



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 24, 2018

CASE NUMBER: 2018OPA-0037

Allegations of Misconduct & Director's Findings

Named Employee #1

| Allegation(s): | | Director's Findings |
|----------------|--|-----------------------------------|
| # 1 | 8.200 - Using Force 1. Use of Force: When Authorized | Not Sustained (Lawful and Proper) |

Named Employee #2

| Allegation(s): | | Director's Findings |
|----------------|---|-----------------------------------|
| # 1 | 8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force | Not Sustained (Lawful and Proper) |

Named Employee #3

| Allegation(s): | | Director's Findings |
|----------------|--|-----------------------------------|
| # 1 | 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 Named Employee #1 may have used excessive force on the Complainant during her arrest. It was further alleged that Named Employee #2 may have failed to report complaints of pain as required by policy. Lastly, it was alleged that Named Employee #3 stopped recording Body Worn Video on two occasions in violation of policy.

STATEMENT OF FACTS:

Officers, including the Named Employees, were dispatched to a call of a possible burglary in progress at a residence. The description provided of the subjects was "4 males, poss [possibly] all Asian." As they approached the scene, the officers saw two Asian males and an Asian female approach the vehicle from the driveway of a home and place items into the trunk. When the individuals saw the officers, they ran back towards the house. The officers directed the subjects to stop, but none did. One of the Asian males dropped the keys of the car onto the ground.

The officers chased the three subjects behind a house. At that point, it was dark outside and the lighting was minimal. Named Employee #1 (NE#1) pursued the Asian female, who was later identified as the Complainant. When she stopped at a chain-linked fence, NE#1 reported that his momentum carried his body into the Complainant. This caused her to fall down to the ground, which was a grassy surface. NE#1 reported that the Complainant continued to try to get up. He ordered her on to her stomach on multiple occasions but she did not initially comply. NE#1 reported that he tried to control the Complainant's body in order to handcuff her. He, at one point, grasped her hair



and pushed her head into the ground. NE#1 was able to position the Complainant face down and eased pressure on her in order to handcuff her in the prone position. She tried to move on her side and NE#1 applied pressure to her back with his forearm in order to keep her on her stomach. The Complainant was able to roll over onto her stomach. NE#1, while holding her arms, again instructed her to get on her stomach. The Complainant complained at that point that she could not breathe. However, based on a review of the video, it did not appear as if her breathing was actually impaired at that point. She eventually rolled onto her stomach and NE#1 was able to handcuff her.

The Complainant stated that she felt pain to her head and her back as a result of the force used by NE#1. Specifically, she stated that NE#1 “broke” her back and caused her to incur other injuries. She repeated these allegations of pain to the sergeant when he screened the arrest and force at the scene.

Named Employee #2 (NE#2) chased down one of the male subjects. NE#2 reported that he believed that the male subject had something in his hand at the time. NE#2 ordered the male subject to get on the ground and he ultimately did so. NE#2 directed the male subject to lay on his stomach and handcuffed him in the prone position. NE#2 ordered the male subject to drop what he was holding in a loud voice. Virtually simultaneously, the male subject stated “ow, ow.” The male subject did not make any additional complaints of pain. NE#2 did not report these complaints to a supervisor or initially document it.

During the use of force review, a supervisor, who was watching Body Worn Video (BWV), heard the complaints of pain by the male subject and determined that they had not been reported by NE#2. This issue was raised to NE#2 and NE#2 supplemented his report. NE#2 wrote that, at the time the complaints of pain were made, his attention was split on the male subject in his custody and the one additional outstanding subject, who had yet to be arrested. He stated that he did not remember the complaints being made and stated that, at that same time they were made, he was speaking to the Complainant.

The Complainant’s allegations that NE#1 hurt her and “broke” her back were construed as a claim of excessive force, and this was referred to OPA. The failure of NE#2 to report the male subject’s complaints of pain was also referred to OPA. Lastly, OPA determined that Named Employee #3 (NE#3), who was also involved in this incident, deactivated his BWV on two separate occasions while at the precinct. This conduct was evaluated in OPA’s investigation.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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.” (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 pursued on foot three subjects believed to be involved in an active burglary. During the pursuit, the subjects ran behind a house. The conditions were dark and it was difficult for the officers to see. NE#1 chased down the Complainant and, when she stopped at a fence, NE#1’s momentum caused him to collide with her and knock her to



the ground. NE#1 then attempted to secure the Complainant into handcuffs. She continuously resisted and prevented him from doing so, including refusing to roll onto her stomach and refusing to put her hands behind her back. NE#1 used de minimis force to try to push the Complainant over and to try to get her hands behind her back. At one point, he gripped the hair on the top of her head and pushed her head down towards the ground. This was purposed to control her head, which would, in turn, help control her body. Ultimately, this was successful and the Complainant was handcuffed and secured. During the handcuffing, the Complainant alleged that her back was hurt, including stating that it was “broken.” Ultimately, there was no evidence of any such injury.

I find that, under the circumstances, the force used in this case was reasonable. NE#1 had a legal basis to arrest the subject and, when she ran, he was justified in chasing her down. While he did not purposefully knock the Complainant down to the ground, this also would have been reasonable given that she was still in the process of fleeing at the time. Once she was on the ground, NE#1 was permitted to use force to handcuff the Complainant. When she resisted, it was reasonable to use force to push her onto her stomach, to put his weight on her body, to pull her arms and hands behind her back, and to push her head down to the ground in order to control her body. This force was further necessary to effect NE#1’s lawful purpose and I find that, at that time, NE#1 did not perceive any reasonable alternatives. Lastly, the force was proportional to the threat that was facing NE#1. Not only did the Complainant present a threat, but the other two outstanding subjects did as well. NE#1 needed to use sufficient force to prevent the Complainant from further fleeing, place her under arrest, and to secure the scene. Notably, NE#1 used only that level of force needed to do so. He did not strike her or use any substantial force on the Complainant.

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

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

Named Employee #2 - Allegations #1

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 requires that officers report all uses of force except de minimis force. Both of the alleged applications of force in this case would have constituted Type I force that would have needed to be reported. It is undisputed that the male subject made complaints of pain while in NE#2’s presence. It is further undisputed that the complaints were required by policy to be reported to a supervisor and documented. Lastly, it is undisputed that NE#2 failed to either report or initially document the force.

NE#2 explained that, at the time the complaints were made, he was handcuffing the male subject, who was a suspect in a possible residential burglary. He believed that the male subject had an object in his hand, which, as far as he knew at the time, could have been a weapon. In addition, there was a third subject who had not yet been apprehended and who represented a potential threat to all of the officers’ safety. As such, NE#2 explained that his attention was split between: trying to control the subject and handcuff him; ensuring that he was unarmed and, if he did have a weapon, disarming him; and keeping an eye on other potential threats, such as the third subject who was still at large. Moreover, at the time the complaints were made, NE#2 was simultaneously talking to the male subject and telling him to drop whatever was in his hand. Based on the totality of these circumstances, NE#2 asserted that he simply did not perceive the complaints of pain.



The reporting of force is one of SPD's most significant priorities. Notably, the accurate and systemic reporting of force is a crucial element of the Department reaching full and effective compliance with the Consent Decree and for the Department to complete the two-year sustainment period. When officers fail to report force and/or complaints of pain, they violate policy and act contrary to the expectations of both the Department and the community.

That being said, OPA does not and cannot apply a strict liability standard. There are circumstances in which the failure to report force and/or a complaint of pain is excusable. This is one of those situations. Here, NE#2 was involved in a foot pursuit of multiple subjects, he was concerned of possible safety risks, and he was giving commands to the male subject when the complaints of pain were made. As such, I find that his failure to hear and report the complaints did not violate policy and were understandable. For these reasons, and based on the specific facts of this case and the explanation provided by NE#2 in his use of force report and during his OPA interview, I recommend that this allegation be Not Sustained – Lawful and Proper.

While not relevant to this allegation and while not classified for investigation in this case, I had significant concerns with NE#2's demeanor during this incident and with some of his statements to the Complainant. I believe that he was inappropriate and unprofessional towards her. Among his problematic statements included: telling the Complainant to "shut up"; in response to her asking why she had been arrested, saying: "we'll talk to you later when we have time. Right now, you're going to shut up unless you want to tell us where your friend went"; and in response to the Complainant's assertion that her back was in pain and broken, saying: "well maybe you should've listened then." Based on the above, had a violation of SPD Policy 5.001-POL-10 been alleged, I would have recommended that it be Sustained. I note that NE#2 received a PAS entry regarding his statements, which I deem appropriate. I counsel him to avoid such conduct in the future.

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

Named Employee #3 - Allegations #1

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

Named Employee #3 (NE#3) was also involved in the law enforcement response to this incident. Consistent with policy, he activated his BWV as part of that response. After the arrest of the Complainant and the other subjects, NE#3 waited at the scene for the tow of the subject vehicle. During that time, he turned off his BWV. He then reactivated his BWV and drove to the precinct in order to perform the inventory search of the vehicle. He deactivated his BWV one more time when he was inside of the vehicle processing room. He turned it back on to record the actual inventory search. NE#3 reported both deactivations and why he did so in the General Offense Report.

SPD Policy 16.090-POL-5(b) requires that Department employees record police activity. Among the activity required to be recorded are officers' responses to dispatched calls, arrests and seizures, and questioning victims, suspects, or witnesses. The policy states that: "Employees will record the entire event to its conclusion unless specifically instructed otherwise by this manual section." SPD Policy 16.090-POL-5(h) requires that officers state the reasons for why they stop recording. The policy states that: "Employees who stop recording during an event will state on the recording their intention to stop recording and explain the basis for that decision. Employees will also document the reason(s) in the GO report and/or CAD update."



In his report, NE#3 explained that he deactivated his BWV the first time because he was just sitting in his car and was not engaging in any law enforcement activity. NE#3 told OPA that he believed that the policy gave him “leeway” to turn his BWV off when he was not interacting with anyone. I am unsure what NE#3 bases this belief on. Once a recording is required to be initiated, the recording cannot be deactivated until two elements are met: first, the officer’s active investigation into the case has been concluded; and, second, where there is little possibility that the officer will have further interaction within anyone involved in the incident. Here, the active investigation was not completed. NE#3 was waiting for the vehicle to be towed from the scene and to complete the inventory search. As such, there was no justification for him to stop recording, even if he was only sitting in his car.

With regard to his second deactivation, even presupposing that the vehicle processing room was a “sensitive” area of the precinct and that there was a Department interest in keeping confidential the other evidence possibly therein, the policy does not provide an exception for not recording within the precinct. (See SPD Policy 16.090-POL-5(d) – (e).) As such, there was also no justification for him to stop his BWV recording while in the vehicle processing room.

While I do not believe that NE#3 necessarily acted in bad faith here, his actions were contrary to policy. That being said, OPA has instituted a grace period for officers to become familiar with the usage of BWV and the policy governing this technology. This case falls within that grace period and, as such, I do not recommend that this allegation be Sustained. Instead, I recommend that NE#3 receive a Training Referral.

- **Training Referral:** NE#3 should be retrained as to the elements of SPD Policy 16.090-POL-5. He should be specifically reminded as to when he is required to record, when he is permitted to deactivate his recording, and those places that qualify as “sensitive areas” in which recording is not required. NE#3’s chain of command should instruct NE#3 that the policy does not give him “leeway” to pick and choose when he is going to record and he is required to comply with its plain language. This retraining and counseling should be documented and this documentation should be maintained in an appropriate database.

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