



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 20, 2019

CASE NUMBER: 2018OPA-0704

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)
# 2	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 (Management Action)

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 was unprofessional and violated the Department’s de-escalation policy when he threatened to shoot the Subject.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

Named Employee #1 (NE#1) was on patrol with his partner when he on-viewed a stolen vehicle. The driver of the car – referred to here as the Subject – got out and fled from the officers. NE#1 exited his patrol vehicle and ran after the Subject. During the foot pursuit, NE#1 yelled at the Subject: “Police, Stop! Police, stop right now! Stop or I’m gonna shoot you Man!”

The Subject was ultimately taken into custody by other officers. At that time, force was used that caused a potential broken finger to be suffered by the Subject. As a result, the Department’s Force Investigation Team (FIT) investigated the incident. After its investigation, which included watching Department video, the FIT Lieutenant wrote the following in his review:

[W]hen pursuing the suspect on foot, [NE#1] yells at [the Subject], “Stop or I’m going to shoot you man!” [NE#1] undoubtedly intended this as a bluff to convince the [Subject] to stop fleeing and give himself up. However, this language could become problematic and critically viewed if [NE#1] later uses lethal force against the [Subject].



OPA reviewed the video of the incident when it was played during the Force Review Board. OPA shared similar concerns to those expressed by the FIT Lieutenant and initiated this investigation.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

At his OPA interview, NE#1 stated that, when he told the Subject that he was going to shoot him, he was using a ruse. He said that he had no intention of actually shooting the Subject and that he did not reach for his firearm at any time. NE#1 acknowledged that, under the circumstances of this case, he would not have had the legal authority to fire his weapon at the Subject. To that end, NE#1 stated the following: “I had not seen a weapon, he wasn’t aggressively attacking me. He was just fleeing; it wasn’t a violent crime. I don’t believe he was putting other civilians in danger at that time. So, it wasn’t a shoot situation.” NE#1 denied that his statement was unprofessional.

I have no doubt that NE#1 had good intentions in this case and meant the threat as a ruse in a last-ditch effort to prevent the Subject from further fleeing. However, I find the threat to shoot the fleeing perpetrator of a non-violent crime to be problematic. This is primarily due to my belief that such a threat could undermine public trust in NE#1 and the Department if heard by community members. While I do not believe that this warrants a Sustained finding, I do conclude that a Training Referral is appropriate.

- **Training Referral:** NE#1 should be counseled by his chain of command concerning his statement during the foot pursuit of the Subject. He should be instructed that, even if well intentioned, a threat to shoot a fleeing non-violent suspect could significantly undermine public confidence in both NE#1 and the Department. NE#1 should be cognizant that, had he been required to go hands-on with the Subject, his statements also could have served to undermine that later use of force. This counseling and any associated retraining should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #2

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

It was alleged that NE#1’s threat to shoot the Subject served to unnecessarily escalate rather than de-escalate this incident.

“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.

As a starting point, I note that NE#1 engaged in a foot pursuit virtually immediately upon seeing the Subject. Given this, aside from attempting to order the Subject to stop, any further de-escalation would not have been feasible at that time. As discussed above, the issue here is whether the threat made by NE#1 served to escalate this incident. OPA notes that this case is similar to another investigation (*see* 2018OPA-0577) in which an officer threatened to tase an individual if that individual did not comply with the officer’s orders. Like NE#1, that officer contended that such threats of force – which would have been impermissible force given the circumstances of both cases – were forms of de-escalation. As NE#1 explained at his OPA interview: “it was still an attempt to de-escalate him. According to policy, I tried to de-escalate using verbals, and tried to exhaust all verbals before I went to anything hands-on or anything like that.” This assertion finds support in Department policy, which categorizes such threats as one example of a de-escalation tool.

OPA does not question that a threat of force can be a valuable and effective law enforcement tactic; however, OPA does not believe that such a threat constitutes de-escalation. Instead, it is a means of escalating an incident in order to frighten or intimidate a subject into compliance. In reaching this conclusion, OPA acknowledges that such threats can, if they work, reduce or eliminate the need for force. That being said, threats run contrary to a number of the



de-escalation tools called out in the policy, including, most notably: “Using verbal techniques, such as Listen and Explain with Equity and Dignity (LEED) Training, to calm an agitated subject and promote rational decision making.” Threats cannot be said to calm an agitated subject, nor can they be found consistent with the principles of LEED. Moreover, a threat of harm or force, and particularly the threat to shoot a fleeing suspect, can serve to amplify a situation and to make it more likely that force will be used. For example, what if the Subject here was, in fact, armed? The threat to shoot could have caused him to turn around and attempt to fire a weapon at NE#1. While this did not happen here, it is another reason why such threats may not represent a best practice.

That being said, OPA does not seek to preclude officers from using such threats when appropriate and necessary. OPA does, however, recommend that the Department modify SPD Policy 8.100 to be clear that threats of force – and particularly threats of force that would be otherwise excessive – does not constitute de-escalation. OPA notes that the most recent version of this policy expressly allows for such threats and categorizes them as a de-escalation tool. OPA strongly disagrees with this decision and has previously requested that the Department remove that language from the draft policy. For these reasons, OPA issues the below Management Action Recommendation.

- **Management Action Recommendation:** OPA recommends that the Department revise the language of SPD Policy 8.100 to make clear that threats, including threats of force, do not constitute a de-escalation tactic.

Recommended Finding: **Not Sustained (Management Action)**