



## CLOSED CASE SUMMARY

ISSUED DATE: JULY 2, 2018

CASE NUMBER: 2018OPA-0035

### 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	Not Sustained (Lawful and Proper)
# 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 (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:**

The Complainant, who witnessed the Named Employee use force on the subject, believed that the force was excessive. It was also alleged that the Named Employee may have failed to de-escalate prior to using force.

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

On the date in question, Named Employee #1 (NE#1) conducted a traffic stop in the vicinity of a hotel on Aurora Avenue. When he stopped his patrol vehicle, and was about to get out, an individual uninvolved with the stop approached. This individual, who was later identified as the subject, appeared intoxicated and was potentially in crisis. The subject began yelling at NE#1 and told him: “Get out of here, go back to where you came from.” The subject then began to strike the driver’s side door and window of NE#1’s patrol vehicle with his fist. The subject continued to yell at NE#1, including stating that he was going to “scalp” and “kill” NE#1. The subject also called NE#1 a racial slur. The subject’s actions prevented NE#1 from leaving his patrol vehicle on multiple occasions. NE#1 closed his door and, from inside of his patrol vehicle, called for backup. NE#1 also directed the subject to back away; however, the subject did not do so and tried to reach inside of NE#1’s patrol vehicle. Additional officers arrived at the scene and the subject began to walk away from the patrol vehicle. NE#1 got out and told the subject to stop because he was under arrest. The subject did not do so and continued to walk away. Officers told the subject to get on the ground but he did not do that either.

NE#1 reported that he approached the subject from behind and grabbed his arms. He then put his foot behind the subject and took him down to the ground. NE#1 documented that the subject fell to the ground on his back. NE#1 then handcuffed the subject without using any substantial additional force. This force was captured by NE#1’s Body Worn Video (BWV). The video was consistent with NE#1’s recounting of the incident and depicted him following the subject around several cars. It showed NE#1 grab the subject and pull him to the ground with what appeared to be fairly significant force. The video did not reveal any other force on the subject other than that used to handcuff him.



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The subject later complained that his ribs were broken when he was “body slammed” to the ground. Medical assistance was called and he was examined by the Seattle Fire Department (SFD). SFD determined that there were no substantial injuries to the subject’s ribs and that he had no broken bones. Regardless, based on the allegations, a supervisor who had responded to the scene screened the force with the Department’s Force Investigation Team (FIT). FIT declined to respond to the scene and advised that a Type II investigation was appropriate. The supervisor ensured that a Type II investigation was completed.

As part of his review of this incident, the supervisor spoke to a witness to the incident – the Complainant, who worked at the hotel. She stated that NE#1 did not have to use the force that she had witnessed. She believed that, by doing so, NE#1 injured the subject. Accordingly, the supervisor interpreted the Complainant’s statements as making an excessive force complaint and forwarded that complaint to OPA. This investigation ensued.

As part of its investigation, OPA reviewed the documentation relating to this case, as well as the Department video. OPA also interviewed the Complainant. She indicated that she “didn’t see that much of the incident” because she was inside at the time it occurred. She noted that the subject was “annoying” to the police and that the subject hates the police.

OPA tried to interview the subject but was unsuccessful. The subject ultimately pleaded guilty to assault and harassment stemming from this incident.

OPA interviewed two witness officers. Both observed the force used by NE#1 and believed that it was consistent with policy. OPA also interviewed a sergeant from the Training Unit. He stated that the takedown used by NE#1 was not a trained tactic; however, he told OPA that he did not see anything during his review of the video that he believed to be out of policy.

#### **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.*)

Here, NE#1 was dealing with an intoxicated and likely mentally disturbed individual. The subject had threatened to scalp and kill NE#1, had attempted to physically assault him, and had repeatedly struck his patrol vehicle. When NE#1 told the subject that he was under arrest and directed him to stop, the subject did not do so. He further did not get on the ground when told to. Based on the subject’s demonstrated violent behavior, it was necessary to place him under arrest and to do so quickly. NE#1 acted accordingly.



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For these reasons, the force used by NE#1 was reasonable. While not a trained tactic, the force was sufficient to get the subject on the ground quickly and to put him in a position to be handcuffed. The force was also necessary under the circumstances to effectuate the lawful purpose of arresting the subject. Moreover, I find that, at that time, NE#1 did not believe that there was any reasonably effective alternative to the force used. I also conclude that the force used by NE#1 was proportional to the threat facing him. The force was utilized to get the subject onto the ground quickly and then to place him in into custody. Once NE#1 was on the ground, the force was modulated. I note that, apart from the takedown, NE#1 used no other substantial force.

Lastly, that NE#1's tactic was not trained does not necessarily yield it out of policy. While it is strongly preferred that officers apply trained tactics when possible, the failure to do so does not, in and of itself, constitute a policy violation. Indeed, the circumstances of a given case may dictate that trained tactics are not feasible. Here, I find that the force was reasonable, necessary, and proportional, and, even though the tactic used was not trained, it was appropriate under the circumstances.

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

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

**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.*)

NE#1 told OPA that he made a number of attempts to de-escalate this situation prior to using force. He initially closed himself into his patrol vehicle and gave the subject verbal commands to back away. When other officers arrived and the subject began to walk away, NE#1 told him to stop and informed him that he was under arrest. Multiple officers told the subject to get on the ground. However, the subject did not comply with any of these lawful orders.

NE#1 expressed the need to place the subject under arrest quickly. The subject had threatened to kill and scalp him, had actually engaged in violent acts towards him, was intoxicated and possibly in crisis, and posed a potential threat not only to the officers but also to community members in the vicinity. At that point, it was clear that the ongoing de-escalation attempts by the officers were not working and that further attempts would be futile. While this may have been based, in part, on the subject’s mental and physical condition, this did not preclude the eventual use of force.



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Once the subject began walking away towards the hotel, NE#1 made the decision to act, believing that further de-escalation was no longer safe or feasible. Only seconds elapsed from the time he got out of the car to the point that he used force to take the subject down to the ground. While the subject's hands may have been in the air at the time the force was used, NE#1 stated that he did not perceive this. I do not find this to have been unreasonable. Moreover, even had the subject had both hands up, this would not have precluded NE#1 from taking him down to the ground. This is particularly the case given that the subject threatened physical violence and had, in fact, engaged in such actions towards NE#1.

While de-escalation is inarguably a crucial component of the Department's obligations under the Consent Decree, it is not purposed to act as a bar to taking law enforcement action, including using force, when necessary. Based on the above, NE#1 acted appropriately to take the subject, who had previously presented as dangerous and violent, down to the ground and into custody. While the subject was intoxicated and likely in behavioral crisis, this did not, in and of itself, preclude NE#1 from acting in this manner. As such, I find that NE#1 attempted to de-escalate the situation until such action was no longer safe or feasible. At that time, he used force. For these reasons, I conclude that NE#1 acted consistent with policy.

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