



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 15, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0226

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.400-POL-1 Use of Force Reporting and Investigation 1. Officers Shall Document in a Use-of-Force Report All Uses of Force Except De Minimis Force	Not Sustained (Training Referral)
# 2	8.400-POL-1 Use of Force Reporting and Investigation 2. Officers Shall Report the Complaint of Handcuff Discomfort Resulting Solely from the Wearing of Properly Applied Handcuffs to a Supervisor	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 alleged that the Named Employee may have failed to report and document a complaint of handcuffing pain.

SUMMARY OF INVESTIGATION:

Officers, including Named Employee #1 (NE#1), responded to a bank robbery. The suspect was arrested, as was another individual – referred to here as the Subject. The Subject was arrested based on the belief that he was an accomplice of the suspect. The Subject was handcuffed by NE#1 and was seated in the rear of a patrol vehicle. NE#1 then transported him from the scene.

The force used by officers to effectuate the arrest of the suspect was later reviewed by SPD’s Force Investigation Team (FIT). During that review, the FIT Captain – who is the Complainant in this case – identified that the Subject may have made a complaint of pain from handcuffing and that there was no indication that NE#1 either reported that complaint of pain to a supervisor or documented it in an appropriate use of force report (here, a “Handcuffing Event”). The Complainant subsequently made an OPA referral.

As part of its investigation, OPA reviewed the Body Worn Video (BWV). The BWV indicated that, after the Subject had been handcuffed for around 12 minutes, NE#1 readjusted the handcuffs. He said to the Subject, who had exited the patrol vehicle and was standing outside of it: “Oh yeah, these are all messed up...let me readjust these.” NE#1 began to reapply the handcuffs. He stated to the Subject: “Turn your wrist like this...whoops...just a minute...there you go...there you go.” He then told the Subject that he would now be more comfortable. At that point, the Subject



loudly exclaimed. NE#1 said in response: "Whoa...oh it pinched...you good?" He again asked the Subject if he was "alright" and the Subject replied by saying "thank you." NE#1 continued to fix the handcuffs and, when he was finished, he re-seated the Subject in the patrol vehicle. Before closing the patrol vehicle's door, NE#1 asked the Subject whether the handcuffs felt better. The Subject replied: "I appreciate it." From OPA's review of the BWV, while the Subject exclaimed at the time the handcuffs were being adjusted, there was no indication that he ever explicitly stated that the handcuffs caused him pain. OPA verified that there was no evidence on the BWV that NE#1 screened the Subject's exclamation with a supervisor.

OPA interviewed both the Subject, an SPD supervisor, and NE#1. The Subject said that the handcuffs were put on too tightly and that he suffered injuries as a result. The supervisor confirmed that NE#1 did not report the complaint of handcuffing pain to him. The supervisor additionally noted that the Subject also did not complain of pain from the handcuffs or state that he had suffered any injuries when the supervisor interviewed the Subject.

Lastly, NE#1 told OPA that the Subject was handcuffed in the rear of his patrol vehicle for an extended period of time, so he made the decision to ensure that the handcuffs were not causing the Subject pain. He said that, while he was adjusting the handcuffs, the Subject made a loud exclamation. NE#1 did not know exactly why the Subject did so and, as such, he asked the Subject whether he had been pinched. The Subject did not respond. NE#1 said that he then asked the Subject if he was "good" and the Subject said that he was. NE#1 said that he did not notice any injuries and, given the lack of an explicit complaint of pain from the handcuffs, he did not think that there was anything to report. He further told OPA that this was his first experience of someone potentially exclaiming from pain due to handcuffs.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 – Allegation #1

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

SPD Policy 8.400-POL-1(1) states that officers shall document all uses of force, except for de minimis force, in a use of force report. For complaints of pain resulting from handcuffing, officers are instructed to complete a force report called a "Handcuffing Event." Lastly, pursuant to SPD Policy 8.400-POL-1(2), officers are required to notify their chain of command as soon as possible concerning any reportable force, which would include a complaint of pain from handcuffs.

Based on the timing of the Subject's statement, OPA finds that it clearly was related to the reapplication of the handcuffs. No force was being used at this time other than that needed to reapply the handcuffs and there would have been no other stimuli that would reasonably have caused the Subject to make such an exclamation. Moreover, the Subject had not previously made exclamations while in the patrol vehicle and, accordingly, there was no reason to think that this exclamation was inadvertent or the result of crisis. As such, when NE#1 did not report the exclamation of pain to a supervisor and document it in a Handcuffing Event, he acted contrary to policy.

The above being said, OPA finds that there are several factors present here that mitigate NE#1's conduct. First, he tried to address the exclamation several times to determine what the basis for it was. However, the Subject either did not respond or indicated that he was fine. Second, as NE#1 noted, this was the first time he was ever confronted by a potential complaint of pain from handcuffing and he was confused on how to handle it, particularly given the



lack of clarity from the Subject. Third, NE#1 has not been previously disciplined or counseled for failing to properly report and/or document force.

For these reasons, OPA finds that a Training Referral rather than a Sustained finding is the more appropriate result. OPA notes, however, that any future failures to timely report and/or properly document force will likely result in a Sustained finding and potential discipline.

- **Training Referral:** NE#1's chain of command should discuss this incident with him, including watching the BWV. NE#1 should be reminded that complaints of pain need to be reported to a supervisor. Even if the complaint was unclear here, NE#1 should have notified a Sergeant and ensured that it was documented. NE#1's chain of command should sufficiently retrain and counsel him to make sure that this same conduct does not occur in the future. This retraining and 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

5.001 – Standards and Duties 7. Retaliation is Prohibited

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (*see* Named Employee #1 – Allegation #1).

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