



CLOSED CASE SUMMARY

ISSUED DATE: JULY 27, 2018

CASE NUMBER: 2018OPA-0188

Allegations of Misconduct & Director’s Findings

Named Employee #1

| Allegation(s): | | Director’s Findings |
|----------------|--|-----------------------------------|
| # 1 | 8.500-POL-2 Use of Force 2. For a Type II Investigation, the Precinct Chain of Command Must Review Video | Not Sustained (Training Referral) |
| # 2 | 8.400-TSK-6 Use of Force 16. Reviews and bookmarks any and all relevant and material ICV or holding cell video related to the incident | Allegation Removed |

Named Employee #2

| Allegation(s): | | Director’s Findings |
|----------------|---|-----------------------------------|
| # 1 | 5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint | Not Sustained (Unfounded) |
| # 2 | 5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations | Not Sustained (Unfounded) |
| # 3 | 8.200 - Using Force 1. Use of Force: When Authorized | Not Sustained (Lawful and Proper) |
| # 4 | 8.300-POL-2 Use of Force – CANINE DEPLOYMENT 4. Police Canines Shall be Deployed as a Force Tactic Only When Objectively Reasonable | Not Sustained (Lawful and Proper) |
| # 5 | 8.300-POL-2 Use of Force – CANINE DEPLOYMENT 5. Canine Deployment Announcements | Not Sustained (Lawful and Proper) |

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 Department’s Force Review Board alleged that Named Employee #1 failed to comply with SPD policies concerning video review and bookmarking during a Type II force investigation. It was further alleged that Named Employee #2 may have failed to report a claim of excessive force, as well as that she may have used force that was inconsistent with policy.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.500-POL-2 Use of Force 2. For a Type II Investigation, the Precinct Chain of Command Must Review Video

In his use of force review, Named Employee #1 (NE#1) noted that he reviewed all In-Car Video (ICV) and that he reviewed the Body Worn Video (BWV) of two of the three officers involved in the incident. Named Employee #2 (NE#2), who was a K-9 officer not equipped with BWV on that date, had no video. Even though he reviewed the BWV, he apparently did not identify that the subject stated: "why so much force used, I'm not resisting." This matter was referred to OPA, in part, due to NE#1's failure to do so.

SPD Policy 8.500-POL-2(2) requires that, when conducting a Type II force investigation, the precinct chain of command must review video. With regard to the responsibilities of the sergeant, the policy instructs that: "The reviewing sergeant must review and bookmark all video necessary for a decision-maker to make an informed decision about the force and the surrounding circumstances."

Here, the statement in question was made at the time that the subject was being handcuffed and directly after the force application. This portion of the video was certainly "necessary" to permit an evaluation of the force and the surrounding circumstances. As such, it should have been reviewed and bookmarked.

NE#1 acknowledged reviewing this video with the assistance of a Lieutenant. He had not yet been trained on BWV and, at the time of this incident, was unfamiliar with how to review and bookmark it. Even though he reviewed the video, NE#1 stated that he did not hear the statement. NE#1 told OPA that, had he heard it, he would have documented the statement and bookmarked the video with the Lieutenant's assistance. However, because he did not do so, no one reviewed this statement and it was not critically evaluated until this matter went to the FRB.

NE#1's failure to identify this statement and bookmark this video was in technical violation of policy; however, I believe that a Training Referral is the appropriate result for several reasons. First, at the time of the incident, NE#1 had not yet been trained on BWV and was unfamiliar with the usage and review of this technology. Second, even had he been fluent with BWV, the statement was difficult to hear based on the Complainant's diction and low tone, the barking of the K-9, and the fact that officers were speaking at the same time. Third, multiple other people failed to catch the statement, including the Lieutenant who listened to it with NE#1 and the Captain. Notably, the policy states in this regard that: "the captain is ultimately responsible for ensuring that all video has been sufficiently reviewed." Here, this was not done.

- **Training Referral:** NE#1's chain of command should provide him with additional training concerning his requirements to review and bookmark relevant video during his use of force reviews. His chain should ensure that he is now familiar with doing so on BWV and, if not, should provide him with training in this regard. Lastly, NE#1 should be counseled that if he does hear similar statements in the future, he should document and critically review them. Based on such similar comments, he should refer the case to OPA or, in the alternative, provide a thorough analysis and clear reasoning as to why the statements do not rise to the level of excessive force in his review. This training and associated counseling should be documented and this documentation should be maintained in an appropriate database.



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

Named Employee #1 - Allegation #2

8.400-TSK-6 Use of Force 16. Reviews and bookmarks any and all relevant and material ICV or holding cell video related to the incident

SPD Policy 8.400-TSK-16 requires sergeants to review and bookmark any and all relevant video during a Type II force review. As discussed above, NE#1 did not do so in this case. However, given that this conduct is captured by Allegation #1, this allegation is duplicative and unnecessary. As such, I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #2 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint

As discussed more fully below, I find NE#2's assertion that she did not hear the subject's statement to be reasonable. Moreover, even had she heard the statement, I am not entirely convinced that it constituted an allegation of excessive force that she was required to report. However, I would have expected her to follow-up with the subject to determine whether he was, in fact, making an allegation of excessive force, as well as to notify a supervisor.

For the reasons set forth herein, as I credit NE#2's claim that she did not hear the statement, she was not required to assist the subject in filing an OPA complaint if she was unaware that he was seeking to do so. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #2

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

At her OPA interview, NE#2 claimed that she did not hear the subject's statement in the moment. She explained that, at the time, she was focused on her K-9 and getting it to release the subject. Given this, she did not hear what was said. She told OPA that she would have reported the statement to a supervisor had she been aware of it. NE#2 indicated that she did learn, at one point, that the subject complained of pain from either the dog bite or his handcuffs. She reported that information to her supervisor.

As discussed in the context of NE#1, the exact substance of the subject's statement was difficult to hear and discern by OPA. If that is the case after the fact, it was logically even more difficult for NE#2 to hear the statement at the time and in the heat of the moment with many other distractions. For these reasons, I credit NE#2's claim that she did not hear the statement. As such, I further find that she was not required to report what she did not hear.

Given the above, I recommend that this statement be Not Sustained – Unfounded.



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

Named Employee #2 - Allegation #3

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

NE#2's force towards the subject took the form of her K-9 biting him. As discussed in the context of Allegation #4, below, I find that this force was reasonable, necessary, and proportional, and, thus, consistent with policy. I accordingly recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #4

8.300-POL-2 Use of Force - CANINE DEPLOYMENT 4. Police Canines Shall be Deployed as a Force Tactic Only When Objectively Reasonable

SPD Policy 8.300-POL-2 specifically governs the use of a K-9 as a force tool. A K-9 may be utilized to capture fleeing subjects, but the force applied by the K9 must be objectively reasonable under the circumstances. When evaluating reasonableness, SPD Policy 8.200(1) applies. As set forth by this policy, 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.*)

In this case, officers were seeking the subject, who was wanted for a domestic violence assault, as well as for stealing the victim's car and phone. The subject had further engaged in a high-speed chase with officers. When she dispatched to the scene, NE#2 knew that the subject was possibly armed and dangerous, had potential gang ties, and would be subject to a mandatory arrest. The subject's location was able to be tracked via cell phone and NE#2 and the other officers went to the location where the car was believed to be; however, the subject had fled the vehicle on foot.

NE#2 used her K-9 to track the subject for multiple blocks. NE#2 determined that it was possible that the subject was hiding behind a garage near a house. She then released her K-9 and, prior to doing so, gave it the order to bite. The K-9 made contact with the subject's body.

In explaining how the force was objectively reasonable, NE#2 referenced the seriousness of the crime that the subject was being sought for, the resistance presented by the subject given his multiple attempts to flee, the risk of harm to the officers, and the risk of harm to the community. I agree with NE#2 that the reasonableness factors support a finding that the force was within policy.

With regard to necessity, NE#2 stated that the force was necessary as it was needed to take the subject into custody and to ensure that he did not escape. She further believed that it was necessary to ensure that the subject was not



provided an opportunity to ambush the officers. Based on my review of the record, I find that NE#2 believed that she had no reasonable alternative to releasing her K-9.

Lastly, NE#2 asserted that the force was proportional. She explained that the force was purposed to immediately stop the subject from fleeing and to quickly eliminate any threat of harm to the officers. She stated that her K-9 does not bring significant force on the bites and this is particularly the case where the subject of the bite is passive and does not fight. In these cases, the K-9 releases with minimal harm being incurred. Here, the subject suffered two lacerations to his back. This force was proportional under the circumstances of his case.

For these reasons, I find that the force used by NE#2 was consistent with 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 #5

8.300-POL-2 Use of Force – CANINE DEPLOYMENT 5. Canine Deployment Announcements

SPD Policy 8.300-POL-2(5) states the following: “If feasible, officers shall issue a verbal warning to the suspect prior to deploying a police canine as a force tactic and wait a reasonable time to allow subjects to comply.”

Here, NE#2 did not provide a verbal warning to the subject before deploying her K-9. NE#2 told OPA that she did not do so for several reasons. First, she stated that she was conducting a multiple block track and she did not know where the subject was located. She explained that it was impractical for her to repeatedly make announcements without any idea of where the subject was. Second, she stated that doing so would have presented a safety risk to the officers, as it would have revealed their location and put them at risk of a potential ambush. At the time contact was made with the subject, the officers had to act quickly and a warning was no longer feasible. NE#2 stated that, had she known where the subject was, she would have issued a warning; however, she did not have that opportunity in this case.

Based on NE#2’s explanation and on my review of the Department video, I agree that providing a warning in this case would not have been safe or feasible. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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