



OFFICE OF PROFESSIONAL ACCOUNTABILITY

Closed Case Summary

Complaint Number OPA#2016-0862

Issued Date: 03/17/2017

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 8.100 (1) De-Escalation: 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 (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Unfounded)
Allegation #2	<u>Seattle Police Department Manual</u> 5.001 (9) Standards and Duties: Employees Shall Strive to be Professional at all Times (Policy that was issued April 1, 2015)
OPA Finding	Not Sustained (Training Referral)
Allegation #3	<u>Seattle Police Department Manual</u> 8.400 (1) Use of Force Reporting and Investigation: Officers Shall Report All Uses of Force Except De Minimis Force (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Lawful and Proper)
Allegation #4	<u>Seattle Police Department Manual</u> 15.180 (5) Primary Investigations: Officers Shall Document all Primary Investigations on a General Offense Report (Policy that was issued April 1, 2015)
OPA Finding	Not Sustained (Lawful and Proper)
Final Discipline	N/A

INCIDENT SYNOPSIS

The Named Employee assisted in taking a suspect into custody.

COMPLAINT

The complainant alleged the Named Employee may have violated SPD de-escalation policy when calling the subject "Fool," prior to the subject escalating his behavior. Additionally, the Named Employee made several other comments as well as asking the subject, "You wanna get whupped?", swore at the subject, and threatened to punch the subject which were possible violations of professionalism policies. OPA review of the Named Employee's follow-up report and Use of Force statement appeared to not be complete, thorough, and accurate in documenting the incident and force as required by policy.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complaint
2. Review of In-Car Videos (ICVs)
3. Search for and review of all relevant records and other evidence
4. Interviews of SPD employees

ANALYSIS AND CONCLUSION

SPD Policy 8.100(1) requires officers to use "de-escalation tactics" when "safe under the totality of the circumstances and time and circumstances permit." During the incident under review in this complaint, the Named Employee was one of four officers standing at the top of an outdoor stairway leading from the sidewalk down to a locked gate. It was in an area of downtown where assaults and shootings have taken place. A suspect (the subject) who had fled on foot from a reported stolen vehicle was trapped at the bottom of the stairs by a locked gate. The officers were giving the subject verbal orders to keep his hands in sight and out of his pockets, as well as to turn around and get down on his knees. The subject was not following these directions and began walking up the stairs toward the officers. At this time the four officers had their handguns out and the situation was quickly becoming potentially dangerous, given the nature of the crime, the subject's earlier flight on foot, the subject's failure to keep his hands continuously in sight and his advance up the stairs toward the officers. The Named Employee yelled at the subject, "Turn around, you fool." In reply, the subject yelled back a colloquialism that was a challenge to fight. The Named Employee holstered his gun and prepared to take the subject into custody. As the Named Employee moved toward the subject, the subject repeated his challenge. The Named Employee responded by asking if the subject wanted to "get whupped," and ordering him to place his hands on the wall. The Named Employee then pulled his hand back in a fist in a motion that suggested he was about to strike the subject. At the same time, the Named Employee stated he was going to punch the subject in the face. The subject told the Named Employee to go ahead and punch him, but the Named Employee did not. Instead, the

Named Employee took hold of the subject, pushed him against a wall and placed him into handcuffs.

This policy requiring the use of de-escalation tactics when time and circumstances permit requires officers to weigh any threats to officers or others against the possibility that time, distance and other tactics might lower the need for force to take a person into custody or gain necessary compliance. In this particular situation, the evidence showed that the subject was advancing up a stairway towards the officers with his hands not always in plain view. This created a situation in which the Named Employee and the other officers had to act quickly to prevent the subject from producing a weapon, if he had one, or assaulting the officers once he reached the top of the stairs. Given the totality of the circumstances shown by the preponderance of the evidence from this investigation, the OPA Director found that it was not safe or feasible for the Named Employee to attempt additional de-escalation tactics before going hands-on with the subject.

SPD Policy 5.001 (9) says, in relevant part:

“Employees will avoid unnecessary escalation of events even if those events do not end in reportable uses of force,” and further that employees “shall not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.”

The Named Employee’s use of the term “fool” directed at the subject, along with his (the Named Employee’s) threats to whup and punch the subject in the face gave rise to the allegation that the Named Employee’s speech may have been derogatory, contemptuous or disrespectful toward the subject and may have served to escalate the event.

The Named Employee explained to OPA that his use of the term “fool” was meant to point out to the subject the “foolishness” of not following the commands of the police and that this and his other comments to the subject were said in an effort to get the subject’s immediate attention and compliance. The Named Employee indicated that, at the moment he began speaking with the subject in this manner, the situation was becoming very serious and potentially dangerous, and he (the Named Employee) believed it was urgent that he use strong language to get through to the subject and gain his compliance.

Based on the preponderance of the evidence, the OPA Director found the Named Employee’s use of the derogatory term “fool” directed at the subject, combined with the Named Employee’s threats to “whup” and “punch” the subject was unnecessarily provocative and insulting, even in light of the very real danger present at the moment.

Additional Analysis:

Based on input from the Named Employee’s Captain and Assistant Chief, the OPA Director decided to amend his recommended finding to Not Sustained (Training Referral). In coming to this conclusion, he took the following factors discussed into consideration:

- there was no evidence to suggest that the Named Employee intended his words and actions to provoke the subject or escalate the situation
- the Named Employee's stated intent was to gain the subject's immediate compliance and reduce the risk he might assault the officers
- the Named Employee was relatively inexperienced as a police officer, having been hired by SPD only three years ago
- the Named Employee's supervisor believed a Not Sustained (Training Referral) would provide them with the opportunity to direct and modify the Named Employee's future behavior and avoid similar situations in the future.

The preponderance of the evidence from this investigation showed that the Named Employee fully reported the force used, both to his supervisor and in a Use of Force statement.

The preponderance of the evidence from this investigation showed that a different officer was primary for this incident and submitted a General Offense Report as required. Further, the Named Employee completed a supplemental officer statement for the General Offense Report in which he accurately reported his (the Named Employee's) actions.

FINDINGS

Named Employee #1

Allegation #1

A preponderance of the evidence showed that it was not safe or feasible for the Named Employee to attempt additional de-escalation tactics before going hands-on with the subject. Therefore a finding of **Not Sustained** (Unfounded) was issued for *De-Escalation: 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.*

Allegation #2

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Standards and Duties: Employees Shall Strive to be Professional at all Times.*

Allegation #3

A preponderance of the evidence showed that the Named Employee fully reported the force used. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Use of Force Reporting and Investigation: Officers Shall Report All Uses of Force Except De Minimis Force.*

Allegation #4

A preponderance of the evidence showed that a different officer was primary for this incident and submitted a General Offense Report as required. Therefore a finding of **Not Sustained** (Lawful and Proper) was issued for *Primary Investigations: Officers Shall Document all Primary Investigations on a General Offense Report.*

NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.