



## CLOSED CASE SUMMARY

ISSUED DATE: MAY 16, 2018

CASE NUMBER: 2017OPA-1200

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	7.060 – Releasing Evidence 7.060-TSK-1 Employee Releasing Evidence 4a. If the property is released to the owner:	Not Sustained (Lawful and Proper)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	7.060 – Releasing Evidence 7.060-TSK-1 Employee Releasing Evidence 4a. If the property is released to the owner:	Not Sustained (Unfounded)

***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 Named Employees mishandled evidence by returning his property to another individual who was not the owner.

### ANALYSIS AND CONCLUSIONS:

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

***7.060 – Releasing Evidence 7.060-TSK-1 Employee Releasing Evidence 4a. If the property is released to the owner:***

The Complainant was arrested in connection to a burglary. During the investigation into that crime, SPD was able to link the Complainant to another burglary. Named Employee #1 (NE#1) was the lead investigator on those cases. The Complainant was ultimately tried and convicted.

During the investigation, property was seized from the Complainant’s home and vehicle pursuant to search warrants. Included among that property were firearms, ammunition, firearm magazines, and cameras. The Complainant asserted that some of this property was not actually stolen and was, instead, owned by him. However, he alleged that some of his property was errantly returned to the victim of the burglary. The Complainant emailed OPA a list of the property that he said was erroneously returned. The Complainant later provided a second list that itemized the same property but which provided additional information concerning the property, including past owners.

OPA ran the serials numbers of the firearms that the Complainant asserted were erroneously provided to the victim. All of the firearms returned “no record.” OPA also ran a search of all firearms registered to the Complainant under his concealed carry permit; however, the two guns listed under the permit did not match any of the firearms returned to the victim.



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OPA interviewed NE#1. NE#1 told OPA that this was an abnormal case due to the large amount of property that had been stolen from the victim. NE#1 explained that the victim had reported that hundreds of items had been taken from him, including approximately 45 guns and tens of thousands of rounds of ammunition. NE#1 stated that, in the aftermath of the first burglary, the victim provided information concerning what property had been taken from him, including spreadsheets. While the victim had to recall some of his stolen property from memory, NE#1 indicated that this was not uncommon for theft victims. NE#1 stated that they “collected as much information from [the victim] as we could to help kind of determine what was actually taken during the first burglary.” However, they could not initially identify the perpetrator. After the second burglary, the Complainant was found to be in possession of various stolen property and was arrested. Searches of the Complainant’s vehicle and home yielded more potentially stolen property.

NE#1 took photographs of all of the property and showed those photographs to the victim. NE#1 asked the victim to identify any property that was his and initial the photograph of that item. NE#1 explained that the victim’s recounting of what property belonged to him was corroborated by various evidence. For example, three of the items taken were suppressors and to have suppressors one needs a specific license. The victim had such a license. Moreover, documentation was located linking those suppressors to a trust held by the victim’s family. NE#1 also reconciled the property identified by the victim with the spreadsheets that the victim had previously provided. Lastly, NE#1 stated that the victim provided a recorded statement verifying that the property belonged to him. Ultimately, NE#1 stated that it was difficult to definitively prove the ownership of the property; however, NE#1 believed that he took reasonable steps to do so and acted consistent with Department policy.

NE#1 told OPA that, after he returned property to the victim, he was contacted by the Complainant’s attorney. The attorney indicated that a camera that belonged to the Complainant had been improperly returned to the victim. NE#1 flagged this issue with the victim and asked if the camera possibly belonged to the Complainant. The victim told NE#1 that he would look into it, but that the items were presently in storage and he was imminently leaving the country for a period of time. The victim represented to NE#1 that he would check on the ownership of the camera and coordinate directly with the Complainant’s attorney. It is unclear from my review of the record whether the victim ever did so.

As part of its investigation, OPA further interviewed a Sergeant from the West Precinct Detectives Unit, who has significant experience in investigating property crimes. The Sergeant stated that, in cases such as this one where a search warrant has resulted in locating a significant amount of evidence, officers are trained to take photographs of the evidence and show those photographs to the victims in order to determine ownership. The Sergeant stated that, at the conclusion the review and initialing of photographs, it was expected that recorded statements would be taken from the victims that memorialized the victims’ explanations of why the property was theirs

SPD Policy 7.060-TSK-1(4)(a) provided guidance for officers when returning property to owners. The policy requires that, before doing so, an officer: “Determines if the owner can show reasonable proof of ownership and may legally possess the property.” If the owner cannot legally possess the property, then it is released to the “Director for disposal.” The officer must also generate and mail to the owner a “Property Release Notice.”

Here, NE#1 asserted that he complied with this policy in that he determined that the victim showed reasonable proof of ownership and he, thus, believed that the victim could lawfully possess the property. He admittedly did not conclusively establish ownership, but this is not explicitly required by the policy. Moreover, as explained by the



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Sergeant, in cases such as this one, where there is a significant amount of stolen property at issue, officers are expected and trained to do exactly what NE#1 did here. As such, even if this is viewed by the Complainant as insufficient and even if the Complainant is right that the victim did erroneously (or, for that matter, intentionally) accept property that rightfully belonged to the Complainant, I do not find that NE#1's handling of this matter and of the return of property violated Department policy. Overall, I find NE#1's actions to have been reasonable under the circumstances of this case.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

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

***7.060 – Releasing Evidence 7.060-TSK-1 Employee Releasing Evidence 4a. If the property is released to the owner:***

Named Employee #2 (NE#2) assisted NE#1 with the return of evidence. He stated that, while NE#1 handled the communication with the victim and later the Complainant's attorney, he completed the Evidence and Property Release Authorization forms.

As I find that NE#1, not NE#2, was responsible for the decision to return various property to the victim, I recommend that this allegation be Not Sustained – Unfounded as against NE#2. I further note that even had NE#2 been involved in this decision-making, as discussed above, I still would have recommended that this allegation not be sustained.

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