



## **CLOSED CASE SUMMARY**

ISSUED DATE:      JANUARY 11, 2019

CASE NUMBER:     2018OPA-0653

### **Allegations of Misconduct & Director’s Findings**

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 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 works as a Metro Bus driver, observed the apprehension and arrest of the Subject by the Named Employee. The Subject was briefly on the Complainant’s bus before an encounter between the Subject and Named Employee took place. Based on what the Complainant observed, he alleged that the Named Employee’s use of force appeared to be unnecessary and excessive.

Given the substance of the Complainant’s allegations, which were made in his witness statement to SPD, a supervisor referred this matter to OPA and this investigation ensued.

**ANALYSIS AND CONCLUSIONS:**

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

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

In his statement to SPD and later interview with OPA, the Complainant reported that on the day in question, an individual – referred to herein as the Subject – got onto his bus “in a hurry.” Shortly thereafter, Named Employee #1 (NE#1) pulled his police vehicle in front of the Complainant’s bus to block it from moving forward. Immediately after that happened, the Subject ran to the front of the bus and attempted to exit, but the door was closed. The Complainant then watched as NE#1 exited his police vehicle and ran toward the front door of the bus. The Complainant then stated that in an apparent response to seeing NE#1, the Subject jumped into the bus driver’s area, where the Complainant was seated, maneuvered his body over the steering wheel, and jumped onto the street from the open driver’s side bus window. The Complainant stated that the Subject never made any noticeable contact with him, and confirmed that the Subject did not assault him.



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After the Subject exited the bus through the driver's side window, NE#1 and the Subject began, "scuffling a little bit." The Complainant recalled hearing NE#1 yell, "stop," to the Subject, and then stated that NE#1 caught up to the Subject and "basically" slammed the Subject to the ground. After NE#1 attempted to gain control of the Subject, the Subject slipped from NE#1's grasp and started to get away when an unknown civilian bystander tripped the Subject in an apparent effort to assist NE#1 in the apprehension. NE#1 and other officers were then able to take the Subject into custody.

The Complainant stated that he witnessed NE#1 use a headlock and knee the Subject in the groin as part of the force used. The Complainant did not witness the Subject strike NE#1, and stated that he believed that the Subject was only trying to get away. The Complainant stated that he watched nearly all of what took place in connection with NE#1's and the Subject's encounter through his rearview mirror, which he felt gave him a clear view of everything. The Complainant confirmed that he never got up from his driver's seat to view the encounter directly. As a summary of what he witnessed, the Complainant analogized that it was "like watching .... a high school bully beat up somebody."

In NE#1's statement to his SPD supervisor, Use of Force (UOF) report, and his interview with OPA, he stated that he responded to a police dispatch call of an alleged assault where an adult male attempted to kick a juvenile female in the head. When NE#1 arrived on scene, he interviewed the alleged assault victim – referred to herein as the victim – who explained that the Subject attempted to kick her in the head while she was seated on the ground, but she deflected the kick from her head to her arm. The victim, who was from outside of Seattle and did not know the Subject, stated that she thought the Subject may have tried to kick her because, "he thought that [she] was making fun of him for smoking a joint." The victim provided a description of the Subject to NE#1, and, after consulting with her mother who was also present and a witness of what took place, she agreed to positively identify the Subject if police located him and she confirmed that she wanted the Subject arrested for assault.

While conducting an area check, NE#1 observed an individual who matched the description of the Subject. When NE#1 ordered the Subject to stop, the Subject immediately fled on foot. NE#1 explained that he later the Subject on a Metro bus, and as NE#1 attempted to enter the bus, the Subject saw NE#1 and appeared to be looking for way to escape. The Subject then climbed on top of the bus driver, over his steering wheel, and jumped out of the bus through the driver's side window. NE#1 explained that from what he witnessed, the Subject's actions constituted reasonable suspicion that he just committed a third-degree assault of the bus driver in order to exit through the bus driver's side window.

NE#1 stated that he caught up to the Subject immediately after he jumped out of the bus and utilized control holds to restrain him up against the side of the bus. NE#1 ordered the Subject to, "stop" and to get on the ground, but the Subject refused to comply by flailing his arms, grabbing and pushing on NE#1's chest, and attempting to get away. In that process, NE#1 noted that the Subject pulled off NE#1's Body Worn Video (BWV) camera and SPD radio microphone. NE#1 added that the absence of his radio microphone prevented NE#1 from further communication with SPD dispatch. NE#1 stated that he knew his encounter with the Subject was taking place on a busy road, which he believed posed an increased level of danger to him and the Subject. To gain control of the Subject, NE#1 stated that he used an SPD-trained head control maneuver, but the Subject pulled out of that move and fled.

As the Subject was making good his escape, an unknown civilian tripped and grabbed the Subject in the middle of the street, which allowed NE#1 to re-initiate contact. NE#1 recalled seeing the Subject take an apparent fighting



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stance as NE#1 approached. NE#1 noted that he was beginning to tire in response to his extended encounter with the Subject, while the Subject appeared unfazed. NE#1 explained that he then began initiating knee strikes to the Subject's mid-body section in order to achieve pain compliance, but that effort did not seem to impact the Subject. At that point, NE#1 began to wonder whether the Subject was under the influence of some sort of drug or not reacting because of a cognitive issue. It was not until other officers arrived, and one of them displayed and threatened the use of a Taser, that the Subject complied and was arrested. NE#1 maintains that his use of force was necessary, reasonable, and proportional based on what NE#1 knew and witnessed in connection with this incident, and the Subject's active and aggressive resistance to his arrest.

OPA reviewed the BWV of SPD's attempted interview of the Subject. In that video, the Subject appeared to have difficulty following many of the questions he was asked, and stated that he did not remember any sort of physical confrontation between himself and NE#1 and other police officers. As of the date of this report, the Subject has not complained to OPA regarding what took place.

OPA reviewed all relevant SPD BWV associated with this incident. NE#1's BWV captured NE#1's interview of the juvenile victim, her description of the Subject, NE#1's initial sighting of the Subject and the associated police commands he gave, and the beginning portion of the encounter between NE#1 and the Subject after he jumped out of the bus. In that video, NE#1 is seen making initial physical contact with the Subject and is heard instructing him to "stop," when the BWV camera ends up on the ground. After NE#1's BWV camera is on the ground, neither the video or audio offer anything of value in this investigation. The BWV of a responding Sergeant, who engaged with the Subject near the end of this incident, captured NE#1 when he had his hands behind the Subject's head and was moving the Subject in a downward motion in an apparent effort to take the Subject to the ground. The Sergeant then assisted in the struggle between NE#1 and Subject and the two officers were able to successfully take Subject to the ground. The BWV further showed the officers attempting to handcuff the Subject. The Subject did not appear to be complying with any of the orders given to him by the officers and appeared to be thwarting their efforts to handcuff him. Ultimately, the Sergeant's BMV was knocked from his uniform during that effort and the remaining video is of no evidentiary value. The BWV of the responding officer who drew his Taser and issued Taser warnings to Subject captures that activity and the Subject as he ends his resistance and complies with the officers' orders.

OPA reviewed the Metro Bus video, which includes footage from various angles in and around the bus. In these videos, NE#1 and the Subject are seen engaged in a struggle. NE#1 does not appear to have control of the Subject in any of the available video footage. The footage captured NE#1 as he delivered two knee strikes to the midsection of the Subject's body, but it is unclear where exactly those strikes landed and whether they had any impact at all as the Subject did not display any recognizable reaction. It also captured a point when the Subject was taken to the ground after the arrival of another officer.

OPA reviewed the other available witness statements. None of the other witnesses reported seeing any action on the part of NE#1 or other officers that caused them concern or was alarming. Descriptions of the incident provided by these witnesses included it being a "tussle" or "wrestling match." One also reported seeing the Subject pushing off NE#1, and that it did not appear that either one was fighting. One of the witnesses noted that she could tell that NE#1 was getting tired as the back and forth effort to apprehend the Subject continued.

OPA reviewed SPD's Use of Force and Force Review Board (FRB) reviews. The chain of command thoroughly reviewed the force and deemed it consistent with both policy and training. The FRB found that NE#1 employed



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appropriate tactics and decision making, but did not opine on whether the force was within policy as the case had already been referred to OPA.

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.*) If, as the Complainant alleged, that the circumstances did not call for the use of force on the part of NE#1, then it would have been a violation of this policy.

Based on the available evidence, I find that NE#1 actions consistent with SPD policy and were based on the totality of the circumstances as they unfolded in front of him. I note that the available video, albeit somewhat limited due to BWV cameras being knocked from officers in this encounter, supports NE#1 account of what took place in his encounter with Subject. Additionally, other witnesses who were on the bus and watched out the window as the events unfolded around them, as well as the witness who watched as NE#1 and Subject briefly made contact with her vehicle, did not view NE#1’s actions as concerning or alarming. Though the Complainant was troubled by the force that was used by NE#1, I find that, based on what NE#1 knew, observed, and subsequently experienced in his encounter with the Subject, the force he used to apprehend and arrest the non-compliant and combative Subject was reasonable, necessary, and proportional, and, thus, consistent with policy.

For these 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***

The Complainant further alleged, in essence, that NE#1 failed to employ appropriate de-escalation tactics and techniques when he continued to use force against Subject even though NE#1 clearly had control of him early in their encounter.

“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



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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.

According to how this incident unfolded, the explanation offered by NE#1, and the available evidence as described above in Allegation #1, I find that de-escalation was not safe or feasible in light of the fact that the Subject immediately fled on foot when NE#1 first made contact with him, and the Subject refused to comply with his commands. Furthermore, I find it reasonable that NE#1 viewed the Subject’s action, in escaping through the driver’s side window of the bus by climbing over the Complainant, as an on-view assault, which heightened the level of urgency on the part of NE#1 to apprehend the Subject. This is the case even though the Complainant, himself, may not have felt that the Subject’s behavior was assaultive. I also find that the facts support that NE#1 continued to issue verbal commands in an effort to gain the Subject’s compliance in an apparent effort to lessen his need to continue to use force. However, this was unsuccessful.

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

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