



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 3, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0313

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	11.050-PRO-1 Securing and Transporting Detainee Property	Not Sustained (Training Referral)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Will Strive to be Professional	Not Sustained (Inconclusive)

Named Employee #3

Allegation(s):		Director's Findings
# 1	11.050 - Detainee Property 1. Officers Secure Detainee Property	Not Sustained (Training Referral)

Named Employee #4

Allegation(s):		Director's Findings
# 1	11.050-PRO-1 Securing and Transporting Detainee Property	Not Sustained (Training Referral)
# 2	11.050-TSK-1 Officer Submitting Detainee Property to the Evidence Unit as SKO	Not Sustained (Training Referral)

Named Employee #5

Allegation(s):		Director's Findings
# 1	11.050-PRO-1 Securing and Transporting Detainee Property	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:

It was alleged that the Named Employees were biased and unprofessional in the arrest of the Complainant and failed to adequately secure his property.

ADMINISTRATIVE NOTES:

On preliminary review of this complaint, OPA determined that two supervisors, a Sergeant and Captain, failed to take adequate responsibility for the complainant's property when it was in police custody. It was alleged that these two Named Employees failed to notice that the arrestee's personal property was left on a desk in the Precinct for eleven days prior to being noticed, inspected, identified as belonging to him and returned. The allegations that these two Named Employees failed to take responsibility for every aspect of their command, see SPD Policy 1.020(7), was

returned to the Chain of Command to be processed as a Supervisory Action Notice (SAN). NE#4 was also found to be in violation of SPD policy when she admitted to discussing the case with her colleagues in violation of a lawful order. See SPD Policy 5.001(15). This allegation was also returned to the Chain of Command to be processed as a SAN.

SUMMARY OF INVESTIGATION:

The Complainant (Community Member #1 or CM#1) was arrested on 07/02/21 following an on-view assault which was witnessed by NE#3 and his partner. NE#4 was detailed as the primary officer. AMR attended to injuries of involved parties at the scene. The complainant was initially brought to the hospital, under police guard, to have the injuries he sustained in the assault examined. NE#1 rode in the ambulance with CM#1 to the hospital and remained there as a hospital guard watch. Following medical treatment, CM#1 was subsequently booked into jail.

Following CM#1's arrest, a complaint was made by his mother (CM#2), where she alleged that the Named Employees arrested her son because of his gender, sexual orientation, and race as an African American. She also alleged that her son's property—namely his phone, shoes, and wallet—were not returned to him. CM#2 stated that when she complained about this to the West Precinct, she spoke with NE#2 and he was "rude and cold" to her. CM#1 subsequently alleged that following his arrest on 07/02/21, Named Employees failed to secure his property, namely his phone, shoes, and wallet.

On investigation, OPA reviewed BWV of attending officers and SPD paperwork related to property retention. Apparently, some of CM#1's property (shoes, headphones and cell phone) went with him to the hospital and some of it (backpack) went back to the West Precinct. OPA's investigation did not determine how CM#1's backpack was transported to the West Precinct.

From BWV, OPA identified NE#3 as the officer who received initial custody of the CM#1's property at the scene (Shoes, headphone and cell) and placed it in the AMR with CM#1. CM#1 was brought to the hospital for medical attention. NE#1 was not present in the ambulance when CM#1's property was placed in the ambulance by NE#3. There was no evidence indicating that NE#3 had told anyone that he had placed the property into the ambulance. When NE#1 arrived at the hospital, he removed CM#1's shoes and earphone and placed it on the gurney with CM#1. NE#1 was unaware that a cell phone had been placed in the ambulance. CM#1 was subsequently brought from the hospital and booked into jail.

OPA determined that, as per CM#1's Booking Sheet, no property was left with CM#1 when he was booked at the jail. The offense/arrest report states that NE#4 took custody of some property, namely a backpack and wallet on 7/2/21. Evidence records indicate that the property was not submitted to Evidence, but instead was held for Safe Keeping Only (SKO) until several days later (7/14). This property was not logged at the Evidence Warehouse until 7/14/21. The property was subsequently released to CM#1 on 7/15/21.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 – Allegation #1

11.050-PRO-1 Securing and Transporting Detainee Property

It was alleged that NE#1 failed to secure and transport CM#1's property according to policy.

SPD Policy 11.050-PRO-1 Securing and Transporting Detainee Property states that the Transport Officer Secures the detainee property during transport and submits the detainee property to the detention facility.

NE#1 was the accompanying officer of the injured complainant (CM#1) to the hospital. OPA noted that NE#3 had received initial custody of property (shoes, headphones and phone) at the assault scene and then placed it in the AMR. NE#3 received these from another Witness Officer (WO) who was assisting at the scene. NE#1 was not present when the property was placed in the ambulance. There was no documentation, nor did NE#3 let AMR staff or NE#1 know about the property NE#3 placed in the ambulance. NE#1 stated that when they arrived at the hospital, he recalled

taking CM#2's shoes and headphones into the hospital with the patient. He stated that he put them on the gurney "how he usually does." NE#1 stated he did not see or know about CM#1's cell phone.

NE#1 appeared to adhere to the main tenant of this policy with respect to the *securing* the property during transport. What is concerning however, is the fact that there was no record of *what* property there was to secure and subsequently remove in the first place. OPA notes that NE#1 stated that he was not informed by other officers that there was any property in the ambulance. The removal of CM#1's property from the ambulance by NE#1 appears to have been done out of either instinct or habit as opposed to a trained, policy-led approach. NE#1 stated that, "I placed them (the property shoes and headset) on the back of a gurney as per usual when we have the arrestee, we place their proper usually on the back of the gurney." NE#1 was unaware that a phone had been placed in the ambulance. NE#1 stated that the last time he saw the property that it was on the "gurney where I left them, and I advised the officer that—officer that relieves us where they were on the gurney".

OPA's concern is that there was no record of what property was brought from the assault scene to the hospital with CM#1. OPA questions how NE#1 could remove property from the ambulance without knowing *what* or indeed *whose* property it was. While ownership of the property may have been apparent to NE#1 in context, there is no record to review or on which NE#1 could have relied.

The approach taken by NE#1 appears to be a best guess approach to property management. The problem with this approach is that the lack of any documentation meant that CM#1's phone was not secure as required by policy. NE#1 made no efforts to learn what property was accompanying CM#1 from other officers present. Custody of a prisoner and their property requires documentation or, in its absence, clear communication by the officers involved. In this case, neither of these elements were present.

OPA does not believe it would have been unreasonable for NE#1 to take the time to accurately identify all of the detainee's property in this instance. However, recognizing that NE#3 placed CM#1's property into the AMR without notifying NE#1, this oversight appears to be the result of a mistake that potentially violated policy, but was not willful misconduct.

Accordingly, OPA recommends that this allegation be Not Sustained (Training Referral).

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1, review SPD Procedure 11.050-PRO-1 with NE#1, and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

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

Named Employee #1 - Allegation #2

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

It was alleged that NE#1 engaged in bias-based policing.

SPD policy prohibits biased policing, which it defines as "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual." (SPD Policy 5.140-POL.) This includes different treatment based on the race of the subject. (*See id.*)

This allegation was made by the Complainant's mother, CM#2. She was not present at the scene when CM#1 was arrested. When interviewed by the OPA she confirmed that she did not have first-hand knowledge of the incident and that she was told what happened by her son, CM#1.

BWV does not show NE#1 making any comments as alleged by CM#1 and CM#2. CM#1 alleged that NE#1 made a lot of remarks that a white guy beat up CM#1 because he is gay. The allegations are not supported by BWV. It was further alleged that NE#1 was biased in the way he spoke with CM#1 during the transport in the ambulance. BWV does not support those allegations. Moreover, NE#1 denied being biased in his engagement with CM#1.

Accordingly, OPA recommends that this allegation be Not Sustained (Unfounded).

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

Named Employee #2 - Allegation #1

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

It was alleged that NE#2 was unprofessional.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (SPD Policy 5.001-POL-10.) 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.)

CM#2 alleged that NE#2 was “cold and rude” on the phone to her when she was trying to locate her son’s property. CM#2 state that NE#2 treated her like he didn’t have the time to talk with her. NE#2 is employed as a desk clerk in the West Precinct. NE#2 recalled the phone conversation with CM#2 and stated that CM#2 was “demanding” to speak with NE#1. CM#2 had obtained NE#1’s name from her son via a phone call when he was in jail. NE#2 stated that CM#2 “kept yelling” and attempted to provide her information, to no avail. NE#2 stated that CM#2 was “very irate, yelling and shouting.” NE#2 stated that he tried to tell CM#2 about the claims department, and that the city would reimburse them for their loss. NE#2 stated that he tried to give CM#2 the phone number for OPA but “didn’t even get to that” because “she wasn’t listening” to him. CM#2 told him that she would ring back in an hour and hung up on him. CM#2 never rang back. NE#2 denied being rude or unprofessional to CM#2. NE#2 stated that when NE#1 returned to the station he briefed him of the call with CM#2.

Phone conversations at the precinct are not recorded. OPA is not aware of any independent witnesses who could confirm either version of the call. If NE#2 made the statements attributed to him while using a rude tone, it could constitute unprofessionalism. However, NE#2 denies that he did so and OPA cannot disprove this. Given the disputes of fact in this case, OPA recommends that this allegation be Not Sustained (Inconclusive).

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

Named Employee #3 - Allegation #1

11.050 - Detainee Property 1. Officers Secure Detainee Property

It was alleged that NE#3 failed to secure CM#1’s property in violation of policy.

SPD Policy 11.050(1) indicates that Officers will store detainee property in a secured area when practical.

NE#3 responded to an assault in progress. CM#1 was involved in the assault and was detained by NE#3 until assistance arrived. NE#4 was the primary officer.

NE#3 agreed that body-worn video accurately depicted him collecting some of CM#1's property from another witness officer (WO) and placing them in the back of the ambulance. WO was an assisting bike officer who collected CM#1's phone and headphones from the hood of a nearby car where CM#1 was detained and CM#1's shoes from the pavement. WO then handed CM#1's property to NE#3. BWV depicts NE#3 putting CM#1's shoes on the floor of the AMR, CM#1's headphones on the gurney, and CM#1's cell phone underneath the cushion. NE#3 stated that normally he would transfer custody of property and verbalize it to the person receiving it but, in this case, ambulance staff was dealing with CM#1 so he put the property in the ambulance without telling them. NE#3 stated that normally an inventory of the property would be made and noted in a report. NE#3 stated that he did not complete any property paperwork as the primary officer (NE#4) has responsibility to document it.

OPA recognizes that the placing of the property by NE#3 into the ambulance was an attempt to secure the property, as is required by policy. NE#3 stated that he, "took them (the property) over to AMR and put them inside the ambulance to where they were within the confines of where the subject was or the arrested was and put them there where they weren't open to the public at the time." In lieu of documentation and photographs, the property was captured on NE#3's BWV, as is required by policy.

However, NE#3 failed, as is required by policy, to narrate to the transport officer that the detainee had property. NE#3 stated that he did not tell NE#1 about the property because "I was not in the area when I believe NE#1 left." NE#3 stated that he was taking photographs of a mug that had been used in the earlier assault. NE#3 failed to tell anyone about the property which he had placed in the ambulance.

Although NE#3 ultimately failed to communicate details about CM#1's property to NE#1, NE#3 did address elements of the policy by recording his placement of the property on BWV and keeping the property together in the AMR with CM#1. OPA also recognizes that this was a chaotic scene and that NE#3 was ultimately neither the primary nor transporting officer in this case. On balance, OPA finds that while NE#3's conduct constituted a potential breach of policy, it was not a willful violation constituting misconduct.

Accordingly, OPA recommends that this allegation be Not Sustained (Training Referral).

- **Training Referral:** NE#3's chain of command should discuss OPA's findings with NE#3, review SPD Policy 11.050(1) with NE#3, and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

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

Named Employee #4 - Allegation #1

11.050-PRO-1 Securing and Transporting Detainee Property

It was alleged that NE#4 failed to secure CM#1's property in violation of policy.

SPD Policy 11.050-PRO-1 requires officers to store detainee property in a secured area when practical and details requirements for the Arresting/Searching officer with respect to the completion of the Detainee Property form.

When asked about the correct procedure for securing arrestees property, NE#4 stated, "if the property is too large, or too much to go with them to jail, it is taken back to put into safekeeping. And usually, any officer who was on the call, can do that. It doesn't have to be the primary officer." Policy does specify however, that the arresting or searching officer is the officer identified for this aspect of policy. NE#4 was the arresting officer.

NE#4 was the primary officer for this offense report. NE#4 stated that in her investigation of the alleged assault she talked to witnesses at the scene and then returned to the Precinct to write a report. NE#4 stated that she did not have

any of the CM#1s property and “didn't even know that there was property to be submitted.” NE#4 explained the circumstances that led to her recognizing that CM#1’s backpack had not been secured:

[T]here was a bag, his bag, ultimately was sitting in the evidence table in our secure building in West Precinct. And I remember seeing it as the days went on, and people were asking, hey, whose is this? I didn't know whose it was. And eventually another officer was like, was going to put it into safekeeping. And he's like, hey, does anybody know who this is? Has—has his ID. I was like, that name sounds familiar. Let me look it up and let me see if I can track it down. Turned out to be from this call. And I had no clue we had any—any property on him. And I don't know who brought it back to the Precinct and nobody let me know that it was there. By the time I realized I think it was like, over a week later, that it was from my call. I took the property inventoried it and put it into safekeeping.

NE#3 notify NE#4 about any of the property that he placed in the back of the AMR.

On review of this incident, OPA recognizes that this was, in effect a busy scene, with numerous witnesses, involved parties and officers in attendance. BWV clearly depicts NE#4 attempting to identify all the relevant parties and witnesses involved for the purpose of the report. BWV depicts NE#4 attempting to create the report for over 20 minutes in her vehicle. However, as she begins to document the report, nine different officers either arrive or radio to speak with her and provide updates on the original assault. NE#4 comments to another officer that, as she is trying to write the incident up, “something else keeps popping up” with respect to the incident needs.

SPD policy and practice is that the primary (Arresting) officer carries the onus of determining what, if any, property belonged to CM#1. However, OPA recognizes that, in certain circumstances, such as scenes like this, policy cannot override a commonsense approach to scene management. OPA recognizes that NE#4 was—correctly—preoccupied with obtaining the facts of the incident. However, as a result, she did not think about any potential personal property at the scene. While this may have been a potential breach of the SPD policy, it was not a willful violation amounting to misconduct.

Accordingly, OPA recommends this allegation be Not Sustained (Training Referral).

- **Training Referral:** NE#4’s chain of command should discuss OPA’s findings with NE#4, review SPD Procedure 11.050-PRO-1 with NE#4, and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

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

Named Employee #4 - Allegation #2

11.050-TSK-1 Officer Submitting Detainee Property to the Evidence Unit as SKO

It was alleged that NE#4 failed to submit CM#1’s property to the Evidence Unit for Safe Keeping Only as required by policy.

SPD Policy 11.050-TSK-1 requires Officers submitting detainee property to the Evidence Unit as SKO will: (1) inventory the detainee’s property with a witness officer present; (2) complete a SKO Tag (form 12.8) for items going to the Evidence Unit and that each box, bag or backpack requires a separate SKO tag; (3) detach the top copy of the SKO Tag and give it to the detainee; (4) complete a Property Report listing SKO items; (5) place a barcode evidence label on the back of the second copy of the SKO Tag; and (6) attach the second copy of the SKO Tag to the SKO item and submit the item to the Evidence Unit.

The assault incident occurred and was documented by NE#4 on 7/2/21. As outlined above, NE#4 did not appear to notice—nor was she alerted to—the arrested subject’s property that was still on scene. NE#4 also did not take appropriate steps to document CM#1’s property while on scene.

NE#4 stated that, when she saw the bag in the precinct, she, “didn’t know it was brought back (to the Precinct) and “I didn’t know whose it was.” NE#4 had no recollection of bringing the bag back to the Precinct. NE#4 stated that she believed someone else may have brought it back to the Precinct.

Evidence records indicate that the property was not submitted to Evidence for (Safe Keeping Only) SKO until several days later (7/14). This property was not received at the Evidence Warehouse until 7/14/21. There is a Custodial Property Report, for CM#1’s property (backpack with arrest misc. items/wallet and \$.25) that notes that the property was released to CM#1 on 7/15/21.

OPA recognizes that this policy is silent as to when *specifically* property should be submitted to the Evidence unit as SKO. On realizing that the found property belonged to CM#1, NE#4 took possession and documented it according to policy. OPA recognizes that, while this is not ideal with respect to appropriate handling of property, it is aligned with the current policy. OPA believes that NE#4’s failing to dispose of the property to the Evidence unit earlier constitutes only a potential breach of policy and was not willful misconduct.

Accordingly, OPA recommends that this allegation be Not Sustained (Training Referral).

- **Training Referral:** NE#4’s chain of command should discuss OPA’s findings with NE#4, review SPD Procedure 11.050-TSK-1 with NE#4, and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

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

Named Employee #5 - Allegation #1

11.050-PRO-1 Securing and Transporting Detainee Property

Body-worn video shows that NE#5 took custody of the detainee’s backpack and wallet at the scene. She secured it in the back of her patrol PIU and continued to assist with the investigation. NE#5 cleared from the call while still on scene. During her interview with OPA, NE#5 stated that sometime during her shift, she transported the detainee’s backpack and wallet to the West Precinct and placed it on the evidence table in the holding cell area. NE#5 could not be sure, but she believes she advised the primary officer, NE#4, of the location of the backpack. When asked why she did not log the backpack herself, NE#5 stated because it is the job of the ‘primary officer’ of the call to document property taken into custody during that call. The property remained on the evidence table until NE#1 documented it several days later

OPA finds a similar fact pattern relative to NE#3 in that this was a busy scene. OPA finds that NE#5 ultimately failed to communicate details about CM#1’s property to NE#4. OPA also recognizes that this was a chaotic scene and that NE#5 was ultimately neither the primary nor transporting officer in this case. On balance, OPA finds that while NE#5’s conduct constituted a potential breach of policy, it was not a willful violation constituting misconduct.

Accordingly, OPA recommends that this allegation be Not Sustained (Training Referral).

- **Training Referral:** NE#5’s chain of command should discuss OPA’s findings with NE#5, review SPD Policy 11.050(1) with NE#5, and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

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