



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 9, 2018

CASE NUMBER: 2017OPA-0962

Allegations of Misconduct & Director’s Findings

Named Employee #1		Serial Number: 8453
Allegation(s):		Director’s Findings
# 1	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained (Unfounded)
# 2	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Sustained
Imposed Discipline		
No Discipline – 03/09/18		

Named Employee #2		Serial Number: 8389
Allegation(s):		Director’s Findings
# 1	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Sustained
Imposed Discipline		
Oral Reprimand – 03/09/18		

Named Employee #3		Serial Number: 8310
Allegation(s):		Director’s Findings
# 1	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Sustained
Imposed Discipline		
Oral Reprimand – 03/09/18		

Named Employee #4		Serial Number: 8512
Allegation(s):		Director’s Findings
# 1	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Sustained
# 2	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Inconclusive)
Imposed Discipline		
Oral Reprimand – 03/09/18		

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 during the scope of an investigation into an occupied residential burglary, the Named Employees failed to clear and sweep her condo unit, as well as the condo unit of another resident who was a potential victim. Sometime later, the Complainant discovered that her master bedroom had been the point of entry and had been “vandalized.” She then spoke by phone to one of the original responding officers who explained that he was at the end of his shift, and that they don't work “like TV,” and failed to return to the scene to document the damage or retrieve evidence.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence

Named Employee #1's (NE#1) role during the incident was that of a cover officer. She did not engage with the Complainant or the other robbery victim and also did not conduct an investigative sweep of either individual's apartment. Given her assigned duties, she further did not perform any searches for evidence or fail to collect evidence.

As such, I recommend that this allegation be Not Sustained – Unfounded as against NE#1.

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

Named Employee #1 - Allegation #2

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity

SPD Policy 16.090-POL-5(b) requires that employees record police activity and sets forth various law enforcement actions that must be recorded.

Here, NE#1 was dispatched to a call for service and, as such, was required to activate her In-Car Video (ICV) system. I note that all of the Named Employees except for NE#1 activated their ICV systems in response to this incident. NE#1 stated that she activated her Body Worn Video (BWV), but mistakenly did not initiate her ICV. She realized that she had not turned on her ICV when she returned to her patrol vehicle. NE#1 noted that she checked her ICV system at the beginning of her shift and that it was working properly. Accordingly, NE#1 did not allege that it had somehow malfunctioned. NE#1 admitted that she did not report her failure to record to a supervisor and explained to OPA that she intended to do so but forgot. She further did not document her failure to record in any report as she was also required to do where no video was recorded. (See SPD Policy 16.090-POL-7.)

During her OPA interview, her Guild representative raised NE#1's relative inexperience and the newness of her BWV system (at that time she had only had her BWV for approximately two weeks). In response to her Guild representative's questions, NE#1 contended that she was still getting used to using both systems. NE#1 did not contend, however, that she was not required to activate both when she responded to this incident. Moreover, the fact that she properly activated her BWV does not excuse her failure to also activate her ICV. Lastly, I note that all of



the Named Employees except for NE#1 activated their ICV systems in response to this incident and the other Named Employees that were also equipped with BWV had no issues concurrently activating those systems.

Given NE#1's status as a newer officer, had she reported her failure to activate her ICV to a supervisor or documented the failure to record, even in a cursory fashion, I would have been inclined to recommend a training referral. However, given that she did not do either, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence

From a review of BWV, OPA determined that Named Employee #3 (NE#3) assumed the role of the lead officer at the scene prior to Named Employee #4's (NE#4) arrival. NE#3 interacted with another potential robbery victim. NE#3 did not make an investigative sweep of the other victim's apartment or search that apartment for evidence. NE#3 did not interact with the Complainant. The video also reflected that Named Employee #2 (NE#2) was the officer who primarily interacted with the Complainant. While he entered her apartment to discuss with her what had occurred, he did not perform an investigative sweep of the Complainant's apartment or search her apartment for evidence.

As indicated above, NE#1's role during the incident was that of a cover officer. She did not have direct engagement with the Complainant or the other victim. Other officers later arrived on the scene and helped search the building but also did not directly interact with the Complainant or the other victim and were not tasked with or responsible for searching their apartments.

In her interview with OPA, the Complainant stated that the officers who initially responded were all very nice, but that there was not much action that was performed by them. She noted that they did not search the home, ask to go upstairs, or ask her to look in the rooms to determine whether anything had been stolen.

During his OPA interview, NE#2 stated that he was a backing officer. He recalled interacting with the Complainant. He spoke to her about what had occurred. He explained that, based on what he learned, he thought there was only one subject and believed that the subject had already exited the Complainant's apartment. NE#2 stated that he did not search or clear the Complainant's apartment. He explained that, under certain circumstances, it was normal for patrol officers to search residences where a suspected robbery had occurred and to look for evidence. But this was not done in this case.

At his OPA interview, NE#3 also stated that he was a backing officer. He indicated that he primarily dealt with the other robbery victim. NE#3 reported interviewing the victim and the victim's contractor, who had also been in the apartment. They recounted that the suspect had entered the apartment and appeared to have property stashed in his pants. NE#3 recalled performing a search for the subject with NE#2 throughout the building. NE#3 stated that he never cleared any apartment unit in the building, including the Complainant's unit.

NE#4 told OPA that he arrived at the residence approximately 30-45 minutes after the other Named Employees. He stated that, upon his arrival, he offered to take over the paperwork. He indicated that he was informed by NE#2 and NE#3 that "they were done with the investigation, everyone's been talked to, [and] we've got all the information."



NE#4 then told them that he was going to go talk to the Complainant and the other victim. When asked by OPA if there was any discussion as to what areas of the building were searched, NE#4 stated that he believed the stairwells and common bathrooms were searched. He made no mention to OPA of any receiving any indication from the other officers that a search of the apartments had been conducted. NE#4 recounted that he went to the Complainant's apartment and spoke with her at length, but that he did not search for evidence or clear the apartment. While NE#4 stated that it is normal to search apartments for evidence, he told OPA that, based on the fact that he arrived so long after the call had come in, he assumed that the search had already been conducted.

SPD Policy 15.180-POL-1 requires officers to conduct a thorough and complete search for evidence. The policy further states that: "All sworn personnel are responsible for knowing how to collect the most common physical evidence that might be encountered on a primary investigation." The policy instructs that "[o]nly evidence that is impractical to collect or submit to the Evidence Unit shall be retained by the owner," and that such evidence must be photographed.

I find that, based on the Complainant's account, the officers' own statements, and the BWV, neither NE#2 nor NE#3 conducted a thorough and complete search for evidence in either apartment as required by this policy. The failure to do so was in violation of policy. Further, if NE#2's and NE#3's expectations were that NE#4, as the primary officer, was going to search the apartments, they should have informed NE#4 that they had not done so. Indeed, NE#4 told OPA that he based his decision to not search the apartments on his belief that it had already been done by the other officers. I find that this inaction was contrary to this section of the policy.

Moreover, I note that neither NE#2 nor NE#3 conducted a protective sweep of the apartments to ensure that there were no remaining dangers therein. While not specifically called out within this policy, these were steps that should have been taken by the officers to ensure that the victims of the robbery were safe and that there were no other suspects hidden within the apartment.

Recommended Finding: **Sustained**

Named Employee #3 - Allegation #1

15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence

For the same reasons as stated above (see Named Employee #2, Allegation #1), I recommend that this allegation be Sustained as against NE#3.

Recommended Finding: **Sustained**

Named Employee #4 - Allegation #1

15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence

As discussed above, NE#4 did not conduct a search of the Complainant's or the other victim's apartments when he arrived on the scene. This was the case even though he assumed the role of the primary officer. He stated that he did not do so because he believed, based on the length of time between his arrival on the scene and the inception of the call, that the search had already been performed. However, he failed to clarify this with any of the officers on scene or to clarify this fact with either the Complainant or the other victim.



Even if this conduct was not contrary to policy given NE#4's stated confusion and lack of complete information, he did violate policy when he failed to return to the Complainant's residence to collect evidence. Both the Complainant and NE#4 agree that she called him after the fact and informed him that the upstairs of her residence had been ransacked. While she did not know at that time whether anything had been stolen, she did believe that the upstairs balcony was how the suspect initially accessed her apartment. She also located a cigarette butt in her apartment that she had good reason to believe belonged to the suspect (no one in her household smoked). She asked NE#4 to come to her residence to collect the cigarette and he admittedly declined to do so. NE#4 told the Complainant that he would not be coming back to her residence to collect the cigarette, which was indisputably potential evidence, "based on the fact that there was no injuries to anyone involved in this, that there was no property missing, [and] there was no property damage." NE#4 subsequently told the Complainant to throw the cigarette butt away, which she did. She later expressed regret to OPA for accepting NE#4's direction and disposing of this evidence.

As discussed above, SPD policy requires a thorough and complete search for evidence. This would have included NE#4 returning to the apartment to collect the cigarette, or, at the very least, sending someone else to do so. Moreover, the policy states that only that evidence that is impractical to collect should be retained by the owner. It cannot be plausibly argued that it was impractical for NE#4 or another officer to collect this evidence. Given the above, I find that NE#4 violated this section of the policy and I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #4 - Allegation #2

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

The Complainant alleged that when she called NE#4 to inform him that she may have located the point of entry of the subject into her apartment as well as potential evidence, he declined to return to the scene to document and collect the evidence. (See Complainant's OPA Interview.) She further reported that, during her conversation with NE#4, he told her, in response to her requests, that he was at the end of his shift and that, while someone else could potentially come out, they were not going to be able to run DNA tests on the evidence and because nothing was stolen and no one was injured there was not much that the police could do. (See *id.*) The Complainant also recounted that NE#4 told her that police work was not like what she may have seen on television. (See *id.*) The Complainant stated that, while NE#4 was nice to her, his comments were "disappointing" and "discouraging."

During his OPA interview, NE#4 was specifically asked about this latter statement. (NE#4 OPA Interview, at p. 9.) NE#4 stated that he did not make this comment and that he would never make a comment like that. (*Id.*) NE#4 explained that this was not the way he talked to people. (*Id.*)

SPD Policy 5.001-POL-9 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-9.) The policy further states that: "Employees will avoid unnecessary escalation of events even if those events do not end in reportable uses of force." (*Id.*) Lastly, the policy states the following: "Any time employees represent the Department or identify themselves as police officers or Department employees, they shall not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person." (*Id.*)



If it could be proven that NE#4 made such a statement, it could have been unprofessional and, thus, in violation of SPD policy. However, here, there is a dispute of fact. The Complainant alleged that the statement was made and NE#4 denied doing so. While I generally found the Complainant's recounting of the incident to OPA to be detailed and credible, I cannot, when applying a preponderance of the evidence standard, make a determination as to whether or not this statement was made by NE#4. As such, and while I sympathize with the Complainant's feelings of disappointment and discouragement based on her interaction with NE#4, I recommend that this allegation be Not Sustained – Inconclusive.

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