



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 16, 2018

CASE NUMBER: 2018OPA-0563

Allegations of Misconduct & Director’s Findings

Named Employee #1

| Allegation(s): | | Director’s Findings |
|----------------|--|-----------------------------------|
| # 1 | 5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing | Not Sustained (Unfounded) |
| # 2 | 8.200 - Using Force 1. Use of Force: When Authorized | Not Sustained (Lawful and Proper) |
| # 3 | 8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force | Not Sustained (Training Referral) |
| # 4 | 6.010 - Arrests 2. When Taking a Suspect Into Custody, Officers Must Identify Themselves, Inform the Suspect [...] | Not Sustained (Training Referral) |

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

It was alleged that the Named Employee violated a number of Department policies during the stop and arrest of the Complainant.

STATEMENT OF FACTS:

Named Employee #1 (NE#1) responded to a call concerning an alleged car prowler. The caller provided a description of the suspect. NE#1 conducted an area search in his patrol vehicle and observed an individual who matched the description. That individual was later identified as the Complainant. At that time, NE#1, who was still in his vehicle, asked the Complainant to stop; however, the Complainant did not do so. NE#1 told him to do so several more times and the Complainant still did not comply. The Complainant began to walk towards a stairwell. At that point, NE#1 believed that the Complainant was going to flee. The Complainant started going down the stairs and NE#1 got out of his car and followed. The Complainant then began to flee down the stairs. NE#1 chased him and grabbed on to his clothes. The Complainant began to shed his clothes and tried to pull away from NE#1. NE#1 continued to chase the Complainant and was able to wrap him in a “bear hug.” NE#1 told the Complainant to “stop” and “get on the ground” but the Complainant continued to try to escape NE#1’s grasp. NE#1 was ultimately able to get the Complainant onto the ground. NE#1 and the Complainant continued to struggle on the ground. NE#1 eventually used a “hammer strike” on the Complainant’s back. As a result, the Complainant’s resistance largely ceased and he was handcuffed.



The Complainant suffered lacerations to his head, abrasions to his torso, and claimed leg pain. The Complainant received medical treatment at the scene. A Sergeant came to the scene to screen the arrest and the force. The force was investigated as Type II.

At that time, the Complainant alleged that he had been subjected to excessive force. Specifically, he claimed that he was thrown down the stairs and that his head was slammed into rocks. As such, the Sergeant made an OPA referral.

During the force review, an Administrative Lieutenant further identified that NE#1 may have failed to properly de-escalate this matter prior to using force and that he did not identify himself or inform the Complainant of the basis of the arrest, as required by Department policy. Moreover, multiple supervisors noted tactical concerns with NE#1's decision-making during this incident. Those concerns were addressed by training and counseling. The chain of command also retrained NE#1 on SPD Policies 8.100, 6.010-POL-2, 6.220-POL-5, and 16.090-POL-1(5)(a).

OPA initiated an investigation into the Complainant's excessive force allegation, as well as into the Complainant's claim that he was subjected to biased policing by NE#1. The Administrative Lieutenant later referred allegations of failure to de-escalate and failure to identify to OPA and those allegations were added to this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

SPD policy prohibits biased policing, which it defines as "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual." (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

Based on OPA's review of the record, including the documents generated by NE#1 and the video of the incident, there is no evidence that NE#1 engaged in biased policing. Ultimately, he attempted to initially stop the Complainant because the Complainant matched the description of the subject. Moreover, NE#1 chased the Complainant because he would not stop and then used force on the Complainant when he continued to resist. NE#1 did not engage in these law enforcement activities based on some other improper motive.

As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

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

As discussed above, the Complainant alleged that NE#1 subjected him to excessive force.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends "on the totality of the circumstances" known to the officers at the time of the force and must



be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

As explained by NE#1’s chain of command, it was tactically inadvisable for NE#1 to respond to a two-officer call as a solo officer, to try to stop the Complainant by himself, and to then get into a foot pursuit and an eventual use of force without summoning backup. These issues are discussed more fully below in the context of de-escalation. However, with regard to the actual force used, I find that it was consistent with policy.

The Complainant asserted that NE#1 threw him down a stairwell and hit his face into rocks. Neither allegation was borne out by the video or by the injuries suffered by the Complainant. While the video did not show all aspects of the force, what it did portray was consistent with NE#1’s account. At the time that NE#1 tried to grab the fleeing Complainant, the Complainant physically resisted him. Accordingly, it was reasonable to use force to prevent the Complainant from further doing so and to take him into custody. NE#1 initially tried to control the Complainant’s person but, due to continuing resistance, took the Complainant down to the ground. Once on the ground, the Complainant kept struggling. NE#1 believed it necessary to use one hammer strike to the Complainant’s back to prevent him from further doing so. This strike was effective and NE#1 was then able to modulate his force and to take the Complainant into custody. Along with being reasonable and necessary, I also find that the force was proportional to prevent harm to NE#1 and to effectuate the arrest of the Complainant.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #3

8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

“De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.” (SPD Policy 8.100-POL-1.)

The policy further instructs that: “When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.” (*Id.*) Officers are also required, “when time and circumstances permit,” to “consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors” such as “mental impairment...drug interaction...[and/or] behavioral crisis.” (*Id.*) These mental and behavioral factors should be balanced by the officer against the facts of the incident “when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.” (*Id.*)

The policy gives several examples of de-escalation, which include: mitigating the immediacy of the threat to give officers time to use extra resources and to call more officers or specialty units; and increasing the number of officers



on scene to thus increase the ability to use less force. (*Id.*) Other examples of de-escalation include, but are not limited to:

- Placing barriers between an uncooperative subject and officers;
- Containing the threat;
- Decreasing exposure to the potential threat by using distance, cover and concealment;
- Avoidance of physical confrontation unless immediately necessary to protect someone or stop dangerous behavior;
- Using verbal techniques, such as “Listen and Explain with Equity and Dignity” (LEED) to calm an agitated subject and promote rational decision making;
- Calling extra resources, including CIT officers and officers equipped with less-lethal tools; and
- Using “any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject.

(*Id.*) De-escalation is inarguably a crucial component of the Department’s obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department’s policy and expectations.

The Administrative Lieutenant in NE#1’s chain of command noted concerns that NE#1 may have violated SPD Policy 8.100 during this incident. The Administrative Lieutenant referenced that: “[NE#1] went on a two-officer call by himself, made contact with the suspect, attempted a Terry stop, engaged in a foot pursuit, and made an arrest. Only after completing handcuffing was he able to request additional units.” Notably, BWV also captured other officers at the scene discussing with NE#1 his decision to contact the Complainant alone and the implications of SPD’s de-escalation policy.

Certainly, when the Complainant fled from NE#1, de-escalation was no longer safe or feasible. The question here is whether NE#1’s initial failure to slow the incident down, his approach of the Complainant on his own, and his failure to call for any backing units to come to the scene prior to taking law enforcement action constituted a failure to de-escalate.

In OPA’s opinion, this is a close call. NE#1’s approach to this situation seemed to make it more likely that he would be required to use force. Moreover, it is undisputed that NE#1 did not call for any backing officers and placed himself in a poor tactical situation, both of which are contrary to the elements of the de-escalation policy. That being said, it is unclear whether the situation would have resolved any differently had he had another officer with him at the time.

Ultimately, based on my review of the record, I do not believe that NE#1’s actions constitute a clear violation of the Department’s de-escalation policy. However, I believe that his decision-making in this incident was less than optimal and, at least in part, sped up this situation, made it more dangerous, and increased the likelihood of force being used. As such, I recommend that NE#1 receive a Training Referral. In reaching this decision, I note that NE#1’s chain of command already appeared to have given thoughtful and thorough training and counseling to N#1 concerning this incident.



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- **Training Referral:** NE#1 should receive retraining and counseling concerning SPD's de-escalation policy. He should further be counseled concerning this incident and, specifically, how his actions may have been contrary to this policy or, at the very least, tactically unsound. As discussed above, NE#1's chain of command appears to have already conducted this training session. To the extent NE#1's chain of command believes that no further intervention is needed, OPA defers to its determination. Regardless, whether additional retraining and counseling is provided or no further action is taken, the chain of command should document its actions in an appropriate database.

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

Named Employee #1 - Allegation #4

6.010 - Arrests 2. When Taking a Suspect Into Custody, Officers Must Identify Themselves, Inform the Suspect [...]

SPD Policy 6.010-POL-2 requires that, "when taking a suspect into custody, officers must identify themselves, inform the suspect that he or she is under arrest, and state the reason for the arrest as early as practical."

As identified by NE#1's chain of command, he failed to provide the notifications set forth in this policy. He further failed to identify himself and the basis for the prospective stop when he first interacted with the Complainant, as well as failed to inform the Complainant that he was being audio and video recorded.

While all of the above constitute technical violations of policy, I find that they are minor violations that, under the circumstances of this case, are better addressed by retraining and counseling rather than a Sustained finding. Again, as with Allegation #3 above, important to this determination is the fact that NE#1's chain of command already took steps to identify and deal with these issues and NE#1 appears to understand what he did wrong and what he could have done better. As such, I recommend that NE#1 receive a Training Referral.

- **Training Referral:** NE#1 should receive retraining and counseling concerning SPD Policies 6.010-POL-2, 6.220-POL-5, and 16.090-POL-1(5)(a). He should further be counseled concerning this incident and, specifically, how he failed to comply with these policies. As discussed above, NE#1's chain of command appears to have already conducted this training session. To the extent NE#1's chain of command believes that no further intervention is needed, OPA defers to its determination. Regardless, whether additional retraining and counseling is provided or no further action is taken, the chain of command should document its actions in an appropriate database.

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