initiated this investigation to determine whether the Named Employees had probable cause to arrest the Complainant and whether the report generated concerning this incident were thorough, complete, and accurate.

As part of its investigation, OPA interviewed the Complainant. He stated that he was working on a story concerning an individual (referred to here as the Subject) who resided in a Seattle apartment building. The Complainant told OPA that he went to the building and, while standing outside, someone let him into the building. He then went to the Subject’s apartment door, knocked several times, and put a letter under the door. While he was in front of the door, the police arrived. The police told him that they were responding to a report of someone trying to break into the Subject’s apartment. The Complainant confirmed that he matched the description of the suspect, but he told the officers that he was not breaking in to the apartment. The Complainant stated that the officers spoke to people in the Suspect’s apartment and that someone reported that the Complainant was harassing them. The Complainant was then placed under arrest.



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The entirety of the Named Employees' response to this incident was captured on Body Worn Video (BWV). The video indicated that the officers were contacted by one of the residents of the apartment. The officers were let into the building by the resident and were led upstairs. When they got to the Subject's floor, the officers observed an individual, who was later identified as the Complainant, standing in the hallway and speaking to another occupant of the building. The officers made contact with the Complainant. The Complainant denied that he had been jiggling the door handles. He stated that he was a reporter for BuzzFeed and he acknowledged knocking on the Subject's door. He told the officers that he left a piece of paper with his contact information under the Subject's door. When asked whether the Subject and the other residents of the apartment were expecting him, the Complainant said that they were.

Named Employee #2 (NE#2) asked the Complainant how he got into the secured building. The Complainant responded: "Uh, someone let me in. I don't know his name unfortunately." NE#2 asked the Complainant whether he was aware that he was trespassing, and the Complainant stated that he was and nodded his head affirmatively. NE#2 also spoke with the Subject and other residents of the apartment. The Subject told NE#2 that the Complainant had been repeatedly trying to contact them and was harassing them nonstop. The Subject described this as "stalking." The Subject stated that the Complainant's conduct caused him to fear for his safety and said that he wanted to file a harassment report. NE#2 again spoke with the Complainant and asked him if he was aware that he was trespassing. The Complainant said yes. NE#2 stated to the Complainant that the Subject and the other residents said that they asked the Complainant to stop contacting them. The Complainant denied that this was the case and said that he would continue to contact people that were connected to news stories until he was explicitly told to stop.

NE#1 also spoke with the Subject and the other residents of the apartment. The Subject stated that he had asked the Complainant to stop trying to contact him. The Subject disclosed to NE#1 that he had recently been receiving death threats. The Subject further told NE#1 that he wanted to press charges against the Complainant.

After concluding his conversation with the Subject and the other residents of the apartment, NE#1 exited and again went to speak with the Complainant. NE#1 began asking the Complainant questions but was informed by a witness officer (referred to here as WO#1) that the Complainant had invoked his right to counsel. NE#1 ceased asking the Complainant questions.

NE#1 then discussed the incident with NE#2 and WO#1 and conferred with them concerning whether there was probable cause to arrest the Complainant for trespass. Ultimately, they collectively concluded that there was. NE#2 placed the Complainant under arrest and NE#1 conducted further interviews of the residents of the Subject's apartment. The Complainant was taken into custody and was booked into the King County Jail. The Complainant was not ultimately criminally charged by the Seattle City Attorney's Office.

The Subject and other residents of the apartment subsequently sought an order of protection against the Complainant and that order was granted.

OPA lastly interviewed both of the Named Employees, as well as WO#1 and the officers' Sergeant. All of these individuals confirmed their belief that there was sufficient probable cause to arrest the Complainant. They contended that he was inside of the apartment building without permission to be there and that, when he stayed therein and tried to make contact with the Subject, the Complainant engaged in a criminal trespass. NE#2 told OPA that she pushed



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for the criminal trespass arrest; however, NE#1, who was the primary officer, also believed that the arrest was warranted.

**ANALYSIS AND CONCLUSIONS:**

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

***6.010-POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an 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 Named Employees arrested the Complainant for criminal trespass. Pursuant to RCW 12A.08.040(A)(1): "A person is guilty of criminal trespass in the first degree if he or she knowingly enters or remains unlawfully in a building."

Here, the Complainant was not a resident of the building in question. He further could not establish that he was a guest of any resident. The Complainant was not buzzed into the residence; instead, he followed someone else into the building. It is likely that the individual who the Complainant followed inside believed that he was also a resident of the apartment; however, this was not the case. Moreover, there is no evidence indicating that the Complainant was a guest of this individual. During their investigation, the officers learned that the Complainant had repeatedly tried to contact the Subject and his associates using multiple methods. The Subject and the other residents of the apartment told the officers that they were scared by the Complainant's actions and that they believed him to be harassing them. Based on the evidence they had at the time, the officers deemed these claims to be credible.

Given the above, the officers had sufficient evidence to determine that the Complainant knowingly entered the apartment building without a key and without being a guest of any resident therein. Moreover, the officers also had sufficient evidence to establish that the Complainant remained unlawfully in the building and tried to contact the Subject who, based on what he told the officers, had asked the Complainant to leave him alone. These facts formed the basis for probable cause to arrest the Complainant for criminal trespass.

While OPA recognizes that the role of a reporter is to zealously pursue leads and newsworthy stories, they are, like all other members of our community, subject to the law and, specifically, are prohibited from criminally trespassing. While the officers were not required to arrest the Complainant and could have exercised their discretion to charge-by-officer or to simply remove the Complainant from the residence without taking him into custody, OPA cannot say that the decision to arrest the Complainant was inconsistent with law or policy. Indeed, based on a review of the totality of the evidence, OPA finds that the arrest was legally supported. As such, I recommend that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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



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**Named Employee #1 - Allegation #2**

**15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report**

SPD Policy 15.180-POL-5 requires officers to document all primary investigations on a General Offense Report. This policy further instructs that such reports must be thorough, complete, and accurate.

In the General Offense Report completed by NE#1, he wrote the following: "I asked [the Complainant] how he was able to get inside the building, due to the fact the building was a lock out building and no one without (sic) a key is able to enter. [The Complainant] stated he followed behind an unknown resident to gain entry." However, the BWV reflected that this was not a completely accurate recitation of the Complainant's statement. To the contrary, the Complainant told NE#1 that someone let him into the building but that he did not know that individual's name.

At his OPA interview, NE#1 recognized the inconsistency but stated that what he wrote in the General Offense Report was his "interpretation" of what the Complainant said. NE#1 provided the following reasoning to OPA: "I believe I stand by my interpretation of that someone did maybe let him in, but again, they didn't actually like invite him in. They—they maybe opened the door for him, but again, this was an unknown person that he did not know. He didn't know what room number they were in, or anything. So, he did enter into the property..."

Ultimately, whether the Complainant was let into the apartment by an unknown individual or whether he followed behind that individual to gain access, the result is the same. The Complainant was not a resident of the building and, he did not present any evidence that he knew or was a guest of the individual who let him into the building. As such, he was functionally trespassing when he entered the building for the purpose of contacting residents who did not invite him in and who did not wish to be spoken with. That being said, the Department still expects officers to document incidents accurately and, here, NE#1 did not do so. However, OPA believes that this is a performance issue that merits retraining rather than a Sustained finding. Accordingly, OPA recommends that NE#1 receive the below Training Referral.

- **Training Referral:** NE#1 should be reminded of the requirement that his reports be thorough, complete, and accurate. 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 #2 - Allegations #1**

**6.010-POL 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 #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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