



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 4, 2020

CASE NUMBER: 2019OPA-0479

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation 4. The Sergeant Will Review the Incident and Do One of the Following:	Not Sustained (Training Referral)
# 2	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Management Action)
# 3	16.090-POL - In-Car and Body Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video	Allegation Removed

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation 3. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Following any Use of Reportable Force, As Soon As Feasible	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 failed to timely and properly notify his supervisor, Named Employee #2, of a reportable use of force. It was further alleged that Named Employee failed to properly classify that force. Lastly, it was alleged that Named Employee #2 did not record Body Worn Video as required by policy.

SUMMARY OF INVESTIGATION:

Named Employee #2 (NE#2) was alerted that an individual may have committed a crime in a 7-11 store. The individual – who is referred to here as the suspect – left the store. NE#2 called out for the suspect to stop but the suspect did not comply. NE#2 again called out for the suspect to stop and the suspect began running away. NE#2 chased the suspect and, based on a review of Body Worn Video (BWV), appeared to use his momentum and body weight to take the suspect down to the ground. This caused the suspect to fall onto the pavement on his stomach and to slide forward. The suspect's head appeared to make contact with the ground, but it was unclear from the BWV how hard that contact was. While on the ground, the suspect asked NE#2 several times why he "hit" him. NE#2 rolled the suspect onto his stomach. The suspect asked NE#2 why he was sitting on him. NE#2 replied: "I told you to stop and you didn't." NE#2 was able to pull the suspect's arms behind his back and placed him into handcuffs. When he did so, NE#2 said to himself: "Another use of force to write up." The suspect was placed under arrest for obstruction and shoplifting. The suspect was also determined to have an open warrant.



In the aftermath of the arrest, NE#2 did not call a supervisor to the scene to screen and investigate the use of force. NE#2 wrote the following in the use of force report that he later generated:

While at the scene immediately following the incident, I recognized the likelihood of the force application to cause injury, however due to the lack of any complaints of pain, no observable injuries, and the refusal of medical treatment at the scene I determined that the force application would likely be a Type 1 at most and did not require a supervisor response.

A review of the BWV confirmed that the suspect did not make any complaints concerning the use of force or state that he was injured.

NE#2 transported the suspect to the precinct. While at the precinct he informed his supervisor, Named Employee #1 (NE#1), that he had engaged in a foot pursuit of the suspect and that he had taken the suspect down to the ground. NE#2 later told OPA that he informed NE#1 of the takedown. NE#1 told OPA that NE#2 described that he “tapped [the suspect] on his shoulders and [the suspect] went onto the ground.” NE#1 denied that NE#2 reported a takedown. NE#2 told NE#1 that he did not observe any injuries and that the suspect did not complain of pain.

NE#1 reported that he spoke to the suspect on two separate occasions concerning the arrest and to determine whether the suspect had any injuries and/or preexisting medical conditions. NE#1 documented that the suspect did not allege that undue force was used on him and denied that he was injured. NE#1 further did not document that the suspect had any injuries. While these screenings were captured on the precinct’s holding cell cameras, NE#1 did not record the screenings on BWV.

The suspect was transported from the precinct to the King County Jail (KCJ). While at KCJ, the suspect was medically inspected. KCJ staff noticed a bump to the suspect’s head and he claimed that it was from when he was taken down to the ground by NE#2 and his head hit the pavement. KCJ declined to take custody of the suspect and he was transported to Harborview Medical Center (HMC) to evaluate him for a possible concussion. An Acting Sergeant responded to HMC to interview the suspect. The Acting Sergeant observed that the suspect had an abrasion on the inside of one of his fingers on his right hand, an abrasion on the top of his wrist, and a small scratch on the suspect’s cheek near his nose. The Acting Sergeant observed the bumps on the suspect’s head, and they were believed to be pre-existing. Notably, the bumps appeared in prior booking photographs of the suspect. The Acting Sergeant photographed the suspect’s injuries. It was determined that the suspect did not suffer a concussion.

NE#1 was later directed to complete a Type II force investigation and NE#2 was ordered to complete a Type II use of force report. NE#2 initial failure to notify NE#1 of the use of force was referred to OPA as a possible violation of policy. NE#1’s lack of a proper identification of the subject’s injuries, the non-investigation into the force, and his failure to record his screening conversations with the suspect on BWV were also referred to OPA. This OPA investigation ensued.

ANALYSIS AND CONCLUSIONS:



Named Employee #1 - Allegations #1

8.400 - Use of Force Reporting and Investigation 4. The Sergeant Will Review the Incident and Do One of the Following:

SPD Policy 8.400-POL-1(4) states that, where force is used, a Sergeant reviews the incident and classifies the force by type. The policy further identified the categories of force and provides examples of each type.

Here, NE#1 was informed by NE#2 that he tackled the suspect onto the ground after a foot chase. NE#2 stated that the suspect did not claim undue force or injury. It is unclear, given the lack of BWV, how thoroughly NE#1 explored NE#2's description of events. NE#1 spoke to the suspect twice and did not observe any new injuries on his person. NE#1 noticed the bumps on the suspect's head and had officers look at prior booking photographs of the suspect. These booking photographs indicated that the bumps were pre-existing. He did not notice the scrape on the suspect's cheek. While the Acting Sergeant also documented the injuries to the suspect's finger and wrist, NE#1 would have likely been unable to see these injuries given that the suspect was in handcuffs with his hands behind his back. Given the information he amassed, NE#1 believed the force to have been de minimis and did not investigate it or have NE#2 complete a use of force report.

Based on OPA's review of the BWV, the force was not de minimis. At the very least, it was Type I force given the takedown onto the pavement. Moreover, as the suspect suffered injuries, it should have been immediately classified as Type II force. NE#1's classification of the force as de minimis was clearly incorrect.

The above being said, there are mitigating factors here. First, NE#2 admittedly did not provide substantial detail as to the force he used and did not call NE#1 to the scene as he should have. Second, the suspect did not state that he was injured at any point during his initial time in police custody and did not raise any injuries until he was booked into KCJ. Third, the one injury that would have been visible to NE#1 – the scratch on the suspect's face – was very small and could reasonably have been missed. For these reasons, OPA recommends that NE#1 receive a Training Referral rather than a Sustained finding.

- **Training Referral:** NE#1's chain of command should counsel him to be more critical when evaluating uses of force, to ask more probing questions of officers, witnesses, and subjects, and to more closely examine subjects for injuries. NE#1's chain of command should also retrain him on the policies governing the investigation of force. This counseling and retraining should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #2

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

NE#1 did not record either of his screening conversations with the suspect on BWV. He further did not document the reason for the lack of recordings. NE#1's Watch Lieutenant addressed the lack of video and noted his belief that SPD policy did not require screenings to be video recorded, even if it was best practice to do so. The Watch Lieutenant requested that this aspect of the BWV policy be clarified. At his OPA interview, NE#1 confirmed that he interpreted policy as not requiring screening conversations to be recorded.



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 includes “questioning victims, suspects, or witnesses.”

OPA believes the policy is clear that all questioning of a suspect – which would include an arrestee who was subjected to force – must be recorded. There is no distinction in the policy concerning questioning performed in an investigative versus an administrative capacity. However, there is clearly confusion regarding this question and this confusion is not only held by NE#1 but also by his chain of command. Accordingly, and even though OPA believes that the failure to record a screening conversation does violate policy, OPA recommends that this allegation be Not Sustained – Management Action Recommendation.

- **Management Action Recommendation:** The Department should modify SPD Policy 16.090-POL-1(5) to make it clear that supervisors are required to record their screening conversations on BWV and that this policy does not differentiate between actions taken in an investigation versus an administrative capacity. The Department should also provide an e-learning or other training to ensure that this is fully understood by supervisors.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #1 - Allegation #3

16.090-POL - In-Car and Body Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video

Given OPA’s issuance of a Management Action Recommendation for Allegation #2, OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #2 - Allegations #1

8.400 - Use of Force Reporting and Investigation 3. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Following any Use of Reportable Force, As Soon As Feasible

SPD Policy 8.400-POL-2 states that officers, including witness officers, will verbally notify a supervisor immediately, unless not practical, following any use of reportable force. An example of Type I force is a: “Controlled placement/takedown that results in a complaint of pain or causes/is likely to cause transitory pain or disorientation.” Type II force is defined as: “Force that causes or is reasonably expected to cause physical injury greater than transitory pain but less than great or substantial bodily harm.” An example of Type II force is a: “Takedown that causes injury or is reasonably expected to cause injury.” Physical injuries consistent with Type II force are, among others, lacerations and abrasions.

As discussed above, it is clear from the BWV that NE#1 used at least Type I force when he took the suspect down to the ground. Further, the takedown resulted in several injuries to the suspect and, even had it not resulted in injury, it was “reasonably expected to cause injury” as it was uncontrolled and was on the pavement. As such, it should have been reported as a Type II.



However, NE#2 substantially failed to comply with the requirements of this policy. He knew the extent of the force he used but, regardless, did not call a supervisor to the scene as required. Moreover, this was the case even though he was captured on BWV complaining about writing another force report. In addition, when he later screened the force at the precinct with NE#1, he admittedly provided a cursory account of what occurred. This prevented a timely Type II investigation from being conducted.

At his OPA interview, NE#2 explained that he misunderstood the policy. He recognized that he should have called a supervisor to the scene. He told OPA that he now handles uses of force differently and knows that, even if the force could be likely to cause injury, he must report it immediately. Notably, NE#2's Captain also opined that NE#2's noncompliance with policy during this incident was based on a lack of understanding rather than malfeasance.

OPA notes that NE#2 is a newer officer and recognizes that, as such, NE#2 will make mistakes. OPA further notes that NE#2 has not been previously investigated or disciplined for failing to properly report force. As such, OPA gives him the benefit of the doubt here and recommends that he receive retraining rather than discipline. However, if NE#2 acts contrary to this policy again, OPA will likely recommend a Sustained finding and it may result in the imposition of discipline.

For the above reasons, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2 should receive retraining on SPD Policy 8.400. He should further receive counseling concerning his failure to comply with Department policy during this incident. This retraining and associated counseling should be documented, and this documentation should be maintained in an appropriate database.

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