



## CLOSED CASE SUMMARY

ISSUED DATE:     APRIL 11, 2018

CASE NUMBER:    2017OPA-1295

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	11.050 – Detainee Property 3. The Department Retains Some Non-Evidentiary Property	Not Sustained (Training Referral)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	11.050 – Detainee Property 3. The Department Retains Some Non-Evidentiary Property	Not Sustained (Training Referral)

***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, the Force Review Board, alleged that the Named Employees may have failed to secure or safeguard the property of an arrested subject.

### ADMINISTRATIVE NOTE:

The sergeant who supervised this incident was, at the time, assigned to the North Precinct. He has since been re-assigned as a sergeant investigator at OPA. In order to avoid any conflict of interest or even the appearance of impropriety, this sergeant was walled off from this matter. Neither the nature and factual findings of OPA’s investigation nor OPA’s ultimate recommended findings were shared with him.

### ANALYSIS AND CONCLUSIONS:

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

***11.050 – Detainee Property 3. The Department Retains Some Non-Evidentiary Property***

On the date in question, Named Employee #1 (NE#1) and Named Employee #2 (NE#2) effectuated a stop of the subject based on the subject’s failure to wear a helmet while bicycling. They requested the subject’s identification and, upon review, determined that the identification did not actually belong to the subject. When the officers identified that fact, the subject ran from the scene, leaving his bicycle unattended on Aurora Avenue. The subject ran to a nearby motel and tried to enter. He was located by the officers and was placed under arrest. After the arrest, a civilian witness alleged that the officers had engaged in excessive force. That complaint, which OPA recommended be Not Sustained, was investigated under case number 2017OPA-1127.



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This matter, and the force used by the Named Employees, was also reviewed by the Department's Force Review Board (FRB). During that review, FRB determined that there was no "record or documentation of any attempt to secure and protect the subject's bicycle at the original scene location." FRB referred this matter to OPA based on its belief that "further investigation is need[ed] to determine if [the Named Employees] failed to safeguard the subject's bicycle or if the subject abandoned it."

During its investigation, OPA reviewed the documentation relating to this case. There was no mention of safeguarding or entering the bicycle into evidence in the General Offense Report. Moreover, the Detainee Property Form generated by NE#1 and witnessed by NE#2 also did not detail a bicycle as among the subject's property.

OPA interviewed the subject who did not consent to that interview being recorded. The subject indicated that the bicycle in question did not belong to him and, instead, was "owned" by a friend. The subject did not provide the friend's name. The subject told OPA that he left the bicycle when he ran away from the officers and that the "cops never went back for it." He stated that neither he nor his friend were currently in possession of the bicycle.

OPA further interviewed both of the Named Employees. NE#1 stated that after the subject's arrest and after the scene was secured, he asked two other officers to return to the place where contact with the subject was originally made in order to locate the bicycle. NE#1 did not provide an approximate time frame for that request or state how soon he made the request after the subject was arrested and the scene secured. The bicycle ultimately could not be found. NE#1 opined that the bicycle was probably taken by someone and told OPA that the present location of the bicycle was unknown. NE#2 provided similar information during his OPA interview. He further stated that, since this incident, he had seen the subject riding several different bicycles.

As a general matter, SPD policy requires that officers secure detainee property. SPD Policy 11.050-POL-3 specifically instructs that the department retains some non-evidentiary property that is not accepted by the detention facility. This evidence is to be submitted to the Evidence Unit as "safekeeping only." SPD policy further sets forth a list of that property that should be placed into safekeeping only. While a bicycle is not itemized on this list, I find that it is the Department's expectation that a bicycle that was in the possession of an arrestee would be secured and prevented from being stolen.

That being said, I do not believe that the Named Employees were required to secure the bicycle immediately. Here, the subject ran from them and they gave chase. There was no obligation on one or both of the Named Employees to stay behind and guard the bicycle. Indeed, it was beholden on them as a matter of maintaining safety, as well as consistent with Department tactics and training, to pursue the subject together. Moreover, when he fled, the subject voluntarily abandoned his bicycle and, thus, knowingly accepted the possibility that it could be stolen. Lastly, the officers were warranted in securing the scene prior to trying to locate the bicycle.

I note, however, that from OPA's review of In-Car Video and Body Worn Video, it appeared that other officers did not begin trying to locate the bicycle until around 4:15 p.m. This was over two hours after the subject was arrested, handcuffed, and brought to a patrol car, and well after the scene was secured. While I find that the subject abandoned the bicycle and while I do not find that the Named Employees' actions rose to the level of a policy violation, I believe that it was inadvisable for the officers to wait for that amount of time before coordinating a search for the bicycle. For these reasons, I recommend that the Named Employees receive a Training Referral.



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- **Training Referral:** NE#1 and NE#2 should receive counseling from their chain of command for their decision to wait over two hours before attempting to locate the subject's bicycle. While the bicycle may have been stolen regardless during the four minutes that elapsed from the time the subject was chased until he was arrested and the scene secured, it would have been the better practice, and consistent with the Department's and the community's expectations had the Named Employees more quickly asked fellow officers to locate and secure the bicycle. This counseling should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #2 - Allegations #1**

***11.050 – Detainee Property 3. The Department Retains Some Non-Evidentiary Property***

For the same reasons as indicated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Training Referral. I refer to the Training Referral set forth above.

Recommended Finding: **Not Sustained (Training Referral)**