



## **CLOSED CASE SUMMARY**

ISSUED DATE: FEBRUARY 9, 2019

CASE NUMBER: 2018OPA-0813

### **Allegations of Misconduct & Director’s Findings**

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)
# 3	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	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:**

It was alleged that the Named Employee subjected the Complainant to excessive force and was unprofessional towards him. It was further alleged that the Named Employee failed to record In-Car Video.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegations #1**

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

Officers, including Named Employee #1 (NE#1), were dispatched to a disturbance at a shelter. An individual – later identified as the Complainant – was threatening another male with a knife. When the officers arrived, they observed the Complainant, who stated: “yeah I have a knife. And it’s your job to come get it.”

The officers then made the decision to go hands on. At his OPA interview, NE#1 noted that the Complainant was significantly larger than any of the officers on scene. This was supported by the Body Worn Video (BWV) of this incident. NE#1 also explained that the Complainant seemed fixated on the shelter and, at that time, there were a number of people coming out. Given the risk to those community members, as well as the fact that the Complainant was armed and appeared willing to fight, the officers made the decision to use a team takedown on him.

The Complainant resisted the officers, injuring both NE#1 and another officer. NE#1 used knee strikes during the incident and, ultimately, the officers were able to take the Complainant into custody. During the search incident to arrest, the officers located a knife. The Complainant continued to be belligerent and assaultive after he was taken into custody, at one point spitting at NE#1.

The Complainant, who was also injured during the incident, made statements that were construed by NE#1’s supervisor as alleging excessive force. This matter was referred to OPA and this investigation ensued.



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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.*)

Based on OPA’s review of the record, including the Department video, OPA concludes that the force used by NE#1 was consistent with policy.

First, the force was reasonable. The Complainant was suspected of threatening to assault another male with a knife and was believed to be armed and dangerous. Moreover, he was non-compliant and, based on his body language and statements, it appeared that he was willing to fight the officers. Further, he was in an area with a number of community members present, and the officers were legitimately concerned that he could cause harm to innocent bystanders. For these reasons, it was reasonable and appropriate to use force, including a takedown, control holds, and knee strikes, to effectuate taking the Complainant into custody.

Second, the force was necessary as it was reasonable to effectuate the lawful purpose of taking the Complainant, who had indisputably committed multiple crimes, into custody. In addition, there was no apparent alternative to using such force.

Third and last, the force used was proportional to the threat posed by the Complainant. Again, the Complainant was armed and appeared willing to fight the officers and harm others. The force was appropriate given the potential of harm. Moreover, once the Complainant was placed in custody, no further force was used.

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

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

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

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

It was alleged that NE#1 was unprofessional when he repeatedly used profanity during his interaction with the Subject. NE#1 specifically stated the following; “give him some fucking knees”; “get your fucking hands off me”; “get on your fucking stomach”; and “get your fucking hands behind your back.”

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.*)



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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.*)

At the time that he used physical force on the Subject, NE#1 noted that the Subject was armed with a knife and was non-compliant. NE#1 explained that his use of profanity was purposed to gain compliance from the Subject and to show that the officers were serious and that he needed to stop resisting and obey their lawful orders.

The profanity used by NE#1 was all associated with commands to the Subject. The profanity had a purpose and was not gratuitous. Indeed, there was no profanity used to insult the Subject. In addition, once the Subject was secured and taken into custody, no further profanity was used by NE#1 in his presence.

NE#1’s chain of command identified the profanity he used and preemptively counseled him. I find that this was appropriate and see no need for any further action on OPA’s part. As such, I issue NE#1 the below Training Referral.

- **Training Referral:** As NE#1’s chain of command has already identified and addressed NE#1’s use of profanity, no further action is recommended by OPA unless the chain of command feels a need to further counsel and train him. Any additional retraining or counseling that is completed in the chain of command’s discretion should be documented and this documentation should be maintained in an appropriate database.

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

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

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

SPD Policy 16.090-POL-1(5) concerns when Department employees are required to record police activity. SPD Policy 16.090-POL-1(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; and arrests and seizures. SPD Policy 16.090-POL-1(7) requires that Department employees document the existence of video or the reason for the lack of video. Officers are required to note the failure to record in an update to the CAD Call Report, as well as to provide an explanation for the lack of a recording in an appropriate report. (SPD Policy 16.090-POL-1(7).)

During this incident, NE#1 failed to activate his In-Car Video (ICV). He did, however, record his actions on BWV. He noted the failure to record ICV in his supplemental report, but did not appear to update the CAD Call Log to note the lack of a recording.

At his OPA interview, NE#1 stated that he did not know why his ICV failed to record. He recalled activating it as he normally did, but he later noted that it did not turn on.

It is undisputed that NE#1 was required to record this incident on both ICV and BWV. However, it clear from my review of the record, that NE#1’s failure to record here was a mistake, not intentional misconduct. Informing this determination is the fact that NE#1 fully recorded this incident on BWV. Where officers fail to record Department video, but self-report, update the CAD Call Log, and document the reason for the lack of a recording in an appropriate report, OPA has not recommended Sustained findings. Here, NE#1 self-reported and documented the lack of the recording in his supplemental report, but he did not update the CAD Call Log. Regardless, and based on



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the circumstances of this case, OPA believes that a Training Referral, rather than a Sustained finding is the appropriate result.

- **Training Referral:** NE#1's chain of command should remind him that, where he fails to record Department video, he must both update the CAD Call Log and document the reason for the lack of a recording in an appropriate report. No further retraining or counseling is required from OPA's perspective as NE#1's Sergeant already identified and appropriately addressed his failure to activate ICV. This retraining and any associated counseling should be documented and this documentation should be maintained in an appropriate database.

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