



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 22, 2018

CASE NUMBER: 2017OPA-0971

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 (Unfounded)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 4. The FIT Unit Captain or FIT Sergeant, When Contacted by a Sergeant, Will Either Initiate a Type III [...]	Not Sustained (Lawful and Proper)

Named Employee #4

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:	Not Sustained (Lawful and Proper)
# 2	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Training Referral)
# 3	8.400-TSK-6 Use of Force -RESPONSIBILITIES OF THE SERGEANT DURING A TYPE II INVESTIGATION	Not Sustained (Lawful and Proper)

Named Employee #5

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:	Not Sustained (Unfounded)
# 2	16.090 - In-Car and Body-Worn Video 7. Employees Will Document the Existence of Video or Reason for Lack of Video	Not Sustained (Lawful and Proper)
# 3	8.400-TSK-6 Use of Force -RESPONSIBILITIES OF THE SERGEANT DURING A TYPE II INVESTIGATION	Not Sustained (Unfounded)

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 Employees #1 and #2 used excessive force. It was further alleged that Named Employee #3 failed to comply with his responsibilities as the Force Investigation Team Lieutenant. It was also alleged that Named Employee #4 failed to comply with his responsibilities to properly classify and investigate force and to refer an allegation of misconduct to OPA. Lastly, it was alleged that Named Employee #5 failed to report his lack of In-Car Video, as well as failed to comply with his responsibilities as a sergeant.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

Named Employee #1 (NE#1) and Named Employee #2 (NE#2), who were assigned to the Southwest Precinct Anti-Crime Team, observed the Complainant walking down the street and believed that he could have an open warrant. When they verified this information, they made a U-turn in their vehicle and pulled up alongside the Complainant who saw them and ran on foot. NE#1 and NE#2 engaged in a foot pursuit and followed the Complainant who jumped over a fence into the yard of a private residence.

Once he jumped into the yard, the Complainant was tackled to the ground by the homeowner and was detained there. NE#1 and NE#2 entered the yard and took the Complainant into custody. The homeowner, who was interviewed by NE#5, indicated that the Complainant fell hard to the ground when he jumped over the fence and that he fell hard again when she tackled him down to the ground. She further stated that the officers got to the scene soon afterwards and handcuffed the subject. The homeowner stated that the Complainant did not struggle when he was taken into custody and she did not report observing NE#1 and NE#2 use any force.

NE#1 reported that the Complainant was initially noncompliant, in that the Complainant attempted to pull his hands under his body in order to prevent the officers from handcuffing him. NE#1 stated that he put his knee on the Complainant's buttock and lower back and was ultimately able to handcuff him with NE#2's assistance. NE#1 denied using any other force at his OPA interview. NE#2 stated, like NE#1, that the Complainant was initially resistant to their attempts to handcuff him. NE#2 reported that the Complainant had his right hand under his body and refused several of NE#2's commands that he remove that hand. NE#2 stated that he placed his knee on the back/shoulder area of the Complainant and put his hand on the back of the Complainant's head, holding it down to the ground to prevent the Complainant from getting up. NE#2 reported that he and NE#1 were then able to handcuff the Complainant. NE#2 also indicated during his OPA interview that he used no further force.

NE#5 also interviewed the Complainant. He alleged that the officers used excessive force by putting their knee in the back of his head and pushing down, which caused a cut to his lip. The Complainant did suffer a cut to his bottom lip and what appeared to be an abrasion to the left side of his head. These injuries were photographed.

I find that the force that NE#1 and NE#2 used was de minimis force that was consistent with policy. As such, and with regard to the force these officers actually used, I would recommend that this allegation be Not Sustained – Lawful and Proper. However, the gravamen of the Complainant's allegation is that one of these officers kned him in



the head causing his face to strike the ground. Based on the accounts of the officers and witnesses, I find that this force did not occur. As such, I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #2 - Allegation #1

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

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #3 - Allegation #1

8.400 - Use of Force Reporting and Investigation 4. The FIT Unit Captain or FIT Sergeant, When Contacted by a Sergeant, Will Either Initiate a Type III [...]

Named Employee #4 (NE#4), who was the primary responding supervisor, initially made the decision to investigate this matter as a Type II use of force. He decided, however, to call Named Employee #3 (NE#3), then the Force Investigation Team (FIT) Lieutenant, to screen this incident based on the Complainant's allegation that his head was kned into the ground. In-Car Video (ICV) captured NE#4's portion of his conversation with NE#3. NE#4 relayed what he had learned from the homeowner, the Complainant's allegation, and NE#1's and NE#2's denial that they used any reportable force. Apparently, based on NE#4's responses during the telephone call, he was advised by NE#3 that the force could be reviewed at a level lower than Type II and to complete an OPA referral.

SPD Policy 8.400-POL-4 states as follows: "The FIT Unit Captain or FIT Sergeant, when contacted by a sergeant, will either initiate a Type III investigation or suggest another type of investigation."

Here, NE#3, after being contacted by a sergeant, NE#4, suggested that this matter be investigated at a level lower than Type II. NE#3 was interviewed by OPA and stated that his recollection was that, based on the facts that were conveyed to him, he suggested that the force could be reviewed as de minimis force. NE#3 indicated that he does not order sergeants to complete a certain type of investigation, he simply advises them on what possibilities are available to them. At his OPA interview, NE#4 recounted that he spoke to NE#3 who advised that the force sounded like it was de minimis but further advised that NE#4 should refer the Complainant's allegation of excessive force by NE#1 and NE#2 to OPA. It was not clear from NE#4's interview, however, that NE#3 directed him to do so.

Accordingly, based on my review of the record, I find no evidence to suggest that NE#3 deviated from policy. While I personally believe that this case should have been investigated as a Type II use of force based on the nature of the Complainant's allegations, this does not mean that a policy violation occurred. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #4 - Allegation #1

8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:

SPD Policy 8.400-POL-3 requires that, when investigating force, a sergeant will review the incident and classify the force as de minimis, Type I, Type II, or Type III.

Here, NE#2 initially classified the force as Type II. He indicated that he did so based on the Complainant's level of injury. He stated that when he learned that the Complainant alleged that the injury was caused by his head being kned into the ground, he screened the incident with FIT as a possible Type III. Between his request that FIT call him concerning the screening, he learned that the homeowner stated that she viewed the Complainant fall to the ground after jumping the fence and that she tackled the Complainant to the ground. Moreover, he learned that both NE#1 and NE#2, as well as civilian witnesses, reported that the officers used no reportable force. Once he spoke to FIT about the facts of the case and received FIT's advice that the force used was likely de minimis, NE#4 reclassified the force as de minimis and did not continue the Type II investigation. As discussed more fully below, however, he failed to make an OPA referral.

While I ultimately agree that the force used by the officers was de minimis, the allegation made by the Complainant coupled with his injury suggested that it could have possibly been at least Type II force. As such, I believe that best practice would have been to document the incident as a Type II use of force, regardless of the statement of the homeowner and the advice of FIT. That being said, I do not believe that NE#3's actions violated policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #4 - Allegation #2

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

SPD Policy 5.002-POL-6 requires that SPD employees report allegations of serious misconduct, such as complaints of excessive force, to a supervisor and OPA.

At his OPA interview, NE#4 recounted that he received advice from NE#3 to classify the force as de minimis and to file an OPA complaint concerning the Complainant's allegations of excessive force. While NE#4 reclassified the force, he did not file an OPA complaint. Indeed, an OPA complaint was not initiated in this matter until September 19, 2017, eleven days after the incident. A review of Blue Team indicated that NE#5 submitted the case to a Lieutenant on September 8, 2017, the date of the incident. The Lieutenant reviewed the case on September 12, but sent it to another sergeant for his review and input that same day. The Sergeant reviewed the case on September 14 and, in his review, noted that there needed to be an OPA referral. The case was re-routed to the Lieutenant on September 14. On September 18, the Lieutenant approved the Sergeant's review and routed the case to a Captain who, in turn, routed the Blue Team Complaint to OPA on September 19. While the Blue Team Complaint indicated that it was "an exact duplicate of the entry made by [NE#5] in the Summary box of this Blue Team complaint submitted to OPA on 9/19/17," there was no indication from my review of Blue Team that NE#5 actually drafted and submitted this OPA complaint.



Of note is that NE#4, himself, took no action to report this matter to OPA. The reasons for this are unclear. However, NE#4 had an obligation to do so and his failure to take this step violated policy. Ultimately, the case did come to OPA, albeit significantly later than it should have. As such, even though NE#4 did not perform his duties consistent with policy and the Department's expectations, I do not believe that a sustained finding is warranted. Instead, I recommend that NE#4 receive a training referral.

- **Training Referral:** NE#4 should receive re-training concerning the requirement that he promptly refer allegations of misconduct, including claims of excessive force, to OPA. Given his knowledge of this complaint, it was inexcusable that this matter was not referred to OPA until eleven days after the incident. NE#4 should also receive counseling from his chain of command concerning their expectations of his conduct in this regard. This re-training and associated counseling should be memorialized in a PAS entry.

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

Named Employee #4 - Allegation #3

8.400-TSK-6 Use of Force -RESPONSIBILITIES OF THE SERGEANT DURING A TYPE II INVESTIGATION

NE#4 initially began a Type II investigation into the force and performed several of the elements of a Type II investigation before reclassifying the force. As discussed above (*see* Named Employee #4, Allegation #1), I do not find the decision to reclassify the force and to cease the Type II investigation to have been in violation of policy. Accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #5 – Allegation #1

8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:

As discussed more fully below, NE#5 was not dispatched as the supervisor to the scene. Instead, he came to the scene at NE#4's request in order to obtain more experience in conducting a Type II force investigation. NE#4, not NE#5, was the primary supervisor at the scene and was responsible for classifying the force that was used. As such, I recommend that this allegation be Not Sustained – Unfounded as against NE#5.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #5 – Allegation #2

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

NE#5's expectation on the day of the incident was to shadow NE#4 and observe his investigation of the use of force. NE#5 was not dispatched to the scene and was not intending to actively participate in the force investigation. However, after he arrived at the scene and went to speak with NE#4, it was proposed that NE#5 assist in the



investigation to which NE#5 consented. He then reported promptly returning to his vehicle and turning on his ICV system.

SPD Policy 16.090-POL-5(b) requires that employees record police activity and sets forth various law enforcement actions that must be recorded. SPD Policy 16.090-POL-7 requires officers to document the reason for the lack of video. This includes when video is belatedly started. The policy specifically delineates that this information should be noted "in a call update and any related GO report, Street Check, Notice of Infraction, Criminal Citation, or Traffic Contact Report (TCR)." (SPD Policy 16.090-POL-7.)

Here, I agree with NE#5 that, at the outset of the call, he was not engaged in law enforcement activity that was required to be recorded. As such, he was not in violation when he failed to initiate his ICV at the inception of his travel to and arrival on the scene. Accordingly, while it may have been best practice for NE#5 to document why he had no ICV for that period of time, he did not act contrary to policy when he did not do so.

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

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

Named Employee #5 – Allegation #3

8.400-TSK-6 Use of Force -RESPONSIBILITIES OF THE SERGEANT DURING A TYPE II INVESTIGATION

For the same reasons as stated above (see Named Employee #5, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded as against NE#5.

Recommended Finding: **Not Sustained (Unfounded)**