INVESTIGATIVE SUMMARY AND FINDINGS

PEACE OFFICER NAME: Dillon Fuston

POST ID NUMBER: C71-S10

EMPLOYING AGENCY: San Diego Police Department

POST CASE NUMBER: POST2300809

WRITTEN BY: Mark Nagel

DATE: 11/8/2023

I. Executive Summary……..……..3

II. Background Information…….……..……..4

a. Identity of Respondent.……4

b. Respondent's Service Record, Relevant Training, and Prior Complaints and Discipline……4

c. Prior Employment History……..……6

d. Peace Officer Certification…….……...…..……6

e. The Present Allegation of Serious Misconduct……6

III. Investigative Methodology……6

IV. Factual Summary……..7

V. Analysis and Findings…….……..……16

a. Does the alleged conduct violate California Regulation 1205(a)(1)……..…16

VI. Supporting Evidence and Documentation…….…..…24

VII. Findings……..…….24

I. Executive Summary

On April 10, 2020, San Diego Police Officer Dillon Fuston (hereinafter "Respondent") and his partner responded to a domestic violence call. After speaking with the reporting party, the Respondent and his partner determined that probable cause existed to make an arrest on the male suspect and entered the apartment to take him into custody. Upon locating the suspect lying on his bed, the Respondent and his partner attempted to handcuff the suspect and a struggle ensued because the suspect would not follow commands to remove his arms from under his body. The Respondent punched the suspect six times in the back with a closed fist prior to applying the handcuffs.

The Respondent escorted the handcuffed suspect to the hallway outside of the apartment and stayed with the suspect while the Respondent's partner spoke with the victim. While the suspect was handcuffed in the hallway, the Respondent felt that the suspect attempted to kick him, resulting in the Respondent using force by leg sweeping the handcuffed suspect causing him to hit his head on the floor. As a result of hitting the floor, the suspect immediately lost consciousness and remained unconscious for approximately two minutes and fifty-eight seconds.

As described above, there are two use of force events that occurred in the arrest of the suspect. The first use of force was used during the initial contact and apprehension of the suspect in the apartment. The second use of force occurred in the hallway. Both events involved the Respondent using force that was ultimately deemed excessive and resulted in sustained findings by the employing agency. Additionally, the agency sustained findings that the Respondent failed to accurately document all the facts and circumstances surrounding the force used during the arrest of the suspect.

As will be discussed in greater detail below, the sustained excessive use of force findings are not actionable for purposes of a decertification action due to the date of this incident. However, the Respondent engaged in multiple acts of dishonesty relating to this matter, which are actionable. Specifically, the Respondent stated in his report that, during the initial contact, the suspect had immediate access to weapons. That statement is unsupported by the facts and was found to be unfounded in the agency's Internal Affairs (IA) investigation. For example, the IA found that the only weapon in sight was not in the suspect's reach, the Respondent did not check the bed for weapons prior to waking the suspect, and neither officer performed a pat down of the bed or surrounding area once the suspect was taken into custody. As for the six punches to the suspect's back, the Respondent described these as distraction blows in his IA interview, stating that he gave the suspect commands each time to give up his arm and waited about a half of a second before taking the next strike. However, the IA found that the injuries sustained by the suspect were not consistent with distraction blows and review of the body worn camera footage shows that the Respondent did not pause each time before taking his next strike. The Respondent described the leg sweep takedown as controlled, claiming that he guided the suspect's body to the ground with both hands. However, review of the Respondent's body worn camera footage demonstrates that the suspect's fall was not controlled, resulting in the suspect hitting the ground without any

way to lessen the impact of the fall. And the Respondent provided false statements to dispatch and responding medical personnel as to the amount of time the suspect remained unconscious. Specifically, the Respondent stated that the suspect was unconscious for 2 to 3 seconds when body worn camera footage shows the suspect was unconscious for two minutes and fifty-eight seconds. Body worn camera footage also shows the Respondent next to the suspect while he is unconscious, rubbing the suspect's sternum and telling him to wake up, demonstrating the Respondent knew the suspect had been unconscious for far more than 2 to 3 seconds. The Respondent then documented in his police report the suspect was unconscious for 2 to 3 seconds. The suspect was subsequently arrested on two criminal charges: Penal Code section 273.5(a) (Inflict Corporal Injury on a Spouse) and Penal Code section 148(a)(1) (Resisting/Delay Peace Officer).

Penal Code section 13510.8(b)(1) establishes that a certified peace officer shall have their certification revoked if the person has engaged in dishonesty relating to the reporting, investigation, or prosecution of a crime. Here, clear and convincing evidence exists to establish that the Respondent was dishonest in the reporting of a crime (PC 148(a)(1)) when he falsely stated in his police report:

- The suspect had immediate access to a weapon during initial contact.
- That he used distraction blows to secure the suspect's arm while pausing a half of a second between each strike.
- That he held onto the suspect's upper body with both hands to guide the suspect to the ground after the leg sweep.
- That the suspect was unconscious for 2 to 3 seconds.

Notably, when asked in his internal affairs interview "Do you think you were accurate is saying he was unconscious for 2 to 3 seconds?" the Respondent stated: "No. I think it's pretty cut and dry." This false statement and other statements made in the report, directly relate to the Respondent's reporting of the resisting arrest charge and were a clear attempt to mitigate the extent of the suspect's injury by falsely stating the suspect had immediate access to weapons, used distraction blows to secure an arm, guided the suspect to the ground after the leg sweep and the length of time the suspect was unconscious.

II. Background Information

a. Identity of Respondent

At the time of the events at issue, the Respondent was employed as a Peace Officer with the San Diego Police Department. On September 22, 2022, he resigned from the San Diego Police Department and was hired as a Deputy with the San Diego Sheriff's Department on September 23, 2022.

b. Respondent's Service Record, Relevant Training, and Prior Complaints and Discipline

Training

Advanced Officer Course – San Diego PD – October 28, 2021

Prior Complaints

The following complaints have been submitted to POST:

POST2306045 – San Diego Sheriff's Office – October 20, 2022

Claim: Physical Abuse/Excessive Use of Force – not sustained by the agency. Complainant alleged that she suffered a facial fracture and numerous body wounds on October 20, 2022, resulting from an encounter with San Diego County Sheriff's Deputies (which included Respondent). The incident and subsequent use of force was documented and investigated to include BWC review. The use of force was determined to be within department policy and law and was found to have been justified.

POST2300507 – San Diego Police Department – October 27, 2019

Claim: Physical Abuse/Excessive Use of Force and Acts that Violate the Law – exonerated by the agency.
San Diego Police Department officers responded to a male who was intoxicated. During the arrest, the suspect resisted by pulling away from the officers and attempted to evade arrest. The suspect was subsequently arrested for narcotics charges and resisting arrest. The suspect claimed that the officers (which included Respondent) used excessive force against him. The agency Internal Affairs investigation concluded minimal force was used and was reasonable, justified, and necessary. The allegation of excessive use of force was not sustained.

POST2300192 – San Diego Police Department – December 14, 2019

Claim: Physical Abuse/Excessive Use of Force and Demonstrating Bias – sustained by agency. This matter was closed by POST as a non-actionable report.
On December 14, 2019, San Diego Police Department officers contacted a suspect who matched the description of a person wanted for vandalism. The suspect did not comply with verbal commands and physically resisted officers and headbutted an officer, who sustained a laceration on his eyebrow. The Respondent subdued the suspect via a carotid hold. The suspect alleged officers used excessive force and discriminated against him because of his race.

The Respondent was found by the agency to have violated their Use of Force and Carotid Restraint procedures when he applied a non-departmental approved/modified carotid restraint or neck restraint. The Respondent was also

found to have violated the Use of Force and Carotid Restraint procedures when he exceeded the carotid restraint duration hold of 15 seconds.

The agency found the Respondent had reasonable suspicion to stop and detain the suspect based on the description of the vandalism suspect and ultimately arrested him after he violently resisted the officers. A curbside lineup was later conducted, and the witness positively identified the suspect as the vandalism suspect. There was no evidence demonstrating the Respondent inappropriately factored race for detaining and arresting him. The discrimination allegation was therefore unfounded. As for the excessive use of force claim, POST closed this matter as non-actionable because the events took place in December 2019, prior to the January 1, 2022, effective date of Senate Bill 2 and Penal Code section 13510.8(b)(3).[1]

c. Prior Employment History

The Respondent was employed by the San Diego Police Department from September 4, 2018, to September 22, 2022, as a Police Officer. The Respondent then resigned from the San Deigo Police Department and has been working as a Deputy with the San Diego Sheriff's Department since September 23, 2022.

d. Peace Officer Certification

The Respondent is assigned POST ID C71-S10. He received the following peace officer certificates from the Peace Officer Standards and Training (POST):

- Basic (Awarded February 26, 2020)
- Intermediate (Awarded February 24, 2021)

e. The Present Allegations of Serious Misconduct

1. Reported to POST on January 20, 2023. The Incident occurred on April 10, 2020.

2. The San Diego Police Department sustained allegations for failing to accurately document all the facts and circumstances surrounding the force Respondent used during the arrest.

III. Investigative Methodology

[1] The suspect in this case filed a civil lawsuit against Respondent (and other defendants) on July 20, 2020, asserting the following claims: 42 U.S.C. §1983, Unreasonable Seizure; 42 U.S.C. §1983, Excessive Use of Force; Civil Code section 51.7, the Ralph Act; Civil Code section 52.1, the Bane Act; Assault; Battery; False Arrest; False Imprisonment; Intentional Infliction of Emotional Distress; and Negligence. The case is pending in the United States District Court, Southern District. *Shine v. Fuston et al*, 3:20-cv-2036.

This report summarizes the findings related to allegations of serious misconduct. This investigation was conducted in accordance with the regulations and policies of POST. The investigation included a review of the San Diego Police Department's administrative investigation, which included an interview of the suspect, body worn camera footage, arrest report, Computer Aided Dispatch ("CAD") report, photographs of the suspect's injuries, a use of force expert review, and witness interviews. The video recording of the incident was analyzed and compared to the written documentation completed by Respondent in his official report.

Information obtained was analyzed using the clear and convincing evidence standard. For purposes of this report, clear and convincing evidence means evidence of a charge is clear and convincing so long as there is a high probability that the charge is true. The evidence need not establish a fact beyond a reasonable doubt.

This report is summary in nature and does not include every fact or issue that might be found in the underlying investigation and attachments. It does, however, contain reference to the evidence that I believe establishes the requisite facts, and proves the serious misconduct charged, by clear and convincing evidence.

IV. Factual Summary

For clarification of this report, any action recommended regarding the Respondent shall be for the act of dishonesty in the reporting of a crime. The excessive use of force claim is not actionable by statute because the date of the incident predates the implementation of Penal Code section 13510.8(b)(3). However, the facts relating to the force used by Respondent are relevant to support the dishonesty, which is covered under Penal Code section 13510.8(b)(1) and (g)(1)(A).

In reviewing the body worn camera ("BWC") evidence, a total of six BWC videos were obtained regarding this incident. Respondent's BWC and his partner's BWC video are the only two videos that captured the force used on the suspect and the events relating to the Respondent's dishonesty. The Respondent's BWC shows the first interaction with the suspect when officers attempted to facilitate his arrest. The video showed the suspect lying on his stomach with his left arm underneath his body. The Respondent had the suspect's right arm behind his back and applied downward pressure with both hands. The Respondent told the suspect several times, "Give us your arm." The Respondent then used his right fist to punch the suspect six times in his back rib area to gain control of the suspect's arm.

During the Respondent's interview, he stated the suspect did not, or was not able to, remove his left arm from underneath his body. Since the suspect did not comply with his orders, the Respondent punched the suspect with six closed fists blows to the back rib area. The Respondent also stated in his administrative interview that he was concerned about the possibility of the suspect possessing unseen weapons. The agency determined the Respondent's statement about potential weapons was not

supported by specific articulable facts that would lead a reasonable officer to believe suspect had or was reaching for a weapon at the time the Respondent punched him six times to secure his arm.

The San Diego Police Department's use of force expert, Officer Rhoten, reviewed the six closed fist strikes to the suspect's back and determined, "The closed fists strikes to suspect's back and ribs by the Respondent are not in line with what is taught at the San Diego Regional academy and during Advanced Officer Training. The Respondent's use of closed fist strikes to the back and ribs of suspect are also not in accordance with SDPD Policy and Procedures." The IA also found that the injuries sustained by the suspect were not consistent with distraction blows.

While in the hallway, the Respondent stood behind the suspect who was positioned facing the wall. The Respondent claimed he thought the handcuffed suspect was going to kick him while being pushed against the wall. In support of this claim, the Respondent stated the suspect lifted his foot off the ground by 1 to 2 inches. I reviewed the relevant portion of Respondent's BWC video and found that there was no sudden movement of the Respondent away from the suspect, nor any sudden movement by the suspect that would indicate he tried to kick the Respondent. The Respondent stated in his administrative interview he used his "right leg and kicked his right leg also hitting his left leg" causing the suspect to fall to the ground. The Respondent did not use an approved takedown taught by the San Diego Regional Academy or Advanced Officer Training and failed to control the suspect's head to the ground. By using an unapproved leg sweep, the Respondent did not use caution in the takedown of a handcuffed prisoner which resulted in the suspect being rendered unconscious.

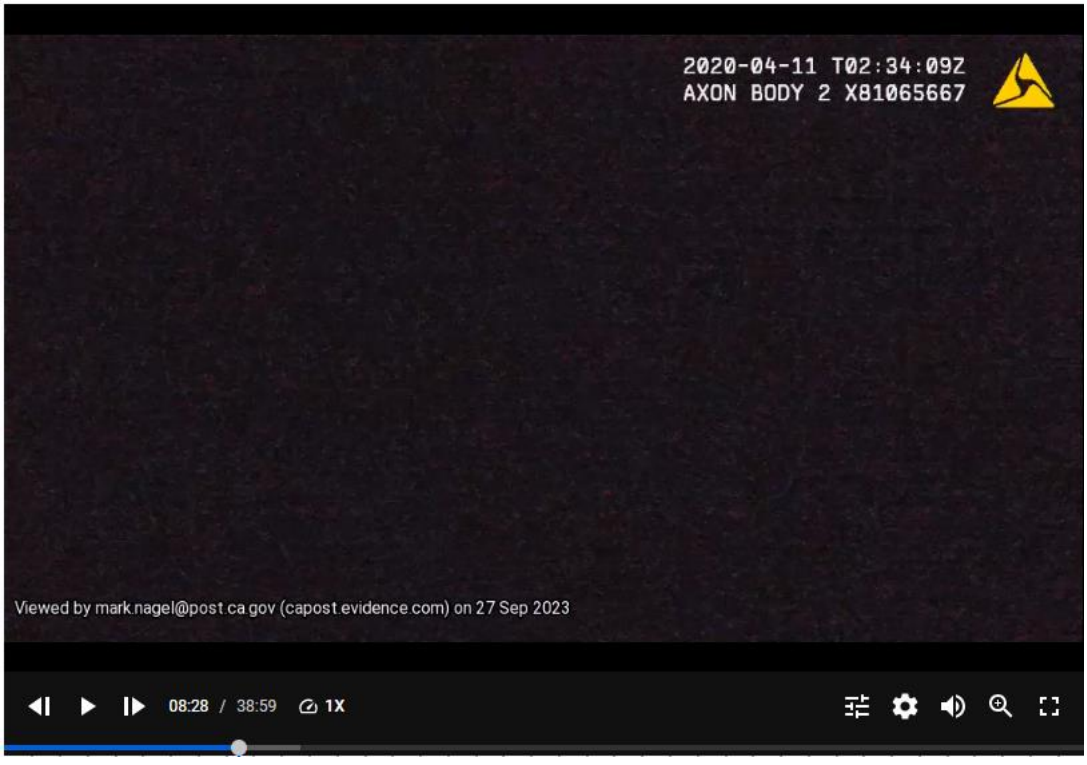
At 8:00 of the BWC video, Respondent uses his microphone asking for an ambulance and states "the suspect tried to kick me, I took him to the ground."



At 8:07 of the BWC video, the suspect is clearly unconscious (eyes are closed, not responding to commands, no body movement) and placed in a recovery position.



At 8:28 of the BWC video, Respondent uses his microphone saying, “Loss of consciousness 2 seconds.”



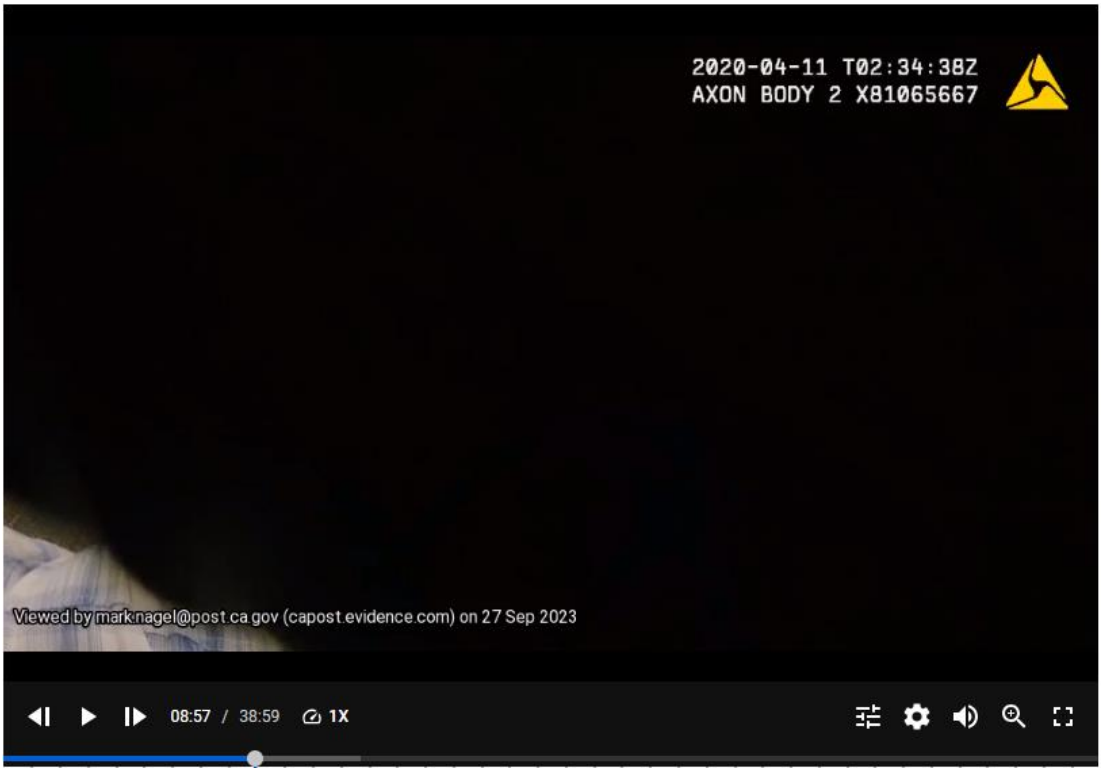
At 8:38 to 8:47 of the BWC video, Respondent gives the suspect a sternum rub.



At 8:42 of the BWC video, Respondent says, "Wake up (suspect name redacted – referred to hereafter as "S1"), wake up."



At 8:57 of the BWC video, Respondent advises dispatch “Conscious and breathing, 59-year-old male.”



At 9:49 of the BWC video, Respondent says, “Wake up bud. Wake up, you are ok. You just tried to kick the police. You shouldn’t do that.” Suspect is still snoring and unconscious.



At 10:26 of the BWC video, Respondent says, “S1 wake up.” Suspect is still unconscious.



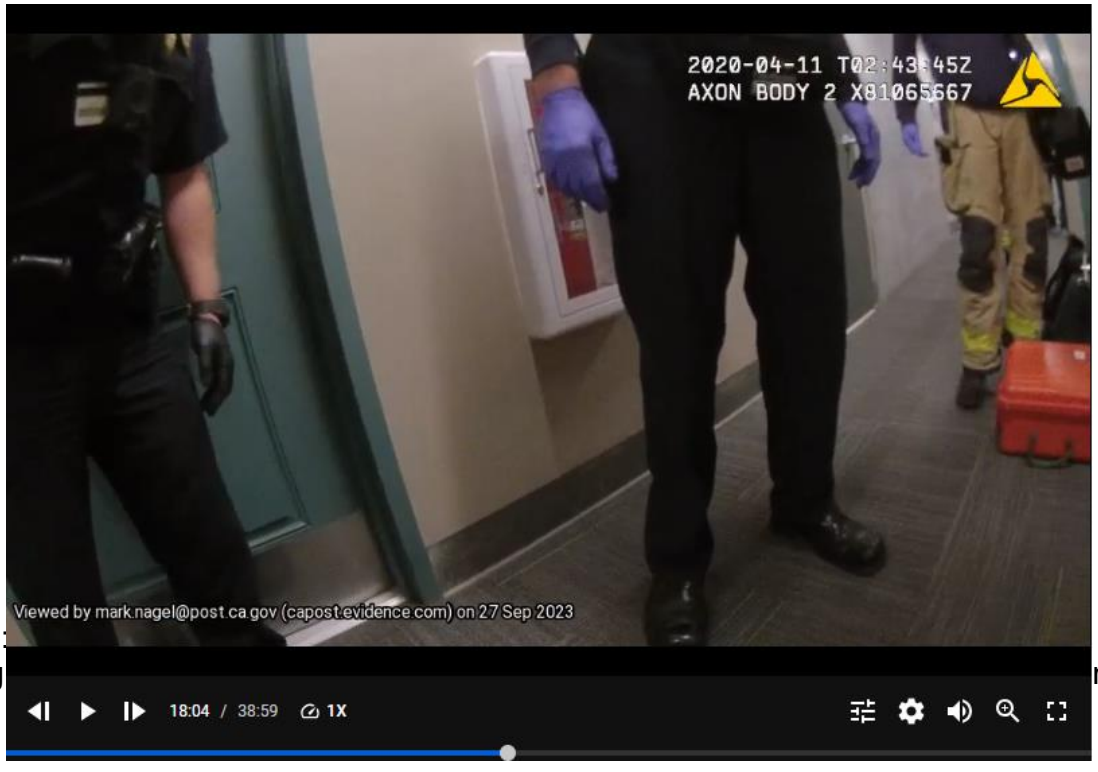
At 10:40 of the BWC video, the suspect’s eyes open and he looks up.



At 10:45 of the BWC video, Respondent rubs the suspect's chest and says "Wake up buddy. You feel alright."



At 18:04 of the BWC video, Respondent tells San Diego Fire personnel, "He lost consciousness for 2 to 3 seconds."



At 25: trying m to

the ground, ended up smacking his head pretty good. Loss of consciousness 2 to 3 seconds."



The Respondent provided statements during his administrative interview regarding the leg sweep and observations of the suspect being unconscious. He stated the following: "I saw the pre-assaultive cue of S1 cocking his right knee up. His foot lifted 1 to 2 inches off of the ground. I perceived his cocked knee as an attempt to kick me. I used my right leg and kicked his right leg also hitting his left leg. I thought I would be able to gain my balance in a timely fashion to take him to the ground. My plan was to keep my left hand on his left arm and use my right hand to control his body to the ground. I did not necessarily control him [emphasis added]. S1 fell to the ground and hit his head." **(Page 40 of IA Report)**

"I have additional training in judo, taekwondo, high school wrestling and the Marines. I was taught three or four different movements to block a leg kick in judo. I was taught a lot of movements to block a leg kick in wrestling. I was taught a few ways to block a leg kick in taekwondo. Also, I was taught ways to block a leg kick in the Marines." (Page 40 of IA Report)

"I aired S1 was unconscious for 2 to 3 seconds. I took S1 snoring and seeing his eyes flutter as a sign of consciousness. I also felt S1 move a little. I think more importantly, it was a sign that he was alive. I misspoke and used the wrong word. Basically, saying that he lost consciousness for 2 to 3 seconds was a wrong time assessment on my part. He was alive but as far as awake and alert, no." **(Page 41 of IA Report)**

“I took S1’s pulse and applied a stern rub 1 minute and 1 second after he hit the ground. This is an effective way of waking someone up and or keeping them awake. At this time, I knew S1 was asleep.” (Page 41 of IA Report)

“At 1 minute and 47 seconds after S1 hit the ground I checked his pulse. At 2 minutes and 47 seconds after S1 hit the ground, I told him to wake up. I could feel him moving and breathing.” (Page 41 of IA Report)

“About 10 minutes after S1 hit the ground, I told fire personnel that S1 was unconscious for two to three seconds. That was my assessment from when he started snoring and showing me, he was still alive. About 18 minutes later, medics showed up and I told them S1 was unconscious for 2 to 3 seconds.” (Page 41 of IA Report)

More importantly, the Respondent admitted in his administrative interview that he was inaccurate in his reporting of this event. This is demonstrated in the following exchange with the internal affairs investigator:

Internal Affairs Investigator: “In hindsight after talking about all of this, do you think you violated Department Policy 9.28, which is accurately reporting.” There was a short pause while I shuffled paper to grab a printout of the policy and Sergeant Adair asked, “Do you think you were accurate is saying he was unconscious for 2 to 3 seconds?” (Page 41 of IA Report)

Respondent: “No. I think it’s pretty cut and dry.” **(Page 41 of IA Report)**

The specific dishonest statement can be found in the Respondent’s report number 20408, dated April 10, 2020. The following is an excerpt from the Respondent’s report:

“I walked S1 outside to ensure he was away from (victim name redacted – referred to hereafter as “V1”) and did not have any access to the numerous knives in the apartment. I pushed S1 into the wall and held him there with both hands. S1 began to yell at me and become aggravated that I had struck him. S1 tensed his muscles up and tried to push off the wall by puffing his chest out. S1 said that he wanted to turn around and I told him not to. S1 cocked his right knee upward. Fearing S1 was attempting to kick me in the groin to incapacitate me I kicked his feet out from underneath him using my right leg. I knew that a kick from that distance to my groin or a joint has the ability to cause severe injury to me. I knew that S1 was in handcuffs and was unable to control himself during a fall so I held onto his upper body with both of my hands to guide him to the ground where he could no longer kick me. While guiding S1 to the ground he fell awkwardly due to his level of intoxication and struck the side of his head on the ground ***causing him to lose consciousness for approximately 2-3 seconds***.” **(Page 2 of Respondent’s report)**

As will be discussed in greater detail below, this statement is false and grossly misstates the time the suspect was unconscious. As previously stated, the suspect was

rendered unconscious for approximately 2 minutes and 58 seconds and was unconscious due to the unauthorized leg sweep of a handcuffed suspect.

V. Analysis and Findings

a. Does the alleged conduct violate California Regulation 1205(a)(1) – Dishonesty?

The statutory definition of Dishonesty in California Regulation 1205(a)(1) states:

Dishonesty relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, a peace officer or custodial officer, including, but not limited to, false statements, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct. For purposes of this subsection, in considering whether a suspension or revocation of certification is proper, the Commission will consider the extent to which the dishonesty related to a material or significant fact in the context of the statement or omission alleged to be dishonest and will also consider whether the dishonesty appears to have been done willfully or intentionally, with the intent to deceive.

Clear and convincing evidence establishes the Respondent was dishonest relating to the reporting of a crime. Specifically, the Respondent was dishonest in documenting that the suspect had immediate access to a weapon during the initial contact, was dishonest in reporting that he used half-second paused distraction blows to secure the suspect's arm, was dishonest in reporting that he guided the suspect to the ground after the leg sweep, and incorrectly reported the amount of time the suspect was unconscious following the Respondent's use of an unapproved leg sweep. These dishonest statements directly relate to the Respondent's reporting of the resisting arrest charge and were a clear attempt to mitigate the extent of the suspect's injury by falsely stating the suspect had access to immediate weapons, used distraction blows to secure an arm, guided the suspect to the ground and the length of time the suspect was unconscious.

Use of Force in Apartment

Dishonest act #1. The Respondent's statement that the suspect had immediate access to a weapon during the initial contact.

The report authored by Respondent:

"Suspect forced his left-hand underneath him towards his waistband. Knowing that I had seen several large knives in the apartment and that they were spread out randomly throughout the apartment I feared there may be another knife in the

bed with Suspect. I also had not been able to check if Suspect had a weapon on his person."

From IA Investigation (Page 53 of IA Report)

- On the notes of the radio call there was no mention of a weapon.
- The victim did not mention any weapons were used when she spoke with officers.
- The steak knife on the kitchen table was a few feet away from the kitchen and it was no longer in the suspect's reach once Officers moved the table.
- Officers did not check the bed for weapons prior to waking the suspect.
- The officers rolled the suspect onto his back and had a clear view of his waistband for several seconds.
- During the Respondent's verbal commands to the suspect, there was no mention of weapons or statements indicating the suspect was believed to be armed.
- The Respondent or the partner did not pat down the suspect until he was taken outside the apartment into the hallway.
- Neither officer performed a pat down of the bed or the surrounding area once the suspect was taken into custody.
- Neither officer made note of a specific weapon in their report, besides the steak knife on the kitchen table.

IA Findings

The Respondent's statement that he believed the suspect had immediate access to a deadly weapon is not supported by specific articulable facts that would lead a reasonable officer to believe the suspect had or was reaching for a weapon at the time the Respondent punched him six times.

Dishonest act #2. The Respondent's statement that he used distraction blows to secure the suspect's arm while pausing a half of a second between each strike.

The report Authored by Respondent

"I struck S1 with a closed fist six times in his right back rib area telling him to give us his arm each time. S1 complied after the sixth closed fist strike and he was handcuffed by the partner Officer Campante."

IA Interview – 35:40

"I executed distraction blows in order to basically get him to comply with our commands as well as get his arm up."

51:15 “In your assessment, in your…you said you gave him a half second to comply with between each one?”

51:23 “Um..”

51:24 “Thereabouts.”

51:25 “About. Yes sir. I was watching his arm the entire time I was striking him.”

51:29 “You mentioned the adrenaline is flowing I get that 100%. Did it occur to you or cross your mind his arm is possibly trapped? By blanket and body weight?”

51:38 “No sir. My assessment at the time is he was pulling his arm towards his waist band because if his arm would have been trapped his muscles would have been relaxed. They were not relaxed. I could visually see his muscles were tense and pulling towards his waist band.”

51:51 “But you weren’t holding that arm?”

51:52 “No sir.”

51:55 “How could you tell they were tense?”

51:56 “Because I could see the striations of his muscles flexing sir. I was close enough to see that.”

53:07 “Do you think a half second was enough time for a drunk to understand what you are telling him to do and comply?”

53:13 “After four commands without strikes, yes sir.”

53:20 “Not the first command, the half second was in between the strikes. Do you think a half second was enough time for him to comply, to process that in his state of inebriation and comply with you?”

53:28 “There was enough time for him to show… My assessment on scene was that the time I was giving him between strikes was enough time for him to show some sort of um, you know, level of compliance which he was not doing. And after four verbal commands, you know, with several seconds in between my first verbal command and first strike he had, in my mind, every opportunity to comply with us.”

IA Findings (Page 54 of IA Report)

The Respondent said he struck the suspect with six closed fist "distraction blows" to the back rib area. These strikes resulted in the suspect sustaining closed fractures to multiple ribs. These injuries are not consistent with distraction blows. Furthermore, the use of closed fist strikes as distraction techniques is not authorized per Department Procedure 1.04.

The Respondent said he hit the suspect with six distractions blows to the back rib area. Distraction blows target the lower body and are defined as open handed lesser controlling strike, using a lower level of force. Therefore, the manner (closed fist) and force, in which the Respondent delivered what he considered distraction blows is not within policy. The Respondent said he believed the suspect was armed with a weapon. However, he could not articulate specific or articulable facts to support his belief that the suspect was armed or had immediate access to a weapon at the time he punched the suspect multiple times. The Respondent said he believed the suspect was reaching for a weapon in his waistband, but BWC evidence showed the suspect's left arm was pinned underneath him. The Respondent was applying downward pressure and using his own body weight to push on the suspect's back. This made it extremely difficult for the suspect, who was intoxicated, awaking from being passed out or asleep and 30 years older than the Respondent to have the physical strength to pull his left arm out from underneath his body when pinned down by a 270 lbs. officer.

Use of Force in Hallway

Dishonest act #3. The Respondent's statement that he held onto the suspect's upper body with both hands to guide the suspect to the ground after the leg sweep.

From the report authored by the Respondent.

"Suspect tensed his muscles up and tried to push off the wall by puffing his chest out. Suspect said that he wanted to turn around and I told him not to. *Suspect cocked his right knee upward* [emphasis added]. Fearing Suspect was attempting to kick me in the groin to incapacitate me I kicked his feet out from underneath him using my right leg. I knew that a kick from that distance to my groin or a joint has the ability to cause severe injury to me. I knew that Suspect was in handcuffs and was unable to control himself during a fall *so I held onto his upper body with both of my hands to guide him to the ground where he could no longer kick me. While guiding Suspect to the ground* [emphasis added] he fell awkwardly due to his level of intoxication and struck the side of his head on the ground causing him to lose consciousness for approximately 2-3 seconds."

From the IA Report (Page 56 of IA Report)

Officers should use caution when using a takedown technique on a handcuffed prisoner. There is potential for injury since the prisoner's hands are behind his or her back, and they have no way of breaking his or her fall. If possible, when the person is handcuffed, officers should consider other controlling methods prior to a takedown.

From the IA Report (Page 57 of IA Report)

Suspect turned his upper body to his left away from the wall. Respondent still had control of the Suspect. Respondent had his left hand around Suspect's left bicep and his right arm pressed against Suspect's upper back. Suspect's right shoulder was against the wall and his left shoulder was bladed towards Respondent. Respondent was positioned to Suspect's left side and was standing slightly behind Suspect when Respondent swept Suspect's legs out from underneath him and forced him to his right side. As Suspect was being forced to the ground, *Respondent only controlled his fall by holding his left shirt sleeve with his left hand. Respondent's right hand was not touching Suspect. Suspect's head was not controlled, thus, resulting in Suspect's head colliding against the concrete floor* [emphasis added].



7:41

The Respondent has extensive close combat training. Respondent's close combat training includes judo, taekwondo, high school wrestling and defensive tactics taught through the United States Marine Corps. This is all an addition to the training he has received from the San Diego Regional Academy. In addition, the Respondent outweighed the suspect by over 100 pounds and is over 30

years younger than the suspect. Nevertheless, the Respondent chose to kick the suspect's legs out from underneath him, while he was handcuffed, and without any plan or way to brace his fall. The Respondent did not try any other controlling methods prior to taking the suspect to the ground or call for assistance from the partner, who was within earshot, and close by in the apartment.

The Respondent executed poor judgement when he thought he would be able to control the fall of an intoxicated male to the ground who weighs 170 pounds and was standing on one leg. The Respondent's left hand was on the suspect's left arm and the suspect fell to the right making it unlikely his left arm would help control the suspect to the ground. Therefore, the Respondent was standing on one leg, and he tried to control a 170-pound male falling to the ground with only his right hand. After performing a leg sweep on a handcuffed male, the suspect struck the concrete floor, he was instantly knocked unconscious for approximately 2 minutes and 58 seconds.

In this incident, it's clear the Respondent failed to control the suspect as he fell to the ground because of the Respondent sweeping his legs out from underneath him. The suspect raised his leg 1 to 2 inches off the ground triggering the Respondent to sweep both of the suspect's legs out from underneath him. The suspect lifting his leg 1 to 2 inches off the ground does not create an exigency or rise to the level of assaultive behavior because the suspect may have been adjusting his stance to gain his balance due to his intoxication level or the pain and discomfort from having multiple ribs fractured from the punches the Respondent delivered minutes earlier. Therefore, the Respondent assumed the suspect was going to kick him was not reasonable given the totality of the circumstances.

Dishonest act #4. That the suspect was unconscious for 2 to 3 seconds

From the report authored by the Respondent.

"While guiding Suspect to the ground he fell awkwardly due to his level of intoxication and struck the side of his head on the ground *causing him to lose consciousness for approximately 2-3 seconds* [emphasis added]."

IA finding (page 63 of IA Report)

The Respondent violated Department Procedure 1.04, Section VI, B, when he failed to accurately document all the facts and circumstances surrounding the force he used during the arrest of the suspect.

The Partner and Respondent placed the suspect under arrest and escorted him outside of his apartment. The suspect was handcuffed behind his back. The Respondent used an unapproved takedown technique on the suspect when he swept his legs out from underneath him. This resulted in the suspect falling to the

ground, while handcuffed, causing the suspect to be rendered unconscious for at least 2 minutes and 58 seconds.

The Respondent's BWC showed the Respondent go onto his knees as the suspect hits the ground. The Respondent keyed his radio and asked SDPD communication to send medics 11 seconds after the suspect hit the ground. 48 seconds after the suspect hit the ground, the Respondent keyed his mic and advised the suspect lost consciousness for 2 to 3 seconds. 1 minute after suspect hit the ground, the Respondent gave the suspect a sternum rub and told the suspect to "wake up." 1 minute and 5 seconds after the suspect hit the ground, the Respondent checked the suspect's pulse. 1 minute and 47 seconds after the suspect hit the ground, the Respondent checked the suspect's pulse while the suspect can be heard snoring. 2 minutes and 58 seconds after the suspect hit the ground, the Respondent's BWC beeped, and the suspect moved his head for the first time since contacting the ground.

Approximately ten minutes after the suspect hit the ground, San Diego Fire personnel arrived in the hallway. The Respondent told Fire personnel the suspect was unconscious for, "2 to 3 seconds." Approximately eighteen minutes after the suspect hit the ground, paramedics arrived on scene. The Respondent told paramedics the suspect was unconscious for, "2 to 3 seconds."

In the Respondent's report, he wrote, "While guiding the suspect to the ground he fell awkwardly due to his level of intoxication and struck the side of his head on the ground causing him to lose consciousness for approximately 2-3 seconds." This statement is factually incorrect and grossly misstates the time the suspect was unconscious. As stated above, the suspect was rendered unconscious for approximately 2 minutes and 58 seconds.

During the Respondent's interview, he said he observed the suspect snoring and saw his eyes flutter as a sign the suspect was conscious. The Respondent clarified his statement and said he misspoke. He said his time assessment was wrong when he said the suspect was unconscious for 2 to 3 seconds. Clearly, the suspect is unconscious for longer than 2 to 3 seconds. The Respondent said, "The Suspect was alive but as far as awake and alert, no." The Respondent was asked if he was accurate in his report. The Respondent responded, "No. I think it's pretty clear."

The Respondent's lack of a feasible, safe plan to take the suspect to the ground after he performed an unauthorized leg sweep takedown on a handcuffed prisoner resulted in the suspect being knocked unconscious. The Respondent told medics and fire personnel; the suspect was unconscious for 2 to 3 seconds. The suspect was unconscious for approximately 2 minutes and 58 seconds. The Respondent had a duty to the care and wellbeing of the suspect who was in his custody, but instead provided medical personnel with inaccurate information as to how long the suspect was unconscious. The Respondent admitted to being

wrong in his time assessment of the suspect being unconscious, thus, providing a wrong injury assessment to medical personnel for an injury he caused.

From the IA interview

1:24:40 “So if someone is snoring, you classify that as consciousness? No, sir.”

1:25:00 “I believe I misspoke on consciousness.”

1:36:01 “Did you review your BWC before you wrote your report?” “Uh, yes sir.” Then… “Parts of it sir, yes sir.” “The strikes where I was striking him” “His cues and everything.” “Generally, I probably watched the whole thing. But I can’t say for sure that I watched every single second with 100 percent focus.” “So now after watching it…”

1:36:46 “I would air it differently.” “I would air it that he’s been unconscious for roughly 2 minutes.”

1:37:21 – they hit him with, if you watched the BWC before writing your report, why didn’t you report that he was unconscious for longer?

1:37:59 – “Did you watch the video in relation to him being knocked unconscious? And the 3 minutes after he hit the ground?” “No, not that I remember sir.” “Specifically, what I remember watching for was my use of force.”

1:39:33 – “Do you think you were accurate in saying he was unconscious for 2 to 3 seconds?” “No. It’s pretty cut and dry.”

The suspect was arrested for resisting/delaying a peace officer. The Respondent had a duty to report the facts relating truthfully and accurately to this offense. Instead, the Respondent mitigated the harm to the suspect by stating in his police report that the suspect the suspect had immediate access to a weapon during initial contact, used distraction blows to secure an arm, guided the suspect to the ground after the leg sweep and stating in the report and to medical providers the suspect was unconscious for 2 to 3 seconds.

When asked in his administrative interview, the Respondent admitted to being wrong in his time assessment of the suspect being unconscious. Based on my review of the BWC footage, relevant arrest reports, and Respondent’s interview, I therefore find that clear and convincing evidence exists to show that Respondent engaged in dishonesty relating to the reporting of a crime.

VI. Supporting Evidence and Documentation

- Attachment A – The Respondent's police report, dated April 10, 2020
- Attachment B – Page 40 of Internal Affairs Report
- Attachment C – Page 41 of Internal Affairs Report
- Attachment D – Page 53 of Internal Affairs Report
- Attachment E – Page 54 of Internal Affairs Report
- Attachment F – Page 56 of Internal Affairs Report
- Attachment G – Page 57 of Internal Affairs Report
- Attachment H – Page 63 of Internal Affairs Report
- Attachment I – The Respondent's Body Worn Camera Footage

VII. Findings

Reasonable grounds exist to submit the case to the Peace Officer Standards Accountability Advisory Board and the POST Commission for consideration of revocation pursuant to Penal Code 13510.8.

CONFIDENTIAL – DO NOT DUPLICATE

arm to push down on S1's right side with about 40% of my body weight. By pushing down on his right side, more space was created on his left side pull his left arm out from underneath him. This also gave my partner more room to pull S1's left arm out from underneath him. S1 did not comply with my commands to give us his hand.

While still having control of S1 right arm with my left hand, I used my fist and hit S1 with 6 distraction blows. I struck S1 with a closed fist 6 times on the back rib area. I was targeting the soft area to minimize injury. My intent in striking S1 was to have him comply and give us his hand to prevent any further injury. After each strike, I gave S1 commands and visually inspected to see if he gave us his left arm. In between each strike, I gave S1 about half of a second to comply. I believe this was enough time between each strike to show compliance. I stopped striking S1 as soon as he took his left arm out from underneath his body and put it behind his back. When both of S1's hands were behind his back, S1 was handcuffed.

I walked S1 through the apartment and into the hallway. S1 appeared to be drunk and needed my assistance to walk. In the hallway, S1 was able to stand on his own. I never tried to sit S1 on the ground. I told my partner to go inside so he could get all the information needed to complete the report. I wanted to clear the scene as soon as possible because we were at an apartment on the seventh floor and security has to use a key fob to let you into the building. If we needed cover it would take a long time for cover to assist us. With us being on the seventh floor, it was going to take a while for us to get down to our vehicles. I wanted to get to a "sanitized," safe environment. The hallway is not as safe as my patrol car or jail.

In the hallway, S1 became aggressive towards me when I was "subduing" him. He was shifting his weight, puffing his chest off the wall, pushing up against me and yelling at me. He called me an "m-fer" several times. I used my physical strength to press S1 against the wall. I had my left hand on his left arm and my right hand on his right hip.

I saw the pre-assaultive cue of S1's cocking his right knee up. His foot lifted 1 to 2 inches off of the ground. I perceived his cocked knee as an attempt to kick me. I used my right leg and kicked his right leg also hitting his left leg. I thought I would be able to gain my balance in a timely fashion to take him to the ground. My plan was to keep my left hand on his left arm and use my right hand to control his body to the ground. I did not necessarily control him. fell to the ground and hit his head.

I have additional training in judo, taekwondo, high school wrestling and the Marines. I was taught three or four different movements to block a leg kick in judo. I was taught a lot of movements to block a leg kick in wrestling. I was taught a few ways to block a leg kick in taekwondo. Also, I was taught ways to block a leg kick in the Marines.

CONFIDENTIAL – DO NOT DUPLICATE

I aired S1 was unconscious for 2 to 3 seconds. I took S1 snoring and seeing his eyes flutter as a sign of consciousness. I also felt S1 move a little. I think more importantly, it was a sign that he was alive. I misspoke and used the wrong word. Basically, saying that he lost consciousness for 2 to 3 seconds was a wrong time assessment on my part. He was alive but as far as awake and alert, no.

I took S1 pulse and applied a stern rub 1 minute and 1 second after he hit the ground. This is an effective way of waking someone up and or keeping them awake. At this time, I knew S1 was asleep.

At 1 minute and 47 seconds after S1 hit the ground I checked his pulse. At 2 minutes and 47 seconds after S1 hit the ground I told him to wake up. I could feel him moving and breathing.

About 10 minutes after S1 hit the ground, I told fire personnel that S1 was unconscious for two to three seconds. That was my assessment from when he started snoring and showing me he was still alive. About 18 minutes later, medics showed up and I told them S1 was unconscious for 2 to 3 seconds.

I am not sure why my BWC only has 35 seconds of buffer mode. I might have reset it when I got into the building or I might have had it off because I was eating or going to the bathroom. I can't tell you why, specifically. I reviewed parts of my BWC prior to writing my report. If I had to air this again, I would air it differently. I would say he was roughly unconscious for 2 minutes.

I asked Officer Fuston, "In hindsight after talking about all of this, do you think you violated Department Policy 9.28, which is accurately reporting." There was a short pause while I shuffled paper to grab a print out of the policy and Sergeant Adair asked, "Do you think you were accurate is saying he was unconscious for 2 to 3 seconds?"

No. I think it's pretty cut and dry.

I asked Officer Fuston, "Do you think you were less then truthful when you told medics and the Sgt. on scene how long S1 was unconscious?"

Not in the moment. Being on scene and what I said at the time was a 100% the truth of what I felt at the time.

If I could do it differently, I would have S1 sit down in the hallway. My intentions going to every call is to preserve life over anything else. I never want to hurt anyone. I had no intentions of deceiving anyone when I said S1 was unconsciousness for 2 to 3 seconds.

The interview concluded at 1635 hours.

PDF-XChange Product Click to buy NOW! www.tracker-software.com

San Diego Police Dept
Officer Report

CAD Event No. **E20040016440**

Case No. **20019975**

Report No. **20408**

GENERAL CASE INFORMATION

Special Studies:			Related Cases:
Location, City, State, ZIP: [redacted]			Occurred On: **4/10/2020 7:21:13 PM (Friday)**
Jurisdiction: [redacted]	Beat: **524**	Call Source:	(and Between):

INDIVIDUAL/S

Name: S1 [redacted]					Person Code:			Interpreter Language:
ALIAS / AKA / NICKNAME / MONIKER:								
Home Address, City, State, ZIP: [redacted]					Res. Country: [redacted]		County Residence:	Undocumented:
Race: [redacted]	Sex: [redacted]	Date of Birth / Age: [redacted]	Height:	Weight:	Hair Color:	Eye Color:	Facial Hair:	Complexion:
Employment Status:		Occupation/Grade:		Employer/School:			Employer Address, City, State, ZIP:	
CONTACT INFORMATION								
IDENTIFICATION:								

Attire:	Injury:	Extent Of Treatment:	Violent Crime Circumstances:
Subject Injury Description:			
Officer Injury Description:			

REPORT NARRATIVE

On 04/10/2020 at 1908 hours, I was on duty in full uniform, and driving a marked police vehicle when I responded to investigate a domestic violence occurring at INCIDENT ADDRESS [redacted]. The reporting party V1 [redacted] stated her boyfriend, later identified as S1 [redacted] by a recent booking photograph, hat hit her in the face. I arrived on scene at approximately 1920 hours with Officer Campante #7831. V1 answered the door to INCIDENT ADDRESS [redacted].

I noticed V1 had several abrasions on her face, a large bruise on her left hand, and a bruise on the bridge of her nose. I heard V1 tell Officer Campante that S1 was drinking all day and at one point started "pounding on her". From prior contacts with V1 I know she has several medical issues and there is a history of domestic violence incidents between her and S1 [redacted].

I walked into V1 apartment where S1 was sleeping on her bed. I noticed when I walked into the apartment there were several large knives in the vicinity of the bed where S1 was sleeping. I moved one knife to ensure S1 would not have access to it. From past domestic violence incidents at this location I know that S1 is often violent with police and has a tendency to become aggressive when he has consumed alcohol.

I noticed a heavy smell of an alcoholic beverage as I approached S1 [redacted] sleeping. I attempted to wake S1 [redacted] gently to ensure he did not become violent by being startled. After several attempts to wake S1 [redacted] he finely woke up and began to speak to me. I told S1 [redacted] that we needed to take his statement about the event. S1 [redacted] was slurring his speech and seemed disoriented. I identified myself as a San Diego Police Officer to S1 [redacted].

I attempted to aid S1 [redacted] to his feet so we could speak to him and determine the dominant aggressor in the situation. S1 [redacted] tensed his arms and pulled them away from me. He also cocked his right leg into a kicking position. Fearing he would kick me I rolled S1 [redacted] onto his face and placed his right arm into a rear wrist lock to gain his compliance and prevent him from hurting me or Officer Campante. I applied enough pressure on his wrist to control it and held his right elbow to prevent him from hitting me or Officer Campante. I could feel that S1's [redacted] muscles were extremely tense and he was thrashing right and left to try and get up. S1 [redacted] forced his left hand underneath him towards his waistband. Knowing that I had seen several large knives in the apartment and that they were spread out randomly throughout the apartment I feared there may be another knife in the bed with S1 [redacted]. I also had not been able to check if S1 [redacted] had a weapon on his person.

I could see that Officer Campante was fighting to get S1 [redacted] arm from underneath his body. I instructed S1 [redacted] to give us his arm. S1 [redacted] continued to resist and reach towards his waistband. I struck S1 [redacted] with a closed fist six times in his right

PDF-XChange Product Click to buy NOW! www.tracker-software.com

back rib area telling him to give us his arm each time. S1 complied after the sixth closed fist strike and he was handcuffed by Officer Campante.

I walked S1 outside to ensure he was away from V1 and did not have any access to the numerous knives in the apartment. I pushed S1 into the wall and held him there with both hands. S1 began to yell at me and become aggravated that I had struck him. S1 tensed his muscles up and tried to push off the wall by puffing his chest out. S1 said that he wanted to turn around and I told him not to. S1 cocked his right knee upward. Fearing S1 was attempting to kick me in the groin to incapacitate me I kicked his feet out from underneath him using my right leg. I knew that a kick from that distance to my groin or a joint has the ability to cause severe injury to me. I knew that S1 was in handcuffs and was unable to control himself during a fall so I held onto his upper body with both of my hands to guide him to the ground where he could no longer kick me. While guiding S1 to the ground he fell awkwardly due to his level of intoxication and struck the side of his head on the ground causing him to lose consciousness for approximately 2-3 seconds.

I immediately called for an ambulance and checked S1's pulse. I could hear that S1 was still breathing. I continued to talk to S1 and held him in the recovery position to ensure he was stable until medics arrived. S1 was transported to UCSD hospital for further treatment due to his loss of consciousness.
See Officer Campante # 7381 arrest report for further.

Approved by: Sgt. J. McAnnally #4593

throughout the apartment I feared there may be another knife in the bed with S1) While Officer Fuston may have thought S1 was reaching for his waistband, his reasoning is based on an unsubstantiated threat or unreasonable belief that everyone is armed until he pats them down. When Officer Fuston pushed S1 onto the bed, S1 left arm was in front of his body. From Officer Fuston's BWC and statement, Officer Fuston pulled S1 right arm behind his back and applied downward pressure to S1 back, thus, pushing S1 onto his stomach on top of his left arm. This essentially trapped S1 left arm underneath his body on a soft bed with downward pressure from Officer Fuston, who weighs 270 lbs.

Although it's appropriate for Officer Fuston to consider the possibility a person could have a weapon, as a factor for using force, his statement that it's his belief that everyone has a weapon until he pats them down is not practical or reasonable. An officer needs to S1 clear and specific facts as to why he believes a person is armed with a weapon in order to perform a "pat down," unless consent is given. Officer Fuston's belief S1 was armed with a deadly weapon is not supported by the details related to this radio call or his report. The facts of this radio call and the events preceding Officer Fuston delivering six punches to S1's back are as follows:

- On the notes of the radio call there was no mention of a weapon.
- Tait did not mention any weapons were used when she spoke with officers.
- The steak knife on the kitchen table was a few feet away from the kitchen and it was no longer in S1 reach once Officer Fuston moved the table.
- Officers did not check the bed for weapons prior to waking S1.
- The officers rolled S1 onto his back and had a clear view of S1 waistband for several seconds.
- During Officer Fuston's verbal commands to S1, there was no mention of weapons or statements indicating S1 was believed to be armed.
- Officer Fuston or Officer Campante did not pat down S1 until he was taken outside the apartment into the hallway.
- Neither officer performed a pat down of the bed or the surrounding area once S1 was taken into custody.
- Neither officer made note of a specific weapon in their report, besides the steak knife on the kitchen table.

Therefore, Officer Fuston's statement that he believed S1 had immediate access to a deadly weapon is not supported by specific articulable facts that would lead a reasonable officer to believe S1 had or was reaching for a weapon at the time Officer Fuston punched him six times.

From Department Procedure **1.04 USE OF FORCE, IV, H**

> Distraction Techniques - acts used to divert or redirect a subject's focus away from resistive behavior in order to assist the officer in gaining control of the individual. Distraction techniques may include an open-handed strike and/or knee strikes that specifically target the lower body, such as the buttock or thigh area. These are controlled strikes, using a lower level of force. These lower level types of strikes are not intended, nor likely to cause serious injury. Personal body weapons may be used under these constraints, when lesser controlling force has not been effective, or the officer reasonably believes lesser controlling force will not be effective. If a distraction technique proves ineffective, a different distraction technique or force option should be considered.

Officer Fuston said he struck S1 with six closed fist "distraction blows" to the back rib area. These strikes resulted in S1 sustaining closed fractures to multiple ribs. These injuries are not consistent with distraction blows. Furthermore, the use of closed fist strikes as distraction techniques is not authorized per Department Procedure 1.04.

In conclusion, Officer Fuston said he hit S1 with six distractions blows to the back rib area. Distraction blows target the lower body and are defined as open handed lesser controlling strike, using a lower level of force. Therefore, the manner (closed fist) and force, in which Officer Fuston delivered what he considered distraction blows is not within policy. Officer Fuston said he believed S1 was armed with a weapon. However, he could not articulate specific or articulable facts to support his belief that S1 was armed or had immediate access to a weapon at the time he punched S1 multiple times. Officer Fuston said he believed S1 was reaching for a weapon in his waistband, but BWC evidence showed S1 's left arm was pinned underneath him. Officer Fuston was applying downward pressure and using his own body weight to push on S1'S back. This made it extremely difficult for S1, who was intoxicated, awaking from being passed out or asleep and 30 years older than Officer Fuston to have the physical strength to pull his left arm out from underneath his body when pinned down by a 270 lbs. officer.

Use of Force Expert, Officer Rhoten, reviewed the six closed fist strikes to S1 back and said, "The closed fists strikes to S1's back and ribs by Officer Fuston are not in line with what is taught at the San Diego Regional academy and during AOT. Officer Fuston's use of closed fist strikes to the back and ribs of S1 are also not in accordance with San Diego Police Department Policy and Procedures." Lastly, Officer Campante who was on scene with Officer Fuston said he did not believe it was necessary for Officer Fuston to punch S1. Officer Campante said S1 was elderly, intoxicated and with a little patience, S1 would have complied. For Officer Fuston's to deliver six full force punches as distraction blows to S1'S back were not reasonable based on the totality of the situation and S1 level of resistance at that time. Therefore, this allegation is **SUSTAINED**.

section 5150 into protective custody. Additionally, officers shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.

The U.S. Supreme Court in *Graham v. Connor,* 490 U.S. 386 (1989), acknowledged that the "reasonableness" test in analyzing the use of force is "not capable of precise definition or mechanical application." For that reason, in determining whether an officer's use of force is reasonable in a particular case, it is necessary to evaluate the facts and circumstances confronting the officer at the time that force was used. All of the surrounding circumstances will be considered, including whether the subject posed an imminent threat to the safety of the officer or others, the severity of the crime at issue, and whether the suspect actively resisted arrest or attempted to flee.

IV. DEFINITIONS

A. Active Resistance – Physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, running away or verbally signaling an intention to avoid or prevent being taken into or retained in custody.

B. Assaultive Behavior - behavior that consists of aggressive physical opposition to being physically controlled and conveys a threat of injury to the officer; or, behavior that consists of a threat of attack conveyed through aggressive physical actions or aggressive physical actions coupled with verbal threats. Verbal threats alone do not constitute assaultive behavior. Assaultive behavior can be directed at the officer or others.

G. Defending Force - the force needed to stop assaultive behavior against an officer or another person. This level of force generally involves impact strikes by the officer. Impact strikes can be delivered either by personal body weapons (e.g., hands, feet, knees, etc.) or impact weapons (e.g., PR-24, OPN, Baton, Flashlight). Due to the potential for serious injury, intentional strikes with an impact weapon are prohibited from being directed at the head, face or throat of the subject unless the subject's actions and behavior pose an imminent threat of death or serious bodily injury to the officer or others.

V. PROCEDURES

B. Officers should use caution when using a takedown technique on a handcuffed prisoner. There is potential for injury since the prisoner's hands are behind his or her back, and they have no way of breaking his or her fall. If possible, when the person is handcuffed, officers should consider other controlling methods prior to a takedown.

As stated in the two previous allegations, Officer Campante and Officer Fuston entered the apartment with the intention of placing S1 under arrest for felony domestic violence. After a struggle, Officer Campante placed S1 in handcuffs. Officer Campante and Officer Fuston walked S1 out of the apartment and into the hallway. Officer Campante went inside the apartment to finish gathering details for V1 's statement.

Officer Fuston's BWC video shows him in the hallway with S1 for approximately 1 minute and 10 seconds prior to S1 being taken to the ground. Officer Fuston is standing close to S1, therefore, the camera view is narrow and mostly captured S1 upper body. S1 was handcuffed with his hands behind his back.

While Officer Fuston searched S1's pockets, Officer Fuston used his off hand to apply pressure to S1 s back forcing S1's chest against the wall. S1 tried to move his upper body several times, but Officer Fuston pushed S1 against the wall. Officer Fuston told S1'S to "stop" several times. S1 called Officer Fuston a, "Chicken mother fucker." S1 appeared to be intoxicated as he complained about Officer Fuston punching him in the ribs.

S1 turned his upper body to his left away from the wall. Officer Fuston still had control of S1. Officer Fuston had his left hand around S1 's left bicep and his right arm pressed against S1 upper back. S1's right shoulder was against the wall and his left shoulder was bladed towards Officer Fuston. Officer Fuston was positioned to S1 left side and was standing slightly behind S1 when Officer Fuston swept S1 's legs out from underneath him and forced him to his right side. As S1 was being forced to the ground, Officer Fuston only controlled his fall by holding his left shirt sleeve with his left hand. Officer Fuston's right hand was not touching S1. S1 's head was not controlled, thus, resulting in S1 s head colliding against the concrete floor.

During Officer Fuston's interview, Officer Fuston said S1 appeared drunk and needed his assistance to walk through the apartment into the hallway. Per Officer Fuston, S1 became aggressive and did the following: shifted his weight back and forth, puffed his chest off the wall, pushed up against Officer Fuston and yelled at him. Officer Fuston used physical strength to press S1 against the wall. While Officer Fuston had his left hand on S1's left arm and his right hand on S1's right hip, S1 lifted his foot 1 to 2 inches off of the ground. Officer Fuston took this as a pre-assaultive cue. Officer Fuston responded by, using his right leg to kick S1's right leg out from underneath him. This leg sweep also kicked S1's left leg out from underneath his body. Officer Fuston thought he would be able to gain his balance in a timely fashion to safely control S1 to the ground. Officer Fuston's plan was to keep his left hand on S1 's left arm and use his right hand to control S1 's body to the ground.

While in the hallway with S1, Officer Campante was inside the apartment when S1 was taken to the ground. Officer Campante was less than ten yards form Officer Fuston and S1. During the 1

CONFIDENTIAL – DO NOT DUPLICATE

OTHER FINDINGS:

3. PROCEDURE-SUSTAINED

Officer Fuston violated Department Procedure 1.04, Section VI, B, when he failed to accurately document all the facts and circumstances surrounding the force he used during the arrest of S1.

On April 10, 2020, at 1908 hours, Officer Fuston and Officer Campante responded to a domestic violence radio call located at INCIDENT ADDRESS. The reporting party, V1, called San Diego Police to report her boyfriend, S1, hit her in the face an hour ago. V1 informed SDPD dispatch that S1 was asleep inside the apartment.

From Department Procedure **1.04 USE OF FORCE (February 28, 2020)**

VI. REPORTING THE USE OF FORCE

B. Officers who use force shall ensure that detailed, accurate reports (arrest, detention, or ARJIS-9) describing the force used and all the circumstances and facts surrounding the use of that force are prepared, including, but not limited to, factors listed in the Force Matrix section of this procedure. In addition, force effectiveness statistical data is also collected whenever force is used. To facilitate this, officers will complete a Use of Force, Blue Team entry.

From Department Procedure **6.01 HANDCUFFING, RESTRAINNING, SEARCHING AND TRANSPORTING PROCEDURES (January 23, 2019)**

III. BACKGROUND

Officers are responsible for the safety and wellbeing of all subjects who are taken into custody. It is an officer's duty to keep prisoners safe from harm and prevent their escape, while also protecting others and preserving evidence.

As stated in allegation 3, Officer Campante and Officer Fuston placed S1 under arrest and escorted him outside of his apartment. S1 was handcuffed behind his back. Officer Fuston used an unapproved takedown technique on S1 when he swept his legs out from underneath him. This resulted in S1 falling to the ground, while handcuffed, causing S1 to be rendered unconscious for at least 2 minutes and 58 seconds.

Officer Fuston's BWC showed Officer Fuston go onto his knees as S1 hits the ground. Officer Fuston keyed his radio and asked SDPD communication to send medics 11 seconds after S1 hit the ground. 48 seconds after S1 hit the ground, Officer Fuston keyed his mic and advised S1 lost consciousness for 2 to 3 seconds. 1 minute after S1 hit the ground, Officer Fuston gave S1 a