



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 25, 2018

CASE NUMBER: 2018OPA-0189

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)
# 2	8.400-TSK-3 Use of Force 5. Completes a Type II Use-of-Force Report in Blue Team by the conclusion of the current shift, unless exigent circumstances require an extension	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 2. Use of Force: When Prohibited	Not Sustained (Unfounded)
# 2	8.400-TSK-1 Use of Force 4. Completes a Type I Use-of-Force Report in Blue Team by the conclusion of the current shift, unless the sergeant approves an extension	Not Sustained (Lawful and Proper)

Named Employee #3

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	8.400-POL-1 Use of Force – REPORTING AND INVESTIGATION 5. When Multiple Officers are Involved in a Use-of-Force Incident, the Entire Incident [...]	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)
# 4	8.400-TSK-2 Use of Force –RESPONSIBILITIES OF THE SERGEANT DURING A TYPE I INVESTIGATION	Allegation Removed

Named Employee #4

Allegation(s):		Director’s Findings
# 1	8.400-TSK-3 Use of Force 5. Completes a Type II Use-of-Force Report in Blue Team by the conclusion of the current shift, unless exigent circumstances require an extension	Not Sustained (Lawful and Proper)



Named Employee #5

Allegation(s):		Director's Findings
# 1	8.400-TSK-3 Use of Force 5. Completes a Type II Use-of-Force Report in Blue Team by the conclusion of the current shift, unless exigent circumstances require an extension	Not Sustained (Lawful and Proper)

Named Employee #6

Allegation(s):		Director's Findings
# 1	8.400-TSK-3 Use of Force 5. Completes a Type II Use-of-Force Report in Blue Team by the conclusion of the current shift, unless exigent circumstances require an extension	Not Sustained (Lawful and Proper)

Named Employee #7

Allegation(s):		Director's Findings
# 1	5.125 - Social Media 4. Investigative Units May Use Non-Official Social Media Accounts	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 Employee #3 failed to properly classify force and to ensure that the other Named Employees completed the appropriate use of force reports. It was further alleged that the other Named Employees failed to complete the required reports prior to the end of their shifts. Lastly, it was alleged that Named Employee #1 and Named Employee #2 may have used prohibited force.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

8.200 - Using Force 2. Use of Force: When Prohibited

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) transported the subject to the precinct after his arrest. The subject was initially secured in the rear of the patrol vehicle. At one point, the patrol vehicle stopped and the subject was removed. When the subject was placed back into the vehicle, his seatbelt was not refastened. The patrol vehicle began driving again and, during that later transport, the officers took a sharp turn. This caused the subject to fall sideways in the rear of the vehicle and complain of pain (“ow”). NE#1 and NE#2 were engaged in conversation at that time and did not respond to or appear to hear the subject’s exclamation, even though they heard him say “goddamn,” which directly preceded his complaint of pain.

I note that the officers’ failure to seatbelt the subject constituted a minor violation of policy; however, this was reviewed by the chain of command in a Frontline Investigation.



The question here is whether NE#1 and NE#2 drove their vehicle in a manner purposed to cause the subject to fall over while he was handcuffed in the back of the patrol vehicle.

SPD Policy 8.200-POL-2 states that force is prohibited: “To punish or retaliate”; or “On restrained subjects (e.g. including handcuffed or contained in a police vehicle) except in exceptional circumstances when the subject’s actions must be immediately stopped to prevent injury, or escape, destruction of property. All such force shall be closely and critically reviewed.”

From my review of the Department video, as well as from my reading of NE#1’s and NE#2’s OPA interviews, I find no evidence suggesting that they intentionally tried to cause injury to the Complainant when he was unsecured in the rear of the patrol vehicle. Instead, I find that this was the inadvertent result of a sharp turn. While unfortunate, this does not constitute a violation of policy. For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against NE#1 and NE#2.

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

Named Employee #1 - Allegation #2

8.400-TSK-3 Use of Force 5. Completes a Type II Use-of-Force Report in Blue Team by the conclusion of the current shift, unless exigent circumstances require an extension

SPD Policy 8.400-TSK-3(5) requires officers to complete their Type II use of force report by the conclusion of their current shift unless an extension is warranted by exigent circumstances.

The Complainant was placed under arrest for engaging in a narcotics transaction. Ultimately, all of the Named Employees except for Named Employee #3 (NE#3) – who was the supervisor – used force on the Complainant to effectuate his arrest. These officers all stated that they reported the force they used to NE#3, which NE#3 confirmed.

NE#3 stated that he believed the force that the officers reported to him to be de minimis. However, the subject suffered injuries in the form of abrasions. NE#2 told NE#3 that he used an open-hand strike against the subject. Even though NE#3 did not think that this caused the injuries incurred by the subject, he ordered NE#2 to write a Type II use of force report. NE#2 completed that report by the end of his shift.

He ordered the other officers to complete witness reports, but did not direct them to write use of force reports as he believed their force to be de minimis and as he could not definitively connect their force to the subject’s injuries. These officers all completed witness reports by the end of their shift.

The use of force investigation was later reviewed by the Acting Captain who determined that NE#1, Named Employee #4 (NE#4), Named Employee #5 (NE#5), and Named Employee #6 (NE#6) should have completed use of force reports not witness reports. All of these officers were ordered to complete Type II reports and, as discussed below, all of them completed the reports by the end of their shift on the date they received the order.

NE#1 was ordered to complete a Type II report on January 25, 2018. She did so before the end of her shift on that day.



NE#4 to complete a Type II report on January 31, 2018. He did so before the end of his shift on that day.

NE#5 was ordered to complete a Type II report on April 24, 2018. He was out on leave when that order was issued and did not return to duty until April 26, 2018. He completed the report before the end of his shift on his first day back to work after receiving the order.

Lastly, NE#6 was ordered to complete a Type II report on January 13, 2018. He also completed this report by the end of his shift.

As indicated above, NE#1, NE#4, NE#5, and NE#6 complied with the requirements of this policy. They completed their witness reports when ordered to do so prior to the end of their shift. Moreover, when ordered to later complete Type II force reports, they all completed the reports before the end of their shift on the date they became aware of the order. For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against these Named Employees.

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

Named Employee #2 - Allegations #1

8.200 - Using Force 2. Use of Force: When Prohibited

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 #2 - Allegation #2

8.400-TSK-1 Use of Force 4. Completes a Type I Use-of-Force Report in Blue Team by the conclusion of the current shift, unless the sergeant approves an extension

SPD Policy 8.400-TSK-1(4) requires officers to complete their Type I use of force report by the conclusion of their current shift unless an extension is warranted by exigent circumstances.

NE#2 was ordered to draft a Type II report that was later reclassified to Type I. He completed that report prior to the end of his shift. As such, he complied with the requirements of this policy and I recommend that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #3 - Allegations #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-1(3) provides that, upon responding to a use of force, the Sergeant reviews the incident and classifies the force by type.

Here, based on the information available to him at the time, NE#3 classified the force used as Type II after viewing an abrasion to the subject's face. He ordered NE#2 to complete a Type II use of force report and ordered the other Named Employees to complete witness reports. While the decision not to have all of the Named Employees complete use of force reports is discussed below, I do not find that it was unreasonable for NE#3 to have preliminarily classified the force as Type II. This is the case even though NE#2's force was later reclassified as Type I by the Acting Captain.

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

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

Named Employee #3 - Allegation #2

8.400-POL-1 Use of Force – REPORTING AND INVESTIGATION 5. When Multiple Officers are Involved in a Use-of-Force Incident, the Entire Incident [...]

SPD Policy 8.400-POL-1(5) states that where multiple officers are involved in a use of force incident, the entire incident must be reviewed at the highest level reached by any single officer during the incident.

Here, NE#3 believed that the highest level of force was Type II and, as such, he ordered NE#2 to complete a Type II report. He stated that he did not believe that the other Named Employees used reportable force. He based this both on the accounts that they gave him of their actions and on his review of Department video. He stated that, after this review, he could not determine which, if any, of those individuals used force that could have caused the subject's injury. He thus decided to have them complete witness reports.

I find that this decision was in error. If NE#3 was not sure whether NE#1, NE#4, NE#5, or NE#6 caused the injury to the subject, this means that he could not definitively determine that they did not do so. As such, he should have had all of them complete Type II reports. Indeed, the Acting Captain watched much of the same video that NE#3 watched and made the decision to have those Named Employees do so.

While I find that NE#3 should have ordered a Type II report from all of the Named Employees, I do not believe that his failure to do so rises to the level of a policy violation. Instead, I recommend that he receive the below Training Referral.

- **Training Referral:** NE#1 should receive additional training concerning the elements of SPD Policies 8.400-POL-3, 8.400-POL-1(5), and 8.400-TSK-6. This can be effectuated by his chain of command discussing these policies with him. His chain of command should go over this incident with him and counsel him concerning his failure to initially require all of the Named Employees to complete use of force reports. He should be



informed that if he is not sure as to the level of force used and if he cannot definitively conclude that officers did not cause an injury, he should order use of force reports to be generated rather than witness report. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #3 - Allegation #3

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

SPD Policy 8.400-TSK-6 sets forth the responsibilities of the sergeant during a Type II investigation. There are 22 separate tasks set forth in this policy. Relevant to this case are the following: “Conducts separate interviews of officers involved in a use of force incident, unless unreasonable under the circumstances and the sergeant documents the circumstances”; “Directs the involved officer(s) to complete a Type II Use-of-Force Report in Blue Team and the witness officer(s) to complete a Use-of-Force Witness Officer Statement”; and “Reviews and bookmarks any and all relevant and material ICV or holding cell video related to the incident.”

As discussed above, NE#3 interviewed all of the Named Employees and they relayed information concerning the force that they used. He further reviewed parts of the Department video that captured the incident. Based on this information, NE#3 ordered NE#2 to complete a Type II report and the other Named Employees to complete witness reports.

While I ultimately find that NE#3 should have ordered all of the Named Employees to complete Type II reports, I conclude that, regardless, he substantially complied with the requirements of this policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegations #4

8.400-TSK-2 Use of Force –RESPONSIBILITIES OF THE SERGEANT DURING A TYPE I INVESTIGATION

SPD Policy 8.400-TSK-2 concerns the responsibilities of a sergeant during a Type I investigation. The policy sets forth nine tasks that the sergeant is required to complete.

Given that the underlying incident was investigated by NE#3 as a Type II use of force, I find that this policy is inapplicable to this case. As such, I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**



Named Employee #4 - Allegations #1

8.400-TSK-3 Use of Force 5. Completes a Type II Use-of-Force Report in Blue Team by the conclusion of the current shift, unless exigent circumstances require an extension

For the same reasons as stated above (see Named Employee #1, Allegation #2), 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-TSK-3 Use of Force 5. Completes a Type II Use-of-Force Report in Blue Team by the conclusion of the current shift, unless exigent circumstances require an extension

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #6 – Allegation #1

8.400-TSK-3 Use of Force 5. Completes a Type II Use-of-Force Report in Blue Team by the conclusion of the current shift, unless exigent circumstances require an extension

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #7 – Allegation #1

5.125 - Social Media 4. Investigative Units May Use Non-Official Social Media Accounts

The subject was arrested as a result of an “order up” operation. Specifically, a dummy Facebook account was used to contact the subject and set up a drug sale. When the sale occurred, it was observed by officers who then took the subject into custody.

During its evaluation of this case, the Force Review Board identified that while a social media was used during the operation, there was no evidence that such usage was authorized by the Chief of Police. Notably, SPD Policy 5.125-POL-4 allows investigative units to use social media accounts only where there is prior approval from the Chief.

During its investigation, OPA learned that the Facebook account in question was operated by an agent assigned to the U.S. Department of Homeland Security. This agent was not subject to Department policy. Moreover, OPA determined that none of the Named Employees, or any other Department employee that OPA could find, operated this Facebook account.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.



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CLOSE CASE SUMMARY

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