



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 17, 2018

CASE NUMBER: 2018OPA-0316

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Sustained
# 3	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Sustained
# 4	8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force	Sustained
# 5	8.300-POL-10 Use of Force – NECK AND CAROTID RESTRAINTS	Sustained
# 6	8.400-TSK-3 Use of Force –INVOLVED OFFICERS’ RESPONSIBILITIES DURING A TYPE II INVESTIGATION	Allegation Removed
# 7	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Not Sustained (Unfounded)
# 8	8.300 - Use of Force Tools 2. Uniformed Officers Are Required to Carry at Least One Less Lethal Tool	Not Sustained (Training Referral)

Imposed Discipline

4 Day Suspension Without Pay

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force	Not Sustained (Lawful and Proper)
# 2	8.400-TSK-3 Use of Force –INVOLVED OFFICERS’ RESPONSIBILITIES DURING A TYPE II INVESTIGATION	Not Sustained (Training Referral)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force	Not Sustained (Lawful and Proper)
# 2	8.400-TSK-3 Use of Force –INVOLVED OFFICERS’ RESPONSIBILITIES DURING A TYPE II INVESTIGATION	Not Sustained (Training Referral)

Named Employee #4

Allegation(s):		Director's Findings
# 1	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Training Referral)
# 2	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Sustained
# 3	8.400 - Use of Force Reporting and Investigation 8.400-POL-3 Use of Force – TYPE II INVESTIGATIONS	Sustained
# 4	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Not Sustained (Inconclusive)

Imposed Discipline

Written Reprimand

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 Named Employee #1 (NE#1) may have used excessive force when he applied out of policy neck restraints. It was further alleged that NE#1 failed to accurately and thoroughly report and document his force. In addition, it was alleged that NE#1 was unprofessional and that he failed to properly carry a less-lethal tool. Named Employee #2 (NE#2) and Named Employee #3 (NE#3), who also used force, were alleged to have failed to properly report their force and to have failed to fully detail the force used by other involved officers. Lastly, Named Employee #4 (NE#4) was alleged to have failed to report potential misconduct and to have failed to conduct an adequate force investigation. NE#4 was also alleged to have potentially engaged in dishonestly. Lastly, it was alleged that NE#4 failed to activate his In-Car Video (ICV) as required by policy.

ADMINISTRATIVE NOTE:

At the discipline meeting in this matter, the chain of command raised their belief that Allegations #3 and #6 against NE#1 were duplicative. Specifically, the chain of command raised the fact that both policies concerned NE#1's failure to thoroughly and accurately describe the force that he used in his use of force report. I agree and, given that OPA already recommended that Allegation #3 be Sustained, I have removed Allegation #6 from this case.

OPA and the chain of command also discussed Allegation #8 against Named Employee #1. It was further agreed that, while he violated this policy, this issue was better addressed through retraining and counseling rather than a Sustained finding.

The chain of command further requested that OPA consider reversing the Sustained findings against NE#2 and NE#3 for failing to report the force that they witnessed. The chain of command asserted, and OPA agrees, that, given the fast-paced nature of this incident and given that the officers' focus was primarily on their force not the force used by NE#1, it was understandable that their reports were deficient in this respect. OPA now recommends that they receive a Training Referral and that they both endeavor to more accurately report force moving forward.

Lastly, at NE#1's *Loudermill* hearing, he raised concerns with OPA's findings on Allegation #7, which concerned whether he engaged in dishonesty. OPA found NE#1's assertions in this regard to be compelling and amends its finding from Not Sustained – Inconclusive to Not Sustained – Unfounded.

STATEMENT OF FACTS:

While reviewing a use of force, the South Precinct Administrative Lieutenant noticed that NE#1 may have used neck restraints on an arrestee (referred to herein as the Subject). It was further noted that this force and the contact with the Subject's neck was not reported or documented. The Administrative Lieutenant accordingly screened this matter with the Department's Force Investigation Team (FIT).

FIT initiated an investigation, which included interviewing the Named Employees, reviewing video, and amassing documentary evidence. In his review, the FIT Captain stated that NE#1 “used a neck hold to take the subject down” and “again used a neck hold while the subject was on the ground and a possible third neck hold to restrain the subject.” The FIT Captain noted that NE#1 “did not report the neck hold to his Sergeant, during the force screening.” The FIT Captain additionally identified that “the force reported was not consistent with video that was reviewed” by FIT. FIT indicted that there were professionalism issues with some of NE#1’s statements. FIT also noted that, even though the supervisor – NE#4 – reported that he reviewed all of the pertinent video, he did not identify the neck restraints used by NE#1. Moreover, NE#4 did not reference the neck restraints in his use of force review or screen that force with FIT. Lastly, FIT identified that NE#1 left his less-lethal tool in his patrol vehicle. FIT ultimately referred this matter to OPA and this investigation ensued.

OPA reviewed the FIT file, including the officer statements and FIT case reviews. OPA also reviewed the Body Worn Video (BWV), which fully captured this incident, as well as third-party video that provided another perspective. OPA reviewed the use of force documentation and review generated by the officers, as well as the arrest paperwork. Lastly, OPA interviewed all of the Named Employees.

A detailed analysis of the BWV, as well as a comprehensive discussion of the FIT investigation and statements of the Named Employees, is set forth in the Case Summary.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

It was alleged that NE#1 may have made a number of statements during this incident that were unprofessional. These statements included the following:

- The Subject told NE#1: “I never try to mess with you.” NE#1 responded: “yah, you are dummy.”
- The Subject said to NE#1: “I never fought with you guys.” NE#1 responded: “the last time you ran from us, now you want to be a jack ass.”
- The Subject stated to NE#1: “I didn’t want to fight with you.” NE#1 replied: “so, why did you dummy?”
- The Subject exclaimed: “ah, ow, you’re trying to break my arm.” NE#1 stated: “we’re not going to break your arm...quit acting like a jack ass.”
- While NE#1 was screening the force with NE#4, the Subject stated: “you guys didn’t give me a chance.” NE#1 retorted: “it doesn’t matter, you haven’t learned shit dude.”
- After reading the Subject his Miranda warnings in the patrol vehicle, NE#1 stated: “right now you’re under arrest for robbery, so congratulations, you get to rack up another one.”
- When pulling into the precinct, NE#1 asked the Subject: “you ever get tired of doing this, huh?” When the Subject did not respond, NE#1 said: “you should probably stop because you’re not very good at it.”

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.*)

In OPA’s opinion, the statements above constituted unprofessional behavior on the part of NE#1. These statements were, in large part, contemptuous, disrespectful, and taunting towards the Subject. They also furthered no legitimate law enforcement purpose at the time they were said, as the Subject was already secured in custody and any ongoing threat had been quelled. Lastly, these comments served to unnecessarily and inappropriately escalate this situation.

I note that, during the force screening with NE#4, which was captured on video, NE#1 reported his force as follows: “Mine’s more just fucking joint manipulation and stuff like that.” He further told NE#4, in response to a question concerning whether the Subject made any complaints of pain, “no, of course not, because he’s probably high as shit, as he always is.” Even this statement, which was made outside of the presence of the Subject but while being recorded on Department video, was arguably unprofessional and demonstrated concerning aggression and a lack of control on NE#1’s part.

Ultimately, NE#1’s collective statements to and about the Subject were unacceptable and undermined public trust in the Department, NE#1, and his fellow officers. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

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

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

NE#1 used various force during this incident. This force falls in two general categories: the de minimis force used to hold the Subject down and to secure his body so that he could be handcuffed; and the three neck restraints. The former force was clearly reasonable, necessary, and proportional under the circumstances. However, the neck restraints were inconsistent with policy.

As a starting point, the neck restraints were not reasonable under the circumstances. SPD policy instructs that for neck restraints to be appropriate, it must be a deadly force situation. Here, that was clearly not the case. The Subject was a non-violent offender who was suspected of committing theft. While he struggled against the officers, he posed no significant physical threat to them. Indeed, as NE#1 reported, the Subject “was not violent or attempting to assault” him and his fellow officers. Certainly, there was no risk, either real or apparent, that the Subject threatened the officers or others with serious bodily injury or death.

Moreover, the neck restraints were not necessary. Notably, there were other force options available to NE#1 rather than using neck restraints. Indeed, nether of his fellow officers, who were faced with the exact same scenario as he was, deemed it necessary to use such force and applied other appropriate force to stop the Subject’s resistance and prevent escape. The neck restraints were simply not necessary to achieve NE#1’s lawful goal of taking the Subject into custody.

Lastly, the force was not proportional to the threat that the Subject posed to the officers and others. While some force was permissible, the risk of potential injury that could be caused by the neck restraints greatly outweighed any possible of harm posed by the Subject to the officers.

For the above reasons, I find that the neck restraints applied by NE#1 were inconsistent with policy and were impermissible uses of force under the circumstances of this case. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

SPD Policy 8.400-POL-1 states that officers shall report all uses of force except for de minimis force. The policy stresses that: "Officers shall thoroughly document all reportable uses of force to the best of their ability, including a description of each force application."

In his use of force report, NE#1 wrote that, when he first observed the Subject, the Subject was on the floor being detained by store security. He and NE#2 were "about to take physical control of the subject" when the Subject started to sit up. NE#1 reported that he and NE#2 pushed the Subject back down to the floor. He described the Subject as continually moving around and preventing himself from being handcuffed. NE#1 wrote that, while the Subject "was not violent or attempting to assault" the officers, he tensed up his arms and legs and resisted the officers' attempts to handcuff him. NE#1 stated that he attempted to "control" the Subject's head "by pushing it to the floor" in order to "prevent him from rolling over." NE#1 also described using a "wrist lock" to "gain control" of the Subject's right arm. However, he stated that this was unsuccessful. Lastly, NE#1 wrote the following: "I wrapped my arm around [the Subject's] face, basically putting his face under my armpit, and then cinched up my arm, leaning back to prevent him from rolling over again."

Based on OPA's review of the video evidence, NE#1 did not thoroughly report the force that he used. The BWV established that, at the time NE#1 first took the Subject down to the ground, NE#1 had his arms locked around the Subject's neck and appeared to be applying pressure. (See NE#2 BWV, at 01:36-01:43.) The Subject's neck was in the crook of NE#1's elbow and NE#1's utilized that restraint to pull the Subject backwards and down the ground. (See *id.*) While the Subject was on the ground, NE#1 placed his left hand around the Subject's neck and pushed down. (See *id.* at 01:56-02:04.) This appeared to, at least temporarily, cause sufficient pressure to impair the Subject's voice. (See *id.*) NE#1 made contact with the Subject's neck on a third occasion, again cinching his elbow around the neck. (See *id.* at 02:38-02:48.) This muffled the Subject's voice, preventing him from speaking. (See *id.*)

None of the contacts with the Subject's neck were described in NE#1's report. Indeed, there was an explicit omission of this conduct. Even NE#1's statement that he "wrapped [his arm] around [the Subject's] face" does not accurately describe what he actually did. The video evidence is clear that on three occasions, NE#1's hand or arms were used to restrain and apply pressure to the Subject's neck.

When he failed to accurately and thoroughly document the force he used, he acted inconsistent with policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegations #4

8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force

SPD Policy 8.400-POL-2 requires that officers, including witness officers, verbally notify a supervisor immediately, unless not practical, following any use of reportable force. Inherent in the requirements of this policy is that the notification provided by the officer is comprised of accurate information that properly allows the supervisor to classify the force and cause it to be investigated at the appropriate level.

NE#4 came to the scene and screened the force used with NE#1. In regard to that force, NE#1 stated: "Mine's more just fucking joint manipulation and stuff like that." When asked by NE#4 whether there were any strikes used by officers, NE#1 stated that he did not know. NE#1 further told NE#4, in response to a question concerning whether the Subject made any complaints of pain, "no, of course not, because he's probably high as shit, as he always is."

As with his failure to document his contact with the Subject's neck in his use of force report, NE#1 also did not thoroughly and accurately describe the force he used during this screening conversation with NE#4. Notably, he did not initially mention the repeated restraints he applied to the Subject's neck, the Subject's complaints of pain, or even that he "wrapped" his arm around the Subject's face, as he later asserted.

These failures were sufficiently significant to rise to the level of a violation of this policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #5

8.300-POL-10 Use of Force – NECK AND CAROTID RESTRAINTS

The video evidence established that NE#1 restrained the Subject's neck on three separate occasions. On each of those occasions, NE#1 applied pressure to the Subject's neck. The first time, he used the pressure on the Subject's neck to pull him down to the ground. On the second occasion, he placed his left hand around the Subject's neck and pushed down, which appeared to temporarily impart sufficient pressure to impair the Subject's voice. On the third occasion, he locked his elbow around the Subject's neck causing his voice to be muffled.

Neck restraints, such as those used in this case, are a Type III use of force and are only appropriate where deadly force is justified. (See SPD Policy 8.300-POL-10.) Here, according to NE#1's own recounting and based on the documentation and video, no such justification existed. Indeed, as NE#1 wrote, the Subject "was not violent or attempting to assault" him and his fellow officers. There was no danger of imminent serious bodily harm or death to the officers or others and, as such, deadly force was not authorized.

Moreover, NE#1 further violated this policy when he failed to immediately place the Subject in the recovery position after the first neck restraint was used. Instead of doing so, NE#1 restrained the Subject's neck two more times.

At his OPA interview, NE#1 contended that he did not violate this policy because he believed that it solely proscribed the Lateral Vascular Neck Restraint (LVNR) or a "choke hold." He asserted that he did not apply either. NE#1's narrow reading of this policy is inconsistent with its plain language. The policy prohibits neck restraints unless deadly force is justified. Here, NE#1 put his hand, arm, and elbow around the Subject's neck and applied pressure. This constituted a neck restraint. NE#1 also opined that he did not violate this policy because any contact with the Subject's neck was inadvertent. Had there only been one incidence of the neck restraint, OPA would have given more credence to this argument. However, NE#1 did so three separate times. Moreover, the fact remains that he engaged in neck restraints, whether he intended to do so goes to later mitigation of discipline but does not impact whether he did, in fact, violate the policy.

For the above reasons, I find that NE#1 used neck restraints contrary to policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #6

8.400-TSK-3 Use of Force –INVOLVED OFFICERS' RESPONSIBILITIES DURING A TYPE II INVESTIGATION

SPD Policy 8.400-TSK-3 sets forth the responsibilities of an involved officer during a Type II force investigation. Relevant to this case, this policy requires that the involved officer give: “A detailed description of any force and non-force actions used, how those actions furthered the intended law enforcement objective, and the observed results.”

While NE#1’s force reporting clearly violated this policy, his conduct is already captured by Allegation #3 above. Given this, it is unnecessary to also recommend that this Allegation be Sustained. As such, I recommend that it be removed from this case.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegations #7

5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication

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

It was alleged that NE#1 was dishonest in the manner that he screened and reported his force. Specifically, it was alleged that NE#1 was dishonest due to the fact that he failed to document in any respect the fact that he made contact with the Subject’s neck on three occasions.

It is undisputed that NE#1 did not report using such force to NE#4 at the time of the initial screening. It is also undisputed that he did not detail the neck contact in his use of force report.

NE#1 asserted that he did not deliberately withhold this information, but that, instead, he did not believe that he used a neck restraint. As discussed more fully above, NE#1 asserted that he viewed a neck restraint as including a LVNR and a “choke hold,” not contact with the neck that did not purposefully impair breathing.

Initially, OPA found that it was implausible that NE#1 did not recognize that when he put his hand, arms, and elbow around the Subject’s neck and then applied pressure that he was required to report that force. As such, OPA deemed the question of whether NE#1 was dishonest to be inconclusive.

After NE#1’s presentation at his *Loudermill* hearing, which OPA thought was both forthcoming and honest, OPA believes that, while NE#1 violated policy in this instance by using a neck restraint and by failing to report that force, NE#1 did not engage in dishonesty. I find that he did his best to honestly report what he did and perceived, even if that was ultimately not consistent with the video evidence. OPA agrees with NE#1 that any inconsistencies that did exist were not intentional. As such, OPA now recommends that this allegation be amended to Not Sustained – Unfounded.

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

Named Employee #1 - Allegations #8

8.300 - Use of Force Tools 2. Uniformed Officers Are Required to Carry at Least One Less Lethal Tool

SPD Policy 8.300-POL-2 requires all uniformed officers to carry at least one less-lethal tool. On the date in question, NE#1 was assigned a baton as his less-lethal tool.

At his OPA interview, NE#1 confirmed that he did not have his less-lethal tool on his person when he responded to the incident. He stated that, because he was in a hurry to arrive at the scene, he left his baton in his patrol vehicle. He explained to OPA that he normally stores his baton in the head rest of his vehicle when he is not out on patrol.

Ultimately, NE#1 is required to carry his less-lethal tool. Specifically, when NE#1 is in uniform and on duty, he must have his less-lethal tool on his person. This rule is purposed for the exact type of situation that arose in this case – to ensure that officers are equipped with less-lethal tools in cases in which force may have to be immediately used.

While I find that NE#1's failure to do so here represented a violation of policy, I recommend that he receive a Training Referral instead of a Sustained finding. I reach this decision primarily due to the chain of command's belief that this matter is better addressed through retraining rather than discipline. Also supporting this decision is the fact that there are already a number of other recommended Sustained findings against NE#1.

I accordingly issue the below Training Referral.

- **Training Referral:** NE#1 should receive additional training concerning SPD Policy 8.300-POL-2 and the requirement that he carry at least one less-lethal tool on his person. NE#1 should be counseled concerning his failure to do so here and should be informed that future violations of policy will result in a recommended Sustained finding. NE#1's chain of command should also explore with NE#1 the possibility that he uses a less-lethal tool that is more easily accessible, such as pepper spray, a Taser, or even a retractable baton. OPA strongly suggests that NE#1 equip himself with a practical less-lethal tool that he can store on his immediate person. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #2 - Allegations #1

8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force

From OPA's review of the record, NE#2 properly notified his supervisor of the force he used. Moreover, NE#2's characterization of his force as de minimis is consistent with OPA's review of the video evidence. The BWV established that NE#2's force included applying pressure and weight to the Subject's body in order to secure and handcuff him.

Given the above, I find that NE#2 complied with this policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #2 - Allegation #2

8.400-TSK-3 Use of Force –INVOLVED OFFICERS' RESPONSIBILITIES DURING A TYPE II INVESTIGATION

Included among the requirements for officer force reporting set forth in SPD Policy 8.400-TSK-3 is the following: "A detailed description of any force clearly observed being used by other officers during this incident." NE#2's use of force witness report failed to accurately and completely describe the type and extent of force that he witnessed.

Specifically, NE#2 failed to report any of the neck restraints utilized by NE#1. He further failed to report the knee strike applied by NE#3. In addition, NE#2's report was inaccurate when he referred to the initial neck restraint used to take the Subject down to the ground as NE#1 attempting to "guide" the Subject to the prone position. This description is simply not supported by the video evidence.

NE#2 told OPA that he was focused more on his attempts to secure the Subject and to prevent further resistance and escape than he was on the force used by other officers. He further told OPA that while he saw the initial takedown of the Subject by NE#1, he did not perceive that to be a neck restraint or, for that matter, reportable force.

OPA disagrees with NE#2's recounting of the force used and finds that his failure to include a detailed and accurate description of the force used by NE#1 and NE#3 in his report violated policy. However, as discussed above, OPA recommends that he receive a Training Referral instead of a Sustained finding. This is based on the recognition that it was a fast-paced and chaotic incident and because OPA credits NE#2's account that he was focused on his own

force and securing the Complainant, not on what NE#1 was doing. That being said, NE#2 should be careful to more closely comply with this policy moving forward.

- **Training Referral:** NE#2 should be retrained on SPD Policy 8.400-TSK-3 and, specifically, on the requirement that he report both his force and the force he witnesses completely and accurately. NE#2's chain of command should counsel him on his failure to do so here. This should include reviewing the BWV of this incident with him. NE#2's chain of command should ensure that he more closely complies with this policy moving forward and instruct him that further failures to do so will likely result in recommended Sustained findings. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #3 - Allegations #1

8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force

NE#3 also properly reported the force he used to his supervisor, which included a knee strike and de minimis force to secure the Subject's body in order to take him into custody. The force he described was consistent with the force reflected on the BWV.

Given the above, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #3 - Allegation #2

8.400-TSK-3 Use of Force –INVOLVED OFFICERS' RESPONSIBILITIES DURING A TYPE II INVESTIGATION

Based on a review of NE#3's Type II use of force report, he failed to include any description or detail concerning the force used by NE#1 and NE#2.

While BWV established that NE#3 was not present for the initial neck restraint used by NE#1 to effectuate the takedown, it did show that he was in the immediate vicinity when the other two neck restraints were applied. NE#3 told OPA that while he saw NE#1 at the top of the Subject's body, he did not see any neck restraints.

As explained above, SPD Policy 8.400-TSK-3 requires officers to include in their force report: "A detailed description of any force clearly observed being used by other officers during this incident." Based, on OPA's review of the Department video, it is clear that NE#1 used reportable force when he applied neck restraints to the Subject. When he did not include any description of this force, NE#3 violated policy.

That being said, and as discussed in the context of NE#2, OPA recommends that NE#3 receive a Training Referral instead of a Sustained finding. This is based on the recognition that it was a fast-paced and chaotic incident and because OPA credits NE#3's account that he was focused on his own force and securing the Complainant, not on what NE#1 was doing. That being said, NE#3 should be careful to more closely comply with this policy moving forward.

- **Training Referral:** NE#3 should be retrained on SPD Policy 8.400-TSK-3 and, specifically, on the requirement that he report both his force and the force he witnesses completely and accurately. NE#3's chain of command should counsel him on his failure to do so here. This should include reviewing the BWV of this incident with him. NE#3's chain of command should ensure that he more closely complies with this policy moving forward and instruct him that further failures to do so will likely result in recommended Sustained findings. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #4 - Allegations #1

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity

SPD Policy 16.090-POL-5 concerns when Department employees are required to record police activity. SPD Policy 16.090-POL-5(b) sets forth the categories of activity that must be recorded, which include: responses to dispatched calls starting before the employee arrives on the scene; arrests and seizures; and questioning victims, suspects, or witnesses.

It is indisputable that NE#4 engaged in law enforcement activities during this incident that were required to be recorded. NE#4 failed to sync his wireless microphone. As such, while he recorded video on his ICV, he failed to record audio. NE#4 did not fully record his BWV and narrated on that recording that he failed to sync his wireless microphone.

Based on my review of the record, when NE#4 failed to sync his wireless microphone and did not record audio on his ICV, he failed to comply with this policy. That being said, I find that this was a mistake rather than misconduct. I also find that NE#4 properly self-reported by narrating his failure on his BWV. For these reasons, I recommend that NE#4 receive a Training Referral rather than a Sustained finding.

- **Training Referral:** NE#1 should receive retraining concerning SPD Policy 16.090-POL-5. He should be reminded to appropriately sync his wireless microphone to ensure that he records both audio and video. He should be counseled that his failure to do so here constituted a technical violation of policy. NE#1's chain of command should ensure that he more closely complies with this policy moving forward. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #4 - Allegation #2

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

SPD Policy 5.002-POL-6 requires Department employees to report any alleged serious violations to a supervisor or directly to OPA.

As indicated by NE#4 in his force review, he watched all of the BWV connected to this case. However, even though he did so, he failed to identify clear potential misconduct engaged in by NE#1. Most notably, NE#4 failed to report to either a supervisor or to OPA that NE#1 may have used force outside of policy in the form of neck restraints and that NE#1 made statements that were in clear violation of the Department's professionalism policy.

Ultimately, NE#4, as a sergeant is held to a high standard. He is a frontline supervisor who is tasked with ensuring that his officers act according to law and policy on a day-to-day basis. Part of that responsibility includes critically evaluating the conduct of his officers and calling out and reporting that conduct when required under the circumstances. He failed to meet that standard here and, in doing so, acted contrary to the Department's expectations of its supervisors. For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #4 - Allegation #3

8.400 - Use of Force Reporting and Investigation 8.400-POL-3 Use of Force – TYPE II INVESTIGATIONS

SPD Policy 8.400-POL-3 sets forth the responsibilities of a sergeant during a Type II force investigation. The policy cross-references SPD Policy 8.400-TSK-3, which, in turn, itemizes the specific tasks that the sergeant is expected to complete during the investigation.

There are three main areas in which NE#4's Type II investigation in this matter was deficient. First, the force used by NE#1 included three neck restraints. Even if NE#4 did not believe that these neck restraints were purposeful. He was required by policy to screen this matter with FIT. He failed to do so.

Second, as discussed more fully above, NE#4 failed to recognize potential misconduct on the part of NE#1 and, as such, failed to properly notify FIT and OPA. Notably, this was the case even though NE#4 confirmed that he "reviewed all ICV and BWV, marking them where needed."

Third, NE#4 failed to ensure that the use of force reports submitted by the involved officers were "full and accurate." Indeed, as discussed above, all of those reports were deficient in their description of the nature and scope of the force that was used.

Given the above, I find that NE#4 failed to comply with the requirements of this policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #4 - Allegations #4

5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication

It was alleged that NE#4 may have engaged in dishonesty due to his inaccurate and vague characterization of NE#1's force and his failure to identify that NE#1 used three neck restraints.

In his use of force review, NE#4 described the most significant portion of NE#1's force as follows: "He then attempted to control the subject's head to stop him from rolling around. [NE#1's] arm was around the [Subject's] forehead and brow area."

Based on OPA's review of the video evidence, this review is incomplete and inaccurate as it fails to describe the multiple neck restraints used by NE#1. This is particularly problematic given that NE#4 confirmed in his review that he watched all of the ICV, BWV, and third party video. It is unclear how, after seeing that evidence, NE#1 could have believed that no neck restraints were used or that the only force used by NE#1 in this respect was putting his arm around the Subject's "forehead and brow area." Notably, NE#4 made no mention of the initial takedown of the Subject by the Subject's neck or when NE#1 gripped the Subject's neck with his hand. Moreover, even if NE#4 believed that the neck contact was incidental, he should have clearly identified and explained that.

While I find this review to be wholly inadequate, whether it was deliberately misleading or purposefully inaccurate is a separate question. When evaluating the totality of the record, I find insufficient evidence to establish dishonesty when applying the higher evidentiary burden required. That being said, I cannot disprove that this was not the case. For these reasons, I recommend that this allegation be Not Sustained – Inconclusive.

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