

JERSEY VILLAGE POLICE DEPARTMENT



CONFIDENTIAL

IAD# 1902

Investigative Findings

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JERSEY VILLAGE POLICE DEPARTMENT

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Incorporated 1956 A Texas Star Community

Eric Foerster, MPA
Chief of Police

September 6, 2019

Summary of Finding IAD 1902

Introduction

On August 27, 2019, JVPD case 1900015849, Ivette Morales, was arrested by JVPD officers for her suspected involvement in a DWI related FSGI accident, within the city of Jersey Village and evading from a JVPD officer, into Harris County. That pursuit ended in a second injury accident, in Harris County. Afterward, Morales was arrested and transported to the Jersey Village Police Station, where she was alleged to have damaged city property. Specifically, Morales damaged a JVPD jail cell phone receiver while in Cell A. Cpl. Mark Zatzkin investigated the damage of city property by Morales. During that investigation, Morales was alleged to have assaulted Cpl. Zatzkin with her hands. Cpl. M. Zatzkin used force (soft weaponless control) against Morales to stop her assault and place her back into handcuffs. After Cpl. M. Zatzkin's use of force, Cpl. M. Zatzkin was alleged to have failed to comply with the JVPD Use of Force Aftercare Policy.

Scope and Authority

I, Detective Sgt. D. Limerick, was contacted by, Chief E. Foerster, with a request to investigate this incident, IA1902, for policy violations, August 29, 2019. Patrol Lt. B. Ferguson's internal Complaint Intake form, Investigation Notice, and Lt. Ferguson's Memorandum to Chief Eric Foerster, concerning the alleged policy violation, were included in this file. The specific allegation was a failure to comply with the aftercare policy in the Use of Force section of the JVPD Policy Manual.

All police officers, employed by the Jersey Village Police Department, are required to follow the policies in the JVPD Policy Manual. The requirement for JVPD officers to have knowledge of the policies within the Policy Manual are detailed in Chapter 1 GENERAL PROVISIONS. In part, Section 1.01.03 states, "It shall be the responsibility of every employee, police officer and reserve police officer to have knowledge of all policies, procedures and regulations contained in this manual..."

A copy of the Policy Manual must be kept by JVPD officers and they are required to stay up to date on the specific policies within it. A digital copy of the Policy Manual is also available to all officers on the departmental server. I checked for the latest JVPD policy manual on the Import/Export folder of the JVPD server, under the Forms/Policy & SOP folder and found a

November 2017 amended version of the Policy Manual available to officers. I also checked with, Sonya Smith, the Administrative Assistant for Chief of Police, Eric Foerster, who had digital copies of the current and former revised copies of the Policy Manual. Sonya Smith, showed me a copy of the most recent February 2018 version of the Policy Manual, which I found identical to the November 2017 version of the Policy Manual in all sections related to this investigation. I found that the policy section for **Use of Force – Aftercare** was added to the Policy Manual in 2016 and was not part of the Policy Manual in 2015 or earlier versions of the Policy Manual.

Areas of particular interest in this report were highlighted with red text.

According to the JVPD Policy Manual, Use of Force Section **08.01.00, IV. DEFINITIONS, K. "Aftercare"** means basic first aid provided to the injured party after a use of force of any level. **This care shall be administered when the scene is secure and care may be provided without endangering the officers on the scene. The subject receiving the aftercare shall be restrained by handcuffs or flex cuffs and shall be searched prior to the administration of first aid.**

The specific section of the Policy Manual alleged to have been violated was Use of Force Section **08.01.00, XIV. AFTERCARE**, which reads:

XIV. AFTERCARE

- A. **All officers shall administer basic first aid after any level of the use of force. This administering of first aid shall take place once the officer feels the subject is properly restrained and is no longer a threat. All weapons shall have been removed from the general area and the officer giving aid should have a cover officer present if possible.**
- B. **Care should be given to note the location of critical evidence and safety of the general public.**
- C. **Officers shall render aid while seeking help from qualified medical personnel to the best of their ability.**
- D. **Officers shall not deny medical care.**
- E. **If medical care is refused by the subject, this refusal shall be documented by an additional officer witnessing this, a video recording of the refusal, or a refusal to medical staff such as a doctor or ambulance crew.**
- F. **Aftercare shall not be administered at the expense of officer safety or the safety of the general public.**

Fact Collection Issues and Controls

The data used in reaching a finding in this investigation came by direct conversation, video and audio records, writings of Officers or complainant, or official records of the Jersey Village Police Department or the City of Jersey Village. As a core best practice, only data gleaned from direct

oral statements, written documents/statements, audio or video, or other writings of the person or those of direct personal knowledge was used to evaluate the authenticity of the conduct or relied upon to reach key conclusions.

I conducted several audio recorded interviews during this investigation which were burned to disk and attached to this report. I interviewed Cpl. Mark Zatzkin and Lt. Bobby Ferguson in separate interviews, 9-4-19, I interviewed Sgt. Danny Keele, 9-5-19 and 9-6-19, and interviewed Det. Lopez, 9-6-19.

While the included files on disk are numerous for this IA investigation, I found the following disks most relevant to this investigation and my findings.

Jail video 5 of 5: I reviewed the video from jail cell A, where Ivette Morales was housed, 8-27-19, from 1:33 PM to 1:54 PM.

Jail Video 4 of 5: I reviewed the video from jail booking area, which started when Cpl. Zatzkin brought Ivette Morales to the holding cell after the use of force until Morales' was transport to the Harris County Jail, 8-27-19, from 1:54 PM to 3:03 PM.

Pictures disk: I reviewed the photos of Cpl. M. Zatzkin's injuries.

Details of Finding

In the Cell A video, Morales was clearly upset and repeatedly stated, she wanted to go home and wanted to see her two girls. She had the outward signs of a person with high level of intoxication. She was housed in Cell A, according to Sgt. D. Keele, due to her refusal to cooperate with the booking/fingerprinting and refusal to provide a breath specimen, with a hope that she would sober up, calm down, and cooperate with officers.

Cpl. J. Taylor and Sgt. Keele put Morales in cell A at 1:33 PM. After a few minutes, Morales began to pace the cell, bang on the cell door/window, and checked the phone in Cell A (which was deactivated). After screaming, "Please...I want to go home...I can't do this..." for several minutes, and several checks of the phone receiver, Morales began beating the phone receiver into the base/hanger with great force, only pausing to readjust/brace herself to deliver more force to the receiver with her strikes. After she delivered approximately 40 consecutive hard strikes with the receiver, dispatch put out a call for an officer to the jail. Cpl. Taylor and Cpl. Zatzkin both responded. Cpl. Taylor arrived first, at 1:44 PM, with his trainee, Officer Polster, and Cpl. Taylor attempted to calm Morales down.

Cpl. Zatzkin arrived shortly after at 1:46 PM. In his interview, Cpl. Zatzkin stated that he arrived to conduct a criminal mischief investigation in Cell A, which he was dispatched to. Cpl. Zatzkin asked Morales, "How about we transport you to Harris County right now, are you ready to go?" Zatzkin then told Cpl. Taylor, "Probably ought to check the phone and make sure if its damaged." Cpl. Taylor inspected the phone and Cpl. Zatzkin told Cpl. Taylor, "Take pictures of that."

At that point, Cpl. Taylor and Officer Polster left the jail area in search of a digital camera and Zatzkin stayed in the doorway of Cell A with Morales. In his interview, I asked Cpl. Zatzkin why he stood in the doorway. Zatzkin told me it was to secure the scene until the camera arrived and prevent Morales from damaging anything else.

While Cpl. Zatzkin was in Cell A awaiting the camera he told Morales, "I told you not to do this stuff. I warned you. You're doing that. I told you you're gonna make things worse and you did. Do something else and make it worse even more. You could have left from here...and now you are going to go to Harris County jail and be there for several days and now you have an additional charge. Now you can do some more stuff and make it even worse. You did that..." Morales interrupted him saying, "I didn't do anything." Zatzkin finished, saying "I told you what to do."

At approximately 1:50 PM, Cpl. Hale arrived and asked if everything is all right. Cpl. Zatzkin stated it was and Cpl. Hale left.

Officer Polster arrived just after Cpl. Hale's departure and began taking photos of the Cell A phone receiver at Cpl. Zatzkin's direction. Cpl. Zatzkin told Officer Polster, "I guess if she keeps it up, put her in a straitjacket and then she can go to county..." Zatzkin also told Polster to, "...call Lerma and have him call the DA's Office for additional charges." Polster asked Cpl. Zatzkin if Zatzkin had the case number and Cpl. Zatzkin replied, "I don't, dispatch will have that."

Upon hearing Cpl. Zatzkin say he did not have the case number, Morales exclaimed, "Of course you don't, you're a fake ass mother fucker! <Indecipherable>!" as Polster left the area. Morales got up from her seated position and approached Cpl. Zatzkin telling him, "I want to go home to see my girls. That's it. To my girls. Why, why, why are you so mad?" To which Zatzkin replied, "I'm not mad..." Morales became louder and more agitated as she said, "I wanna go see my girls." Zatzkin replied, "Well then you shouldn't have been..." but was cut off as Morales yelled, "That's it! I want to go home to my girls." Cpl. Zatzkin noticed Morales getting into an agitated state, and told Morales, "Go sit down."

Morales initially complied and returned to the other side of the cell and sat down on the south side bedding area. According to Cpl. Zatzkin and Sgt. Keele, in their interviews, it was at this time that Cpl. Zatzkin attempted to call Officer Lerma and Sgt. Keele via Lerma's cell phone; however, Officer Lerma and Sgt. Keele were speaking with a Harris County DA about getting a blood draw warrant for Morales and Officer Lerma rejected the call. As Cpl. Zatzkin attempted to make the phone call, Morales became agitated again and said, "I want to go home to my girls. I'm so <inaudible>." Morales started crying and yelling something indecipherable as she began pounding her fist into her open palm, yelling, "<indecipherable> let me go home to my girls! That's it! I want to go home to my girls!" Cpl. Zatzkin then radioed for "D07 (Officer Lerma)..." to, "...public service (contact him by cell phone)"

Morales got up and paced to the shower area of Cell A and asked, "Why did you do it?" Morales then turned and faced Cpl. Zatzkin, who was standing in the open doorway of Cell A, facing Morales. Cpl. Zatzkin was leaning with his right elbow elevated, resting on the Cell A doorframe, with his cell phone in his right hand, held up toward his face, with his elbow bent about 90 degrees. Cpl. Zatzkin's left arm was slightly in front of him, bent slightly at the elbow, with his left hand

near the front of his belt line. Morales then approached Cpl. Zatzkin in a questioning but aggressive manner, with her hands up in front of her, palms open and forward, asking, "What did I do? What did I..."

The assault and use of force occurred in approximately one second and almost in one continuous motion. Morales accelerated her forward momentum and lunged into Cpl. Zatzkin. She attempted to shove him with her left palm under Cpl. Zatzkin's left chest area and her right hand by his left side, under his left elbow area. In his interview, Cpl. Zatzkin told me he could only remember that Morales' nails gripped into his left forearm, causing him pain, and he pushed her with both hands.

In the video, I noted that Cpl. Zatzkin initially reacted by stepping back slightly with his right foot to brace for Morales' shove and by sweeping his left forearm out to deflect Morales' left hand on his chest, though his reaction did not start until she was already too close to stop her initial contact. As Morales' left hand/arm were deflected to her right across the front of her body, she rotated to her right slightly. Simultaneously, Cpl. Zatzkin left his left foot in place, pivoted toward Morales and took a single step toward her, with his right foot. In the jail video, I saw Morales' right arm was bent, held across her torso to the left with her hand in a grasping C type of position, as her hand lost contact with Cpl. Zatzkin. Morales pulled her right hand back in, as she was losing her balance and turning to her right. Cpl. Zatzkin, still holding his cell phone in his right hand, pushed Morales in the left side of her ribcage with his right palm, still holding his cell phone, with screen facing her. Zatzkin appeared to be able retract his left hand to use a small amount of his left hand to assist in a simple, straight, two-armed shove of Morales, to get her away from him.

It was not clear from the jail video if Morales grabbed Zatzkin's left arm with her right hand upon initial contact from underneath or as she lost balance. Morales fell hard, back and to her right side. She landed with her right hip/waist area into the corner of the raised concrete bed foundation. With the impact of only her right side into the concrete corner, approximately 6" off the jail floor, Morales continued her fall onto her back, and pivoted to her left, striking the back of her head against the 90 ledge of the other raised concrete bed foundation, before she came to rest on her left side. She immediately grabbed the back of her head with her right hand. Cpl. Zatzkin appeared to maintain his head oriented toward Morales as she fell, but also slightly lost his balance and had to brace himself with his left arm against the jail wall after his push and during Morales' fall.

Cpl. Zatzkin told Morales, "Don't do that! Don't do that! Don't you attack me! Now you're going to get charges for assaulting a peace officer! Are you out of your mind?" Morales did not respond as she rolled from her left side to her back, grabbing the back of her head with both hands and crying. At that moment, Sgt. Keele called Cpl. Zatzkin on the cell phone and Cpl. Zatzkin told Sgt. Keele, "Hey, I'm calling the Chief, she just tried to assault me." Morales sat up and Zatzkin told her "Stay down." To which Morales responded, "No, I want to go home." Cpl. Zatzkin told Sgt. Keele, "She took a shot at me." Morales, hearing the comment, exclaimed, "I didn't do nothing to you, you're fucking fucked up, admit it! You're such a fucking weak ass motherfucker! I want to go home. Please, I want to go home to my family."

According to Sgt. Keele in his interview, he instructed Zatzkin to cuff Morales and place her in the holding cell of the booking area until she could be transported. Zatzkin ended his call with, "OK, will do."

Zatzkin told Morales, "Stand up." To which she replied, "No." Zatzkin told her, "It's going to hurt if you make me do this. Stand up." Morales responded, "No, no please, you've already hurt me." Cpl. Zatzkin then brought Morales' arms behind her back and used a straight arm joint lock lift to get her to stand up with the command of, "Up." Morales stood as she said, "Ouch." Cpl. Zatzkin double locked her cuffs and took her into the jail booking area. At no point in the Jail Cell A video was I able to hear Cpl. Zatzkin tell a supervisor he had a use of force, attempt to evaluate any possible injuries of Morales, or attempt to get a refusal of medical treatment from Morales.

In the jail booking area, Cpl. Zatzkin put Morales into the Jail booking holding cell at 1:55 PM. Zatzkin stayed with Morales until she was ready to be transported at 2:51 PM. At 1:58 PM Officer Polster and Officer Hill arrived to take photos of Cpl. Zatzkin's injuries. At 2:03 PM, Sgt. Keele arrived to the booking area from the Sally Port and asked Cpl. Zatzkin, "Alright, what did she do?" As Cpl. Zatzkin began to answer, Lt. Ferguson entered the booking area from the PD entrance. Cpl. Zatzkin stated, "Well, she smashing the phone back there. So I came back there to take pictures of the receiver and, uh, while they were away to get a camera, she lunged at me, grabbed my arm, and scratched my arm. When she did, I launched her." as he made a two handed pushing gesture. When Lt. Ferguson emerged from Cell A, Cpl. Zatzkin appeared to tell Ferguson a slightly shorter version of the same story. The words spoken by Zatzkin to Lt. Ferguson were only partially decipherable because of Morales' yelling at officers; however, Zatzkin made a raised arm indication of where Morales grabbed him and another pushing gesture with a completely inaudible description accompanying the push gesture that was too quiet to hear over Morales' screaming. During Zatzkin's second summary of events to Lt. Ferguson, Sgt. Keele leaned in and appeared to be trying hard to understand what Cpl. Zatzkin was saying to Ferguson. I did not initially notice in my first review of the booking video that Cpl. Zatzkin had told Sgt. Keele that he pushed Morales. Only upon an additional review did I notice it. I also had to replay that video section six times in a row to decipher the phrase, "I launched her" before I understood what Cpl. Zatzkin was saying.

In Lt. Ferguson's interview, he remembered Zatzkin telling him that he pushed Morales back or off of him, but did not discuss it in more detail until they were in the Sergeant's office, much later. In my initial interview of Sgt. Keele, he told me that Cpl. Zatzkin explained to him that Zatzkin pushed Morales back, but later Zatzkin made a statement to him more like, he pushed Morales down, and that statement was made in the Sergeant's Office. I had a second interview with Keele and clarified that he was told by Zatzkin in the booking area that Zatzkin pushed Morales, but Keele claimed he did not remember, or comprehend, that Zatzkin used the words, "I launched her." Both Ferguson and Keele agreed that Zatzkin never told them that Morales struck her head on the concrete slab of the jail cell or claimed to be in pain/injured. Both of them stated that they believed Cpl. Zatzkin would have already administered any necessary first aid, checked for possible injuries, or gotten a refusal or confirmation of the lack of need for medical evaluation from Morales because he was the only officer on the scene when the use of force occurred and because he was a supervisor. In my interview of Cpl. Zatzkin, he claimed he did not notice that Morales struck her head on the concrete and did not notice she said he hurt her in the jail. Zatzkin agreed that he should have complied with the policy on aftercare, which begins with the first step of first aid, an evaluation of the subject. Cpl. Zatzkin acknowledged that he should have gotten a refusal for medical treatment, confirmed a lack of injury, or just called EMS and let them evaluate her after his use of force. He acknowledged his own knowledge of the use of force policy, stating that he

had a copy of the Policy Manual on his desktop and taught aftercare as a use of force instructor. Cpl. Zatzkin acknowledged that he knew that he pushed Morales off her feet in a concrete room and that after the fact she did tell him he hurt her and indicated pain after seeing the video and was contrite and honest in his deficit in this case, although he claimed he did not notice those things at the time.

During the Booking area video, I did not see Morales make any references to pain or injuries, did not see her ask for medical treatment at any point, and she did not indicate pain or injury by her actions. Cpl. Zatzkin stayed with Morales until Officer Bryant was ready to process her out and transport her to Harris County jail. Cpl. Zatzkin left the booking area at 2:51 PM and Morales was escorted in to the sally port for transport at 3:03 PM.

During my interviews of Sgt. Keele, he told me that he instructed Cpl. Zatzkin to complete a use of force report in the Sergeant's Office and that Lt. Ferguson said there needed to be a first report of injury. In my interview with Lt. Ferguson, he stated that he and Keele were in the Sgt. Office together and he decided that there needed to be a use of force report and first report of injury (attached to this investigation report). Both agreed that Sgt. Keele reviewed the video from Cell A, the following morning, August 28, 2019 and that Sgt. Keele felt the use of force by Zatzkin needed review. Sgt. Keele also stated that he spoke with Det. Sgt. Lopez about the use of force report and if should check the box for further review. During that conversation, Mrs. Morales' mother called the PD and was transferred to Det. Lopez's office phone, because she spoke only Spanish.

In my interview of Det. Lopez, he stated that Sgt. Keele came to his office and asked if he should forward a use of force report for further review. Det. Lopez told Keele that if he had any doubt he should send it for review to Lt. Ferguson. At that exact moment, the call from Mrs. Morales' mother was transferred to his office and he spoke with her about the case. Lopez said that Morales' mother wanted to know why JVPD officers were harassing and hurting her daughter for a second time. Det. Lopez explained to her that her daughter was involved in a DWI injury accident and there was someone in the hospital due to her daughter's actions. He also found that Morales was indeed arrested in an eerily seminal incident 13 months prior.

I checked Morales prior arrest and read report 1800012697. That report, exactly 13 months prior, detailed an accident in Jersey Village where Morales was arrested for DWI. Morales was the suspect in a Harris county FSGI 5 minutes prior to her accident in Jersey Village and has still pending charges under HCSO case HC180120014. After fleeing the HCSO accident scene, she was alleged to have crashed into a car at Enterprise in Jersey Village and a witness saw her throw an empty Vodka bottle out the window of her vehicle. When the JVPD officer arrested her for DWI, she refused breath and blood and a blood draw search warrant had to be executed. She resisted all attempts to take her blood in a struggle at the hospital. Four partial blood vials had to be taken from Morales. That blood eventually revealed Morales' blood alcohol level was over twice the legal limit. Det. Lopez was not sure if Morales' mother was referencing her daughter being injured from her last arrest or not but it was clear she would have sustained injuries in the fight and struggle to serve the blood draw warrant in 2018. Lopez stated that Morales' mother did not request an investigation and seemed shocked when Det. Lopez explained that her daughter had

seriously injured someone while driving drunk, only saying she would have to speak with her daughter and promptly hung up.

Conclusion

It is the opinion of this investigator that the facts learned from this investigation clearly show the following:

The policy clearly indicates that "basic first aid... shall be administered when the scene is secure... the subject receiving the aftercare shall be restrained by handcuffs... prior to the administration of first aid."

Cpl. Zatzkin knew the Aftercare policy as a supervisor/use of force instructor and was certainly expected to have followed it in this case. Cpl. Zatzkin was contrite in his admission of his fault in this matter and agreed that he should have, at a minimum, asked Morales if she was injured or required EMS, if not called EMS to clear her before transport to HCSO jail. Cpl. Zatzkin stated that he had an adrenaline rush, did not notice her head strike the concrete, and did not remember Morales making statements or gestures that indicated injury. He did, however; acknowledge he pushed Morales off her feet in the concrete jail cell and even commented, "I launched her" to Sgt. Keele, indicating an automatic need for a use of force report and automatic initiation of first aid/aftercare.

While Cpl. Zatzkin's other decisions/actions during this incident could have been handled in a different manner and Sgt. Keele could have been more diligent in double checking Cpl. Zatzkin's actions at an earlier time, such evaluations are beyond the scope of this investigation. None of the other involved supervisor actions in this incident absolved Cpl. Zatzkin from his responsibility to adhere to the Aftercare policy and he was the only person who was at the scene at the time the use of force occurred.

For these reasons, the allegation of failure to follow the Aftercare policy is **SUSTAINED**.

Respectfully,


Det. Sgt. Devron Limerick