



CLOSED CASE SUMMARY

ISSUED DATE: MAY 18, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0717

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	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Training Referral)

Named Employee #3

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)

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 alleged that the Named Employees may have failed to report and investigate an allegation of excessive force made by the Subject.

SUMMARY OF INVESTIGATION:

The Subject was arrested during a demonstration that occurred in the vicinity of the East Precinct on October 15, 2020. He was brought into the precinct sally port prior to being taken to the holding cells. At that time, his arm was held by Named Employee #1 (NE#1), and Named Employee #2 (NE#2) was standing next to them.

Video from the precinct’s sally port indicated that the Subject then fell forward on his own power and straight down to the ground. Both officers grabbed his arms and eased his fall, preventing him from striking his head on the ground. The Subject then alternatively alleged that the officers pushed him and threw him down the stairs (there were no stairs present). When questioned by officers about the lack of stairs, the Subject replied: “There’s a fuckin’ big ass



ledge here, they just fucking threw me down it.” NE#1 reminded the Subject that he was being audio and video recorded and that there were cameras everywhere in the precinct. The Subject did not further allege being thrown or pushed to the ground but complained of pain and questioned why he was arrested. The Subject did not suffer any injuries as a result of falling to the ground.

Named Employee #3 (NE#3), a sergeant, spoke to the Subject while he was being held at the precinct. NE#3 asked the Subject: “The officers say you were on the ground, were you sick earlier?” The Subject responded: “When?” NE#3 rephrased the question: “After we arrested you. You fell down and were on the ground. Were you sick?” The Subject replied: “Which part?” NE#3 asked: “Do you have a medical problem? I’m just trying to check and see if you’re ok?” the Subject stated: “I’m fine. I appreciate the concern though.” They discussed why he had been arrested and whether he would be charged. The Subject again referenced his lack of injuries, stating: “And yes, I’m physically fine, I do appreciate, I sincerely appreciate you checking.”

Neither NE#1 nor NE#2 completed a use of force report. NE#3 did not document and/or investigate the Subject falling to the ground. He further did not expressly question the Complainant concerning his statement to NE#1 and NE#2 that he was thrown/pushed to the ground. Lastly, NE#3 did not explore the Subject’s potential allegation of misconduct and either make an OPA referral or screen the matter with OPA as unsubstantiated.

The Department’s Force Investigation Team (FIT) later identified that the Subject fell to the ground and his allegations that he was pushed/thrown. They determined that no investigation, referral, or screening had been done. As such, they referred this matter to OPA.

As part of its investigation, OPA reviewed the incident reports documenting the Subject’s arrest. OPA also reviewed the involved officers’ Body Worn Video (BWV), as well as the precinct sally port video. Lastly, OPA interviewed the Named Employees. OPA attempted to contact the Subject in order to interview him but was unsuccessful.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

As indicated above, the Subject alleged that he was pushed/thrown to the ground by NE#1. If true, using such force on a handcuffed person who was not actively threatening or causing harm, would be prohibited by SPD policy. (See 8.200-POL-2.)

However, the sally port video conclusively established that this did not occur and that the Subject fell on his own volition, not as a result of any action by the officers. Indeed, from OPA’s review of the video and the Subject’s statements after the fact, this allegation appears to have been purposefully fabricated. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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



Named Employee #1 - Allegation #2

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

SPD Policy 5.002-POL-6 concerns the reporting of misconduct by Department employees. It specifies that minor misconduct must be reported by the employee to a supervisor, while potential serious misconduct must be reported to a supervisor or directly to OPA. (SPD Policy 5.002-POL-6.) In addition, SPD Policy 5.002-POL-5 requires supervisors who become aware of a potential policy violation to investigate or refer the allegations depending on their severity. Minor allegations of misconduct may be investigated by a supervisor, while allegations of serious misconduct – such as the use of excessive force – must be referred to OPA or screened with OPA as unsubstantiated. (SPD Policy 5.002-POL-5.)

This allegation was classified for investigation as it was unclear whether either NE#1 or NE#2 reported the Subject's assertion that he was pushed/thrown to the ground to NE#3, as well as because there was no indication that NE#3 took any action concerning the possible excessive force claim.

At their OPA interviews, both NE#1 and NE#2 asserted that they screened the Subject's falling to the ground with NE#3. NE#1 stated that he expressly told NE#3 that the Subject claimed to have been pushed/thrown to the ground. NE#2 did not remember what was said during the screening and whether the officers informed NE#3 of the Subject's statement. For his part, NE#3 affirmed that the officers told him that the Subject fell to the ground, but he had no recollection of being informed by either NE#1 or NE#2 that the Subject claimed to have been pushed/thrown. He further asserted – and this was confirmed by his BWV – that the Subject did not make this allegation in his presence. OPA notes that there was no BWV recording the screening conversation and memorializing what was disclosed by NE#1 and NE#2 to NE#3.

As indicated above, there is an irreconcilable dispute of fact between the involved officers. NE#1 and NE#2 say that the Subject's allegations were screened – with NE#1 being more affirmative concerning the content of the screening – and NE#3 denies any memory of that screening. Had the officers not screened the claim, it would have been contrary to policy. On the other hand, had NE#3 not properly handled a claim of potential misconduct that he was aware of, it would have been contrary to policy.

Ultimately, OPA cannot establish which of the Named Employees, if any, violated policy. However, the facts of this case inform OPA's determination that, even though the finding may be inconclusive, all of the Named Employees would benefit from retraining and counseling. Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral as against all of the Named Employees.

- **Training Referral:** OPA requests that the Named Employees receive retraining and counseling concerning this matter. NE#1 and NE#2 should be reminded of the obligation that they report any potential allegations of misconduct to a supervisor, this would include an assertion by a handcuffed individual that they were pushed/thrown to the ground. NE#1 and NE#2 should also be informed that best practice would be to screen such an allegation over BWV to ensure that there is a record of their compliance with policy. NE#3 should be reminded that, where he becomes aware of allegations such as those made by the Subject, he must either make an OPA referral or screen the claim with OPA as unsubstantiated. Moreover, NE#3 should be counseled to ask more probing questions of the Subject, particularly under these circumstances, to explore how the Subject got onto the ground and to verify that the Subject had no excessive force claim.



This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #2 - Allegation #1

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

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #1 – Allegation #2).

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

Named Employee #3 - 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

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #1 – Allegation #2).

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