



## ***CLOSED CASE SUMMARY***

ISSUED DATE: MARCH 23, 2020

CASE NUMBER: 2018OPA-0742

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

<b>Allegation(s):</b>		<b>Director's Findings</b>
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 2	7.080 - Money Evidence 2. Employees Package All Money Evidence in a Sealed Currency Envelope	Not Sustained (Management Action)

#### **Named Employee #2**

<b>Allegation(s):</b>		<b>Director's Findings</b>
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 2	7.080 - Money Evidence 2. Employees Package All Money Evidence in a Sealed Currency Envelope	Not Sustained (Management Action)

#### **Named Employee #3**

<b>Allegation(s):</b>		<b>Director's Findings</b>
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 2	7.080 - Money Evidence 2. Employees Package All Money Evidence in a Sealed Currency Envelope	Not Sustained (Inconclusive)

### **EXECUTIVE SUMMARY:**

It was alleged that an unknown SPD officer may have misappropriated currency seized pursuant to a search warrant.

### **ADMINISTRATIVE NOTE:**

On August 1, 2018, a Department supervisor became aware of the potential misconduct at issue in this case. A referral was made to OPA on August 6, 2018. During its intake investigation, OPA determined that there was possible criminal conduct and referred the case back to SPD for criminal investigation on August 14, 2018. SPD concluded its criminal investigation and returned the case to OPA on October 30, 2018. OPA finalized its investigation approximately two months later, on December 28, 2019, a month prior to the 180-day deadline. On December 31, 2018, the Office of Inspector General for Public Safety (OIG) declined to certify the case and requested additional investigation. OPA conducted that additional investigation but was unable to do so and to resubmit the case for OIG review and certification until after the 180-day deadline – January 28, 2019.

As such, this case was not completed prior to the expiration of the 180-day deadline and is, thus, untimely. OPA notes that none of the findings in this case would have been recommended Sustained even had the 180-day deadline been met.

Consistent with SMC 3.29.135(C), OPA's completion of this case beyond the 180-day deadline will be documented in a letter transmitted to the Mayor, the City Council, the City Attorney, the Office of Inspector General for Public Safety,



and the Community Police Commission. This will also be reflected in the final Closed Case Summary for this matter, which will be provided to the Complainant and shared with the public, which is also consistent with SMC 3.29.135(C).

#### **SUMMARY OF INVESTIGATION:**

The Lieutenant who oversees the Evidence Unit filed a complaint with OPA concerning potential missing money. The Lieutenant reported that currency submitted as evidence was deposited with a bank. The bank later notified SPD that one of the currency envelopes was short \$6,250 from the amount listed on it. The Lieutenant opined that this was most likely due to a counting error on behalf of the officers; however, given the size of the discrepancy, the Lieutenant made an OPA referral. This investigation ensued.

OPA determined that, on March 28, 2018, South Precinct ACT officers served a warrant on a residence. Officers located quantities of marijuana and seized two vehicles. The officers also recovered \$43,911 of U.S. currency. The money, which was recovered in several locations at the residence, was photographed where it was found. However, the money was not photographed bill by bill.

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were involved in the service of the search warrant. Part of their responsibilities at the scene was to itemize the evidence recovered, including money. NE#1 documented the amount of money that was recovered as follows: "\$23,700 in hundreds, \$7,500 in fifties, \$11,340 in twenties, \$400 in tens, \$800 in fives, \$14 in twos, \$157 in ones." NE#1 reported that the money was counted at the residence and was then transported to the Evidence Unit. He wrote that, while at the Evidence Unit, he and other officers put the money into currency envelopes and submitted it as evidence. NE#2 reported that money was found in various locations in the bedroom on the main floor of the residence. He wrote that the money was photographed and collected. He identified that \$43,911 was taken from the residence in total. NE#2 documented that he helped count the money at the residence and then assisted in transporting it to the Evidence Unit. Lastly, NE#2 wrote that, while at the Evidence Unit, he placed the money into currency envelopes and submitted those envelopes into evidence.

NE#1 and NE#2 both recorded Body Worn Video for the beginning portion of the service of the search warrant. Specifically, NE#1 recorded BWV for around 16 minutes and NE#2 recorded for just over 17 minutes. They then deactivated their BWV consistent with an order issued by the then Assistant Chief of the Investigations Bureau. This order was issued to the South ACT officers via a Sergeant. In response to questions from OPA, the Assistant Chief said that he gave the order to deactivate BWV at a briefing before the operation commenced. He did so to safeguard the identity of undercover officers involved in the operation, and because SPD might attempt to involve some of the individuals in the house in future investigations. The Assistant Chief also cited a memorandum in which he requested an exception to the BWV policy for operations involving undercover personnel. The Chief of Police approved this requested exception.

OPA also obtained security video from the SPD Evidence Unit Lobby showing NE#1 and NE#2 packaging the currency in sealed currency envelopes. The footage shows NE#2 and another South ACT officer bringing a brown paper sack into the Lobby while NE#1 retrieved a money counter to assist in the count. NE#1 and NE#2 sorted the currency, removed rubber bands, and fed it through the money counter. After the count was complete, NE#1 and NE#2, with the assistance of the other officers, placed the money into currency envelopes. At no time did the video show any of the officers appearing to take any of the currency, and video showed the officers verifying that no currency remained in the sack by turning it over and shaking it before discarding the sack.



OPA interviewed the officers involved in processing the evidence. One of the South ACT officers recalled that, after transporting the currency to the Evidence Unit, it was divided by denomination and packaged into four sealed envelopes since it would not fit into a single envelope. The officers also stated that it was not atypical for a large amount of currency seized at a scene to be transported to the Evidence Unit prior to the official count being conducted. One of the officers noted that, sometimes, an initial count was conducted at the scene with a second count occurring at the Evidence Unit. That officer also noted that he did not recall any discrepancy being identified when the second count was conducted at the Evidence Unit. The total amount recorded at the Evidence Unit was \$45,851. This was \$1,940 in excess of the amount counted by NE#1 and NE#2 at the house.

Ultimately, one of the sealed currency envelopes was reported to contain \$31,614. The denominations were recorded on the envelope as follows: 237 \$100 bills, 150 \$50 bills, 40 \$10 bills, and 7 \$2 bills. The bank reported to SPD that the envelope contained only 25 \$50 bills in addition to the other denominations listed, for a total difference of \$6,250 (or 125 “missing” \$50 bills). There was another minor discrepancy associated with one of the envelopes. Specifically, an envelope reported to contain 364 \$20 bills in fact contained 367, for a total of \$7,340 rather than the listed \$7,280. When asked in their OPA interviews, NE#1 and NE#2 did not have any explanation for the discrepancies reported. NE#1 stated that he and NE#2 counted the currency twice at the house and once at the Evidence Unit using a money counter. Neither officer could recall anything unusual about the count at the Evidence Unit and did not recall seeing each other or any other officer take money or behave suspiciously.

OPA also interviewed SPD employees assigned to the Evidence Unit who handle currency envelopes as part of their duties. One of the employees, a Sergeant, stated that this was the first time he had been made aware of a significant discrepancy in the currency count by the bank. He noted that once sealed, evidence envelopes cannot be opened without visibly damaging the packaging. The second employee, a civilian, stated that none of the sealed currency envelopes associated with this incident appeared to have been opened when she deposited them at the bank. OPA also contacted the suspect of the investigation through his attorney. The suspect did not provide any information establishing how much money was recovered from the home.

## **ANALYSIS AND CONCLUSIONS:**

### **Named Employee #1 - Allegations #1**

#### ***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. If it could be proven that NE#1 or NE#2 misappropriated currency, that conduct would violate numerous policies and laws. However, for the reasons stated below, the evidence in this case is insufficient to establish that either NE#1 or NE#2 did so.

As a starting point, there is no evidence—apart from the discrepancy reported by the bank—that NE#1 or NE#2 individually misappropriated currency. The discrepancies that occurred between the initial count at the house and the second count in the Evidence Unit do not seem consistent with misappropriation of the \$6,250 reported missing by the bank. Indeed, the count conducted at the Evidence Unit reflected a \$1,940 *increase* in the amount of currency over what NE#1 and NE#2 reported based on their count at the home.

In addition, no witness testimony or statements seem to indicate that either NE#1 or NE#2 violated standard procedure for handling currency. While this alone does not eliminate the possibility that NE#1, NE#2, or both



misappropriated the money, it similarly does not implicate them in any wrongdoing or give rise to a reasonable basis to conclude that either officer violated policy.

Moreover, because the \$6,250 discrepancy appeared to occur between the sealing and labeling of the envelopes at the Evidence Unit and the count by bank employees, OPA finds it more probable than not that the discrepancy was due to miscounts by the involved employees. This conclusion is strengthened by the fact that none of the envelopes appeared to have been tampered with after they were sealed in the Evidence Unit.

Lastly, the available video evidence, both at the scene of the warrant execution and the Evidence Unit, provides no indication that NE#1 and NE#2 secreted money or acted inappropriately or suspiciously.

Given the totality of the evidence, OPA finds that there is an insufficient basis to determine that NE#1 or NE#2 misappropriated money and, thus, that they violated this policy. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#2.

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

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

##### ***7.080 - Money Evidence 2. Employees Package All Money Evidence in a Sealed Currency Envelope***

SPD Policy 7.080-POL-2 requires that SPD employees package currency in a currency envelope. It further requires that employees who package currency must sign the envelopes. *Id.* OPA finds that NE#1 and NE#2 followed this policy as written.

However, OPA found no policy that actually governed the processing of large amounts of currency. As a result, OPA's interviews in this case yielding significant differences in how officers handled currency. For example, in some instances, officers recalled transporting currency evidence to the Evidence Unit while, in others, a count was conducted on-site.

In addition, OPA notes that order permitting the officers to deactivate BWV, while supported by a legitimate desire to protect the identity of undercover officers, had the effect of creating holes in the record related to the currency count. OPA believes that, where dealing with a large quantity of currency, the better course of action would be to deactivate the BWV during the time that there was a risk of exposing the identities of undercover officers and then reactivate it while handling money and other evidence.

Given the above, OPA issues the below Management Action Recommendation.

- **Management Action:** SPD should create a policy governing the collection, transporting, and counting of large amounts of money evidence. The policy should state that, where possible and while taking steps to safeguard sensitive information, BWV should be used to record the currency count. In cases where BWV recording is not possible, units should consider additional steps to ensure the integrity of the money evidence and that an accurate count is completed. Such procedures should be uniform across all unit that handle such evidence.

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



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

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

For the same reasons as stated above (see Named Employee #1, Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded.

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

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

***7.080 - Money Evidence 2. Employees Package All Money Evidence in a Sealed Currency Envelope***

OPA recommends that this allegation be Not Sustained and refers to the above Management Action Recommendation (see Named Employee #1 – Allegation #1).

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

**Named Employee #3 - Allegations #1**

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

Despite conducting a full inquiry into this matter, OPA was unable to conclusively determine whether an unknown SPD employee failed to properly package currency in a sealed envelope and, instead, misappropriated the currency. Given this, OPA has no other option than to recommend that this allegation, as well as Allegation #2 below, be Not Sustained – Inconclusive.

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

**Named Employee #3 - Allegation #2**

***7.080 - Money Evidence 2. Employees Package All Money Evidence in a Sealed Currency Envelope***

For the same reasons as stated above (see Named Employee #3, Allegation #1), OPA recommends that this allegation be Not Sustained – Inconclusive.

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