

OFFICE OF THE INDEPENDENT POLICE MONITOR

Use of Force Investigation: Level 4 Use of Force December 13, 2018



Parties Involved

Key Facts Cont'd



Officer Jonathan Fowlkes
NOPD Eight District C Platoon



Length of Service:
April 17, 2016



History:
No prior unauthorized use of force



Use of Force on Handcuffed person: ✓

Key Facts

- At the request of the Third District, Officers Fowlkes and Diaz took custody of an individual and transported him to Central Lock Up.
- Prior to transporting the individual, the officers conducted a search of Stuart.
- While in route, the individual can be faintly heard making threats to kill the officers when he was free and possibly banging on the metal partition in the police vehicle.
- Body warn camera (BWC) footage of Ofcs. Fowlkes and Diaz, document that the individual did not have any injuries when he arrived at Central Lock Up.

- Body warn camera (BWC) footage of Ofcs. Fowlkes and Diaz, document that the individual did not have any injuries when he arrived at Central Lock Up.
- While waiting to be processed, the individual threatened to kill Ofc. Fowlkes.
- Ofc. Fowlkes escorted the individual back to his police unit and advised him he was going to add charges for threats to an officer.
- The BWC footage shows Ofc. Fowlkes telling the individual, " I am tired of the threats. We are going to do something about it. We are going to handle it. We are about to become reacquainted with each other."
- Ofc. Fowlkes instructed the individual to sit in the vehicle. He did not comply.
- Ofc. Fowlkes placed his hand on the individuals head, forcefully pushed him inside of the vehicle, and closed the door.
- Ofc. Fowlkes BWC fell off during this encounter.
- BWC footage shows Ofc. Fowlkes lowering the individuals head and forcing his chest onto the seat. The individuals face was positioned against the partition inside of the unit and Ofc. Fowlkes lifted the individual's legs (while in a hog-tied position) and pushing him into the unit.
- Ofc. Fowlkes advised his supervisor, Sgt. Daggs, of the threats.
- Sgt. Daggs arrived at Central Lock Up and observed lacerations to the individuals face and a bruise to his right eye.

KEY QUESTIONS ASKED BY THE OFFICE OF THE INDEPENDENT POLICE MONITOR (OIPM)

1. Was the level of force appropriate for the crime/level of resistance?
2. Were the officers' tactics *safe and reasonable*?
3. Was the level of force *effective*?
4. Was the Force Investigation Team investigation *fair, timely and thorough*?
5. Were there risks that could have been mitigated by a *change in policy or training*?
6. Did NOPD appropriately *critique officer tactics*?
7. Are there special *lessons learned* through this incident?
8. Were bystander *civilians' safety* preserved?
9. Were *officer and suspect safety* preserved?

With this case review summary and the full report, the Office of the Independent Police Monitor (OIPM) committed to building public confidence in law enforcement through transparency, accountability and fairness. The OIPM spent over hours reviewing and monitoring this Use of Force case. With our oversight and recommendations, OIPM hopes to lower the risk level posed to the community, the Department and the future liability.

USE OF CEW

Force against persons in handcuffs—
Officers shall not use force against persons in handcuffs, except to prevent imminent bodily harm to the officer, or another person, or to physically move the subject who has become passively resistant.

NOPD Policy Chapter 1.3, Para. 29



PRISONER TRANSPORT



PIB/FIT ANALYSIS

- **Use of Force**
 - PIB/FIT reviewed the incident and determined that Ofc. Fowlkes use of force was a Level 4 and not justified. FIT referred Ofc. Fowlkes use of force for criminal investigation of battery.
- **Training**
 - Sgt. Daggs recommended Ofc. Fowlkes receive training in de-escalation techniques and professionalism.
- **Equipment Use**
 - PIB/FIT did not identify any problems with Ofc. Fowlkes' equipment use.
- **Policy Violations/Considerations**
 - PIB/FIT identified the following areas of concern: (1) Rule 2: Moral Conduct: Para. 1 - Adherence to Law - R.S. 14:35 Relative to Simple Battery, (2) Professionalism, (3) Failure to use de-escalation techniques, and (4) Repeatedly engaging with the suspected person in unnecessary statements.
- **Tactics**
 - PIB/FIT did not address the use of any involved tactics in its report.



OIPM RECOMMENDATIONS AND ANALYSIS

- **Commendation of PIB**
 - OIPM commends PIB/Sgt. Davis for recognizing this use of force required reclassification from Level 2 to Level 4.
- **Professionalism and Use of Force**
 - OIPM agrees that Ofc. Fowlkes violated Rule 3: Professional Conduct, Para. 1: Professionalism.
 - Ofc. Fowlkes decision to take the verbal threats of an intoxicated and handcuffed individual led to unnecessary commends and escalation that resulted in a Level 4 use of force.
 - OIPM agrees with PIB's determination that this Use of Force is a Level 4 and not justified.
 - OIPM agrees that Ofc. Fowlkes failed to de-escalate the situation and rather exacerbated the tension.
 - OIPM agrees that Ofc. Fowlkes use of force may amount to criminal conduct by an officer.
- **Prisoner Transport and Guarding; Seat-belt Restraint**
 - OIPM is concerned about a pattern we are seeing of failure to use seatbelts when transporting prisoners during use of force incidents. OIPM encourages PIB to consider options for reminding or retraining officers on the importance of Ch. 71.1 Prisoner Transport and Guarding
- **Miscategorization of Use of Force**
 - After reviewing the BWC and ICC footage in this case Sgt. Daggs classified this as a Level 2 use of force-weaponless defense technique. This incident is clearly a Level 4 use of force because the individual was handcuffed. OIPM recommends that Sgt. Daggs be re-trained Ch. 1.3 Use of Force, specifically the levels and categorization of use of force.
- **Failure to Provide Evidence to OIPM**
 - OIPM notes there were BWC videos referenced in the Use of Force report that were not provided with the file from PIB
 - OIPM notes that the file from PIB did not contain the witness interviews that were recorded by Sgt. Daggs or any transcripts of the interviews.