



## CLOSED CASE SUMMARY

ISSUED DATE: MARCH 23, 2018

CASE NUMBER: 2017OPA-0990

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Inconclusive)
# 2	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement a. Consent Searches	Sustained
# 3	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Sustained

Imposed Discipline

Written Reprimand
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***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 the Named Employee knowingly made a false statement in a General Offense Report in order to justify an unlawful entry into a home.

### ANALYSIS AND CONCLUSIONS:

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

***5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication***

Named Employee #1 (NE#1) was investigating a hit and run and developed reason to believe that the subject’s vehicle was involved. NE#1 called the subject, who denied being in any accident. NE#1 responded to the subject’s address and observed that her car, which was parked in the near vicinity, was damaged consistent with an accident. He further observed that the damage to the subject’s vehicle was consistent with the damage to the victim’s car. At that point, he believed that he had probable cause to arrest the subject.

NE#1 knocked on the door and spoke with a male who answered. In the General Offense Report that he wrote the night of the incident, NE#1 reported the following: “I knocked on the door at [the subject’s residence]. A male answered who said that [the subject] was inside and that he lived there as well. He stated the house was shared with multiple roommates including [the subject]. We contacted [the subject] in the basement.” The subject was placed under arrest.

NE#1 later testified at a Department of Licensing hearing concerning this matter. At that hearing, the subject’s attorney, who is the Complainant in this case, questioned NE#1 concerning his entry into the subject’s residence. At the hearing, NE#1 explained that he understood the legal standard governing entry in the home and that if the male



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who answered the door had been a house guest, the male could not have provided consent to enter. NE#1 told OPA that he listened to the Complainant's summation and heard the Complainant argue that the male who answered the door was a house guest and that NE#1 knew this information at the time was established by NE#1's In-Car Video (ICV). NE#1 indicated to OPA that he was surprised to hear this and stated that, as a result, he went back and reviewed his ICV.

After reviewing his ICV, he explained to OPA that he realized that the male was, in fact, a house guest and that the male had conveyed this information to him. OPA also reviewed the ICV and the transcript of the discussion between NE#1 and the male is contained in the Case Summary. Suffice it to say, the male clearly and explicitly told NE#1 that he was "just a friend staying here" and that he was "just a guest visiting from out of town." However, even though this information was provided to NE#1, he still asked the male "can you go grab her or show us where she is at" and walked with the male into the residence. Notably, this was a significant departure from his General Offense Report, wherein he stated that the male said that "he lived there as well." Moreover, while NE#1 indicated in the General Offense Report that the male asserted that "the house was shared with multiple roommates," the ICV indicated that NE#1, not the male, made that statement.

NE#1 told OPA that, after reviewing his ICV and realizing that it was significantly inconsistent with his General Offense Report and sworn hearing testimony, he wrote a Supplemental Report that he forwarded to the City Attorney's Office. In that Supplemental Report, NE#1 mentioned that he had testified at a hearing and that, "during this hearing it was brought to [NE#1's] attention that [his] police report contained at least one significant error." NE#1 wrote that he was now aware, after reviewing his ICV, that the male stated that he was a house guest, not, as NE#1 had previously reported, a resident of the subject's home. NE#1 explained in the Supplemental Report that he had not reviewed his ICV until after the hearing and did not review it prior to writing his report. NE#1 opined that he "apparently misinterpreted or misremembered this subject's statement when [NE#1] wrote the original report."

NE#1 gave the same explanations to OPA during his interview. He told OPA that, when he wrote his General Offense Report, he was being truthful to the "best of [his] knowledge and belief at the time." He again stated that he did not watch his ICV prior to writing his report. Lastly, NE#1 contended that the inaccuracies in his report were attributable to his "incompetence" rather than to material dishonesty.

SPD Policy 5.001-POL-10 requires that SPD employees be truthful and complete in all communications. While NE#1 was certainly inordinately inaccurate as proven by the ICV, this allegation should only be sustained if it can be proved that NE#1 was deliberately and materially dishonest in his original General Offense Report and during his sworn hearing testimony.

I am greatly troubled by NE#1's initial report. Were there just minor inconsistencies, that would be understandable given that the report was written at or near the end of his shift. Moreover, it is unrealistic to expect an officer to remember every detail of a conversation he had and to report that conversation with perfect accuracy. However, the inaccuracies here were so significant and so material that it raises the specter that NE#1 was dishonest. Moreover, I find NE#1's explanations provided in his Supplemental Report and during his OPA interview to be extremely unconvincing. There is no possible way that NE#1 could have "misinterpreted" the male's two explicit statements that he did not live in the residence. Similarly, that he "misremembered" such significant facts only four hours after the incident seems to me to be equally implausible. Indeed, the only reason that I do not ultimately recommend that this allegation be sustained, is because I cannot imagine that NE#1 would be that foolish to engage



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in dishonesty and risk his employment at the Department and law enforcement certification given that he knew he was recording on ICV and given the likelihood that he would later have to testify concerning this incident.

At the end of the day, even with my grave concerns regarding NE#1's honesty in this manner, I do not believe that I can sustain this allegation based on the quantum of evidence required. Instead, I give NE#1 the benefit of the doubt and counsel him to be careful to not find himself in a similar situation in the future as it may have a different result. For these reasons, I recommend that this allegation be Not Sustained – Inconclusive.

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

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

***6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement a. Consent Searches***

SPD Policy 6.180 generally sets forth the elements for searches effectuated by SPD employees and the requirement that search warrants are required. SPD Policy 6.180-POL-2(a) describes the exceptions to the search warrant requirement and, specifically, discusses consent searches. Under my reading of the policy (and of established case law) it is clear that a house guest cannot consent to a search of a residence. Moreover, even had the male been a roommate, as NE#1 errantly reported, consent still would not have been valid under Department policy as NE#1 knew that the subject was also present in the residence and she had not consented to the search. (See SPD Policy 6.180-POL-2(a).)

NE#1 admitted at his OPA interview that he violated this policy but contended that he did not do so intentionally. That fact is immaterial. NE#1 was twice explicitly told by the male that he was a house guest and did not live at the subject's residence. NE#1 appeared to understand what the male was saying to him and responded to the male, but he still went forward and entered the residence. Not only did this action violate SPD policy, it also violated the subject's constitutional rights.

As such, NE#1's error was a significant one that warrants a Sustained finding.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #3**

***15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report***

SPD Policy 15.180-POL-5 requires that officers document all primary investigations on a General Offense Report. It further mandates that General Offense Reports be "complete, thorough and accurate." (SPD Policy 15.180-POL-5.)

As indicated above, NE#1's General Offense Report was clearly not complete, thorough, and accurate. The egregious nature of the inaccuracies therein, even if they may not rise to the level of deliberate and material dishonesty, warrant a Sustained finding. This is the case even if, as NE#1 contends, he did not purposefully violate this policy. The fact is that NE#1's General Offense Report was extremely problematic and provided justification for a search that did not exist in reality. This conduct fell well below the Department's expectations and the standards envisioned under this policy and the law.



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For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**