



OFFICE OF INDEPENDENT REVIEW

**SUPPLEMENTAL REPORT FOR THE
SECOND QUARTER OF 2020**

**John A. Gliatta
Independent Reviewer**

**Maira Aguilar
Community Coordinator**

ABOUT THE OFFICE OF INDEPENDENT REVIEW

The Office of Independent Review (OIR) works to strengthen community trust in the Fresno Police Department (FPD) by providing a neutral, third-party review of police policies, procedures, strategies, and Internal Affairs (IA) investigations. The OIR operates independently of the FPD and will provide City leaders and the public with an objective analysis of policing data, actions, and outcomes. The OIR analyzes complaints filed by citizens and those initiated by the department to ensure they have been investigated fairly and thoroughly. Periodically, the OIR will provide an objective analysis of individual units within the FPD to ensure compliance with policy and procedure, best practices, and the law. This includes recommendations and findings to increase thoroughness, quality, and accuracy of each police unit reviewed.

The work of the OIR is guided by the following principles:

- Independence
- Fairness
- Integrity
- Honesty
- Transparency
- Participation of Stakeholders, both internally and externally
- Acceptance, Cooperation, and Access
- Obedience to Legal Constraints

In addition, a Citizens' Public Safety Advisory Board, hereafter referred to as the Board, works to enhance trust, accountability, transparency, and promote higher standards of services in the FPD. This will increase public confidence in the FPD and work to strengthen and ensure the application of equal protection under the law for everyone in the City of Fresno. The Board also advises the Independent Reviewer (IR) in helping to define, assess, and further develop Community Based Policing citywide.

The Board is comprised of nine individuals appointed by Mayor Lee Brand. The Board members represent the diversity of the community. In addition, there are five non-voting members serving the Board in an advisory capacity. The non-voting members represent the FPD, Fresno Police Officers' Association, City Attorney's Office, Fresno County District Attorney's Office, and Mayor Brand's Office.

OIR REPORT FORMAT

The OIR adheres to the following guidelines, format, and definitions in all quarterly reports:

- Definitions for the terms used are consistent with the definition of terms used in California Legislative documents and the FPD.
- Officers are referred to as “O” and where there is more than one officer involved they will be identified as O1, O2, and so on depending on the total number of officers.
- The charts are grouped by incident type and cases appear in order of case number.
- The incident type charts list all cases which were pending, assigned, or closed during the review period, and where applicable a Year to Date (YTD) chart will be listed.
- All cases in which the FPD IA determined the officer(s) was Exonerated, Unfounded, or Not Sustained are reviewed by the OIR. The findings reached by the OIR for these cases will also be listed. If IA and the OIR have not reached the same decision the OIR explanation will appear following the chart. Cases in which IA deemed officer(s) Sustained will not be reviewed by the OIR.
- All closed Informal Complaint cases, which were addressed by supervisors, are also reviewed by the OIR.
- Cases are not reviewed by the OIR until IA has completed their investigation and the case is classified as closed by IA, thus allowing for all information to be reviewed.
- In the event the OIR proposes a recommendation or corrective action, it will appear directly following the chart summarizing the cases within the specific incident type.
- Recommendations or corrective actions which are not directly related to a charted incident type will appear at the end of the report prior to the summary.
- Activities of the Board and Community Coordinator will appear before the summary.
- The report is previewed by Mayor Lee Brand, City Manager Wilma Quan, Assistant City Attorney Francine Kanne, and Chief Andrew Hall, prior to finalization. This allows the respective parties an opportunity to respond to recommendations and/or findings, and those responses may be included in the final report. However, their reviews and responses will not alter the recommendations or corrective actions made by the OIR. Responses will appear following the summary.
- All FPD responses to OIR recommendations, to include if the FPD implemented policy or procedure change(s) in response to recommendation(s) listed in the previous quarterly report will be addressed in the section which appears following the summary section of this report.
- Previously when the officer or employee’s employment status changed the cases were no longer listed as pending or closed which created doubt on their status. The cases are now listed as SUSP (Suspended). The FPD still reviews the information to improve training and/or policies and procedures when applicable. In view of the fact the officers or employees are no longer with FPD the cases will not be reviewed by the OIR.
- Beginning with the fourth quarter 2019 report, Officer Involved Shootings involving an animal are now listed in the OIS charts. Per FPD Policy 300.6.1(a) (c), an officer is within policy to use deadly force to stop a dangerous animal, such as a dog.

During my three years as the IR this is the only case review which was not released within the quarter in which the IA case was completed. Also, I reviewed every IA case resulting in an IA finding other than sustained. However, a review of the OIR reports for the three years prior to my appointment revealed the following issues regarding the case reviews which were never called into question:

	OIS/ICD	UOF	ALL OTHERS
DELAYED RELEASE	7	6	9
ELECTED NOT TO REVIEW	11- OIS DOG	7	55

OIS/ICD: Office Involved Shooting/In Custody Death of Prisoner

UOF: Use of Force

All Others: Allegations included Sexual Conduct, Obeying Laws, Off-Duty Issues, etc. The most severe disciplines have been imposed within these types of cases.

USE OF FORCE CASE REVIEW

The following portion of the Unreasonable Force chart appeared in the second quarter OIR report released in July 2020 and posted on the City of Fresno’s public website. The chart stated the FPD IA case investigation was completed on May 20, 2020, and the findings for both the FPD and the OIR would be released in the third quarter report. In an attempt to show full transparency the chart also expanded the list of possible policy violations which were reviewed for each officer involved. There was never an attempt to conceal or misrepresent the review from the community as the chart indicates below. Our office did not receive any correspondence questioning why the release of the findings was being delayed.

UNREASONABLE FORCE					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
19-0048	4/17/2019	5/6/2020	SUS	NR	CP ALLEGED O USED UNREASONABLE FORCE
19-0088	7/22/2019	5/20/2020	TO BE RELEASED IN 3 RD QTR REPORT	TO BE RELEASED IN 3 RD QTR REPORT	CP ALLEGED O USED UNREASONABLE FORCE CP ALLEGED O USED UNREASONABLE FORCE DEPT ALLEGED O EXCEEDED AUTHORITY DEPT ALLEGED O EXCEEDED AUTHORITY DEPT ALLEGED O USED POOR DISCRETION DEPT ALLEGED O USED POOR DISCRETION DEPT ALLEGED O USED POOR DISCRETION DEPT ALLEGED O FALSIFIED REPORT DEPT ALLEGED O FAILED TO ACTIVATE BODY WORN CAMERA (BWC)

The following review was prepared in May and has not been altered since it was completed, therefore, language may appear to be in the wrong tense, etc. This is due to the fact it was written in anticipation it was going to be released with the third quarter report and not in a supplemental report.

IA2019-0088: Because of local media coverage, this matter received significant attention locally and nationally. In response to the amount of attention it received it was determined the OIR’s review of the matter should be included in the quarterly report once the investigation was completed by the FPD IA.

In January 2019, detectives assigned to the Multi-Agency Gang Enforcement Consortium (MAGEC) were investigating an increase in gang shootings. MAGEC is comprised of law enforcement personnel from several Fresno area agencies, to include the FPD. Due to the sensitive nature of the information, this case summary will not include the detailed investigative intelligence gathered. In the course of the investigation, documented and tangible information was discovered on January 23, 2019, regarding a gathering of gang members and their associates. The gathering was taking place at a Fresno apartment that was also the registered address of an individual on probation. As a condition of the individual’s probation, the apartment was subject to being searched by law enforcement. MAGEC also learned a handgun was in the apartment during the meeting, which was a violation of the resident’s probation.

Shortly after developing intelligence of the gathering, and the existence of a weapon, MAGEC conducted a briefing for personnel participating in the probation search. Once MAGEC made contact at the apartment, officers discovered more than 20 individuals inside. Officers then instructed the individuals to exit the apartment. Before the search was initiated, a FPD officer and one individual, hereafter referred to as the CP, became involved in a physical altercation. The CP sustained an injured nose during the altercation when he resisted being detained. As a result he was charged with felony resisting arrest.

On March 25, 2019, the FPD received a complaint from the CP alleging two FPD officers, hereafter referred to as O1 and O2, used unreasonable force during the incident. In response to the allegations made by the CP an IA investigation was initiated. During the review of the investigation Chief Hall identified a third officer, hereafter referred to as O3, although he was not involved in the altercation, he appeared to have violated a FPD policy.

Although the CP’s allegations were limited to unreasonable force by two named officers, during the course of the IA investigation, and the review by Chief Hall, it appeared there were additional policy violations by O1, O2, and O3. The below chart contains the individual policy or procedure violations that came under review by the FPD and the findings by the FPD and this office:

ALLEGATION(S)	POLICY/PROCEDURE	OFFICER	FPD FINDING	OIR FINDING
Activate Body Camera	Procedure 450B	O1	Sustained	Not Reviewed
Exceeding Powers	Policy 341.2.5(v)	O1	Unfounded	Unfounded
Exceeding Powers	Policy 341.2.5(v)	O2	Unfounded	Unfounded
Discretion	Policy 341.4	O1	Unf/Sustained**	Not Reviewed
Discretion	Policy 341.4	O2	Unfounded	Unfounded
Discretion*	Policy 341.2.4	O3	Sustained	Not Reviewed
Unreasonable Force	Procedure 300 (A)	O1	Exonerated	Sustained
Unreasonable Force	Procedure 300 (A)	O2	Exonerated	Exonerated
Falsification Records	Policy 341.2.5(j)	O1	Not Sustained	Not Sustained

* Identified by Chief Hall during his review of the IA investigation ** See summary of Discretion allegation for O1

Allegations which IA found to be sustained are not reviewed a second time by this office. In an effort to ascertain if the FPD findings were appropriate, only the allegations where the officer(s) were found not to be at fault by the FPD were reviewed by this office. Due to the number of allegations against several officers each one will be addressed separately.

Exceeding Peace Officer's Powers:

FPD Policy 341.2.5(v); Exceeding lawful peace officer powers by unreasonable, unlawful, or excessive conduct;

This allegation was raised when it was questioned if O1 and O2 had the legal authority to detain the CP and subsequently place him under arrest because of his actions when they attempted to simply detain him. The MAGEC officers coordinating this operation developed intelligence of a gang meeting. In developing the information it was also learned a weapon was being passed between members at the meeting.

MAGEC confirmed that several of the gang members in attendance were on either probation or parole prior to the start of the operation. In addition, at least one person had an address of record as being the apartment of where the meeting was taking place. A condition of their probation and parole forbid these individuals from associating with other known gang members. MAGEC was aware of the history and violence associated with this specific gang. In addition, the fact a handgun was believed to be present was also a violation of the probation and parole conditions for several individuals present at the meeting. The intelligence obtained by MAGEC established the necessary probable cause to conduct a probation search at the location of the meeting. Anyone found in the apartment at the time of the operation was subject to being detained until it was determined the weapon was not in the possession of anyone or within the apartment. The officers made contact at the apartment less than an hour after compiling the information. Since the apartment had not been searched and cleared prior to the encounter with the CP it was reasonable to detain him until the premises was searched and deemed void of any weapons.

Independent Reviewer finding for this allegation: **Unfounded for O1 and O2**

Discretion:

FPD Policy 341.4; Many incidents that members handle do not involve law violations and are not covered by any written policy, regulation, or procedure. Members shall have full discretion in the handling of these types of incidents, within the confines of law, ethics, professionalism, and propriety. Members shall be held accountable for using good judgment and taking reasonable and proper actions in handling these types of situations.

This allegation was levied against O1, O2, and O3. The allegation will be addressed separately for each officer along with the individual findings.

O1: Initially the IA investigation determined this allegation against O1 was unfounded. However after a thorough review by Chief Hall the finding was amended to sustained. In view of the amended finding of sustained this allegation was not reviewed by this office.

O2: Once the CP exited the apartment he was searched by O2 and another officer. The officer's actions during the search of the CP were in accordance with FPD policy since the handgun was still outstanding and the search was conducted properly. Once O1 attempted to restrain the CP the actions of O2 in assisting O1 were also questioned. In reviewing the BWC videos and interviews it was determined O2 focused on the yet to be searched apartment after he and another officer completed the search of the CP. However, once O2 heard the commotion between O1 and the CP he turned his attention towards them. O2 did not have the opportunity to systemically assess what had transpired prior to him turning around as the CP and O1 were now fully engaged in a physical confrontation. O2 immediately proceeded to assist O1 in detaining the CP, who was now physically resisting the efforts of O1.

Therefore, O2's actions did not violate the discretion policy when he assisted O1 in detaining the CP. It should be noted O2 was not involved in the initial use of force by O1. By the time O2 was aware of the altercation between the CP and O1 the punches had already been applied by O1. O2's use of force from this point forward will be addressed later in this report.

Independent Reviewer finding for this allegation against O2: **Unfounded**

O3: This allegation was brought to the attention of IA by Chief Hall as he was reviewing the investigative file. Upon further review by IA it was determined O3 did violate this policy when he utilized the light beam from his flashlight to interfere with a resident's attempt to video the incident. In view of the finding of sustained this allegation was not reviewed by this office.

Unreasonable Use of Force:

The FPD policy and a Supreme Court decision are being provided to understand the findings reached for this allegation

FPD POLICY 300; USE OF FORCE POLICY 300.1

“It is the policy of the Department that officers shall use only that amount of force that reasonably appears necessary, given the facts and circumstances perceived by the officer at the time of the event, to accomplish a legitimate law enforcement purpose.

PURPOSE AND SCOPE

The purpose of this policy is to provide officers of the Department with guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, each officer is expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner.

The "reasonableness" of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that police officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.”

POLICY 300.4 OBJECTIVELY REASONABLE FORCE:

“Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect an arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape or to overcome resistance (Penal Code §835a).

“The legal standard recognizes that Peace Officers are often required to make split second judgments and rapidly respond to dynamic situations that are tense, uncertain, rapidly evolving, and potentially dangerous. Members shall evaluate each situation in light of the known circumstances and apply an appropriate use of force calculated to accomplish a legitimate law enforcement mission. In all cases, members shall consider the seriousness of the crime, the level of resistance, and the apparent threat to the safety of the community, the arresting officer, and the person or persons to be detained. The degree of force used will be that which is objectively reasonable to bring individual situations under control. The degree of force and the manner of its application shall be consistent with the training the member has received relative to its use and application.”

POLICY 300.4.1 CONSTITUTIONAL GUIDELINES FOR REASONABLE FORCE

“Both Federal and State law authorize Peace Officers to use objectively reasonable force to accomplish a legitimate law enforcement mission. There are five recognized objectives that serve as the basis for the reasonableness of any police use of force. The five lawfully recognized objectives are:

- (a) Self-defense;
- (b) Defense of others;
- (c) Effect an arrest or detention;
- (d) Prevent an escape; or
- (e) Overcome resistance.

Due to the immediacy with which a member must apply force, together with the absence of time and/or physical ability of the member to select alternative methods, it may be objectively reasonable for the member to apply that method of force most readily available that will affect the desired results.”

POLICY 300.4.2 JUSTIFICATION - KNOWN FACTS

The decision to use force, including deadly force, must be made based solely on the facts known to the member at the time force is used. Justification for the use of force shall be based on the situation as it reasonably appeared to the member(s) directly involved in its application. Facts unknown to the member at the time, no matter how compelling, cannot be considered later in determining the reasonableness of the member’s decision to use force.

The following United States Supreme court decision was also considered to determine if the force used was within policy:

Graham vs. Connor, 490 U.S. 396 (1989), which held that courts must look at whether the officer's actions were reasonable based on the information and circumstances confronting that officer at the time. The court stated that the 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation. Not the best decision, only a reasonable decision.

When O1 first made physical contact with the CP following the search by O2 and another officer it appeared words were exchanged between the two. However, due to the fact O1 had not activated his BWC it is unknown what was said by either person. Regardless of what was said by either person, the CP did assume a defensive stance when engaging with O1.

O1 initially reached out with his right hand grabbed the CP's right forearm and with his left hand grabbed the CP's upper right arm near his bicep. As O1 began saying something the CP pulled his right arm free from the grasp of O1 by pulling his right arm back. O1's grip slid down from the CP's bicep area down to his wrist and hand area. In the same continued motion the CP raised his right hand and arm to the eye level of O1 with his arm bent at the elbow. Although the CP did not form a fist with his right hand he did bring his fingers together as he tried to pull his right arm from the grasp of O1. The CP continued to attempt to free his right arm as O1 attempted to gain control of the CP's arms.

O1 then tried to take the CP to the ground by reaching up with his right arm and placing it around the back of the CP's neck while pulling in a downward motion. The CP resisted this attempt and pulled free by bending over and using his left arm to push O1's right arm from around the back of his neck and then standing up erect. O1 then attempted to gain compliance by striking the CP in the head area with a closed fist. The first punch glanced off the lower left side of the CP's chin and was not a direct strike to his chin or face. O1 then punched the CP a second time but because the CP was now bending over the punch missed the CP and traveled behind his head and neck making minimal contact with the CP. As O1 started to deliver the second punch the CP had bent over and brought his left hand up to cover his head. It is difficult to determine the intent of the CP when he brought up his left hand but it did graze the right side of O1's face for a moment before it continued to the top of the CP's head. Because the CP remained in a bent over position the third punch thrown by O1 also traveled behind the CP's neck, head, and shoulders and made minimal contact with the CP.

The CP remained in a bent over position with his left hand covering the top of his head. O1 proceeded to deliver four more punches at this point. The four additional punches were delivered as follows:

- # four grazed the left shoulder and back of the CP's head and neck
- # five also grazed the left shoulder and back of the CP's head and neck
- # six did make contact with the right side of the CP's chin
- # seven were similar to four and five as it grazed the same areas

As O1 completed the seventh punch he again tried to pull the CP to the ground by placing his right arm behind the CP's neck and pulling in a downward motion. At this time other officers began to assist O1, to include O2 and another officer. The CP physically resisted the attempts of the officers in being placed on the ground. The movement of the officers trying to take the CP to the ground, along with the resistance being displayed, resulted in the group being moved to the close proximity of the railing of the second floor landing.

The CP continued to resist their efforts and also reached out with his right arm and grabbed onto the railing in an attempt to remain upright. Due to the amount of resistance exhibited by the CP, it took several officers to get him to the ground and handcuffed.

The review of this unreasonable use of force allegation was broken down into three segments of the force being applied by O1 and O2:

1. The CP immediately became defensive and began resisting O1 when he was first contacted. O1 attempted to control the CP by gripping his right arm. The CP pulled his right arm back with enough force it caused O1 to lose his grip on the upper arm of the CP. O1's grip slid from the upper arm of the CP to his wrist. In the same motion the CP raised his right arm to the eye level of O1. At this point the CP brought his fingers together with his hand bent at the wrist. O1 had to react immediately as he did not know if the CP was going to strike him. The audio did not capture what the CP was saying but it was evident by his demeanor and facial features he was also verbally resisting. O1 addressed the resistance with whatever "tools" he had available at the time, which was his fist. As outlined in Penal Code §835a "it may be objectively reasonable for the member to apply that method of force most readily available that will affect the desired results."

Fist strikes are permitted per FPD Roll Call Training Bulletin, 09-10:

In isolated situations, circumstances may justify the use of fist strikes to a suspect's head; however, they are discouraged due to the associated risk of injury to both the officer and suspect. All force will be evaluated in light of what was objectively reasonable to bring the individual situation under control in accordance with Department policy and both Federal and State legal standards.

Therefore, in response to the resistance by the CP, the first three punches by O1 were determined to be within policy. It needs to be pointed out only the first punch actually made contact with the CP's face/chin. This portion of the allegation warranted a finding of unfounded.

2. As O1 was delivering the third punch the CP began to cover up his head and remained in a bent over position. It has been documented by several studies a person is unable to stop an action once they physically start the movement. Since O1 already began the third punch it would not have been possible for him to stop the movement once the CP covered his head. However, it is my opinion punches four through seven could have been avoided since the CP was now bent over with his hand covering his head in an attempt to avoid the punches and was no longer being a threat. The punches were delivered over a two to three second period allowing enough time for O1 to cease the punching action.

It is my opinion punches four through seven were not within policy, however only the sixth punch actually made contact with the CP's chin. The remaining punches made minimal contact with the CP and thus were inconsequential. I believe this portion of the allegation warranted a finding of sustained.

3. After the seventh punch O1 again attempted to take the CP to the ground in order to restrain him with handcuffs. At this point the CP switched from a defensive position to an aggressive position by resisting the efforts of the officers attempting to get him to the ground. The CP refused repeated commands to put his hands behind his back. The CP even used his right arm, which he broke free from the grips of the officers to grab onto the railing. It was obvious from the BWC the officers and the CP were very close to the railing. The threat of an officer or the CP going over the second floor railing was a concern. It is my opinion at this point the officers were justified of using whatever reasonable force was necessary to overcome the resistance being displayed by the CP. This right is afforded to the officers under FPD's policy and Penal Code §835a.

The officers were finally able to get the CP to the ground and apply handcuffs. This segment of the use of force was determined to be within policy and warranted a finding of unfounded.

In summary, it can be argued the overall use of force allegation should have been determined to be unfounded since the initial resistance justified the application of force applied by O1. However, it is my belief if O1 had attempted to take the CP to the ground after the third punch was delivered and the CP then went from a defensive position to an aggressive stance, force would have been justified and the overall allegation would have been unfounded.

A significant fact, which needs to be stated, is none of the punches thrown by O1 made contact with the CP's nose. Therefore, the injury sustained to his nose appears to have occurred when he was resisting being taken to the ground. The use of force by the officers in taking him to the ground was determined to be within policy.

A final point regarding this allegation should be the manner in which several media outlets presented the BWC camera video to the public. The actual recorded portion of the punches that was aired was repeated twice, back to back, without a break in the airing. It appeared as if the CP was hit more times than what actually took place.

Independent Reviewer finding for this allegation against O1: **Sustained**

O2: When O2 completed the search of the CP he then focused on the open doorway of the apartment as the officers were about to begin the search. O2 then heard the commotion created by O1 and the CP as O1 attempted to detain the CP. By the time O2 turned around O1 had stopped delivering punches and was now trying to take the CP to the ground. O2 quickly moved to assist O1 in detaining the CP. The CP refused commands to put his hands behind his back and resisted the officers attempts to place him on the ground. The resistance caused the officers and CP to move to the close proximity of the second floor railing, which was confirmed in the BWC recording. The CP reached out and grabbed the railing to aid in resisting the efforts of the

officers to take him to the ground. O2 was concerned about an officer, or the CP, falling or being pushed over the railing. In an attempt to quickly remove the CP's grip of the railing O2 applied several forearm strikes to the CP's upper body.

The CP continued to refuse commands to place his hands behind his back. O1 and O2 were not able to place the CP's hands behind his back until an additional officer provided assistance. The CP was then handcuffed and no additional force was applied. Due to the immediate need to eliminate the danger of an officer or the CP being pushed or falling over the railing O2 was justified in his application of force. In this instance, Policy 300.4.1 would be applicable. The specific portion of the policy appears below:

“Due to the immediacy with which a member must apply force, together with the absence of time and/or physical ability of the member to select alternative methods, it may be objectively reasonable for the member to apply that method of force most readily available that will affect the desired results.”

Based on the above, O2 was justified in the level of force applied.

Independent Reviewer finding for this allegation against O2: **Exonerated**

Falsification of Records:

Policy 341.2.5(j) Performance - The falsification of records, the making of misleading entries or statements with the intent to deceive, or the willful and unauthorized destruction and/or mutilation of any Department record, book, paper or document;

The written report prepared by O1 contained several statements which some viewed as inaccurate when compared to the BWC video. This created the perception by some of O1 intentionally falsifying his written report. One fact O1 failed to include in his written report, which could explain certain discrepancies, was he did not review his BWC video prior to preparing his written report. Although his report did state he uploaded his BWC video, he did not clarify the fact his camera only captured the incident after the CP was handcuffed. O1 was found to be in violation of the BWC policy as a result of failure to activate his BWC.

The IA investigator provided an adequate explanation of the impact stress has on the memory of the officers involved. Much of the explanation was based on the investigator's training received by the Force Science Institute, Use of Force certification class. I received the same training and agree with the explanation of why O1's report may appear to have discrepancies when compared to the BWC video recorded by other officers on scene. However, some may question using a single source of information in providing a defense for the discrepancies.

The following additional studies document the impact stress has on an officer's memory:

<https://www.policeone.com/police-products/body-cameras/articles/476498006-How-to-best-and-defensibly-use-body-worn-camera-video-during-report-writing/>

<https://www.forcescience.org/2018/04/law-enforcement-memory-of-stressful-events-recall-accuracy-as-a-function-of-detail-type/>

<http://www.aele.org/law/2008FPJUN/wb-19.pdf>

<https://escholarship.org/content/qt6mz8w7qd/qt6mz8w7qd.pdf>

<https://link.springer.com/content/pdf/10.1007%2F03379584.pdf>

Some of the studies reference the effects of stress on memory following an officer involved shooting. However, the impact is similar to the stress incurred during a physical confrontation when an officer is attempting to overcome resistance by a suspect. The doubt of accuracy was partially created by the belief O1's written account was prepared after reviewing his BWC video. However, since O1's BWC video did not begin recording until after the CP was handcuffed the report should have included this fact. In addition, O1 was unable to view any of the other officers' BWC video since his report was needed for case filing by the next morning. Including a disclaimer in written reports will be a recommendation for future reports.

In summary, it is not believed O1 intentionally falsified his written report but instead included the events how he perceived them during a stressful situation where there were many contributing factors, thus creating a "sensory overload." Chief Hall was also of the opinion O1 may not have intended to prepare an inaccurate report, however the IA investigation did not clearly prove or disprove this allegation. Initially the IA finding was unfounded but after further guidance from Chief Hall the final finding was not sustained, which was also the finding of this office.

Independent Reviewer finding for this allegation against O1: **Not Sustained**

Observation #1: Per FPD Policy 450.10, which appears below, officers should review their BWC recordings before completing their report. Unfortunately, O1 did not capture the use of force on his BWC and therefore he was unable to review the incident before completing his report. In addition, the report was needed the following morning by the District Attorney's Office, allowing minimal time to access and view other officer's BWC recordings.

450.10 REVIEW AND USE OF RECORDINGS

Officers should review recordings to assist with their investigation, prior to the completion of their report. Recorded statements shall be summarized and documented within the narrative of the applicable report. Only official Department devices should be used to review AXON recordings.

This matter was further complicated by the statement included in O1's report, in which he noted his BWC recording was uploaded. O1 did not clarify he discovered his BWC camera did not begin recording until after the CP was handcuffed. The omission of this clarification created the perception by some that O1 falsified statements in his written report regarding the application of force.

Recommendation #1: FPD should consider amending Policy 450 and Procedure 450 to require officers to include a statement confirming the BWC was activated and functioned properly. The statement should also confirm the recording was reviewed prior to the submission of the report.

In the event the recording was not reviewed it should be stated. It is recognized due to unforeseen circumstances there will be times the officers will not be able to review the recordings before completing every report.

In the event a report differs from what appears on the BWC recordings this change may explain the reason it differs and should enhance the trust within the community

Observation #2: The UOF was reported to the supervisor and a corresponding UOF form was completed and documented based on the information provided by the officer. No further action was requested and the matter was considered closed. However, in view of the fact the officer did not activate his BWC, the recollection of what transpired during the arrest could not be confirmed by viewing the BWC recording. Subsequently, the CP suffered injuries requiring medical treatment.

Recommendation #2: When significant injuries are sustained it is recommended the approving supervisor review available BWC recordings in order to determine if the matter warrants a referral to next level for consideration of an IA investigation.

SUMMARY

A collateral function of this office is to engage in community outreach. Since the creation of the Community Coordinator position in this office we have spoken to over 145 organizations, groups, businesses, and schools. However, due to the ongoing COVID-19 pandemic, group meetings and community events have been postponed. In an event to continue our outreach we have begun offering to provide presentations via any of the virtual meeting platforms, such as ZOOM, WebEX Meeting, Microsoft Teams, or any of the other platforms being used. We have also recently created an OIR Facebook page (Fresno Office of Independent Review) for the community to contact us or view our quarterly reports as they are released.

We recognize this is a very critical time regarding law enforcement accountability and community trust. In an effort to establish an open dialogue with those who have expressed their concerns about the FPD, we have contacted several community leaders to provide our office as a resource to formally document the specifics of their concerns. There are several ways to contact this office and it is our policy to return all calls or emails within a 24 hour period with the exception of calls received over the weekend. Our contact information is listed below.

<https://www.fresno.gov/oir>

Telephone: (559) 621-8617

Email: Maira.Aguilar@Fresno.gov

John A. Gliatta
Independent Reviewer
Office of Independent Review