



CLOSED CASE SUMMARY

ISSUED DATE: MAY 14, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0684

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

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 used excessive force on the Subject and that the Named Employee failed to de-escalate prior to using force.

SUMMARY OF INVESTIGATION:

OPA received three anonymous complaints concerning the actions of Named Employee #1 (NE#1). All of the Complainants asserted that NE#1 used excessive force when he arrested the Subject. They asserted that he suddenly and without warning arrested the Subject and that the arrest was unnecessary. The complaints linked to a Twitter video. OPA commenced this investigation.

As part of its investigation, OPA interviewed the Subject. She said that she was walking on the sidewalk when she observed a patrol vehicle driving slowly up the street. She said that she hit the side of the patrol vehicle with her gloved hand and continued walking on the sidewalk. She stated that, seconds later, she was tackled from behind by NE#1 and taken down to the ground. She was arrested. She noted that she was not told to stop or given any warning by NE#1 before being tackled from behind. She stated that she was not trying to escape or run away from NE#1. She said that she was not injured as a result of this incident.

OPA further reviewed the third-party video, as well as Department video recorded by other officers. Given his status as an Acting Captain, NE#1 was not assigned Body Worn Video (BWV) or In-Car Video.

OPA determined that the only video that showed any part of the force was the third-party video. That video did not show the Subject striking the window – even though this is not disputed by her. The eight second video depicted NE#1 open his patrol vehicle door and exit. The Subject was proceeding down the sidewalk. NE#1 then ran down the sidewalk and moved in front of two other individuals prior to tackling the Subject down to the ground. The view of



the tackle itself was blocked by another bystander. The video ended with the Subject on the ground and NE#1 kneeling over her.

The BWV recorded showed the aftermath of the incident and people complaining about the tackle. However, it did not show the tackle itself. However, the BWV of one officer recorded a loud bang that was consistent with the striking of the patrol vehicle's window as described by NE#1.

OPA reviewed the report generated by NE#1. He wrote that, during the ongoing demonstration activities, individuals had caused damage to property. He determined that, due to the damage that had already been caused, as well as given his concern that more damage and potential assaults would occur, the crowd needed to be dispersed. NE#1 then gave a dispersal order; however, the crowd did not leave the vicinity. NE#1 also directed vehicles that were part of the "car brigade" to disperse and to stop shielding criminal activity and preventing officers from intervening and taking action. Eventually, all of the cars did depart except for a van that kept driving in front of the officers. NE#1 directed the van to stop, but it did not. Ultimately, officers pulled the van over. At around that time, a woman – who NE#1 later identified as the Subject – walked by his patrol vehicle and struck the window. This made a very loud noise. NE#1 believed that the Subject had struck his window with a hard object, such as a pipe, and that she was trying to break the window. NE#1 noted that both he and a Lieutenant who was in the vehicle believed that the window had been broken. Given her conduct, NE#1 made the decision to arrest the Subject. He got out of the vehicle and observed her moving away from him. NE#1 felt that the Subject was trying to escape. He decided to then bring her down to the ground in a body wrap. He stated that, after the Subject was searched incident to arrest, a Taser flashlight, which functions as a stun gun, was found. He characterized his force as low-level and noted that the Subject did not complain of pain and did not appear to be injured.

Lastly, OPA interviewed NE#1. He provided his rationale for using force and his decision to take the Subject down to the ground in the manner he did.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will 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.*)



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.

When asked about his de-escalation at his OPA interview, NE#1 said that, at the time he chose to arrest the Subject, he believed that she was attempting to escape. While the Twitter video did not depict the Subject running away, the video was only eight seconds long and did not show the Subject's immediate actions after striking the window. As such, OPA cannot say that NE#1's belief that the Subject was trying to escape was unreasonable or unsupported by the evidence.

NE#1 explained that, given her proceeding away from him and the fact that she and the other demonstrators in the area had already been given multiple orders to disperse and requests for compliance, he felt that further de-escalation was no longer safe or feasible.

In assessing this question, OPA distinguishes between static and fluid cases. In static cases – where the subject is standing still or not actively escaping – there is more of an opportunity to use de-escalation techniques and an increased expectation that officers will seek to gain voluntarily compliance through communication and time, distance, and shielding. In fluid cases – where the subject is actively trying to escape, is running away, or is physically resisting – there is less of an ability to de-escalate and, given the exigency of the situation, a higher likelihood that de-escalation will not be safe or feasible and a stronger law enforcement interest in acting decisively.

This case was a fluid, not static, scenario. The Subject, who had just struck the patrol vehicle window – potentially with a metal object – was moving away from NE#1. As such, OPA concurs that it was not safe or feasible to de-escalate at that time and law enforcement interests permitted NE#1 to take action.

Accordingly, OPA does not find that NE#1's decision to exit his patrol vehicle, to run after the Subject, and to tackle her down to the ground constituted a failure to de-escalate. OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

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." (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.*)

It is not disputed that the Subject struck the window of NE#1's patrol vehicle. Moreover, a witness officer's BWV corroborated NE#1's description of the strike being forceful enough to cause a very loud noise. This constituted



property damage. Moreover, NE#1 interpreted the Subject's actions as purposed to interfere in the arrest of the van driver and to distract NE#1 and other officers. Given this, NE#1 asserted that he had probable cause to arrest the Subject. OPA agrees.

Moreover, as discussed above, the Subject was moving away from NE#1 at the time and OPA cannot say that his belief that she was trying to escape was unreasonable. Regardless, she was clearly moving away from NE#1 and he was permitted to use force to stop her from doing so and to take her into custody.

While the force used by NE#1 was characterized by the Complainants as a hard tackle by him causing the Subject to hit the ground, this is not entirely consistent with the video. In OPA's perspective, what is shown on the video is more consistent with the body wrap described by NE#1. This is further consistent with the lack of any injuries suffered by the Subject or any complaint of pain of her part.

Under the circumstances, OPA determines that this force was within policy. As discussed above, the force was reasonable to effectuate the arrest of the Subject. It was further necessary as she was actively moving away from NE#1 at the time. Moreover, given her conduct just seconds earlier, it was reasonable for NE#1 to try to get her down to the ground as soon as possible. Lastly, the force was proportional. OPA notes that NE#1 believed it possible that the Subject could possess a metal object given how loud the striking of the window was. This coupled with the Subject's intent to cause damage to a police vehicle presented a risk of harm for which a body wrap takedown was commensurate force.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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