



## CLOSED CASE SUMMARY

ISSUED DATE: MAY 5, 2020

CASE NUMBER: 2017OPA-1309

### **Allegations of Misconduct & Director's Findings**

#### Named Employee #1

Allegation(s):		Director's Findings
# 1	6.120 - Impounding Vehicles 9. Detectives Assigned to An Impounded Vehicle Case Shall Only Retain Vehicles As Long as Necessary to Complete Investigation or Prosecution	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 Complainant alleged that the Named Employee failed to properly secure her vehicle when he impounded it. As a result, the Complainant alleged that items of her property were lost.

### **ADMINISTRATIVE NOTE:**

On June 20, 2018, OPA transmitted this case to the former OPA Auditor for certification. The Auditor requested additional investigation on June 22, two days before the expiration of the 180-day timeline imposed by the SPOG contract. The timeline expired before OPA was able to conduct that additional investigation and, due to high caseloads at the time, the requested additional interviews were not conducted until later that year. In late 2018, this case was sent to the Office of Inspector General (OIG) for certification. The OIG requested further investigation, which resulted in another case being initiated under number 2019OPA-0065. Given this, OPA did not complete this investigation and issue recommended findings within the requisite contractual timeline.

### **ANALYSIS AND CONCLUSIONS:**

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

#### ***6.120 - Impounding Vehicles 9. Detectives Assigned to An Impounded Vehicle Case Shall Only Retain Vehicles As Long as Necessary to Complete Investigation or Prosecution***

On December 11, 2017, the Complainant was driving when she was arrested on suspicion of an assault with a firearm which had occurred around one month before. The arresting officers conducted a high-risk traffic stop and took the Complainant into custody. They then impounded her vehicle. One of the arresting officers seized a firearm that the Complainant had on her person. During the arrest, the Complainant told the officers that she wanted her "stuff" protected because the window of her car would not roll up. The officers retrieved the Complainant's purse and phone from the vehicle. While retrieving the purse, one of the officers opened the vehicle's rear door. That officer's BWV captured an image of a white box with an Apple logo on it. The officers told the Complainant that her car would be impounded to the Vehicle Processing Room, a secure location, rather than being left out on the street.



The detective assigned to the assault case, Named Employee #1 (NE#1), responded to the Vehicle Processing Room and conducted an inventory of the vehicle for firearms. No search warrant was sought given the nature of the crime for which the Complainant was arrested, and NE#1 stated that his inventory search intended to determine if there were other firearms in the vehicle. He stated that he did not do a thorough inventory of the vehicle or otherwise inspect its contents. He recalled the presence of a plastic grocery bag in the front seat but did not recall looking for or seeing a laptop. NE#1's partner, also a detective, took photographs of the vehicle's exterior. None of the photos depicted the rear seats where the laptop was shown on BWV. NE#1 stated that, to his knowledge, the Vehicle Processing Room is access-controlled with a pass key. NE#1 and his partner were in the Vehicle Processing Room at the same time, and neither individual observed the other remove property from the vehicle.

On December 13, 2017, NE#1 released the vehicle from SPD custody and notified the Complainant. Lincoln Towing towed the vehicle from the Vehicle Processing Room to their lot. On December 14, the Complainant called Lincoln Towing to verify the vehicle's location. On December 16, she picked up her vehicle. Also on December 16, the Complainant contacted SPD to file a police report regarding the theft of an item from her vehicle. The Complainant stated that an Apple computer that she had recently purchased and that was still in its box was missing from the back seat. She also stated that SPD improperly retained her firearm. This OPA investigation ensued.

As a threshold matter, OPA finds no indication that NE#1 himself removed items from the Complainant's vehicle. NE#1 and his partner each stated that they did not see the other remove any items from the vehicle, and there is no evidentiary basis to believe they did so. Given that the vehicle could have also been accessed by others prior to the Complainant taking possession of it, OPA finds it more likely than not that no SPD employee improperly accessed or misappropriated the Complainant's property. This issue was discussed more fully in 2019OPA-0065.

In addition, with regard to SPD's retention of the firearm, OPA notes that the Complainant was arrested for a crime involving assault with a firearm. Consequently, the firearm seized upon the Complainant's arrest was potential evidence of criminal activity and was properly not returned to her.

SPD Policy 6.120-POL-9 requires that the detective assigned to an impounded vehicle case shall retain the vehicle for the time required to complete the case. In addition, the policy states that: "If the primary detective decides not to obtain a search warrant for the vehicle, they will inventory the contents of the vehicle as soon as practical." (SPD Policy 6.120-POL-9). Contents of the trunk and locked containers are not to be opened during inventories. (*Id.*)

When reviewing the plain language of this policy, OPA finds that NE#1 should have conducted a full inventory of the vehicle once it was determined that a search warrant would not be sought. Inventory searches of impounded vehicles serve a threefold purpose: to ensure officer safety and the safety of the public, to safeguard valuables in the vehicle, and to protect the Department against claims, merited or otherwise, for lost or stolen items. *See South Dakota v. Opperman*, 428 U.S. 364, 378-79 (1976) (Powell, J., concurring). Here, NE#1's failure to conduct a full inventory may have prevented him from identifying valuable items, like the laptop, which, if retained in safekeeping, would have likely forestalled this investigation.

The above being said, OPA is mindful that the primary focus of the inventory that NE#1 conducted was to identify the existence of firearms. As such, his overlooking of the other items in the vehicle was understandable, even if inconsistent with policy. Moreover, OPA finds no basis to conclude that NE#1 willfully violated this policy. For these reasons, OPA concludes that retraining rather than a Sustained finding is the appropriate result. Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.



- **Training Referral:** OPA recommends that NE#1 receive counseling and retraining related to the elements of SPD Policy 6.120-POL-9, including the requirement that an inventory be conducted when vehicles are impounded to the Vehicle Processing Room and where a search warrant is not sought. Such counseling and retraining should be documented in an appropriate database.

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