



## **CLOSED CASE SUMMARY**

ISSUED DATE:     AUGUST 3, 2018

CASE NUMBER:     2018OPA-0157

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

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Training Referral)
# 2	8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force	Allegation Removed

***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 failed to comprehensively report complaints of pain made by the Complainant, which potentially negatively impacted a Type I use of force investigation and may have been in violation of SPD Policy 8.400.

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

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

##### ***8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force***

Named Employee #1 (NE#1) arrested and handcuffed the Complainant. He then transported her in his patrol vehicle to the precinct. While in the rear of the patrol vehicle, the Complainant made the following statements with regard to the handcuffs: “is there a reason why they have to be so fucking tight on my left arm, to where it’s really hurting” and “I would rather die than have this cuff as tight as it is.” The Complainant also stated: “come on, this shit is killing me.” In response to that statement, NE#1 told her that they were almost at the precinct. Several seconds later, the Complainant said “ow.” When they arrived at the precinct, NE#1 took the Complainant out of the patrol vehicle. At that time, she stated “ow, ow, ow” and told NE#1 that she had a pre-existing injury to her left wrist. She said “ow” three more times.

NE#1 placed the Complainant to a holding cell and went to speak with his sergeant. He told the sergeant about one of the Complainant’s statements (“I would rather die than have this cuff as tight as it is”). He did not disclose the Complainant’s other statements to the sergeant, including the multiple times that she said “ow.” Moreover, during that screening, the sergeant asked NE#1 whether the Complainant said “ouch,” and NE#1 told the sergeant that he did not recall. The sergeant then went to speak with the Complainant.



---

Over an hour later, NE#1 completed the General Offense Report and booking form and then went to try to find his sergeant but could not locate him. NE#1 found another sergeant and conveyed to that sergeant the same statement. This other sergeant told NE#1 that he should complete a Type I force report and advised NE#1 to call his sergeant. NE#1 did so and, after a further discussion, his sergeant agreed that NE#1 should complete a Type I force report. NE#1 did so. The other sergeant took photographs of the subject's wrists and completed the Type I force investigation.

During his force review, a lieutenant noted that, while NE#1 reported one statement to his sergeant, he failed to disclose multiple others. The lieutenant wrote that the sergeant completed an arrest screening and, during that time, the subject did not complain of pain or injury. The lieutenant reasoned that this interaction with the Complainant coupled with the nature of the statement relayed by NE#1 would not have given the sergeant any reason to believe that a Type I investigation was required. As such, the lieutenant believed that NE#1's failure to comprehensively report the complaints of pain may have violated SPD Policy 8.400.

NE#1's sergeant also counseled him on the incident the next day. His sergeant wrote the following:

During an arrest screening you relayed a statement made by an arrestee. Based on what was said I determined force had not been used. This was later clarified. On the subsequent day we discussed the importance of conveying any complaint of injury or pain accurately enough for the screening sergeant to make a determination. I also recognized my part in the lapse of communication. We agreed that we both could be more clear in the future.

At his OPA interview, NE#1 stated that when he told his sergeant about the Complainant's statement, he believed that it was sufficient to express that she was in pain from the handcuffs. He acknowledged that he told his sergeant that he did not recall whether the Complainant said "ouch," but he told OPA that he repeated her statement to his sergeant. NE#1 stated that he did not know what steps his sergeant took or what questions he asked of the Complainant during his arrest screening. NE#1 explained that once he finished the arrest paperwork, he went to look for his sergeant. NE#1 did so because he thought that his sergeant was going to come speak with him after the screening was finished but his sergeant never did. NE#1 then went to speak with another sergeant, repeated the Complainant's statement to that sergeant, and told that sergeant that he was pretty sure that he needed to write a Type I force report. That sergeant agreed and told NE#1 to call his sergeant, who was on his way home. NE#1 did so and his sergeant confirmed that a Type I force investigation should be completed.

OPA also interviewed NE#1's sergeant. He did not believe that the statement relayed by NE#1 constituted a reportable use of force or a complaint of pain. He recalled receiving a phone call on his way home from either the other sergeant or NE#1 during which he was told that the incident was a use of force. He remembered asking NE#1 some clarifying questions and arranged with the other sergeant to handle the Type I force investigation. He did not believe this delay in the commencement of the Type I investigation negatively affected it. He opined that it was simply a communication error between himself and NE#1. He further told OPA that he did not believe that NE#1 would have tried to hide anything from him regarding the force.

Lastly, OPA interviewed the other sergeant. He stated that NE#1 told him that the Complainant had complained of pain from the handcuffs. He told NE#1 that he needed to write a use of force report but that he also needed to talk to his sergeant. He did not recall whether he or NE#1 called NE#1's sergeant. He said that offered to take the



---

photographs of the Complainant. He stated that the use of force investigation was delayed by an hour, but that it did not negatively impact the investigation. He did not believe that NE#1 deliberately withheld information.

SPD Policy 8.400-POL-1 requires that officers report all uses of force except for de minimis force. Complaints of pain from handcuffs are construed as Type I force under this policy (see SPD Policy 8.400), and must be reported to a supervisor and documented.

From my review of the evidence, it appears clear to me that NE#1 failed to comprehensively report the statements made by Complainant. This included failing to report that she said "ow" at least seven times. This unfortunately resulted in NE#1's sergeant not comprehending that NE#1 was reporting force and not timely ordering and conducting a Type I force investigation. While this failure was less than optimal, NE#1 asserted that it was not intentional and that he, instead, simply did not remember the Complainant's explicit complaints of pain. Given this, as well as given that the force was ultimately investigated and the delay did not appear to have any negative effect on the investigation, I recommend a Training Referral.

- **Training Referral:** NE#1's chain of command should address this case with him. NE#1's chain should remind him to ensure that he reports complaints of pain and allegations of excessive force accurately, completely, and in a timely fashion. To the extent NE#1's chain is confident that this is understood by him, no further counseling or retraining is necessary. This counseling and any retraining that NE#1's chain chooses to impart should be documented and this documentation should be maintained in an appropriate database.

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

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

***8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force***

SPD Policy 8.400-POL-2 requires that officers verbally notify a supervisor immediately, unless not practical, following any use of reportable force. I believe that this allegation captures the same conduct as addressed in Allegation #1, above. For that reason, and as I already issue a Training Referral addressing this matter, I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**