



CLOSED CASE SUMMARY

ISSUED DATE: JULY 6, 2018

CASE NUMBER: 2018OPA-0063

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	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	Sustained
# 2	8.400 - Use of Force Reporting and Investigation 8.400-TSK-2 Use of Force RESPONSIBILITIES OF THE SERGEANT DURING A TYPE I INVESTIGATION	Not Sustained (Training Referral)

Imposed Discipline

No Discipline Imposed

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 subjected the Complainant to excessive force. It was further alleged that the Complainant told Named Employee #1 and, later, Named Employee #2 that she had been subjected to “police brutality,” beaten in the face, “brutally harassed,” and falsely arrested, but that Named Employee #2 did not report these allegations of serious misconduct to OPA.

STATEMENT OF FACTS:

Named Employee #1 (NE#1) was dispatched to a call concerning a possible shoplift. NE#1 was informed that a female subject had allegedly taken two bags of merchandise from a store and was refusing to return the items. While responding to the call in his patrol vehicle, NE#1 noticed a woman matching the subject’s description. NE#1 approached the woman with his partner, while two other officers contacted an employee of the store.

At that time, the woman – who was later identified as the Complainant – began to collect her belongings and started walking away from the officers. She was informed by NE#1 and his partner that she was not free to leave and was being detained. NE#1 and his partner attempted to control the Complainant’s arms, but she pulled away from them and began swatting her arms at them. The officers told her that she was under arrest and directed her to put her hands behind her back multiple times. Ultimately, she did so and was led to the front of the officers’ patrol vehicle.



The other officers arrived at the scene with the store employee. The store employee, who previously verified to the other officers that the shoplift occurred, positively identified the Complainant as the perpetrator.

NE#1 formally placed the Complainant under arrest and applied the handcuffs. While he was gauging the handcuffs, NE#1 determined that the left handcuff was potentially too tight. He then removed the handcuffs to switch to another set that might fit the Complainant better. While he was doing so, the Complainant made a complaint of pain. She told the officers that they were hurting her and complained of “police brutality.” NE#1’s Body Worn Video (BWV), captured the Complainant then begin kicking at the officers. NE#1 told her several times to stop doing so. She was ultimately secured in the patrol vehicle and transported to the North Precinct.

NE#1 properly reported the complaint of pain to his supervisor, Named Employee #2 (NE#2). NE#2 screened the incident at the precinct, including speaking with the Complainant. NE#2’s interaction with the Complainant was captured by her BWV.

In response to NE#2’s questions as to what occurred, the Complainant stated that she was beaten in the face and harassed by cops. She further stated that she was “brutally harassed,” that her handcuffs were painful, and that she falsely arrested. Notably, at one point, NE#2 tried to clarify with the Complainant whether the complaint of pain was solely related to the handcuffs. NE#2 began by stating, “other than putting the handcuffs on you...,” but the Complainant interrupted by asserting: “no, they brutally harassed me.”

After concluding her conversation with the Complainant, NE#2 then discussed the arrest and the Complainant’s allegations with NE#1. NE#1 told NE#2 that the Complainant made a complaint of pain when the handcuffs were switched out. He also explicitly told NE#2 that, at the time of the complaint, the Complainant also asserted that she had been subjected to “police brutality.”

NE#2 directed NE#1 to complete a Type I use of force report. She did not, however, report any of the Complainant’s allegations to OPA. During his review of the force, a Lieutenant identified the complaint of police brutality and referred this matter to OPA. Construing the Complainant’s statement to allege a claim of excessive force, OPA initiated this investigation.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged that she was subjected to “police brutality,” that she was beaten in the face, that she suffered pain from handcuffing,” and that she was “brutally harassed.” However, while the video established that the Complainant did complain of pain when the handcuffs were switched, it conclusively disproved her other allegations.

With regard to her complaint of pain from the handcuffs, that complaint, in and of itself, does not yield the force out of policy. Indeed, here, I find the opposite. NE#1 had the lawful authority to place the Complainant under arrest. With that came the justification to use force to secure the Complainant’s person and take her into custody. In order to do so, NE#1 placed the Complainant into handcuffs. This force was consistent with policy.



Moreover, the complaint of pain, itself, occurred when NE#1 was actually trying to make the Complainant more comfortable. This is, in my opinion, clear evidence that no excessive force occurred in this case.

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

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

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

SPD Policy 5.002-POL-5 requires that supervisors investigate or refer to OPA allegations of policy violations. Whether the potential allegation may be investigated by the supervisor, rather than be referred, depends on its severity. Accordingly, while minor violations of policy may be investigated by the supervisor, serious allegations – including excessive force and unlawful arrest – must be passed on to OPA.

Here, the Complainant directly told NE#2 that she had been beaten in the face, “brutally harassed,” and falsely arrested. Moreover, NE#1 told NE#2 that the Complainant had alleged that she was subjected to “police brutality.” At her OPA interview, NE#2 stated that she did not think that a claim of “police brutality” would necessarily need to be reported to OPA. In support of this belief, she stated that “police brutality” was not explicitly defined in the SPD Manual, and specifically SPD Policy 5.002-POL-5, as serious misconduct.

First, I find this to be a hyper technical and incorrect reading of the policy that is inconsistent with its very purpose. An allegation of excessive use of force is serious misconduct. “Police brutality” would constitute excessive force. As such, and logically, an allegation of “police brutality” is serious misconduct that must be reported under this policy.

Second, even were this issue debatable, the allegations made by the Complainant still constituted potential serious misconduct that needed to be reported. Specifically, the Complainant’s allegation that she was beaten in the face would have, if true, constituted excessive force under the circumstances of this case. This is the case even if such force did not actually occur because, at the time this complaint was made to her, NE#2 had not yet seen the Department video and did conclusively know what had happened. Moreover, the allegation of false arrest clearly would violate the right of the Complainant “to be secure against unreasonable search and seizure,” which is a category of serious misconduct delineated in the policy.

While the Complainant appeared to be in crisis and/or impaired, and while NE#2 is a well-regarded and conscientious sergeant, she did not properly interpret or apply Department policy in this instance. I find that NE#2 was required by policy to report the Complainant’s allegations of serious misconduct to OPA. She failed to do so and, as such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**



Named Employee #2 - Allegation #2

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

SPD Policy 8.400-TSK-2 sets forth the responsibilities of a sergeant during the investigation of a Type I use of force. Relevant to this case, it tasks a sergeant with evaluating “the incident for concerns.” This includes, where “it appears that serious misconduct may have been involved with the use-of-force” that “the sergeant will ensure that OPA is contacted and consult the FIT team regarding reclassification of the incident as Type II or Type III.”

As discussed above, I find that NE#2 should have referred this matter to OPA. Given that fact, as well as given that she did not consult with FIT regarding this incident, I find that she also violated this policy. That being said, and as I believe that this conduct is already captured by the Sustained finding in Allegation #1, I find it unnecessary to reach the same recommendation here. Instead, I issue a Training Referral.

- **Training Referral:** NE#2 should be retrained concerning the elements of SPD Policies 5.002-POL-5 and 8.400-TSK-2. NE#2 should receive counseling from her chain of command concerning this case and her failure to report the Complainant’s allegations to OPA. NE#2 should be on notice that an allegation of police brutality, being beaten in the face, and false arrest are claims of potential misconduct that NE#2 is required to take action on and that her failure to do so in this case was inconsistent with the Department’s and the community’s expectations.

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