



## CLOSED CASE SUMMARY

ISSUED DATE:      SEPTEMBER 30, 2019

CASE NUMBER:     2019OPA-0385

### 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	Allegation Removed
# 2	SPD Directive 19-00014(1): K9 deployments will be conducted in-line with the following guidance:	Not Sustained (Training Referral)
# 3	SPD Directive 19-00014(2): The following tactics will be followed during all K9 deployments	Not Sustained (Training Referral)
# 4	SPD Directive 19-00014(4): The following requirements must be followed after a K9 bite	Not Sustained (Training Referral)
# 5	8.300 – POL –1 Use of Force – Canine Deployment 5. Canine Deployment Announcements	Not Sustained (Training Referral)
# 6	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report All reports must be complete, thorough and accurate.	Not Sustained (Training Referral)
# 7	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	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:**

The Named Employee used his K9 to effectuate a directed take of the Subject. It was later determined that this use of force may have been contrary to policy in multiple respects. It was further alleged that the Named Employee may have inaccurately reported the force and his actions in his reporting and subsequent interviews and that these inaccuracies possibly rose to the level of dishonesty.

**SUMMARY OF INVESTIGATION:**

On March 29, 2019, Named Employee #1 (NE#1), a K9 officer, responded to a call of an in-progress violation of a domestic violence (DV) protection order. NE#1 set up with his K9 at the rear of the residence. In his report concerning this incident, NE#1 wrote that he was aware of the Subject and knew that he had fought with officers during a prior incident. While in that location, NE#1 observed the Subject running. NE#1 gave chase to the Subject. At that time, NE#1 had the K9 on a 33-foot lead.

NE#1 made the decision to release the K9 to effectuate a directed take of the Subject. In his report, NE#1 wrote that, prior to deployment, he “gave a loud verbal” K9 warning. The Body Worn Video (BWV) for this incident indicated that a K9 warning was given less than two seconds before the K9 was released. The Subject ran through blackberry bushes and the K9 followed and caught up to him. The K9 bit onto the Subject’s hamstring. NE#1 ran to catch up to the Subject

and the K9 but was slowed by the blackberry bushes and fell down. NE#1 reported that, during this time, the Subject was trying to get the K9 off of his legs and, in order to do so, was punching the K9 and grabbing its jaw. The BWV video depicted the Subject struggling with the K9, including grabbing around its muzzle. NE#1 directed the Subject to stop fighting with his dog. The K9 also bit the Subject's hand. NE#1 eventually pushed through the brambles and reached where the Subject and the K9 were located. NE#1 directed the Subject to stop fighting and to roll over. The Subject said that he could not do so because of the ongoing K9 bite. NE#1 told the Subject that he was being bitten because he was fighting with the K9 and again directed him to stop and put his hands behind his back. The Subject continued to try to prevent the K9 from biting him and exclaimed in pain. Ultimately, backing officers arrived at the scene and assisted in securing the Subject. At that time, NE#1 gave the K9 an order to release and the K9 did so. All in all, the bite was maintained for just under a minute and a half.

In the immediate aftermath of the incident, BWV captured NE#1 speaking with another K9 officer. When asked whether there had been an assault perpetrated by the Subject, NE#1 responded: "I don't think the victim was there." Supervisors, including those from NE#1's chain of command, responded to the scene of the incident. NE#1 reported pain to his shoulder as a result of the incident but declined medical attention. When asked by a South Precinct supervisor whether the K9 was on lead at the time of the bite, NE#1 affirmed twice that the K9 was on a 33-foot lead. NE#1 told the South Precinct supervisor that he observed the Subject punching the K9 multiple times and that blood was "gushing" from the K9's nose. NE#1 also told the K9 Unit Sergeant and Lieutenant that the K9 was on the 33-foot lead. He further told them that the warning was given prior to the deployment. NE#1 told the K9 Sergeant and Lieutenant that he knew the Subject and he was aware that the Subject had previously run from and fought with officers. Lastly, NE#1 told them that the crime at issue was a "crime of violence."

The K9 Sergeant interviewed the Subject, who acknowledged being aware of the active no contact order. He stated that he heard someone behind him say "go get him," but that he did not see anyone. He then recalled being bitten by the K9. He admitted grabbing the K9's mouth but denied ever punching the dog.

As a result of this incident, the Subject suffered bite wounds to his leg and hand. He was transported to a hospital where he received medical treatment. Given the nature and scope of the Subject's injuries, the K9 Lieutenant screened this matter with the Department's Force Investigation Team (FIT). In that initial screening, the K9 relayed information concerning the injuries suffered by the Subject. The K9 Lieutenant also told FIT that, based on what he learned from NE#1, the K9 was on-lead at the time of the bite. FIT requested photographs of the injuries (which were provided by the K9 Unit) and stated that they would evaluate whether to respond. When the Subject was discharged from the hospital, a doctor recommended that he seek corrective surgery to his hand. The K9 Lieutenant again contacted FIT and disclosed this additional information. FIT told the K9 Lieutenant that they would review the video. After doing so, FIT took over the investigation.

As part of its investigation, FIT interviewed NE#1. He told FIT that the crime at issue was a felony violation of a DV protection order. NE#1 acknowledged that there was no specific information suggesting that the Subject was armed. However, NE#1 asserted that this did not definitively mean that the Subject had no weapons. NE#1 contended that he received information indicating that the Subject could be hiding in a shed and he contended that the Subject could have accessed improvised weapons therein. NE#1 also referenced being aware of the Subject's previous fleeing from and fighting with officers. NE#1 recognized that he did not have a cover officer with him at the time he observed and began to give chase to the Subject. In this regard, NE#1 stated the following:

I know our policy also states that, you know, we need to have a cover officer when we're running, uh, I knew officers were on foot in the area, I could hear them. It was my fault I missed judged the distance. I thought I was closer than I was. So, I figured that my cover officers were also closer. It's because I did not know the geography or anything like that I wasn't, uh, comfortable with that area, I guess you could say.

NE#1 stated that he released the K9 because he believed that this was the best tool available to capture the fleeing subject without endangering officers or others. NE#1 explained that, from his vantage point, it appeared that the Subject appeared to repeatedly punch the K9. NE#1 was ultimately able to get to where the Subject and the K9 were.

He reported pushing the Subject down to the ground and keeping him pinned there. NE#1 stated that he did not personally use any other force. NE#1 said that he lifted the K9's collar to do a "lift-off." NE#1 told the Subject to stop fighting the K9 so that the bite could be released. Eventually the Subject stopped fighting and backing officers arrived, which allowed for the bite to be released. With regard to the length of the bite, NE#1 pointed to the Subject's continued fighting with the K9. NE#1 also acknowledged that his decision to follow the Subject and the K9 through the blackberry bushes and his getting stuck therein may have prolonged the bite. NE#1 told FIT that, in the aftermath of the incident, he relayed what occurred and the force he used to the K9 Sergeant.

Both the FIT Lieutenant and the FIT Captain identified several problems with the K9 application in this incident. Both noted that the force appeared to be outside of the SPD Directive that was then in place. The FIT Captain also determined that NE#1 may have made several inconsistent statements regarding what occurred. The FIT Captain referred this matter to OPA for investigation. The K9 Captain also reviewed the force. He concurred with the necessity of the OPA referral by FIT. The K9 Captain concluded that the force was outside of policy and noted that the directed take was effectuated without a cover officer present. The K9 Captain further stated the following:

It appears to me, that there are issues with understanding the UOF Policy throughout the K9 unit. We are currently reviewing the policy and clarifying the issues. I am working with the Chain of Command (from handler to D/C) to make sure the UOF policy is as clear as it can be, and the handlers have a firm understanding so that they can be successful doing their work.

As part of its review of this case, OPA reviewed the FIT investigation, as well as the BWV and the documents generated by the involved officers. OPA interviewed NE#1, the FIT Sergeant, the FIT Lieutenant, and the Deputy Chief of Operations. A full recitation of these individuals' testimony is set forth in the Case Summary, but relevant portions are discussed below.

## **ANALYSIS AND CONCLUSIONS:**

### **Named Employee #1 - Allegations #1**

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

As discussed below in the context of Allegation #2, OPA concludes that the K9 application in this case was not reasonable as contemplated by the Directive. As such, it was contrary to both the Directive and SPD's use of force policy. However, given that I find that no Sustained finding is warranted for the violation of the Directive, I also find that a Sustained finding is inappropriate for this allegation. Instead, I recommend that this allegation be removed as duplicative.

Recommended Finding: **Allegation Removed**

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

#### ***SPD Directive 19-00014(1): K9 deployments will be conducted in-line with the following guidance:***

SPD Directive 19-00014(1) provides that an off-lead deployment of a K9 is reasonable where: "probable cause exists to arrest the suspect for a crime of violence" or "in circumstances in which a subject is reasonably suspected to be armed and presently dangerous based on articulable information."

Here, neither of the scenarios in which an off-lead deployment is reasonable were present. First, while there was probable cause to arrest the Subject for a violation of the DV order of protection, as well as for obstruction when he fled the scene, this was not a crime of violence. Second, there was insufficient evidence supporting a determination that the Subject was armed and presently dangerous at the time of the deployment. NE#1 contended that he believed that the Subject was potentially armed and dangerous because: (1) he could have accessed a shed and obtained improvised weapons; and (2) he had previously fought with officers. While both of these eventualities

were possible, they were primarily the product of guesswork. There was no actual, articulable evidence – as was required by the Directive – that either were actually the case.

Accordingly, and when evaluating this incident based on the plain language of the Directive, the deployment and subsequent bite were not reasonable. In this respect, OPA is in agreement with the FIT Captain, the K9 Captain, and the K9 Lieutenant.

However, reaching a finding that NE#1 acted contrary to policy is complicated by the fact that he received guidance from the Deputy Chief that the application was, in fact, appropriate. Multiple individuals (including the Deputy Chief) confirmed that, in a meeting concerning the Directive, the Deputy Chief relayed to the K9 Unit that deployments – whether on or off lead – were permissible in misdemeanor DV cases. This instruction was contrary to the plain language of the Directive. Not all misdemeanor DV cases are crimes of violence and, as such, deploying in non-violent DV cases should have been clearly impermissible.

In OPA's perspective, it is problematic that SPD command staff provided direction to K9 officers that, if followed, would result in violations of policy. This is particularly the case where it concerns K9 applications given the high-risk of serious injury and public concern regarding this type of force. OPA intends to relay these concerns directly to command staff and to ask that command staff avoid future ad hoc discussions that can sow uncertainty and cause improper conduct.

OPA further understands that, even independent of the conflicting information provided to the K9 Unit by command staff, there was significant confusion regarding the Directive and when deployments were appropriate. This was noted by NE#1, as well as all of his supervisors. Indeed, OPA took part in a meeting with the K9 Unit to clarify for officers when they could and could not deploy. Since this time and in concert with OPA and the Office of Inspector General for Public Safety, the Department also rewrote and submitted a new K9 policy. This policy is a significant improvement over the Directive and provided substantially clearer guidance to the K9 Unit and the rest of the Department.

Ultimately, OPA cannot recommend that NE#1 be disciplined because his failure to comply with the Directive was based, at least in part, on the guidance he received from the Deputy Chief. Instead, and given OPA's desire to ensure that NE#1 does not repeat the same mistakes he made here in future situations, OPA recommends that he receive the below Training Referral.

- **Training Referral:** Even though the Directive is no longer in effect, NE#1's chain of command should discuss this incident with him and how his deployment in this case was contrary to the terms of the Directive. Moreover, as the new version of the K9 policy maintains several of the elements discussed herein, NE#1 should receive additional training concerning the new K9 policy. He should specifically be instructed concerning: the crimes for which a K9 deployment is allowed; when he may use a K9 to effectuate a directed take; the requirement of a cover officer; the requirement that a bite be released as soon as possible; the need to de-escalate, where safe and feasible; and the necessity of providing sufficient time for a subject to comply after a K9 warning is provided. 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 #1 - Allegation #3**

#### ***SPD Directive 19-00014(2): The following tactics will be followed during all K9 deployments***

SPD Directive 19-00014(2) provides several additional requirements governing K9 developments. First, it requires that K9 officers de-escalate prior to utilizing the K9. Second, it instructs that a K9 bite is only permitted where: the subject poses an imminent threat to officers; or the subject is posing an active resistance with the threat of harm and is escaping. The policy states that simply escaping "is not, on its own, a justification for a bite and requires additional articulable safety reasons." Third, the policy requires that there must be a cover officer in close proximity

to the K9 officer at the time of deployment. This is purposed to ensure that any bite is as limited in duration as possible.

Here, NE#1 acknowledged that he did not have time to de-escalate. OPA agrees that de-escalation with the fleeing Subject was not safe or feasible. As such, he acted in compliance with this portion of the policy.

However, when evaluating the plain language of this portion of the Directive, OPA fails to see how NE#1 was justified in allowing the K9 to bite the Subject. There is no evidence that the Subject posed an imminent threat to NE#1 or any other officers. While the Subject previously fought with officers, there was no conclusive evidence indicating that he was going to do so during this incident. Moreover, the policy is clear that the simple act of escaping does not warrant a K9 bite. There needed to be additional articulable safety reasons justifying the bite and that further evidence is not apparent here. Lastly, NE#1 failed to ensure that a cover officer was present when he released the K9. This resulted, at least in part, in a prolonged bite.

Even though OPA concludes that NE#1 acted inconsistent with several aspects of this policy, for the same reasons as stated in Allegation #2, OPA finds that a Sustained finding is not warranted. Instead, OPA recommends that NE#1 receive the Training Referral detailed above (see Named Employee #1, Allegation #2).

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

#### **Named Employee #1 - Allegations #4**

##### ***SPD Directive 19-00014(4): The following requirements must be followed after a K9 bite***

SPD Directive 19-00014(4) concerns the requirements that must be followed after a K9 bite occurs. The policy specifically directs that: "The handler will call the K9 off as soon as it is safe and feasible to do so given the totality of circumstances." The policy further "instructs that: The handler will consider the extent to which the subject's behavior is a natural reaction to the bite. A reaction to the bite alone is not resistance or aggression that justifies the use of an additional/continued bite."

This allegation was classified for investigation due to the prolonged nature of the bite. NE#1 explained that the bite was extended due to NE#1 having to fight through the blackberry bushes to reach the Subject and the K9. He denied that the bite would have lasted for a shorter duration had there been a cover officer nearby.

While OPA recognizes that NE#1 suffered injuries when he was required to push through the blackberry bushes, OPA concludes that, had he ensured that a cover officer was running with him at the time the directed take occurred – as was required by the Directive – it is likely that the Subject would have been secured more quickly and the bite would have been more promptly released. While OPA does not dispute that the Subject was trying to resist being bitten, as indicated by the Directive, that did not, by itself, warrant the bite being continued, particularly had another officer been present to provide cover.

However, as with the remaining allegations in this case, OPA finds that a Sustained finding is not warranted. Instead, OPA recommends that NE#1 receive the Training Referral detailed above (see Named Employee #1, Allegation #2).

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

#### **Named Employee #1 - Allegation #5**

##### ***8.300 – POL –1 Use of Force – Canine Deployment 5. Canine Deployment Announcements***

SPD Policy 8.300-POL-1(5) requires that a warning be given prior to deploying a K9. The policy also states that a reasonable amount of time must be given after the warning and prior to the deployment to allow compliance.

While NE#1 provided a K9 warning, he did so less than two seconds prior to effectuating the directed take. NE#1 contended that, in this regard, he acted consistent with his training. NE#1 further asserted that, had the Subject given any indication that he was planning on complying, NE#1 would have called off the K9.

The policy does not provide specific guidance on what a reasonable time for compliance is. OPA does not believe that the less than two seconds provided in this case was a reasonable amount of time, but OPA cannot say conclusively that this is the case. It is OPA's understanding that the entire K9 Unit will be trained regarding this aspect of the policy. OPA finds that such training, rather than discipline, is the more appropriate result here. As such, OPA recommends that NE#1 receive the Training Referral detailed above (see Named Employee #1, Allegation #2.)

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

#### **Named Employee #1 - Allegation #6**

***15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report All reports must be complete, thorough and accurate***

In his reporting of this incident, NE#1 made three significant inaccurate statements. First, in response to a question from the K9 Sergeant, he stated that he was tracking the Subject for a crime of violence. Second, he asserted that the crime at issue was a felony during his FIT interview. Third, in response to questions from the South Precinct Sergeant, the K9 Sergeant, and the K9 Lieutenant, NE#1 stated multiple times that the K9 was on-lead. While NE#1 also stated that the K9's nose was "gushing" blood and, from OPA's perspective, this was not captured on the BWV, OPA does not deem this to be a significant inaccurate statement.

With regard to the first and second misstatements, NE#1 acknowledged that they were based on a misapprehension of the information that was available to him at the time and his understanding of the Subject's prior conduct. He also pointed to the guidance provided by the Deputy Chief concerning DV order violations being considered as "crimes of violence" for which K9 deployments were permitted.

With regard to the third statement, NE#1 denied that he intended to mislead any of the supervisors. From OPA's review of the video, NE#1 could have more definitively communicated that, at the time of the bite, he had released the lead and that it was not an on-lead deployment. This lack of clarity resulted in the K9 Lieutenant initially relaying to FIT during the initial screening that it was an on-lead deployment. This, in turn, resulted in FIT not taking immediate control of the investigation as they should have. This being said, and when viewing the video and the context in which the statements were made, I do not believe that NE#1 attempted to deliberately mislead the supervisors or to cover up the fact that, at the time the bite occurred, the K9 was off-lead.

The totality of the evidence indicates that NE#1 did not completely, thoroughly, and accurately describe what occurred during this incident. However, I find that this was not intentional misconduct, and was, instead, the result of a misapprehension of information and a lack of clarity on NE#1's part. Accordingly, I conclude that retraining is the appropriate result and I refer to the below Training Referral.

- **Training Referral:** NE#1 should be retrained and counseling on the obligation that he completely, thoroughly, and accurately report the incidents in which he is involved. 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 #1 - Allegations #7**

***5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication***

NE#1 made several inaccurate statements during his reporting and later interviews in this case. It was alleged that one specific discrepancy – whether NE#1 told his chain of command that the K9 was on-lead at the time of the directed take – potentially rose to the level of dishonesty.

However, as discussed above, I conclude that this inaccuracy was due to a lack of clarity on NE#1's part, not on an intent to deceive. As such, I find that the evidence does not prove that he was dishonest in this case and, accordingly, I recommend that this allegation be Not Sustained – Unfounded.

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