



## CLOSED CASE SUMMARY

ISSUED DATE: MARCH 1, 2018

CASE NUMBER: 2017OPA-0909

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Sustained
# 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)
# 3	5.001 - Standards and Duties 5. Employees May Use Discretion	Not Sustained (Training Referral)

**Imposed Discipline**

Written Reprimand

*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:

The Complainant alleged that the Named Employee may have violated SPD’s use of force policy when he effectuated the arrest of a non-violent warrant suspect fleeing on a bicycle by pushing her off her bicycle and into a garage door.

### ADMINISTRATIVE NOTE:

I originally recommended that Allegation #2, which concerned Named Employee #1’s (NE#1) purported failure to de-escalate, be sustained. My reasoning in sustaining this finding is set forth below:

Here, it is unclear what if any plan the officers had to take the subject into custody. Of note is the fact that the sergeant, who was the supervisor, engaged in a solo foot pursuit leaving his two officers in the car. NE#1 then made the poor tactical decision to place himself in front of a bicycle that was traveling towards him downhill, which then influenced, at least in part, his decision to push the subject off the bicycle. Notably, as discussed in the context of Allegation #1 above, NE#1 could have let the subject ride by him, radioed in her description and direction of travel, and other units could have apprehended her. He also could have worked to set up containment, which he admittedly did not do. These were just two of the other options that were available to him in this situation, apart from using force to push the subject off her bicycle and subjecting her to significant injury.

NE#1’s decision-making increased, instead of reduced, the need for him to use force. Moreover, as a result of his actions, he used force that resulted in serious injuries to the subject. I understand that the officers pursued the subject for a period of time and gave

her multiple orders to stop, which she did not comply with. I also understand that NE#1 made his decisions over a quick period of time. However, the policy explicitly provides that officers should try to slow down and contain an incident, use distance, cover and concealment, and avoid using physical force unless immediately necessary. Here, I simply do not agree with NE#1 that the threat towards him or towards the subject, herself, was immediate as contemplated by the policy. While the Department's de-escalation policy places significant expectations on the conduct of its officers, it is in place for a reason – to prevent exactly these types of situations from occurring.

At the discipline meeting in this matter, NE#1's chain of command disagreed with my decision to sustain this allegation. The chain asserted that realistically, under the circumstances of this case, no de-escalation was safe or feasible. The chain noted that containment, which was referenced as an option in my initial recommendation, was not possible with a moving target such as a person on a bicycle. They further noted that there was no way to place a barrier to stop the Complainant from riding away under the circumstances of this case. While the chain recognized that it could have been possible to summon more resources, they noted that this would have necessitated calling numerous officers away from other equally if not more important calls and would not have conclusively resulted in the capture of the Complainant. I find the chain's points compelling and, as such, amend my recommended finding concerning Allegation #2.

As indicated more fully below, however, I have significant concerns about the subjectivity of the de-escalation policy. I also have concerns about its practical application. I lastly have concerns about officer uses of force that I have seen where the officers do not appear to be fully considering the potential risks and consequences of their force. Again, as explained more fully below, I believe this to potentially be a training issue.

#### **STATEMENT OF FACTS:**

On the date of the incident, NE#1, a witness officer, and a sergeant were members of the North Precinct Anti-Crime Team. (Witness Employee General Offense Report.) They were riding together in an unmarked vehicle, unequipped with In-Car Video (ICV), when they observed the subject riding a bicycle. (*Id.*) The subject was not wearing a helmet. (Witness Employee OPA Interview, at p. 6; AMR Patient Care Report.) The officers indicated that they were aware that the subject potentially had an open warrant. (Witness Officer General Offense Report.) They verified on their laptop computer that she did, in fact, have an open felony warrant for identity theft, a non-violent offense. (*Id.*) The officers pulled their vehicle over and the witness officer, who was the driver, got out of the car, identified himself as a police officer, and ordered the subject to stop. (*Id.*) The subject did not stop and biked away from the officers. (*Id.*) The sergeant also got out of the vehicle and began pursuing the subject on foot and also gave her repeated orders to stop. (*Id.*) The subject again did not stop. (*Id.*)

The witness officer got back in the vehicle and he and NE#1, who had remained inside the car, began driving after the subject in an attempt to cut off her route of escape. (*Id.*) The sergeant reported that during his foot pursuit of the subject, she crashed her bicycle into what appeared to be a parked car. (Sergeant OPA Interview, at p. 3.) However, she got back on the bicycle and continued riding away on a downhill grade. (*Id.*)

Ultimately, after receiving a report of the subject's direction of travel from the sergeant, the officers stopped their vehicle in the vicinity of the 800 block of NE 66<sup>th</sup> Street. (Witness Officer General Offense Report.) The witness officer reported observing the subject approaching NE#1 on her bicycle, who he described was in a position to block her travel on the sidewalk. (*Id.*) The witness officer recounted that as he ran towards NE#1, he saw NE#1 move to the side "to avoid being hit" by the subject who was not stopping her bicycle. (*Id.*) The witness officer wrote that he then viewed NE#1 "remove" the subject from her bicycle. (*Id.*) At his OPA interview, the witness officer stated that he would have done what NE#1 did in this instance. (Witness Officer OPA Interview, at p. 4.) He believed that the force was within policy because the subject had multiple opportunities to stop, knew that the police wanted her to stop, the force used by NE#1 "was just...him reaching out and touching" the subject, and "[w]hat happened after that, mass and motion, her with a rolling tire, her trying to go around, then created the instance where she fell down and hurt her shoulder." (*Id.* at pp. 4-5.)

The sergeant screened the arrest and use of force, but he did not observe NE#1's actions. (Sergeant OPA Interview, at p. 4.) He stated that NE#1 reported to him:

“that he exited the Suburban, stood on the same sidewalk that [the subject] was riding on and as she was coming towards him, at the downhill grade, he ordered her to get off the bike, and when she didn't he told me that he pushed her somewhere on her torso upper body and that she was pushed into this garage and then she was – she came off the bike then.”

(*Id.*) The sergeant stated that were he in NE#1's situation, he “would have either used an open hand push off the bike” or “take the handlebars and move the handlebars so [the rider] can't steer.” (*Id.* at p. 5.) He further stated that: “Either way...it forces the individual off the bike.” (*Id.*) However, the sergeant noted that he had never received training as to how to stop an individual fleeing on a bicycle in his 18 years working for SPD. (*Id.*) The sergeant opined that, at the time, he believed the force used by NE#1 to be within policy. (*Id.*) The sergeant noted that the subject was attempting to flee, she had been ordered to stop and did not do so, that the actual force of an open-handed push was “minimal,” and that it was needed to effectuate the subject's arrest. (*Id.* at p. 6.)

The Seattle Fire Department (SFD) arrived at the scene and provided medical treatment to the subject. SFD records indicated a possible dislocation to her right shoulder, an abrasion to her right knee, and small wounds to her hands. (SFD Patient Care Record.) SFD indicated that the subject had no back or neck pain. (*Id.*) The subject was then transported to Harborview Medical Center. The American Medical Response (AMR) report indicated that the subject had 7 out of 10 pain to her right shoulder and elbow and right and left knees. (AMR Patient Care Report.) It further noted that the subject was not wearing a bicycle helmet and had a “pounding” headache that she said was 6 out of 10 pain. (*Id.*) She stated that she was nauseous and dizzy, had neck pain, and that it hurt to turn her head. (*Id.*) The AMR report indicated that the “primary impression” was “trauma fracture/dislocation” and the “secondary impression” was “trauma – head injury.” (*Id.*) Photographs taken of the subject at HMC revealed injuries to her right shoulder, knees, and forehead. Her neck was placed in traction during her treatment.

Initially, the sergeant viewed the application of force as a Type II, but, based on the subject's injuries that were diagnosed at the hospital, he determined that the force was likely Type III and screened the incident with the Department's Force Investigation Team (FIT). (Sergeant OPA Interview, at p. 6.) FIT rolled out and began an investigation into this incident. (See FIT Force Investigation Report (“FIR”).)

FIT conducted a number of interviews, including, but not limited to, interviews of the subject and NE#1. (See FIT FIR.) During her FIT interview, the subject indicated that she was riding her bicycle when someone jumped out of a vehicle and startled her. (*Id.*) She reported hearing and seeing lights and sirens and she stated that she turned right and rode down a hill. She stated that a police officer “just showed up out of nowhere” and either “nudged” her or “jumped in front” of her causing her to fall off of her bicycle. (*Id.*) She complained to FIT of injuries to her: “Right arm, shoulder, and elbow, hand, both knees, right head and right neck.” (*Id.*)

During his FIT interview, NE#1 described that when the subject fled on her bicycle, she was “pumping her legs” and biking “really fast.” (NE#1 FIT Interview.) NE#1 stated that the sergeant pursued the subject on foot and that he and the witness officer followed her in their vehicle. (*Id.*) NE#1 stated that when he later observed her and before he stood in front of her, he believed that the subject was biking downhill at approximately 10-15 miles per hour. (*Id.*) NE#1 reported that he stood on the sidewalk and made an “x” with his body when he “widened” his legs and arms and “squatted down a little bit.” (*Id.*) NE#1 thought that once the subject saw him, she would slow down and get off her bicycle. (*Id.*) However, NE#1 indicated that it became clear to him that she was not going to stop when she “broke” to his left, NE#1 stated that he used two hands to push her off her bicycle. (*Id.*) NE#1 stated that his “hope” was to push her into a garage door and she ended up landing at the base of the garage. (*Id.*)

When explaining the rationale for why he took the action that he did, NE#1 stated that his “major thought process was we need to...get this over with.” (*Id.*) NE#1 indicated that he could have stepped out of the way, but opined that

the subject could have then crashed into a compost bin or ridden into a busy intersection. (*Id.*) NE#1 stated that he could have let her ride by, “but then that endangers the public, that endangers her even more.” (*Id.*) NE#1 went on to say that he’d “rather push her than her get, hit by a car, down in that intersection...” and stated that he had no problem with what he did. (*Id.*) Notably, at his FIT interview, NE#1 did not explicitly indicate that he had any fear for his own safety or the safety of other officers or civilians or that this influenced his actions or decision-making. (*See id.*)

When asked about what efforts he took to de-escalate this matter, he stated that he said “police stop” and “clogged” up the sidewalk with his body. (*Id.*) He felt that he and his fellow officers had done as much as they could to de-escalate at that point and there was not a lot of time to further de-escalate given that the subject was riding downhill on her bicycle at approximately 10-15 miles per hour. (*Id.*)

FIT also obtained an opinion from the Training Unit. The Training Unit sergeant stated that the Department does not train officers how to stop a suspect fleeing on a bicycle. (Training Unit Sergeant Training Evaluation.) He noted that the Department does train officers to “check” a subject fleeing on foot. (*Id.*) The Training Unit sergeant opined that while NE#1’s actions were not trained, they were not necessarily inconsistent with training. (*Id.*) The Training Unit sergeant also opined that the force was reasonable. (*Id.*) In reaching this opinion, he focused on his belief that NE#1’s “action was not likely to result in any permanent serious injury,” but instead was foreseeable to cause minor injuries. (*Id.*) The Training Unit sergeant also focused on his belief that NE#1’s actions posed less of a risk of injury than if he had allowed the subject to keep riding her bicycle and she had collided with a motor vehicle. (*Id.*) The Training Unit sergeant stated his belief that NE#1 tried to lessen the risk of injury to the subject by pushing her into the “more flexible surface of a garage door, instead of the proximate concrete wall” and by “[a]ttempting to stop as much as her forward momentum as possible with his shove.” (*Id.*)

The FIT Captain, after evaluating FIT’s initial investigation and the associated evidence gathered and statements taken, made the decision to refer this matter to OPA. (*See* FIT OPA Referral Memo.) In doing so, the FIT Captain indicated: “There is enough information that this Use of Force application could be outside of policy that I am referring this to [OPA], prior to further investigation, in order to meet the timeliness requirements of the SPOG 5 day notification for complaints.” (*Id.*) In his Force Investigations Captain Review, the FIT Captain further wrote in the field addressing “Reasonable, Necessary, and Proportional Force”: “As this was a non-violent offender and the action of the officer could have incurred a very serious injury and I attempted to reconcile the risk to officers and the public, a referral was made to OPA for the UOF.” (FIT Force Investigations Captain Review.) After receiving this referral, OPA initiated its investigation into this matter.

During its investigation, OPA reviewed the FIT file in its entirety, the other documentation generated concerning this incident, and conducted interviews of NE#1, the witness officer and the sergeant. OPA attempted to interview the subject through her defense attorney but was unsuccessful. As such, the subject was not interviewed as part of this case.

At his OPA interview, NE#1 again asserted that he used force to push the subject off her bicycle to “put an end to the chaos.” (NE#1 OPA Interview, at p. 3.) He described that there was not much of a plan to arrest the subject except the intention of the officers to take her into custody. (*Id.*) The possibility that she would flee on her bicycle and a contingency plan to place her under arrest in those circumstances was not discussed. (*Id.* at pp. 3-4.) NE#1 described that he did not think that “bear hugging” the subject would be effective, so he “kind of side stepped and took two hands, pushed her on the shoulders and that got her off the bike.” (*Id.* at p. 4.) NE#1 again estimated that, at that time, the subject was traveling towards him at approximately 10-15 miles per hour. (*Id.*) NE#1 described that the subject fell off of her bicycle and landed on her right shoulder. (*Id.* at p. 5.)

NE#1 stated that he perceived the subject to represent an immediate threat (*id.* at p. 6); however, later in his interview he recalled, in response to OPA’s questioning, that he had previously asserted during his earlier statement to FIT that the subject veered around him to the left. (*Id.* at p. 8.) NE#1 indicated his belief that the arrest needed to be effectuated “then and there,” and stated that, had he let the subject go, she would potentially bike towards motorists and/or people crossing the street and other harm could have possibly occurred. (*Id.* at p. 6.) NE#1 stated that he

considered that his actions could cause the subject severe injuries but that he still thought that his actions were warranted. (*Id.* at p. 7.)

When asked about his attempts at de-escalation, NE#1 stated that the officers' vehicle's lights were on, they chased the subject, and they ordered her to stop multiple times. (*Id.* at p. 8.) NE#1 stated that he was not aware if additional officers and patrol vehicles were responding to the scene due to the chaotic nature of the incident. (*Id.*) He admitted that it might have been feasible to set up containment, but that the situation was "fluid" and he felt it was "urgent" when she was biking away downhill. (*Id.*) He also stated that he could have decided to let the subject bike past him, but that he felt he needed to act in this situation. (*Id.*) Lastly, NE#1 stated that he had not been trained regarding how to arrest a subject fleeing on a bicycle. (*Id.* at p. 6.)

## **ANALYSIS AND CONCLUSIONS:**

### **Named Employee #1 - Allegation #1**

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

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." (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.*) These three factors and my conclusions as to each are outlined below.

#### ***Reasonableness Factor***

With regard to this first element, I find that the force used was not reasonable. At the time of the incident, while the subject had an active felony warrant, NE#1 was aware that it was for a non-violent offense. Moreover, while the subject actively fled from the officers on her bicycle, she did not attempt to physically harm them or anyone else and posed no immediate threat of violence. While NE#1 contended at his OPA interview that he was afraid that he could be physically harmed, this was because he made the tactically unsound choice to stand in front of a bicycle that was moving downhill at 10-15 miles per hour. Moreover, NE#1 also stated that the subject rode around him, which undercuts any threat of actual harm that she posed to him.

NE#1's decision to push the subject off her bicycle, while it was moving at speed, could have resulted in catastrophic injuries to the subject. Both NE#1 and the Training Unit sergeant accentuate the fact that NE#1 pushed her into a "more flexible" garage door. However, as the Training Unit sergeant notes, there was a concrete wall "proximately" close to the garage. This is confirmed by photographs taken of the scene by the sergeant. Moreover, the ground in front of and around the garage was pavement. Notably, the subject, who was not wearing a bicycle helmet, could have traveled in virtually any direction once pushed off her bicycle. She could have struck her head and, in fact, did. While she ultimately only suffered a headache, dizziness and nausea, this could have resulted in a much more serious injury, including a traumatic brain injury. I disagree with the Training Unit sergeant's assertion that NE#1's actions would only foreseeably cause minor injuries. Pushing someone not wearing a helmet off of a bicycle moving at 10-15 miles per hour into an area almost entirely made up of concrete and pavement would foreseeably cause more than minor injuries. Notably, NE#1, himself, stated at his OPA interview that he believed that his force could have caused the subject to suffer "severe" injuries. Moreover, the force used did, in fact, cause more than minor injuries.

Further, the argument that the subject may have crashed into a compost bin or collided with traffic was entirely speculative. It cannot be said, in my opinion, that pushing the subject off of her bicycle put her at lower risk of physical harm than some event that may never have happened in the future.

Lastly, at his FIT interview and again at his OPA interview, NE#1 stated that he pushed the subject off of her bicycle because he wanted the chase to end. This was not an appropriate justification for the force he used. Notably, NE#1 did not, at any point, explicitly contend that he did so in order to protect himself from harm or that he was in fear of being harmed by the subject. At his OPA interview, NE#1 contended that the subject might have driven “through him” had he not pushed her off the bicycle. However, at his FIT interview, he stated that at the time she neared him, she made a last second swerve to his left and, at that time, he pushed her off her bicycle. He recognized this inconsistency at his OPA interview. As such, I do not believe that the evidence supports that the subject was actually attempting to collide with NE#1.

### **Necessary Factor**

With regard to whether the force was necessary, there were other actions that NE#1 could have taken instead of pushing the subject off of her bicycle. Most notably, he could have let her ride past him, called in her description and direction of travel, and another unit could have apprehended her. Even if she had not been apprehended on that date, the officers knew her identity and could have arrested her at a later time. These were more effective alternatives. Moreover, as stated above, the force actually used was not a reasonable degree of force.

### **Proportionality Factor**

Lastly, with regard to the proportionality of the force, the force ultimately applied was not commensurate with the threat facing NE#1 or the speculative threat of harm to the subject were she allowed to ride away. As indicated above, the subject was put at risk of serious, if not catastrophic injury. This was the case even though she was a non-violent offender, whose identity the officers knew, and who could have later been tracked down and apprehended. Moreover, the subject did, in fact, suffer serious harm. She was diagnosed with a dislocated shoulder and possible head trauma. However, this could have been significantly worse and the force used was, thus, not proportional.

Lastly, that NE#1 may not have been trained on how to stop a suspect fleeing on his bicycle does not change my analysis. That being said, and as noted by the FIT lieutenant in his Force Investigation Lieutenant Review, the Department would be well served to train its officers concerning such scenarios going forward in order to avoid what happened in this case.

For these reasons, the force used by NE#1 was outside of policy and I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

### **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***

“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 indicated above, I initially recommended that this allegation be Sustained against NE#1. However, based on discussions with the chain of command, I have reversed that recommendation. My reasons for doing so are outlined above and I will not revisit them here. Instead, I below issue a Management Action Recommendation concerning the de-escalation policy.

I note that this case is the most recent of a number of cases in which OPA and the Department have either disagreed as to whether an officer properly de-escalated or where it has simply been unclear whether the officer de-escalated consistent with policy, even when the relevant facts of the cases have been fully explored and illuminated during OPA’s investigation and have been agreed to by all the parties.

I strongly support the concept of de-escalation and believe it to be absolutely essential to constitutional and equitable policing. SPD’s commitment to de-escalation is a product of and requirement of the Consent Decree and it is a practice that puts SPD head and shoulders above most other Departments nationwide.

That being said, during my time at OPA, I have found this policy to be one of the most challenging to apply and evaluate. When looking at the de-escalation policy, I have a number of ongoing outstanding questions. Do all of the suggested de-escalation tools called out in the policy need to be used before force can be applied? If not, how many? How long do officers need to try to de-escalate before they can use force? 2 minutes? 5 minutes? 1 hour? 2 hours? When is physical confrontation “immediately necessary” to permit force to be used? What is meant by the phrase “without compromising law enforcement priorities”? If effectuating an arrest is always a compelling law enforcement priority (as it should be) does that not potentially unworkably expand the policy?

This policy, like many others, is subjective. In that respect, I recognize the difficult place that officers are put in. On one hand, they are told that, in order to preserve public order and safety, it is essential to make arrests and, with many arrests, to use a degree of force. On the other hand, the de-escalation policy, if read literally, could be construed to dissuade such active policing and instead encourage officers to not take action that could result in force unless all other possible options are exhausted and the force is immediately necessary. I worry that the policy, while incredibly important and well-intentioned, has the potential to create unclear standards and expectations for officers, thus risking affecting the officers’ procedural due process during the disciplinary stage.

Unlike most Management Action Recommendations, I do not have what I believe to be an immediate fix to the policy. Instead, here, I am simply identifying my thoughts and concerns and my belief that it may be time to take a look at revising, clarifying, and improving this policy. To be clear, I am not calling for the policy to be removed or in any way undermined; however, now that we are five years into the Consent Decree, I believe it necessary to

evaluate the policy to determine whether changes are warranted and, if so, what those changes should be. I also believe that the Department should take a close look at training on de-escalation and related tactics to ensure that it is providing needed clarity and rules of conduct for officers. I further believe that the evaluation of both the policy and associated training should be led by the Department, but should intimately involve OPA, the Community Police Commission and the Inspector General at the research, deliberation and drafting stages.

Lastly, as discussed in the training referral set forth in Allegation #3, below, I strongly advise the Department to include in training a discussion of officer decision-making when using force. Specifically, I believe that the Department needs to better train its officers to consider the downstream consequences of their actions prior to using force. Whether an officer decides to tackle onto the pavement a person suspected of a citable offense who is running from the police, Tasers from behind a subject who is sprinting away on the sidewalk, or pushes a non-violent felon off of her moving bicycle potentially subjecting her to catastrophic injuries, I have seen a number of cases where these necessary calculations have not been made. I believe that this is a trained skill like anything else and should be stressed by the Department in the 2018 use of force and/or defensive tactics training.

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

### **Named Employee #1 - Allegation #3**

#### ***5.001 - Standards and Duties 5. Employees May Use Discretion***

As indicated in SPD Policy 5.001-POL-5, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-5.)

As discussed more fully above, I believe that NE#1 made a number of poor decisions in this case and did not properly exercise his discretion. Most notably, the decision to push the subject off of her bicycle while it was moving and thus to place her at risk of serious, if not catastrophic, injuries was a poor decision. In addition, his initial decision to place himself in front of the bicycle, thus causing, at least based on his OPA interview, the need to use force was an untrained and arguably inadvisable tactic. However, given the circumstances of this case, which involved a fast-evolving and chaotic situation, I do not believe this allegation should be sustained. Moreover, I believe sustaining this allegation to be unnecessary given that I already recommend that Allegation #1 be sustained. Instead, I recommend that NE#1 receive a training referral.

- **Training Referral:** NE#1 should receive counseling from his chain of command concerning the risk of catastrophic harm he placed the subject in, the fact that his actions caused her to actually suffer serious injuries, and the fact that he, at least in part, caused the need to use force by placing himself in front of her bicycle. NE#1 should be counseled to consider the risk of injuries or harm that could result from the force he uses and to balance that risk against the need to use force prior to making decisions. This counseling should be memorialized in a PAS entry.

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