



## CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 2, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0188

### Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	7.100 – Fingerprint Evidence 2. Employees Will Attempt to Locate Latent Prints...: Employees will wear gloves when processing, retrieving, and packaging fingerprint evidence	Sustained
# 2	5.001 – Standards and Duties 11. Employees Will Be Truthful and Complete in All Communication	Sustained
# 3	5.002 – Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Management Action)
# 4	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
Imposed Discipline		
Termination		

***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 Employee violated multiple SPD policies when he handled a firearm for fingerprints without gloves and caused others to do the same, as well as when he then wiped the firearm down, destroying evidence.

### SUMMARY OF INVESTIGATION:

An SPD Sergeant filed a complaint concerning the handling of evidence by Named Employee #1 (NE#1), a Senior Evidence Warehouse. Specifically, the Sergeant stated that the Evidence Unit accepted a firearm into evidence that was submitted for fingerprint processing. The firearm was entered into evidence by an Evidence Unit employee – Witness Employee #1 (WE#1) – on April 8, 2021, and chain of custody was established. Later that same day, NE#1 took possession of the firearm to complete the rest of the intake process and to get the firearm into its assigned storage location inside the secured gun room at the Evidence Unit. The Sergeant reported that NE#1 was not wearing rubber gloves at that time, which are required whenever evidence submitted for fingerprint processing is handled. The Sergeant stated that NE#1 did not believe that it was a real firearm and that he sought the opinion of two other Evidence Unit employees – Witness Employee #2 (WE#2) and Witness Employee #3 (WE#3). NE#1 handed the firearm to WE#2, who was not wearing rubber gloves, and did not tell WE#2 that the firearm was for fingerprints. WE#2 then handed the firearm to WE#3, who was also not told that the firearm was for prints. Both WE#2 and WE#3 confirmed



that it was a real firearm. NE#1 again took possession of the firearm. Another Evidence Unit employee – Witness Employee #4 (WE#4) – said out loud: “Wasn't that gun for prints?”

The Evidence Unit was closed the next day, Friday, April 9, 2021, and through the weekend. On the morning of Monday, April 12, 2021, NE#1 met with both Chief Evidence Warehouse – WE#3 and Witness Employee #5 (WE#5). He told them that, once he took possession of the firearm back from WE#2 and WE#3, he realized that the firearm was for prints, that he had not worn gloves, and that he had not told WE#2 and WE#3 to wear gloves. He said that he then wiped the firearm down. He told WE#3 and WE#5: “I wiped it down. I couldn't sleep all weekend. I'm an honest person, and I know it was wrong.”

Based on this, the Sergeant alleged the following:

[NE#1] had intentionally wiped down the pistol to remove his fingerprints and those of [WE#2] and [WE#3] to avoid his own mistake being detected by the Latent Print Unit during the fingerprint examination. He also potentially destroyed any suspect fingerprints on the pistol, which was submitted to the Latent Print Unit anyway for examination.

As part of its investigation, OPA reviewed prox card records showing when the gun room was accessed by NE#1 on April 8. OPA determined that the gun room was accessed by NE#1 and WE#4 on three occasions. The times of entry were: (1) 4:14 p.m.; (2) 4:45 p.m.; and (3) 5:10 p.m.

OPA further interviewed NE#1 and five witness employees.

#### **A. Named Employee #1**

NE#1 said that he was handling a firearm that had been entered into evidence. He was wearing gloves at the time and was examining whether it was a real firearm or not. It seemed light to him and looked and felt “funny,” so he was not sure. He brought the firearm back to show WE#2 and WE#3 and handed it to them. They handled it without gloves. He did not think about the implications of this at the time. He then went back to his desk, and, at that point, WE#4 noted that the firearm was for prints. NE#1 said that he had an “oh shit” moment and that he wiped the slide of the firearm down with a white napkin. He said that he wiped a print off. He stated that he was operating in a “panic” and was not thinking at the time. He did not talk to WE#4 about his mistake or the wiping of the firearm. He placed the firearm back in its box and he and WE#4 put it into the gun room.

NE#1 did not notify a supervisor at that time and went home. During his drive home, he had a realization of how serious his actions were and what harm he could have caused. The office was closed until the following Monday. NE#1 described agonizing over what occurred during the weekend. Accordingly, he spoke to his supervisors first thing on Monday morning and told them what occurred. When asked why he waited until Monday, he said that it was because the office was closed, and he did not have anyone that he could contact after hours. NE#1 noted that, since this incident, a requirement was put in place that gloves always needed to be worn when handling firearms. He further stated that he did not know how to handle the situation he faced at the time, but that he subsequently learned the steps he needed to take.

NE#1 told OPA that, when working with other Evidence Unit employees, he would ordinarily tell them when something was for prints. He again asserted that he was wearing gloves during his entirety of his handling of the firearm but



recognized that he failed to tell WE#2 and WE#3 that the firearm was for prints and, thus, they were not wearing gloves.

NE#1 denied that he failed to report misconduct to his chain of command. He said that he did so the morning of his next shift and that there was nothing that could be done over the weekend, so it was appropriate to wait until Monday.

NE#1 also denied that he was dishonest. He again focused on his reporting of his conduct to his chain of command on Monday and the fact that he instead could have not done so and kept it to himself.

Lastly, with regard to his professionalism, NE#1 said that he did not intentionally destroy evidence. He stated that he understood the importance of community trust but said that he did not try to hide what he did.

## **B. Witness Employees**

WE#1 did not recall entering the firearm into evidence. However, when shown Evidence Unit video, he stated that it appeared that the firearm was for prints based on how it was handled by the Detective who brought it in and the fact that the Detective was wearing gloves. WE#1 told OPA that the practice in the Evidence Unit was to wear gloves when handling all firearms. WE#1 explained that if a firearm for prints was handled without gloves, a supervisor and a Latent Print Unit employee (if present) should be notified right away. WE#1 did not observe NE#1 handle the firearm in question.

WE#2 recalled that NE#1 handed him a firearm to determine if it was real. WE#2, who was not wearing gloves, handled it for around 30 seconds and determined that it was. He then handed the firearm back to NE#1. Shortly thereafter, NE#1 said to him: "Just so you know that gun was for prints." WE#2 stated that he thought NE#1 was joking and replied: "Well I guess you better wipe them off then." He observed NE#1 begin dabbing at the grip area with a Kleenex. Ofc Pine thought Thomas was still screwing around because the grip is cross-hatched and would not have any prints on it anyway. He did not see NE#1 wipe down the slide. WE#2 explained that Evidence Unit employees would often joke when someone picked up an item up that was for prints. This is why he thought NE#1 was joking. WE#2 did not recall if NE#1 was wearing gloves at the time. WE#2 estimated that this incident occurred at some point between 3:00 p.m. and 5:00 p.m.

WE#3 stated that she was sitting with WE#2 when NE#1 approached them with what appeared to be a firearm. WE#3 believed at that point that the firearm was for safekeeping as no one was wearing gloves. It was determined that it was a real gun and NE#1 then walked away. WE#3 estimated that this occurred at some point between 3:30 p.m. and 4 p.m. She told OPA that generally she and others in the unit left work around 5:15 p.m. Early the following Monday, NE#1 asked to speak with WE#3 and WE#5. NE#1 told them that he handled a firearm without prints and that he became aware of this after being notified by WE#4. He informed WE#3 and WE#5 that he then wiped the firearm down. WE#3 described NE#1 as being visibly upset at the meeting. NE#1 did not explain how he wiped down the firearm. After the meeting, WE#5 notified the Detective who entered the firearm into evidence and the unit Sergeant was also notified. With regard to the timing of NE#1 notifying supervisors, she said that the other options available to him were to speak with a supervisor prior to them leaving for the day (usually around 5:15 p.m.) or to call a supervisor over the weekend. She opined, however, that not much could have been done concerning this issue until the following Monday given that the office would have been closed on Friday and over the weekend. WE#3 told OPA that, where evidence for prints is handled without gloves, the expectation is that a supervisor will be notified. They would then use elimination prints and let the Latent Print Unit know who mishandled the evidence.



WE#4 said that he was sitting with NE#1 and saw him open up the box in which the firearm was stored. NE#1 removed the firearm and then walked back to where WE#2 was sitting. WE#4 did not recall whether NE#1 was wearing gloves at that time. When NE#1 returned, WE#4 saw that a notation on the box indicating that the firearm was for prints. WE#4 stated this out loud because he felt that NE#1 was handling the firearm a lot when he should have had minimal contact with it. In response, NE#1 said that he did not know. WE#4 did not believe that NE#1 was wearing gloves at this point based on his reaction, which WE#4 described as upset. NE#1 walked away, and WE#4 believed that he went to inform WE#3. WE#4 told OPA that he did not see NE#1 wipe the firearm down at any point. He and NE#1 then went together into the gun room to put the box away.

OPA additionally interviewed a recently retired Evidence Unit employee – Witness Officer #6 (WE#6). She had previously trained NE#1 on unit policies and procedures. She told OPA that there was no formal training manual and that the instruction consisted of “training by doing.” The unit did have a binder entitled Standard Operating Procedures, that contained some content. WE#6 stated that it was understood in the unit that wearing gloves when handling a firearm was a best practice, but not necessarily a mandate depending on the circumstances. Where a piece of evidence for fingerprints was handled without gloves, employees were expected to notify latent prints so that the person who handled the evidence could be excluded.

#### **ANALYSIS AND CONCLUSIONS:**

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

##### ***7.100 – Fingerprint Evidence 2. Employees Will Attempt to Locate Latent Prints...: Employees will wear gloves when processing, retrieving, and packaging fingerprint evidence***

SPD Policy 7.100 concerns the processing and handling of fingerprint evidence. SPD Policy 7.100-POL-2 specifically states that “[e]mployees will wear gloves when processing, retrieving, and packaging fingerprint evidence.”

The question here is whether NE#1 was wearing rubber gloves when he handled the firearm and then handed it to WE#2 and WE#3.

NE#1 is the only witness who conclusively states that he was wearing gloves. WE#2 did not recall whether he was doing so. However, both WE#3 and WE#4 asserted that NE#1 was not wearing gloves. WE#4 said that, at the time he notified NE#1 that the firearm was for prints, NE#1 appeared to be upset, which indicated to WE#4 that he was not wearing gloves. WE#3 definitively stated that NE#1 was not wearing gloves at the time he approached WE#2 and herself with the firearm. She specifically observed this. She further explained that, had NE#1 been wearing gloves, she also would have put them on. As he was not doing so, she handled the firearm without gloves.

OPA ultimately credits the accounts provided by WE#3 and WE#4 over that relayed by NE#1. OPA finds WE#3’s recitation of the facts to be particularly compelling – specifically, her statements that she observed NE#1 not wearing gloves and that, had NE#1 been wearing gloves, she also would have put them on.

Moreover, even had NE#1 been wearing gloves, he handed the firearm to two individuals who were not wearing gloves, and both handled the firearm. As such, by his actions he caused this policy to be violated. This was further exacerbated by his decision to wipe down the firearm after the fact, functionally destroying its evidentiary value.

For these reasons, OPA recommends that this allegation be Sustained.



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Recommended Finding: **Sustained**

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

***5.001 – Standards and Duties 11. Employees Will Be Truthful and Complete in All Communication***

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications.

OPA finds that NE#1 violated this policy in two main respects. First, NE#1 was dishonest to OPA when he said that he was wearing gloves at the time he handled the firearm. As discussed above, OPA finds that he was not, relying on the testimony provided by both WE#3 and WE#4.

Second and significantly more concerning to OPA, NE#1's act of wiping the firearm was dishonest as it was an act purposed to conceal his wrongdoing. As discussed above, doing so destroyed the evidentiary value of the firearm. This is particularly troubling as all NE#1 had to do was to notify a supervisor and the Latent Prints Unit, which would have resulted in elimination prints being used and would have largely served to preserve the evidence.

While OPA credits NE#1 for coming forward, this does not remedy his underlying conduct. Not only did he eliminate the viability of the firearm being used as evidence in a criminal investigation and/or prosecution, but he also undermined the very purpose of the Evidence Unit – to make sure that evidence is preserved and that the chain of custody is followed in all cases. Wiping down evidence is incompatible with the expectations of Evidence Unit employees and serves to undermine all of the other work performed by the unit. Indeed, based on NE#1's conduct, all of his previous and future handling of evidence could be called into question and later challenged. In OPA's perspective, this is extremely problematic as the honesty of Department employees is a crucial element of serving in this trusted role.

Ultimately, this convinces OPA that a Sustained finding is warranted in this case.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation 3**

***5.002 – Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations***

SPD Policy 5.002-POL-6 concerns the reporting of misconduct by Department employees. It specifies that minor misconduct must be reported by the employee to a supervisor, while potential serious misconduct must be reported to a supervisor or directly to OPA. (SPD Policy 5.002-POL-6.) The policy further states the following: "Employees who witness or learn of a violation of public trust or an allegation of a violation of public trust will take action to prevent aggravation of the incident or loss of evidence that could prove or disprove the allegation." (*Id.*)

It is undisputed that NE#1 notified his chain of command. The question here is whether he should have done so immediately, or whether it was acceptable to wait until Monday morning.

In assessing this matter, OPA notes that when this incident occurred could not be conclusively established. WE#2 opined that the incident took place at some time between 3 p.m. and 5 p.m. For her part, WE#3 believed that the incident occurred sometime between 3:30 p.m. and 4:00 p.m. NE#1 contended that the incident happened at the end



of the day and that no one worked after hours. He said that he did not contact his supervisors until Monday because he did not want to worry them over the weekend and when the office was closed and there was nothing that could be done at that time. Lastly, the prox card entries were not determinative, in that the incident could have occurred at three separate times, including at 5:10 p.m.

OPA notes that SPD Policy 5.002-POL-6 does not specifically state when misconduct needs to be reported. Other sections of SPD Policy 5.002 do provide guidance on this point, including SPD Policy 5.002-POL-8, which requires that certain acts be reported by the beginning of the next shift. OPA believes that SPD Policy 5.002-POL-6 is insufficiently clear in this area and needs to be clarified. Accordingly, OPA recommends that this allegation be Not Sustained – Management Action Recommendation.

- **Management Action Recommendation:** The Department should modify SPD Policy 5.002-POL-6 to set forth when potential misconduct must be reported. In OPA’s opinion, the Department should require that employees notify OPA and/or a supervisor of potential misconduct as soon as feasible and no later than the beginning of their next shift. The Department should further evaluate whether specific categories of misconduct should have different reporting requirements. As an example, SPD should consider requiring the immediate referral of matters that could significantly implicate and undermine public trust and confidence – such as what occurred in this case – as opposed to waiting until the beginning of an employee’s next shift.

Recommended Finding: **Not Sustained (Management Action)**

#### **Named Employee #1 - Allegation 4**

##### ***5.001 – Standards and Duties 10. Employees Shall Strive to be Professional***

SPD Policy 5.001-POL-10 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-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.*)

OPA finds that NE#1’s conduct violated the Department’s professionalism policy. Had NE#1 admitted his mistake contemporaneously as he was expected to do by his supervisors, OPA would have deemed this to be an unfortunate mistake. However, by wiping down the evidence, he violated the Department’s expectations for his conduct, as well as the community’s trust and confidence. This was simply unacceptable and inexcusable.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**