



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 21, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0138

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	7.010 - Submitting Evidence 7.010-POL 2. Employees Document Evidence Collection	Sustained
# 2	7.010 - Submitting Evidence 7.010-POL 3. Employees Follow Department Guidelines for Evidence Packaging and Submission	Sustained

Proposed Discipline

One to Three Day Suspension

Imposed Discipline

Resigned Prior to Proposed DAR

Named Employee #2

Allegation(s):		Director's Findings
# 1	6.181 - Performing Inventory Searches 6.181-POL 2. Officers Will Inventory Vehicles and Personal Items Effective Date: 05/07/2019	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.

ADMINISTRATIVE NOTE ON PROPOSED FINDINGS:

When the OPA Director recommends a sustained finding for one or more allegations, a discipline committee, including the named employee's chain of command and the department's human resources representative, convenes and may propose a range of disciplinary to the Chief of Police. While OPA is part of the discipline committee, the Chief of Police decides the imposed discipline, if any. See OPA Internal Operations and Training Manual section 7.3 – Sustained Findings.

EXECUTIVE SUMMARY:

The Complainant alleged Named Employee #2 (NE#2) failed to properly search items submitted to the Evidence Unit, causing an unaccounted handgun to remain in an inventoried backpack. The Complainant also alleged Named Employee #1 (NE#1), an evidence warehouser, failed to properly process received evidence, causing an unaccounted handgun to remain within an inventoried backpack.



ADMINISTRATIVE NOTE:

NE#2 no longer works for the department. Accordingly, the allegations against NE#2 are ungoverned by a 180-day timeline.

SUMMARY OF INVESTIGATION:

The Complainant, an SPD supervisor, submitted a Blue Team complaint to OPA. The Complainant alleged the registered owner of a recovered stolen vehicle gave NE#2 an unfamiliar backpack found inside his vehicle. The Complainant alleged NE#2 submitted the backpack to the Evidence Unit without performing a thorough inventory search. The Complainant alleged NE#1 received the backpack and completed the intake process. The Complainant alleged NE#1 failed to conduct a thorough secondary search of the backpack before submitting it to long term storage. The Complainant alleged, over two years later, the backpack was approved for disposal. The Complainant alleged Witness Employee #1 (WE#1), an evidence warehouser assigned to dispose of the item, found a loaded semi-automatic pistol inside the backpack.

During its investigation, OPA reviewed the Blue Team Complaint, auto-theft Incident Report and Follow-Up, Custodial Property Summary Report, NE#2's Body Worn Video (BWV), the Evidence Packaging/Submission Guide, Evidence Unit Training Checklist, and NE#1's Email Correspondence. OPA interviewed NE#1 and WE#1. NE#2 was no longer an SPD employee at the time of this investigation, so he was not compelled to appear for an interview. NE#2 declined OPA's request for a voluntary interview.

A. Incident/Offense Report and Follow up

The original Incident Report stated a South Precinct officer responded to a reported auto theft. That officer contacted the registered owner of the stolen vehicle and made a report. The officer noted the registered owner refused permission for law enforcement to search his vehicle if recovered. The stolen vehicle was not recovered that day.

NE#2 also wrote a Follow-Up Report. That report documented the registered owner going to the West Precinct to turn over a backpack found in his recovered vehicle. The registered owner reported documents were missing from his vehicle and the backpack was found in his trunk. NE#2 noted the backpack was locked and he placed it in the West Precinct Evidence Room with a handwritten tag for collection.

B. Custodial Property Summary Report

The Custodial Property Summary Report is consistent with the Complainant's report. Specifically, the Property Summary documented NE#2 recovered the backpack on December 2, 2019, describing it as a "Black Northface c/clothing, toiletries, tools, small notebook." On December 5, 2019, NE#1 changed the report's status and noted the same description "Black Northface c/clothing, toiletries, tools, small notebook." On April 12, 2022, WE#1 added the following property to the report: "Kimber Pro Carry 2 .45 Cal Semi Auto Pistol W/Mag and 7 Rounds."



C. Body Worn Video

OPA reviewed two of NE#2's BWVs showing his interaction with the registered owner of the recovered vehicle.

In the first BWV, the registered owner approached the West Precinct's clerk's desk and put the black The North Face backpack on the counter. A small combination lock is attached to the backpack. The registered owner and NE#2 discussed the original auto theft report. NE#2 attempted to locate the report in the records system. NE#2 was unsuccessful. The registered owner agreed to get the vehicle's identification number (VIN) to aid their search.

In the second BWV, the registered owner returned to the clerk's desk. The registered owner gave NE#2 the VIN, and NE#2 found the original auto theft report. NE#2 and the registered owner discussed the backpack. NE#2 found it was a locked heavy backpack. NE#2 asked the registered owner if the backpack appeared suspicious, including any unusual shapes inside it. The registered owner reiterated the backpack was not his and the South Precinct officer told him to return anything that did not belong to him to the police. NE#2 did not believe he could open the backpack without a warrant. The registered owner informed NE#2 he had found a small notebook in one of the backpack's accessible pockets. NE#2 asked if there were any needles or drug paraphernalia in the backpack. The registered owner did not know, but said he saw a broken pen inside it. NE#2 took custody of the backpack.

D. Witness Employee #1 – OPA Interview

OPA interviewed WE#1. WE#1 described processing items approved for disposal. WE#1 did not recall the backpack being locked, even after being shown pictures of the backpack with a lock attached. WE#1 conducted an initial search and removed the backpack's contents, but the backpack still felt heavy. WE#1 double-checked the backpack and located a firearm at the bottom of a laptop compartment. WE#1 turned the backpack upside down and shook it to recover the firearm.

E. Named Employee #1 – OPA Interview

OPA interviewed NE#1. NE#1 stated she worked as a senior evidence warehouse for about six years. NE#1 described her job as maintaining the continuity of evidence, ensuring evidence is packaged correctly, collecting and storing evidence properly, and basic customer service tasks.

NE#1 also described her training and experience for receiving containers, like backpacks, with items inside. NE#1 was trained to complete a " cursory check " to ensure the submitting officer correctly packaged the items. The point of the cursory search was to "mak[e] sure there's not perishables, there's no drugs, there's no money, and there's no guns." When found, those items must be repackaged and entered in the computer system.

NE#1 stated the Evidence Unit does not accept "locked containers." Further, when a locked container is submitted, either the submitting officer or Evidence Unit employee removes the lock. NE#1 did not recall seeing a lock on the



backpack in question. Had she encountered a locked container, NE#1 would have reported it to her supervisor for guidance.

NE#1 admitted she was unaware there was a firearm in the backpack but stated she did her job correctly and that the firearm was simply missed. NE#1 also noted NE#2 missed the firearm, she missed the firearm, and WE#1 only uncovered the firearm after shaking it during the disposal process.

Following her OPA interview, NE#1 emailed OPA through her union representative. In her email, NE#1 stated the backpack was received in 2019 which she called the “era of the needles” due to the large quantities of needles found in backpacks in the Evidence Unit. NE#1 noted warehouse workers’ fear of being stuck by a needle.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

7.010 - Submitting Evidence 7.010-POL 2. Employees Document Evidence Collection

The Complainant alleged NE#1 failed to properly document her evidence collection.

SPD Policy 7.010-POL-2 requires employees to document collected evidence on a report. *SPD Policy 7.010-POL-2*. Policy also requires employees to individually label each item of evidence and attach a barcode to it or its packaging.

Unlike NE#2, NE#1 stated she did not remember the backpack being locked when she received it. Evidence Unit personnel are required to “catalog” incoming evidence/property. *Evidence Packaging/Submission Guide, at page 3 of 43*. Moreover, Evidence Unit personnel are “required to physically search all backpacks, bags, purses etc. that are submitted as Evidence or Safekeeping.” *Id. at page 26 of 43*. Had NE#1 conducted a proper search, OPA finds NE#1 would have found, documented and labeled the firearm.

While OPA understands NE#1’s explanation that the firearm was “hidden,” nevertheless, that fact does not excuse NE#1’s apparent lack of diligence. Moreover, it does not comport with the aforementioned policy or NE#1’s own description of her responsibility to ensure submitted items do not contain contraband, like firearms.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

7.010 - Submitting Evidence 7.010-POL 3. Employees Follow Department Guidelines for Evidence Packaging and Submission

The Complainant alleged NE#1 failed to follow department guidelines for evidence and packaging submission.

SPD Policy 7.010-POL-3 requires employee follow the Evidence Packaging/Submission Guide.



As mentioned at Named Employee #1, Allegation #1, the Evidence Packaging/Submission Guide required NE#1 “catalog” incoming evidence/property and “physically search all backpacks, bags, purses etc. that are submitted as Evidence or Safekeeping.” Here, the evidence suggests NE#1 did not adequately perform that task.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

6.181 - Performing Inventory Searches 6.181-POL 2. Officers Will Inventory Vehicles and Personal Items (Effective Date: 05/07/2019)

The Complainant alleged NE#2 failed to conduct an inventory search required by SPD Manual Section 6.181.

SPD Manual 6.181-POL-2 requires officers to inventory vehicles and personal items. Specifically, officers must inventory “all personal property for safekeeping or that has accompanied an arrestee to a secure police facility.”

Here, the backpack in question did not accompany an arrestee. Instead, the victim of an auto theft found it inside his recovered car and gave it to NE#2. NE#2 believed he needed a warrant to open the locked backpack. NE#2 also recognized the bag’s potential evidentiary value related to the auto theft case, so he submitted it to the Evidence Unit. SPD policy states “Officers will not perform the inventory search if the . . . contents are considered evidence or must remain untouched pending a search warrant.” *SPD Policy 6.181-POL-2*. Further, had the locked backpack been recovered from an impounded vehicle, policy would have expressly forbidden its search absent specific circumstances. *SPD Policy 6.181-POL-3*. Nor could NE#2 consider the backpack abandoned property because the registered owner told him that the person arrested in relation to the auto theft was allegedly still in the vehicle at the time of their arrest.

Perhaps the best course of action was for NE#2 to seek approval to open the backpack prior to submitting it for evidence or to contact the officer assigned to the auto theft to initiate a search warrant. However, given the exceptions articulated in SPD Policy 6.181-POL-2, OPA cannot find NE#2 violated this specific policy by not performing an inventory search.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**