



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 9, 2018

CASE NUMBER: 2017OPA-0859

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):	Director’s Findings	Final 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	Not Sustained (Lawful and Proper)
# 2 5.001 - Standards and Duties 5. Employees May Use Discretion	Not Sustained (Training Referral)	Not Sustained (Training Referral)

EXECUTIVE SUMMARY:

It was alleged that the Named Employee violated SPD’s de-escalation Policy when he made the decision to charge a subject armed with an ice axe thereby creating the need to use force. It was further alleged that the Named Employee’s actions constituted an abuse of discretion.

ADMINISTRATIVE NOTE:

As indicated in the chart above, OPA initially recommended that Allegation #1 be sustained. At the discipline meeting in this matter, during which OPA and the Named Employee’s chain of command discussed OPA’s recommended findings, the chain of command disagreed that this allegation should be sustained. Accordingly, the chain of command wrote a letter conveying their disagreement with OPA’s recommendations to the Chief of Police. A due process meeting was held, during which the Named Employee was afforded the opportunity to address the Chief. After that meeting, the Chief agreed with the chain of command and reversed OPA’s recommended findings. The Chief further wrote a letter detailing her ultimate findings and her reasoning. All of these documents are contained in OPA’s casefile.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #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

A. General Overview

The factual circumstances of this incident are addressed fully in the Case Summary. As an overview, however, SPD officers were flagged down and informed that a robbery had been committed at a REI store. The perpetrator of the robbery – the subject in this case – stole several items, including an ice axe. Store employees reported to the officers that the subject had threatened them with the ice axe. For the record, an ice axe is an object with at least one sharp point that could be used as a weapon and could cause serious bodily injury.



The two officers initially informed of the robbery – Witness Officer #1 (WO#1) and Witness Officer #2 (WO#2) – began following the subject who was in the near vicinity. Other officers, including Named Employee #1 (NE#1), responded to provide assistance. The officers following the subject as well as NE#1 rushing the subject and subsequent actions were fully captured by WO#1's Body-Worn Video (BWV). This is the clearest evidence of what occurred during this incident.

The officers followed the subject for several blocks until he entered a construction tunnel that had walls on both sides. During this time, the subject did not speak with the officers, but did turn around to face them periodically. At times, he waved the ice axe in the air. Once the subject had taken several steps into the tunnel, NE#1 rushed him from behind, placed him in a bear-hug, and shoved him up against one of the tunnel walls. At the time NE#1 ran up to the subject, Witness Officer #3 (WO#3) could be heard on video saying: "[NE#1] hold up, no!" WO#3 then ran behind NE#1 with his firearm drawn and placed his gun against the side of the subject's head. The subject was told to drop the ice axe and WO#3 told the subject: "I will fucking shoot you!" The subject dropped the ice axe and was placed under arrest.

This incident was screened at the scene by a Sergeant. However, when the Sergeant later reviewed the BWV of the incident, he was concerned that NE#1's actions were in violation of SPD's de-escalation policy. He raised his concerns and reviewed the video with a Lieutenant who agreed that it appeared to be a violation of the policy. At the Lieutenant's direction, the Sergeant initiated an OPA complaint into NE#1's actions and this OPA investigation followed.

B. NE#1's General Offense Report

In his general offense report, which was written after the incident, NE#1 stated that he was preparing to begin work when he heard units go over the radio and state that they were "following a white male swinging an ice axe." NE#1 reported hearing that the subject was not obeying the officers' commands and there was a request for back up from additional units. NE#1 wrote that he responded to the scene and "observed the subject walking north on Fairview AV N on the east side walk." NE#1 indicated that the subject did not obey "multiple orders to drop the ax[e] and stop." NE#1 indicated that he saw the subject raise the axe in a menacing manner several times.

NE#1 reported that he pulled his vehicle in front of the subject to stop the subject's advance towards construction workers. NE#1 ordered the construction workers to leave the scene and then got out of this vehicle. He wrote that the subject walked towards a construction tunnel that had walls on both sides. NE#1 and other officers followed the subject down the corridor and the subject continued to walk forward. NE#1 documented that he was concerned that the subject would walk out the other side of the corridor to an area where he "was free to advance on the public."

NE#1 then made the decision to run up to the subject and wrapped his arms around the subject's body, pinning the axe against the subject's leg. NE#1 reported that he then walked the subject against the concrete wall "to limit his mobility." Again, NE#1 articulated that he did so because he "was concerned with public safety" and because he "knew that someone could easily be killed by a strike" of the ice axe. He stated that he knew he "had to act quickly to gain control of the subject in order to prevent him from raising the ax[e] again and forcing [officers] to use lethal force against him." Lastly, NE#1 stated that "based on [the subject's] posture and the



distance between us [NE#1] knew [he] could gain control of the ax[e] before [the subject] could utilize it as a weapon.”

C. NE#1’s In-Car Video

NE#1 activated his vehicle’s In-Car Video (ICV), which captured his response to the scene. NE#1 parked facing an intersection near a construction site. At the time he parked the vehicle, the subject could be seen walking down the street holding the axe. He was being followed by three officers, one with a gun in the low ready position, one with a Taser, and one holding a bicycle. NE#1 could be heard telling individuals to “get out of here” – presumably construction workers. NE#1 could also be heard asking if someone had a Taser and telling the subject to drop the axe. Officers, including NE#1, could be heard repeatedly telling the subject to drop the axe. Movement is then heard on the ICV, which I presume is NE#1 running up to the subject, considering that WO#3 can also be heard telling NE#1 to “hold up” and “no.” The ICV only captures audio but not video of NE#1’s actions.

D. NE#1’s OPA Interview

During his OPA interview, NE#1 was asked if he was familiar with the Department’s policies concerning de-escalation and discretion and he responded that he was not sure. He explained that he believed the policies changed often and he was not given sufficient time on duty to read the policies. NE#1 stated that he may have received training on de-escalation. He contended that there was so much training and e-learning that it was hard to keep track. He confirmed, however, that he had gone to use of force training and that de-escalation was likely discussed during that training.

NE#1 recounted that during the incident, he was among several officers who were following the subject and that the subject was armed with an ice axe. NE#1 stated that he perceived the subject to be raising the ice axe in a “menacing” manner. The subject did not comply with multiple orders to drop the ice axe. NE#1 stated that, in his opinion, the subject was “either high or mental.”

NE#1 told OPA that he identified an opportunity when the subject was within a safe location and was turned away from NE#1 and had the ice axe by his side. NE#1 then holstered his weapon, ran towards the subject, and held him in a bear-hug, securing the axe against the subject’s side. Other officers then approached, including WO#3 who placed his gun against the subject’s head and threatened to shoot him. The subject was ultimately taken into custody without further incident.

When asked by OPA to describe the de-escalation he engaged in, NE#1 reported that “officers used verbal commands. They used their presence. They did everything to seek and to minimize the likelihood of using force.” NE#1 said that he used the most minimal force. NE#1 was asked by OPA if he considered “whether the subject’s lack of compliance was a deliberate attempt to resist, or an inability to comply based on medical or mental condition, drug interaction, behavioral crisis, or other condition.” NE#1 stated that this issue was “irrelevant” to him as other officers had been following the subject and those officers likely evaluated those considerations. NE#1 stated that his ultimate concern was public safety. NE#1 denied that, aside from rushing the subject, there was anything else that could have been done and opined that any further de-escalation would not have been safe or feasible.



NE#1 stated that he did not discuss any tactical plan or his decision to rush the suspect with any of the other officers. He stated that there was not time to do so. NE#1 explained that while he heard WO#3 say “hold up, no,” he did not have time to stop and talk to WO#3 before acting. Ultimately, NE#1 did not believe that his decision to rush up to and bear-hug the subject caused WO#3 to use force by holding a gun against the subject’s head. He felt that he actually ensured that a higher level of force was not used against the subject by his actions.

E. Analysis of De-Escalation

“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.



1. Non-Compliance With Tactics and Training

At the outset, I note that there is no doubt in my mind that NE#1's actions on this day were contrary to Department training and were tactically unsound.

When asked by OPA, virtually all of the witness officers and NE#1, for that matter, indicated that they had not been trained to run up to a suspect holding a weapon and to bear-hug that individual. In these types of scenarios, officers are trained instead to establish a less-lethal contact team. (Advanced Tactics Training: 2017 Small Team Tactics, at pp. 82-85.) The other officers would then act at the direction of the less-lethal operator. (*Id.* at p. 83.) Training recommends at least three officers be part of the team (less-lethal operator, cover officer, and arrest officer). The Department also provides training on the roles and responsibilities of each member of the team. Included in these roles and responsibilities are that the officers will: "form a deployment plan in relation to exigency"; "establish a contingency plan"; and "position team members [and] communicate in place." (*Id.* at pp. 82-83.) Essential to this tactic is communication and effective teamwork between officers. (*Id.* at p. 82.)

Department training on de-escalation further emphasizes a "team-tactics approach to CIT incidents." (*Id.* at p. 77.) It directs officers to "emphasize contact/cover concepts..." to "cover teammates from threats," and discusses "how team tactics enhance changes of de-escalation." (*Id.*) Again, like the training concerning the utilization of a less-lethal contact team, the de-escalation training accentuates the use of teamwork by instructing officers to: "exercise command"; "communicate"; and "coordinate." (*Id.* at p. 78.)

Here, WO#1 and WO#2 first responded to the incident and evaluated the situation, they discussed a preliminary plan that would have involved one of them bear-hugging the subject when he turned his back to them. However, this never got past an initial discussion. At that point, Witness Officer #4 (WO#4) arrived on the scene and announced that he had a Taser. The plan then began to appropriately develop to include WO#4 acting as the Taser officer and WO#3 possibly going hands on. This was consistent with training. NE#1 then arrived on the scene and, after a period of time, made the unilateral decision to run up to the subject, bear-hug him, and push him against a wall. It is clear from the witness officers' statements that NE#1's decision and actions were not discussed with them prior to those actions occurring and, accordingly, were not agreed to.

NE#1 should have spoken to his fellow officers prior to taking such a risk as they were operating together as a team on that date. First, by doing so, he did not allow his fellow officers to fully develop a plan and team tactics. Second, he failed to communicate with his fellow officers and, by acting unilaterally, served to cut off communication between them. Third, he failed to coordinate with his colleagues, instead taking matters into his own hands. As such, the officers were never able to develop their team tactics, were unable to organize a less-lethal cover team, and WO#3 was put in the position of nearly having to fatally shoot the subject. NE#1's actions in this regard were inconsistent with training and with the Department's expectation that he would engage in collaborative and communicative team tactics.

2. Failure to De-Escalate

That being said, that NE#1 engaged in a gross violation of his training and used unsound tactics does not necessarily mean that he violated policy. This is, in my opinion, a closer question.



During its investigation, OPA interviewed the six other officers that were on scene with NE#1 during the incident. The substance of these interviews is detailed fully in the Case Summary. As a general matter, however, all of these officers except for one, opined that they collectively engaged in appropriate attempts to de-escalate the incident and that further de-escalation would not have been safe or feasible. These officers all relied on the fact that the subject had not been responsive to their attempts to engage with him, had raised or waved the ice axe, was walking towards an area that could contain civilians, and that the subject was presently inside of a tunnel and it was an opportune time to act. The outlier, WO#4, stated that he was surprised “a little bit” when he saw NE#1 run up and bear-hug the subject. When he was asked if further de-escalation would have been safe and feasible, he stated that “there’s always more things that we could do” and that “at the time we weren’t around other citizens.” While WO#4 noted that the subject was walking towards an area that could have more civilians present and while their time to handle the situation was possibly “quickly running out,” “there were no other civilians around.” WO#4 stated that, at the time NE#1 bear-hugged the subject, he “did not know of any imminent threat that was happening.” He stated that, instead of NE#1 charging the subject, the officers could have deployed a Taser or continued talking to the subject.

OPA also interviewed NE#1’s supervisors who viewed the appropriateness of NE#1’s conduct quite differently than the majority of his fellow officers. In his review of the incident, the Sergeant noted that when he watched the video of NE#1’s actions he believed that NE#1 substantially deviated from the requirements of the de-escalation policy. He raised his concerns with the Lieutenant who agreed and directed that an OPA complaint be initiated.

The Sergeant told OPA that he further evaluated NE#1’s decision making in this case when he was reviewing the Type I use of force by WO#3 – the pointing of his firearm at the head of the subject at point blank range. Based on his review of the BWV, the Sergeant did not believe that NE#1’s actions were necessitated by the circumstances facing him. Notably, the Sergeant indicated that there were no civilians present and the officers had been following the subject at a distance and could have continued to do so. The Sergeant’s interpretation was that the officers were far enough away from the subject that he could not have struck them with the ice axe. The Sergeant opined that NE#1’s actions precipitated a use of force that did not need to be precipitated at that time. Ultimately, the Sergeant believed that there was no immediate threat and noted that NE#1 was not involved in any planning or communication with his fellow officers when he decided to take action. Lastly, the Sergeant stated his belief that NE#1’s actions directly contributed to WO#3’s need to point his firearm against the subject’s head.

During her OPA interview, the Lieutenant stated that she discussed this matter with the Sergeant and she believed that it was a “clear violation” of the de-escalation policy. The Lieutenant was concerned when she saw how NE#1 “broke the contact team, approached the person from behind, and grabbed the suspect, which unfortunately put the other officers at risk.” The Lieutenant believed that the officers had time, “some distance,” and “there was no need to take immediate action.” She asserted that NE#1’s actions caused WO#3 to use force and could have resulted in a deadly force situation.

Ultimately, when looking at this case in the totality of the circumstances and evaluating all of the statements and video evidence, I agree with NE#1’s supervisors that his actions violated the Department’s de-escalation policy.



I find that at the time that NE#1 made the unilateral decision to rush and bear-hug the subject, there was no immediate threat of harm to any officer or civilian. The subject was walking away from them at a normal pace – he was not running out of the construction tunnel or towards civilians. From a review of the video, the officers were a significant distance from the subject and the ice axe, and, while the subject waved it in the air in their general direction, he never attempted to strike the officers or even took any steps towards them. From my review of the video, no civilians could be seen in the construction tunnel or even at the other side of the tunnel. Of course there could have been civilians somewhere outside of the tunnel, but there were no visible civilians to whom the subject posed an imminent threat. As WO#4 suggested, the officers could have engaged in further de-escalation. They could have tried to further contain the threat; for example, by driving a patrol vehicle to the other side of the tunnel and parking it there to block the subject's exit. They could have called for more CIT certified officers (from my review, only WO#2 was so certified. WO#1 stated that he was "fully trained" but it is unclear whether he was formally certified) or additional less-lethal operators. They could have used different types of verbal approaches, including LEED. From my review of the ICV and BWV, I almost exclusively heard the officers ordering the subject to drop the axe and identifying themselves as police officers. Lastly, they also could have organized a less-lethal contact team, as contemplated by their training, and, if necessary, used less-lethal force (such as a Taser) to subdue the subject.

Interestingly, NE#1 argued here that by unilaterally rushing and bear-hugging the subject, he actually caused the force used to be a lower level than what it could have been. This is only the case, however, because WO#3 did not pull the trigger of the gun that he had braced against the subject's head. Had he done so, we would be having a very different and much more serious discussion. Moreover, NE#1's actions resulted in a potential application of deadly force, whereas the use of a Taser as part of a trained less-lethal contact team would have likely been a Type II use of force. Ultimately, this is the most significant manner in which NE#1 violated the de-escalation policy – he took an untrained and tactically unsound risk where there was no imminent and immediate threat and, by doing so, created a potential deadly force scenario.

Several times in his OPA interview, NE#1 referenced the concern that he was being "Monday morning quarterbacked." In some sense, he is right. Inherent in OPA's and the Department's critical review of incidents is the reality that we look at cases after they occur and with the benefit of 20/20 hindsight. However, this is mitigated by the fact that we are required to, and do, apply a reasonable officer standard when engaging in our analyses.

In summary and applying a preponderance of the evidence standard, I find that NE#1 failed to fully comply with the Department's de-escalation policy in this instance. I further find that his failure to do so caused WO#3 to be placed in a situation where he came close to fatally shooting the subject. This was exactly the type of situation that the de-escalation policy is purposed to avoid.

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

Recommended Finding: **Sustained**



Named Employee #1 - Allegation #2

5.001 - Standards and Duties 5. Employees May Use Discretion

As explained above, I find that NE#1's decision making and actions in this incident were contrary to the Department's de-escalation policy. I also find that he acted inconsistent with Department training and tactics. However, I find it unnecessary to also sustain this allegation, which is premised on that same lack of discretion. That being said, I believe that a training referral is appropriate.

- **Training Referral:** NE#1 should receive additional training concerning the requirements of SPD's de-escalation policy. This training should be conducted by the training unit. NE#1 should also be re-trained as to team tactics, including the duty to communicate and coordinate with his fellow officers. I believe that it would benefit NE#1 to again be taught the Advanced Tactics Training curriculum. NE#1 should also be counseled by his chain of command on how his failure to properly de-escalate this matter, his decision-making, and his failure to comply with training and tactics fell outside of the Department's expectations of his conduct. This re-training and associated counseling should be memorialized in a PAS entry.

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