



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 9, 2018

CASE NUMBER: 2017OPA-0734

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Training Referral)

Named Employee #3

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

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:

The Complainant, a Department Captain (at the time of the incident a Lieutenant), alleged that Named Employee #1 and Named Employee #2 failed to refer a complaint of excessive force to OPA in violation of policy. The Complainant further indicated that, based on the claims made by the subject, it was alleged that Named Employee #3 may have used excessive force.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

Multiple officers, including Named Employee #3 (NE#3) responded to a residential burglary in progress. The subject was identified as one of three suspects when he exited the residence through the rear door. When he did so, he was ordered to get into a prone position in order to be handcuffed. The subject was handcuffed by NE#3, searched and placed into a patrol vehicle. The two other suspects were also placed under arrest.



As discussed more fully below, during subject's handcuffing by NE#3 he complained of pain on multiple occasions. Named Employee #1 (NE#1) was an Acting Sergeant on that date and came to the scene. NE#1 interviewed the subject concerning the force that had been used on him during the handcuffing. The substance of that interview was memorialized in NE#1's review of NE#3's force.

In that review, NE#1 documented the subject's statement that the force was "unnecessary." NE#1 reported that when he asked the subject to elaborate, the subject stated that NE#3: "put her knee in [his] back and [he] asked her to lighten up and she pressed harder. [He] said owe [sic] as she twisted [his] arm." NE#1 recounted that he tried to explain SPD's training concerning prone handcuffing and "why we treat felony suspects the way we do," but the subject still asserted that the force was unnecessary, and articulated his belief that SPD would not do anything about it. NE#1 ordered NE#3 to complete a Type I use of force report; however, even though the subject alleged that the force was unnecessary and caused him pain, NE#1 did not make a referral of the complaint to OPA.

At his OPA interview, NE#1 stated that he did not interpret the subject's statements as alleging excessive force and, thus, warranting an OPA referral. NE#1 explained that the subject never stated that the force was "excessive," just that it was "unnecessary." NE#1 believed that the subject was saying that the force was not needed, not that it was unnecessary or excessive as defined by the policy and law. NE#1 explained that he did not directly ask the subject whether the subject believed that the force was excessive because he felt that this would automatically generate an OPA complaint as the subject would agree with him. NE#1 further told OPA that he watched the handcuffing and he did not believe it to have been excessive.

NE#1 approved the use of force and forwarded that review up his chain of command. Named Employee #2 (NE#2), who was assigned as an Acting Lieutenant, performed the next level of force review. NE#2 approved the force and, like NE#1, did not make an OPA referral based on the subject's statements. A Captain (then a Lieutenant), who was serving as the Acting Captain for the North Precinct, performed the final level of review. While the Captain also approved the force, he noted that both NE#1 and NE#2 failed to make OPA referrals as required. He then initiated a complaint with OPA concerning that conduct.

SPD Policy 5.002-POL-5 requires that SPD employees report allegations of potential serious misconduct, including complaints of excessive force, to OPA.

Both NE#1 and NE#2 expressed their belief that the Complainant's allegation was that the force was not needed, not that the force was excessive. NE#1 confirmed that had he interpreted the Complainant to be alleging excessive force, he would have initiated an OPA complaint.

As a general matter, today, five years into the Consent Decree, officers should know that force is excessive as a matter of policy and law when it is not reasonable, necessary, or proportional. Here, the Complainant stated that the force was unnecessary. This allegation warranted an OPA referral.

This case is unique in a sense in that NE#1 reported actually viewing the force, which he described as consistent with tactics and policy. I further note that NE#1 clearly reported the Complainant's allegation in his use of force review. While I believe that NE#1 acted in good faith, the plain language of the policy requires him to refer the allegation to OPA regardless of his personal observations or opinions.



However, given NE#1's stated confusion with the policy, I find that under the circumstances in this specific case a training referral is the appropriate result. However, NE#1 should be aware that his conduct was in technical violation of policy.

- **Training Referral:** NE#1 should receive additional training concerning the elements of SPD Policy 5.002-POL-5, as well as the reporting requirements set forth in Title 8 of the SPD Manual. NE#1 should be counseled by his chain of command that whenever a subject reports that force was excessive, unreasonable, or unnecessary, he is required to refer that allegation to OPA, regardless of his personal opinions or observations. This re-training and associated counseling should be memorialized in a PAS entry.

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

Named Employee #2 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

NE#2, like NE#1, found the force to be within policy. In addition, as with NE#1, NE#2 also failed to refer the subject's allegations to OPA. NE#2 agreed with NE#1's interpretation that the subject was disagreeing with the tactics used during the incident, rather than claiming excessive force.

As described above, the failure to report the allegation to OPA was in technical violation of policy. NE#2, as a sergeant seeking promotion to lieutenant, should be aware that an allegation that force was unnecessary is tantamount to an allegation that an officer utilized excessive force.

That being said, and based both on the unique circumstances of this case and on my belief that both NE#1's and NE#2's confusion was borne out of a good faith misunderstanding of policy, I recommend that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2 should receive additional training concerning the elements of SPD Policy 5.002-POL-5, as well as the reporting requirements set forth in Title 8 of the SPD Manual. NE#2 should be counseled by her chain of command that whenever a subject reports that force was excessive, unreasonable, or unnecessary, she is required to refer that allegation to OPA, regardless of her or another supervisor's personal opinions or observations. This re-training and associated counseling should be memorialized in a PAS entry.

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

Named Employee #3 - Allegation #1

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

While I find that both NE#1 and NE#2 failed to refer an allegation of excessive force to OPA, I agree with both of them, as well as with the Captain, that the force was reasonable, necessary and proportional, and thus consistent with policy.



The subject was identified as a suspect in an active burglary. Officers had abundant probable cause to place him under arrest.

NE#3 reported that, during the handcuffing, she placed her right knee across the subject's back and put most of her body weight on her left knee, which was on the ground. She scooped the subject's right arm and placed it behind his back. She reported handcuffing his right wrist, patting his back and waist for weapons, and then asking the subject to put his left arm behind his back. When the subject did so, NE#3 placed the handcuffs on his left wrist.

NE#3 stated that when the subject complained of pain, she informed him that she was barely putting any weight on him. When the subject continued to complain, NE#3 stated that she modified her handcuffing technique in order to not cause the subject any further discomfort.

Ultimately, NE#3 was legally justified in placing the subject into handcuffs and she was entitled to use a modicum of force to do so. Given the circumstances and the crime of arrest, it was both reasonable and consistent with training and policy to engage in prone handcuffing. I find that NE#3 used only that level of force necessary to place the subject into handcuffs. I further find that the force was proportional to the potential threat facing NE#3 and the need to place the subject into handcuffs. That the subject complained of pain does not make the force *per se* unreasonable. Accordingly, I conclude that the force applied by NE#3 was within policy and, therefore, recommend that this allegation be Not Sustained – Lawful and Proper.

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