



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 19, 2018

CASE NUMBER: 2018OPA-0577

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 (Unfounded)
# 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 (Management Action)
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

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 alleged that the Named Employee engaged in various misconduct during the Complainant's arrest.

STATEMENT OF FACTS:

Named Employee #1 (NE#1) was dispatched to a trespass in progress at a known vacant location. When he arrived at the location, he saw the Complainant on the property. NE#1 reported that he observed the Complainant peer at him from around the corner of a garage on the property. The Complainant then disappeared from view. While waiting for other backing units to arrive at the scene, NE#1 observed the Complainant walking northbound. NE#1 then approached and made contact with the Complainant. When he did so, NE#1 threatened to tase the Complainant if the Complainant did not comply with his orders. NE#1 then saw a bulge in one of the Complainant's jacket pockets and noticed a handle protruding from the pocket. NE#1 drew his Taser, pointed it at the Complainant, and ordered him to come to the front of his patrol vehicle. NE#1 again told the Complainant that he would be tased if he did not do so. The Complainant complied and NE#1 took him into custody. NE#1 handcuffed the Complainant and frisked him. He found that the object in the Complainant's pocket was a hairbrush. The Complainant was placed under arrest for trespass and the arrest was screened by a supervisor. During that arrest screening, the Complainant made various allegations of misconduct against NE#1. Among the statements the Complainant made were the following: NE#1 was "out of control"; the Complainant "feared for [his] life"; NE#1 subjected the Complainant to "police brutality"; and the Complainant suffered a "beat down." The supervisor subsequently made an OPA referral and this investigation ensued.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged that NE#1 subjected him to excessive force.

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.” (SPD Policy 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.*)

NE#1’s interaction with the Complainant, as well as the force he used, were captured by NE#1’s Body Worn Video (BWV). The BWV clearly establishes that the force used by NE#1 was de minimis and, in no way, excessive. Indeed, NE#1 used no force other than that needed to control the Complainant’s person and to handcuff him. This force was reasonable, necessary, and proportional, and, as such, was consistent with policy.

I find no evidence supporting the Complainant’s allegations and, for these reasons, I recommend that this be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

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

It was further alleged that NE#1 may have failed to de-escalate prior to using 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.*) 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.

When he first exited his patrol vehicle, NE#1 stated that following to the Complainant: “Come here bro. Come here. If you walk away, you’re going to get tased. You’re going to get tased.” The Complainant, who was walking away from NE#1 at the time, turned around and faced NE#1. NE#1 stated: “Come over here man. Get your hands out of your pockets.” NE#1 continued to give the Complainant directions and again told him that he was going to get tased if he did not comply. At this point, NE#1 referenced the fact that he noticed an object in the Complainant’s pocket. The Complainant complied and walked over to the patrol vehicle. NE#1 was then able to take the Complainant into custody without incident.

At his OPA interview, NE#1 provided three main explanations for the threat to tase the Complainant. First, he stated that it was an advance Taser warning that he issued consistent with SPD Policy 8.300-POL-3(6). Second, in response to follow-up questions asked by his Guild representative, NE#1 contended that the threat to tase the Complainant was a ruse. Third, and most significant for the purposes of this DCM, he stated that the threat of force was a form of de-escalation.

I note at the outset that this allegation was not classified for investigation because OPA believed that NE#1 violated the Department’s de-escalation policy. Indeed, I do not find that NE#1 failed to de-escalate this matter. My focus here is, instead, on the threat to tase and on the question of whether such a threat is a proper de-escalation tactic. This is especially the case where, as NE#1 acknowledged in this case, the force threatened would have been excessive had it been used. This is not the first case in which the question has arisen and there appears to be a clear need for clarification on this issue.

OPA does not question that a threat of force can be a valuable and effective law enforcement tactic; however, OPA does not believe that such a threat constitutes de-escalation. Instead, it is a means of escalating an incident in order



to frighten or intimidate a subject into compliance. In reaching this conclusion, OPA acknowledges that such threats can, if they work, reduce or eliminate the need for force. That being said, threats run contrary to a number of the de-escalation tools called out in the policy, including, most notably: "Using verbal techniques, such as Listen and Explain with Equity and Dignity (LEED) Training, to calm an agitated subject and promote rational decision making." Threats cannot be said to calm an agitated subject, nor can they be found consistent with the principles of LEED. Moreover, a threat of harm or force can serve to amplify a subject and to make it more likely that force will be used.

Ultimately, OPA does not seek to preclude officers from using such threats when appropriate and necessary. OPA does, however, recommend that the Department modify SPD Policy 8.100 to be clear that threats of force – and particularly threats force that would be otherwise excessive – does not constitute de-escalation. OPA notes that the most recent version of this policy expressly allows for such threats and categorizes them as a de-escalation tool. OPA strongly disagrees with this decision and has previously requested that the Department remove that language from the draft policy. For these reasons, OPA issues the below Management Action Recommendation.

- **Management Action Recommendation:** OPA recommends that the Department revise the language of SPD Policy 8.100 to make clear that threats, including threats of force, do not constitute a de-escalation tactic.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

The Complainant alleged that NE#1 engaged in unprofessional behavior. Specifically, the Complainant contended that NE#1's behavior was "out of control" and that NE#1 scared him and made him fear for his life.

SPD Policy 5.001-POL-9 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-9.) The policy further states the following: "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person." (*Id.*)

While I do not doubt that it was frightening for the Complainant when NE#1 pointed a Taser at him, the Complainant had been engaged in criminal activity and NE#1 reasonably believed that the Complainant could be armed. Based on my review of the video evidence, I see nothing supporting the assertion that NE#1 was out of control. Moreover, while I call into question whether NE#1's threat to tase the Complainant constituted de-escalation, I do not have difficulty finding that it was not unprofessional.

For the above reasons, I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**



Seattle Office of Police Accountability

January 17, 2019

Chief Carmen Best
Seattle Police Department
PO Box 34986
Seattle, WA 98124-4986

Dear Chief Best:

Please see the below Management Action Recommendation.

Case Number

- 2018OPA-0577

Topic

- De-Escalation

Summary

- The Named Employee threatened to tase a subject as a de-escalation tactic, even though the force threatened would have been excessive if used under the circumstances. The most recent version of *SPD Policy 8.100 – De-Escalation* expressly allows for such threats of force and categorizes them as a de-escalation tool.

Analysis

- Threats of force undermine de-escalation tools outlined in *SPD Policy 8.100-POL-1*, most notably: “Using verbal techniques, such as Listen and Explain with Equity and Dignity (LEED) Training, to calm an agitated subject and promote rational decision making.”
- A threat of harm or force can serve to amplify a subject and make it more likely that force will be used.

Recommendation(s)

- Revise *SPD Policy 8.100* language to clarify that threats of force – and particularly threats of force that would otherwise be excessive – do not constitute a de-escalation tactic.

Thank you for your consideration of this matter. I look forward to your response.

Sincerely,

AM

Andrew Myerberg
Director, Office of Police Accountability