



## CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 19, 2018

CASE NUMBER: 2018OPA-0400

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

| Allegation(s): |   | Director’s Findings |
|----------------|---|---------------------|
| # 1            | 8.400 - Use of Force Reporting and Investigation 8.400-TSK-2<br>Use of Force –RESPONSIBILITIES OF THE SERGEANT DURING A<br>TYPE I INVESTIGATION | 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:

It was alleged that the Named Employee failed to screen a Type I use of force in person and failed to photograph the subject’s injuries.

### ANALYSIS AND CONCLUSIONS:

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

***8.400 - Use of Force Reporting and Investigation 8.400-TSK-2 Use of Force –RESPONSIBILITIES OF THE SERGEANT DURING A TYPE I INVESTIGATION***

Officers effectuated the arrest of the subject. The subject was handcuffed and his arrest was screened at the scene by Named Employee #1 (NE#1), who was the supervisor. At that time, the subject did not complain of any pain or discomfort from his handcuffs. An officer transported the subject from the scene. During that transport, the subject complained of pain from the handcuffs. The officer called NE#1 and notified him of the complaint of pain. NE#1 screened the complaint over the phone and did not go to the officer’s and subject’s location. As such, NE#1 also did not take photographs of the area of pain and/or any injuries.

The failure of NE#1 to take these steps was identified by the Complainant in his force review. Both the Watch Lieutenant and Captain concurred. The Complainant referred this matter to OPA and this investigation ensued.

SPD Policy 8.400-TSK-2 sets forth the responsibilities of a sergeant during a Type I force investigation. Among these responsibilities is the requirement that the sergeant “screens the incident in-person with the involved officer.” (SPD Policy 8.400-TSK-2(1).) In this regard the policy provides that: “If the sergeant responds to a scene in which there is [an] allegation of injury of pain, the will photograph the bodily area of the alleged injury or pain and an overall photo of the subject.” (*Id.*) Lastly, the policy states that: “When a subject is in custody, the sergeant will take photographs unless the subject refuses and safety dictates, after voluntary and non-coercive attempts fail.” (*Id.*)



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At his OPA interview, NE#1 provided the following reason for why he did not screen the complaint of injury in person: "I did not come back to the scene for the report of force, because it was not caused by the Officers." He further explained:

By—by definition of force, force means any physical coercion by an Officer in performance of official duties. If, if there's no force by the Officers, then there's no force report needed... And the Officers didn't use force, it was caused by the Suspect in the backseat adjusting himself, you know, either his position or trying to move his hands about. So they didn't cause it. The Type I was done as a CYA because he said ouch on film.

NE#1's explanation for not going to the scene and not photographing the area of pain/injury represents a fundamental misunderstanding of the policy that was in force at that time. Under SPD Policy 8.400, a complaint of pain represented a Type I use of force. This included a complaint of pain from handcuffs, even if from the wearing and not the application. This was and is a universally understood concept by Sergeants in the Department.

NE#1 further cited a memorandum from the Complainant in which the Complainant referred to SPD Policy 8.050 when defining force as "any physical coercion by an officer in performance of official duties, including the following types of force." NE#1 pointed to this as support for his position that he did not have to comply with SPD Policy and complete a Type I investigation in this case. I do not find this argument compelling. First, this memorandum was written by the Lieutenant to inform his sergeants that "lightly shaking" a sleeping person to wake them up did not constitute reportable force when that person said "ow." This is not analogous to the instant case in which an officer used a force tool to restrain the subject's liberty and while the subject was so restrained he complained of pain from the handcuffs. Second, NE#1 fails to note that the policy goes on to expand this definition by including within force "the complaint of transitory pain."

Ultimately, the Department's policy and training at the time of the incident was clear that a complaint of pain relating to the wearing of handcuffs constituted a Type I use of force. As such, NE#1 was required to go to the scene to screen the force and to take photographs of the area of pain/injury. When he failed to do so, he violated Department policy. For these reasons, I recommend that this allegation be Sustained.

Lastly, I note that NE#1's chain of command informed OPA that NE#1 had had two previous documented use of force investigation deficiencies. I strongly encourage NE#1 to more closely comply with the requirements of this policy moving forward.

Recommended Finding: **Sustained**