



## CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 26, 2017

CASE NUMBER: 2017OPA-0685

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)
# 2	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	8.400-POL-1 Use of Force - REPORTING AND INVESTIGATION 3. The Sergeant Will Review the Incident and Do One of the Following:	Sustained
# 2	8.400 - Use of Force Reporting and Investigation 6. Sergeants May Request a Higher Level of Investigation for a Given Force Incident	Not Sustained (Training Referral)

**Named Employee #3**

Allegation(s):		Director’s Findings
# 1	8.400-POL-3 Use of Force - TYPE II INVESTIGATIONS a. Each Reviewer in the Chain Will Review the Report Within a Reasonable Period of Time to Ensure it is Thorough and Complete	Not Sustained (Inconclusive)
# 2	8.400-POL-1 Use of Force - REPORTING AND INVESTIGATION 10. The Incident Commander Will Make Appropriate Notifications of Serious Officer Misconduct or Criminal Liability	Not Sustained (Inconclusive)

***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 subject alleged that Named Employee #1 punched him during the course of his arrest. OPA added allegations against Named Employee #2 and Named Employee #3 for failing to conduct any investigation into the force reported by the subject.



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**ANALYSIS AND CONCLUSIONS:**

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

***8.200 - Using Force 1. Use of Force: When Authorized***

As described more fully below, the subject told Named Employee #2 (NE#2) that he was punched by Named Employee #1 (NE#1). NE#1 denied using any force on the subject, let alone punching him. A review of In-Car Video (ICV) relating to the incident corroborated NE#1's account that he did not use force on the subject.

Based on this, NE#1 could not have violated SPD's use of force policy. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

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

***8.200 - Using Force 2. Use of Force: When Prohibited***

Presumably, this allegation was classified based on the fact that the subject's allegation of force, if true, could have constituted retaliation for him spitting in an officer's face and because the subject may have been handcuffed when the force purportedly occurred.

However, as explained above, I find that there is no evidence indicating that NE#1 used any force against the subject, let alone force that would violate this SPD Policy 8.200-POL-2. Moreover, the only even potentially reportable force actually used on the subject was when an officer pushed the subject's head away immediately after the subject spit in his face. This was a trained tactic that was within policy. I further note that the officer is not a named employee in this case and his conduct is thus not at issue.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

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

***8.400-POL-1 Use of Force - REPORTING AND INVESTIGATION 3. The Sergeant Will Review the Incident and Do One of the Following:***

SPD Policy 8.400-POL-1(3) requires that a sergeant review a force incident and classify the force as either Type I, Type II, or Type III for investigation.

Here, NE#2 heard the subject state that he had been punched by NE#1. This statement was further captured on ICV. As a result of that complaint, NE#2 referred the allegation to OPA (see Original Complaint Summary); however, she failed to ensure that NE#1 completed a use of force report. An officer who punches a suspect has used Type II force (force "reasonably expected to cause injury"). As such, NE#1 should have been ordered to complete a Type II use of force report.



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At her first OPA interview, NE#2 stated that she did not require NE#1 to complete a use of force report because she believed that the subject's assertion represented a complaint of misconduct, rather than an allegation of a reportable use of force. Even if this is the case, the fact that she referred the matter to OPA does not obviate her from requiring NE#1 to generate a use of force report. Such a report is still compelled by SPD Policy 8.400.

Also in her first OPA interview and again in her second OPA interview, NE#2 further explained her actions by stating that she believed that, if the subject's allegations were true, the conduct he was attributing to NE#1 was criminal in nature. If this was the case, NE#2 was required to screen that force with the Department's Force Investigation Team (FIT). However, it is undisputed that she did not do so.

Ultimately, as the sergeant responding to the scene, NE#2 was responsible for ensuring that the force alleged to have been used was properly classified, investigated correctly, and appropriately documented. She failed to do so in this instance. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

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

***8.400 - Use of Force Reporting and Investigation 6. Sergeants May Request a Higher Level of Investigation for a Given Force Incident***

As indicated above, NE#2 asserted to OPA that the subject's allegations suggested criminal behavior on the part of NE#1. As such, NE#2 should have requested that the force be investigated as Type III, rather than Type II, and should have screened the force with FIT. However, NE#2 failed to do so, or, for that matter, to order any investigation of the force at any level.

As I already recommend that Allegation #1 be sustained, I deem it unnecessary to also recommend that this allegation be sustained. Instead, I recommend that it be Not Sustained – Training Referral.

- **Training Referral:** NE#2 should be retrained as to her obligations under SPD Policy 8.400 and, specifically, her duty to ensure that complaints of force are properly classified, investigated, and documented. This training and related counseling from her chain of command should be memorialized in a PAS entry.

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

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

***8.400-POL-3 Use of Force - TYPE II INVESTIGATIONS a. Each Reviewer in the Chain Will Review the Report Within a Reasonable Period of Time to Ensure it is Thorough and Complete***

As explained above, NE#1 was not initially directed to complete a use of force report relating to the subject's allegation of force. He ultimately did do so approximately two weeks after the allegation had been made, after being ordered to generate the report by a Lieutenant. At that time, and due to the lateness of the reporting, both NE#2 and Named Employee #3 (NE#3) were "conflicted out of the investigation and review." (See Lieutenant Use of Force Review.)



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At her first OPA interview, NE#2 claimed that she screened this incident with NE#3. Specifically, NE#2 stated that she informed NE#3 of the subject's allegation that he was assaulted. She indicated that NE#3 gave her no specific guidance as to what her next steps should be.

At her second OPA interview, NE#2 clarified that while she definitely told NE#3 that the subject had spit on an officer, she was not sure whether she also discussed with him the subject's allegation of an assault. She stated that she may have only forwarded the OPA complaint concerning the assault to NE#3. In response to further questioning, she stated that she "must have" reported her concern of possible criminality to NE#3, but that she could not remember the exact substance of that conversation.

NE#3, for his part, remembered that NE#2 reported that the subject spat on NE#1. He had no recollection, however, of any allegations of assault or criminality conveyed to him by NE#2.

If it could be conclusively established that NE#2 communicated the assault allegation and her intention to not order any force reporting as well as that NE#3 supported or did not correct this errant plan of action, I would have recommended sustaining this allegation as against him. However, based on the lack of definitive evidence in this regard, I recommend that this allegation be Not Sustained – Inconclusive.

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

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

***8.400-POL-1 Use of Force - REPORTING AND INVESTIGATION 10. The Incident Commander Will Make Appropriate Notifications of Serious Officer Misconduct or Criminal Liability***

As indicated above, NE#2 told OPA that she "must have" relayed to NE#3 that there was an allegation that NE#1 had possibly engaged in criminal conduct, but she could not remember whether she did so in person or over the phone. NE#2 also could not remember the substance of that conversation. NE#3 was interviewed by OPA and indicated that he did not remember the specifics of this incident. He vaguely recalled NE#2 telling him about an officer being spit on, but did not recall any allegation that NE#1 used excessive force or engaged in criminal conduct.

If this information had been relayed to NE#3, he was ultimately responsible for making "appropriate notifications of serious officer misconduct or criminal liability." However, as I cannot conclusively determine what was told to him by NE#2, I recommend that this allegation be Not Sustained – Inconclusive.

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