



## CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 3, 2018

CASE NUMBER: 2018OPA-0488

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	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 (Training Referral)
# 2	5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer	Not Sustained (Lawful and Proper)
# 3	16.110-POL-5 Responding to Subjects in Behavioral Crisis 1. Upon Encountering a Subject in Any Type of Behavioral Crisis During Any Type of Incident	Not Sustained (Lawful and Proper)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	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	Sustained
# 2	1.020 - Chain of Command 6. Command Employees Take Responsibility for Every Aspect of Their Command	Sustained
# 3	16.110-POL-5 Responding to Subjects in Behavioral Crisis 2. Communications Shall...[ If a sergeant or above has assumed]	Allegation Removed
<b>Discipline Imposed:</b>		
Resigned prior to Proposed DAR		

***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 Employees violated multiple Department policies when they made a forced entrance into a hotel room where the Complainant was staying.

**STATEMENT OF FACTS:**

This matter was referred to OPA by a Department Administrative Lieutenant. The Administrative Lieutenant, who was reviewing the use of force that occurred in this case, identified that Named Employee #1 (NE#1) may have failed to properly de-escalate prior to making entry into a hotel room in which the Complainant was residing and, once the room was accessed, prior to using force against the Complainant. It was further alleged that Named Employee #2



---

(NE#2), as the supervisor on scene, also failed to de-escalate the situation and failed to properly take control of the scene and supervise the incident.

On May 6, 2018, officers responded to a hotel. They were informed that the Complainant, who was the subject of an earlier crisis call, was within a hotel room and was refused to check out and leave. Accordingly, the hotel alleged that the Complainant, by remaining within the hotel room, was trespassing. The CAD Call Log indicated that the officers were informed that the Complainant was possibly high and/or intoxicated. It was unknown whether the Complainant was armed.

Approximately 25 minutes after they responded, the officers contacted a supervisor, NE#2, and reported that the Complainant was barricaded in his hotel room. The primary officer told NE#2 during that phone call: "we'll probably have to break the door." NE#2 came to the scene and, at that time, was the highest-ranking officer there. NE#2 asked the primary officer what the plan was and the primary officer stated: "pretty much we have to kick it, go in and get him. Sit there, been talking to him, he won't respond to anything." NE#2 asked the primary officer whether he had a key card to the room and the primary officer responded: "we've tried, it's not working." The primary officer told NE#2 that hotel staff was trying to determine with management whether it permissible for the officers to kick in the door. NE#2 replied: "I'm fine with opening the door and then not going in...seeing what we have."

From a review of the video, it appears that the Complainant was likely in crisis. He was making numerous statements while inside of the room, most nonsensical. NE#2 told the subject to open the door. The hotel manager then arrived at the door with the key and opened the door. NE#2 stated "let's do that." Another officer then told NE#2: "Hold on, we're not nearly in position to open this door." However, NE#2 then twice issued an order to open the door. An officer opened the door approximately one inch. NE#2 then put his hands on the door and told the Complainant that he needed to open it. NE#1 stated: "I got this." NE#2 responded "K" and NE#1 then forced the door. NE#1 entered the room and used force to take the Complainant down to the ground and place him into custody.

Prior to the decision being made to force the door, NE#2 did not do any of the following: Screen the call with a Lieutenant, the Night Duty Commander, or the SWAT Commander; assign a CIT-certified officer to take the lead with communicating with the Complainant to gain voluntary compliance; call for the Hostage Negotiation Team (HNT) to respond to the scene to develop a rapport with the barricaded Complainant; call for any additional resources to come to the scene; or engage in any tactical planning or coordinate officers' roles and a plan of engagement.

During the supervisory review of this matter, a Lieutenant flagged all of the above issues and concluded that NE#2 should have "slowed things down," had no "exigency" to enter the room, and failed to exhaust other resources before making forced entry, which was, in the Lieutenant's opinion, the last resort. The Lieutenant consequently disapproved NE#2's actions and agreed with the OPA referral that was made by the Administrative Lieutenant. The Lieutenant further noted that he counseled and provided retraining to NE#2 concerning this matter, as well as on the guidelines for dealing with barricaded subjects.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegations #1**

***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***



---

As discussed more fully below, I find that NE#2 failed to properly de-escalate this matter. This failure resulted in a largely unplanned and tactically unsound forced entry and force being used by NE#1. While I conclude that NE#1, like NE#2, also did not satisfy the Department's de-escalation policy during this incident, I find that, when he acted, he did so in response to direction from NE#2. As such, I hold NE#2, as the supervisor, primarily responsible for this violation of policy.

With regard to NE#1's actions, I recommend that he receive the below Training Referral rather than a Sustained finding.

- **Training Referral:** NE#1 should receive retraining concerning the Department's de-escalation policy. He should be shown this DCM, as well as the Administrative Lieutenant's and Lieutenant's reviews of this incident. He should be counseled by his chain of command concerning the failure to de-escalate that was identified in this incident and should be directed to more closely comply with this policy moving forward. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

**Named Employee #1 - Allegation #2**

***5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer***

This allegation was classified against NE#1 based on the possibility that when he forced open the door, he acted contrary to NE#2's orders. Specifically, prior to the door being forced open, NE#2 stated: "I'm fine with opening the door and then *not* going in..." (emphasis added). However, NE#1 then forced entry into the apartment.

SPD Policy 5.001-POL-15 states that Department employees obey any lawful order issued by a superior officer. If NE#1 was ordered not to force the door and he did so, such conduct would have potentially violated this policy.

Based on OPA's review of the record, however, it appears that NE#1 reasonably believed that his decision to force the door had been approved by NE#2. Notably, prior to doing so, NE#1 stated that he was going to force the door and NE#2 responded by saying "K." At his OPA interview, NE#1 confirmed that this was his belief.

For these reasons, and even though I disagree with the decision to force the door at that time, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

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

***16.110-POL-5 Responding to Subjects in Behavioral Crisis 1. Upon Encountering a Subject in Any Type of Behavioral Crisis During Any Type of Incident***



---

SPD Policy 16.110-POL-5 provides for how officers are expected to respond to subjects who are in behavioral crisis. SPD Policy 16.110-POL-5(1) specifically instructs that: “upon encountering a subject in any type of behavioral crisis during any type of incident...officers shall make reasonable efforts to request the assistance of CIT-certified officers.”

It is unclear why this allegation was classified against NE#1. At the time he arrived at the scene, a CIT-certified officer was already present. As such, it was unnecessary for NE#1 to take further efforts to request the assistance of a CIT-certified officer. Moreover, NE#1 was neither the primary officer on scene or a supervisor. Both of those individuals, rather than NE#1, were responsible for ensuring that the requirements of this policy were satisfied.

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

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

**Named Employee #2 - Allegations #1**

***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***

Both NE#2’s Lieutenant and Administrative Lieutenant concluded that he failed to appropriately de-escalate this matter prior to the decision to force the door and prior to using force. As noted by the Lieutenant, there were no exigent circumstances or imminent dangers warranting NE#2’s failure to: engage in tactical planning; create a plan of engagement; use the CIT-certified officer present at the scene; and confer with a supervisor, HNT, or SWAT. Instead of pushing forward and forcing entry, NE#2’s chain of command found that he should have “slowed” the incident down.

“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.

Based on my review of the record, I agree that NE#2, as the supervisor on scene, failed to de-escalate prior to overseeing the forcing of the door and the force being used on the Complainant. As discussed in the policy, prior to engaging in this conduct, NE#2, and the officers under his command, were required to: call in extra resources; utilize the CIT-certified officer at the scene; use other tactics and approaches to gain voluntary compliance; and, overarchingly, to take steps to stabilize and slow down the incident. NE#2 did not do so here.

In reaching this decision, I find the analysis and conclusions of NE#2’s supervisors to be persuasive. I also find persuasive the fact that, when NE#2 ordered that the door be opened, one of the officers who was at the scene stated: “Hold on, we’re not nearly in position to open this door.” This clearly demonstrated that at least one officer, and I assume others, felt tactically unprepared and did not believe it advisable to open the door at that time. When NE#2 did so, over the officer’s objection, he violated the Department’s de-escalation policy.

For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #2 - Allegation #2**

***1.020 - Chain of Command 6. Command Employees Take Responsibility for Every Aspect of Their Command***

SPD Policy 1.020-POL-6 states that command employees, such as NE#2, take responsibility for every aspect of their command. As such, under this policy, supervisors are ultimately responsible for the acts and omissions of their subordinates. (SPD Policy 1.020-POL-6.)

As discussed herein, NE#2 failed to supervise and take control of the scene consistent with his training and the Department’s expectations. By not doing so, he set in motion a chain of events that resulted in both he and NE#1 failing to de-escalate as required by SPD policy. This failure to comply with policy constituted a failure of command.

For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**



---

**Named Employee #2 - Allegation #3**

***16.110-POL-5 Responding to Subjects in Behavioral Crisis 2. Communications Shall...[ If a sergeant or above has assumed]***

SPD Policy 16.110-POL-5 concerns officers' responses to subjects in behavioral crisis. SPD Policy 16.110-POL-5(2) specifically instructs that a CIT-certified officer be dispatched to each scene involving a subject in behavioral crisis. SPD Policy 16.110-POL-5(2) further states the following:

CIT-Certified officers will take the lead, when appropriate, in interacting with subjects in behavioral crisis. If a sergeant or above has assumed responsibility for the scene, he or she will seek the input of CIT-Certified officers on strategies for resolving the crisis event when it is reasonable and practical to do so.

As discussed above, there was a CIT-certified officer at the scene of this incident, which clearly involved an individual in behavioral crisis. However, NE#2, who was the supervisor on scene, failed to seek the input of that officer to evaluate strategies that would help facilitate the resolution of this incident. While I find that this failure to take these steps constituted a violation of policy, this conduct already forms the basis, at least in part, for the Sustained finding in Allegations #2 and #3. While, in these types of circumstances, I would normally issue a Training Referral, NE#2 no longer works for the Department and that remedy would be inapplicable. As such, I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**