



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 26, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0407

Allegations of Misconduct and the 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 - Training Referral
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper

EXECUTIVE SUMMARY:

The Complainant alleged that Named Employee #1 (NE#1) may have failed to de-escalate when safe, feasible, and without compromising law enforcement objectives. OPA alleged that NE#1 may have used unauthorized force.

ADMINISTRATIVE NOTE:

OPA originally calculated the 180-day timeline for completing its investigation from the date the frontline supervisor submitted this case in Blue Team plus 14 days, equal to May 2, 2021. See SPOG Collective Bargaining Agreement (CBA), Section 3.6(B)(iii). Using this date, the 180-day timeline would have expired on October 29, 2021. On October 15, 2021, SPOG agreed to a 30-day extension, making the originally calculated deadline November 28, 2021. OPA submitted this investigation to the Office of Inspector General (OIG) for certification on November 23, 2021. OIG returned a certification memorandum to OPA on November 30, 2021, certifying the investigation as thorough and objective but not certifying the investigation as timely because "it was sent to OIG with only 5 days remaining before the 180 day timeline expired."

However, OPA later determined that the May 2, 2021 date was the incorrect date to begin running the 180-day timeline. The Chain of Command did not determine that misconduct occurred. Instead, this complaint was generated after review by SPD's Force Review Board (FRB). Accordingly, OPA used the date of the FRB review, August 31, 2021, as the start date for the 180-day timeline. See SPOG CBA, Section 3.6 (for situations where "following a Blue Team entry, the Chain of Command concludes that no misconduct occurred"). That timeline was extended twice by agreement. The 180-day timeline expires on April 28, 2022.

Accordingly, it is OPA's position that this investigation is thorough, objective, and timely.

SUMMARY OF INVESTIGATION:

The SPD FRB alleged that NE#1 may have violated SPD policy by failing to employ de-escalation tactics, Listen and Explain with Equity and Dignity (LEEDs) principles, or wait for backing officers when contacting the subject of an alleged attempted assault. OPA alleged that NE#1 may have used unauthorized force. OPA commenced this investigation.



During its investigation, OPA reviewed the Incident/Offense Report (Incident Report), Type II Use of Force Documentation, Body Worn Video (BWV), In-Car Video (ICV), the FRB Action Report, and NE#1's training records. OPA also interviewed NE#1.

Although no objective video evidence captured the entirety of this incident, BWV, ICV, and NE#1's statements on the Use of Force Report and to OPA were consistent. No other eyewitnesses provided statements to OPA.

According to NE#1, he was stopped at a traffic light while on routine patrol when he flagged down by an employee of a convenience store. NE#1 stated that the employee reported that a man nearby (the Subject) was "trying to assault the employees." NE#1 stated that the employee pointed out the Subject who was standing nearby.

NE#1's BWV depicted NE#1 contacting the Subject. NE#1 parked his SPD vehicle in the right lane of traffic and exited the vehicle. NE#1 advised dispatch of his location and that he was contacting the Subject. The Subject was standing on the sidewalk on the side of the road. NE#1 then walked towards the Subject and called out "Hey, come here, Sir." The Subject complied with NE#1's request and both NE#1 and the Subject moved to the sidewalk. NE#1 asked the Subject if he had any weapons on him, which the Subject denied. BWV showed the Subject put his right hand into his jacket pocket while holding a cell phone in his left hand. The Subject then turned to his right and faced away from NE#1. At this time, NE#1 and the Subject were standing about six feet away from one another. NE#1 then verbally repeated his location to dispatch, and advised he was "with one who was fighting with employees at the [convenience store]." The Subject then dropped something and bent forward, while facing away from NE#1. BWV depicted NE#1 stepping towards the subject and stating "hey," to which the Subject replied, "my bad."

BWV then showed the interaction between NE#1 and the Subject become physical. As NE#1 stepped towards the Subject, the Subject reached his right hand towards NE#1 while stating "my bad, my bad, all of sudden." NE#1 grabbed the Subject's right hand and right upper arm. NE#1 stated "good?" NE#1 then stated "put your hands behind your back." NE#1 then moved the Subject's hands together in order to handcuff him. The Subject then pulled away from NE#1 and NE#1 stated "no, no, no don't." The Subject asked what he did, to which NE#1 replied, "hold on, man." The Subject repeated "what did I do?" NE#1 replied, "just relax." The Subject continued to protest that NE#1 was not telling him what he did. The Subject then appeared to pull away from NE#1, at which point NE#1 moved close to the Subject. At the point, the BWV was recording too close to the Subject to regularly depict what was occurring, but BWV recorded NE#1 stating "he's fighting," "dude, stop," and "get on the f***** ground." The Subject continued to protest that "I'm not doing nothing" and "you didn't tell me what I did." Snippets of BWV suggest that NE#1 and the Subject were struggling on the ground. NE#1 repeatedly told the Subject to lay on his stomach on the ground, and the Subject replied that his stomach "hurt." NE#1's BWV then stopped recording.

OPA attempted to contact the Subject for an interview without success. OPA was able to interview the Subject's mother who stated that her son suffers from schizophrenia and that the Subject would not talk to OPA. However, the Subject's mother was aware of the incident because, according to her, the Subject told her about it. The Subject's mother stated that she asked the Subject if the police treated him "bad," which the Subject denied.

At his OPA interview, NE#1 described his interaction with the Subject. NE#1 stated that he stepped away from his vehicle to speak with the Subject because his vehicle was in a busy roadway, and it would not have been safe to speak there. NE#1 noted that the Subject was physically larger than NE#1 and that NE#1 saw the Subject "digging for something" in his pockets. NE#1 stated that he then decided to frisk the Subject for weapons, at which point the Subject started fighting with NE#1. NE#1 stated that he believed the only way to keep himself safe and the Subject



from fleeing was to take the Subject to the ground. NE#1 described that, once he and the Subject were on the ground, the Subject “was trying to get up. And so, I was kept trying to get him down... So, I tried the knee strike to get him to get out. But he wouldn’t.” NE#1 described a knee strike as a technique to “break down a subject’s structure,” but that the technique was not effective here. In his use of force report, NE#1 stated the knee strike is a trained technique and that he used a knee strike to the Subject’s rib cage. NE#1 stated to OPA that, as he was struggling with the Subject, he heard sirens and made the decision to “put [his] weight on [the Subject’s] in such a way that he was unable to reach for his waistband or find his balance enough to stand up.” NE#1 described using this sort of “bear hug” until other officers arrived. NE#1 stated that during this struggle, his BWV was inactivated.

An acting sergeant screened this arrest and noted that the Subject had no injuries or reported injuries.

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

The Complainant alleged that NE#1 may have failed to de-escalate.

“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)

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.” (SPD Policy 8.100-POL-1). 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.*) 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.

(*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.

Whether or not NE#1 appropriately de-escalated in this situation presents an extremely close call. This incident has now been reviewed by NE#1's acting sergeant, administrative lieutenant, watch commander, and precinct captain—who conducted an initial screening with OPA—as well as the SPD FRB. There was no agreement among this group as to whether NE#1 de-escalated within policy during this incident.

OPA notes first that NE#1 did not choose the location that he encountered the Subject. Instead, NE#1 was flagged down by a community member who reported that the Subject had just committed a violent crime, attempted assault. When NE#1 initially contacted the Subject, NE#1 was alone and standing behind his SPD vehicle. However, NE#1 explained that he stepped out from behind his vehicle—away from cover and towards the Subject—because he “was in a major arterial in South Seattle, you know, during afternoon time,” elaborating “I was in the actual lane of travel of ML King... So, my only safe spot for positioning for me was like, in the bushes, or on the sidewalk, you know, near him... [I]t wasn't feasible for me to stand anywhere between my patrol car and him.” NE#1's decision to step out from behind cover, however reasonable, also limited NE#1's options to respond to the actions of the Subject. As noted by NE#1's precinct captain in his review of this use of force, “once the [S]ubject reaches inside his pocket, [NE#1] has two choices, either retreat to a position of cover or press forward to take affirmative control of the [S]ubject. [NE#1] chose to press forward and take control of the [S]ubject's hands.”

In OPA's view, the act of taking control of the Subject's hands, without explaining the reason he was doing so, caused the Subject to escalate the situation by pulling away and repeatedly demanding to know the reason he was being detained. Different reviewers offered different perspectives on alternative courses of action NE#1 could have taken. NE#1's administrative lieutenant opined that “[i]t may have been beneficial to have the [S]ubject sit on the ground while requesting another unit before going ‘hands on,’” and that NE#1 could have allowed the Subject to flee if he failed to comply. NE#1's watch commander noted that NE#1 could have “possibly wait[ed] to frisk the suspect until additional units arrived,” but also found the decision to frisk the Subject “reasonable” and noted NE#1's observations that the Subject had “unzipped a pocket, turned away from him, and reached inside.” NE#1's precinct captain elaborated that “it would have been better for [NE#1] to remain behind his car and to give verbal commands from a position of cover. That being said, I do not believe that [NE#1] violated policy by taking affirmative physical control over someone who was reaching inside a coat in a furtive manner.” The SPD FRB found that NE#1 failed to de-escalate noting, among other things, that NE#1 ordered the Subject to come to him (rather than to wait further away), did not give any orders about the Subject putting his hands in his pockets, and could have used LEED principles such as “explaining to the [S]ubject who he was and the reason for the contact and attempting to get an explanation from the [S]ubject about what transpired.” The SPD FRB concluded “[t]here was no exigency in this circumstance that required [NE#1] to contact this [S]ubject alone.”

Ultimately, OPA agrees with the SPD FRB and finds that NE#1 possibly violated SPD's de-escalation policy in this instance. However, given the speed of the encounter, imperfect contact location, and NE#1's use of some de-escalation techniques—such speaking to the Subject in a calm manner and providing the Subject with instructions to “hold on,” “relax” and “stop”—OPA find that this NE#1's possible failure to de-escalate was not a willful omission rising to the level of misconduct. OPA also notes the significant disagreement among NE#1's chain of command as to whether NE#1 failed to de-escalate.



In reaching this finding, OPA is guided by the core principle of de-escalation: the imperative to minimize the likelihood of using force and increase the likelihood of voluntary compliance *when safe and without compromising law enforcement priorities*. SPD Policy 8.100-POL. The policy provides that de-escalation should be “attempted” when “safe and feasible under the “totality of the circumstances.” Here, NE#1’s best de-escalation technique—waiting behind the cover of his vehicle at a distance from the Subject—was not safe. NE#1 explained, and the BWV showed, that NE#1 was parked in the far-right lane of traffic in a busy street. However, other de-escalatory techniques were both available to NE#1 and preferable, even if imperfect. First, NE#1 could have maintained distance, ordered the Subject to keep his hands visible and out of his pockets, and ordered the Subject to sit down. OPA recognizes NE#1’s explanation that, around the time the Subject was reaching into his pockets, NE#1 recognized that he had to correct dispatch, which had made a mistake that could have affected the response of backing officers. But, after review of the BWV, OPA believes there was time for NE#1 to clearly communicate with both dispatch and the Subject. Moreover, OPA notes that the Subject was entirely compliant with NE#1’s instructions to that point and was not attempting to flee. Second, OPA agrees with SPD FRB that better use of LEED techniques in this case may have created a dialogue that calmed the situation could have allowed more time for backing officers to respond.

Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1’s chain of command should discuss OPA’s findings with NE#1, review SPD Policy 8.100(1) with NE#1, and provide any further retraining and counseling that it deems appropriate. NE#1’s chain of command should emphasize the importance of verbal commands and LEED techniques. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

Named Employee #1 - Allegation #2

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

OPA alleged that NE#1 may have used unauthorized force.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” 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 8.050.) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

NE#1 used *de minimis* force to control the Subject’s hands, hold on to the Subject, and conduct a controlled takedown of the Subject that did not result in a complaint of pain. The one exception to this was NE#1’s use of a knee strike against the Subject’s ribs. This was a Type II use of force. *See* SPD Policy 8.400-POL-1 (“Punch or kick with less than Type III injury.”). OPA finds this use of force to be reasonable, necessary, and proportional.

At the time NE#1 used the knee strike, the Subject was identified as having attempted to assault store employees, refusing to comply with orders, and was actively resisting NE#1. Moreover, NE#1 explained, and the BWV appears to



corroborate, that the Subject repeatedly tried to get up from the ground and NE#1 was unable to get the Subject in the prone position as trained. Use of a trained knee strike was within policy to break down the Subject's position.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**