



## CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 27, 2019

CASE NUMBER: 2018OPA-0796

### 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 (Lawful and Proper)
# 2	8.200 – 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)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	8.200 – Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	8.200 – 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:**

It was alleged that the Named Employees subjected the Complainant to excessive force and that they failed to deescalate prior to using force.

**ANALYSIS AND CONCLUSIONS:**

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

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

The Named Employees responded to an apartment complex where it was reported that an individual – who was later identified as the Complainant – was following people around and potentially trying to access their apartments. The callers indicated that he was placing them in fear and that he was high/intoxicated and was behaving unpredictably. The callers further provided a description of the Complainant. Multiple callers indicated that they would buzz the officers into the complex, which was locked, upon their arrival. When the Named Employees approached the complex, they observed the Complainant, who was standing behind the locked entry gate.

The Named Employees made contact with the Complainant, who matched the description of the perpetrator, and asked him what he was doing. The Complainant responded that he was “hanging out” on the patio because he was “declared the king of the most high.” The Named Employees tried to reason with the Complainant for a period of



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time and to obtain his voluntary compliance, including asking him to open the gate; however, they were unsuccessful. The Named Employees then used the intercom to obtain entry and were buzzed in by one of the residents. Named Employee #2 (NE#2) tried to open the gate, but the Complainant prevented the officers from entering. NE#2 was ultimately able to force entry.

At that point, the Named Employees believed that they had probable cause to arrest the Complainant for both trespass and obstruction. They made the decision to take the Complainant into custody and went hands-on, grabbing the Complainant's arms. The Complainant tried to pull away from them and the Named Employees made the decision to take the Complainant down to the ground. They did so by first pulling him downwards and then maneuvering him onto his stomach. At that time, the Complainant was actively resisting the Named Employees and pushing back on them in an attempt to get up. The Named Employees further reported that he repeatedly kicked at NE#1 and engaged in assaultive behavior. In order to prevent him from further doing so, NE#2 recounted that he kned the Complainant twice in the side and punched the Complainant once in the triceps. NE#1 reported that he used one knee strike. He stated that he did so in order to prevent the Complainant from continuing to kick him.

The force used allowed the Named Employees to secure the Complainant's person, to prevent further resistance, and to place him into handcuffs. A supervisor screened the incident and the Complainant made allegations suggesting an excessive force claim. These allegations included that the Named Employees purportedly "beat up on" the Complainant, that they twisted his arms and head, and that they bashed his head into the ground. This OPA investigation ensued.

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.*)

At the time the Named Employees used force, they had probable cause to arrest the Complainant. When the Complainant refused to comply with their orders and physically resisted their attempts to take him into custody, the Named Employees were allowed to use force to effectuate the arrest. Moreover, when the Complainant continued to struggle against the Named Employees while on the ground, including by kicking NE#1 and trying to get up, the Named Employees were permitted to use intermediate force to prevent him from doing so and to eliminate the ongoing threat that he posed. This force was consistent with both policy and the Named Employees' training. As such, I find that the force used was both reasonable and necessary. I further find that the level of force used was proportional to the Complainant's resistance. Notably, the Complainant assaulted both officers. Accordingly, I find that the use of knee strikes and a punch was appropriate under the circumstances of this case.

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

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

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



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**8.200 – 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 alleged that the Named Employees 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.

Based on my review of the evidence, I find that, prior to using force, the Named Employees attempted to communicate with the Complainant for a period of time but were unsuccessful in gaining his voluntary compliance. I further conclude that, at the time the Named Employees made the decision to use force, further de-escalation was no longer safe or feasible. At that point, the Named Employees were aware that the Complainant had committed multiple crimes, which included following residents throughout the complex and trying to gain access to their apartments. Several of these residents had informed the police that they were alarmed and felt threatened by the Complainant’s conduct. Once it became clear that the Complainant was not going to cooperate, the Named



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Employees were obligated to take action to place the Complainant into custody and to eliminate the threat of harm to the residents. It was no longer possible to continue to negotiate with the Complainant, nor was it safe to the Named Employees or others to further do so. Moreover, I note that, even after the decision was made to go handson, the Named Employees tried to use as little force as possible. However, they were required to elevate their force as the Complainant increased his physical resistance and began assaulting them.

For the above reasons, I find that the Named Employees appropriately de-escalated this matter prior to using force and that law enforcement priorities dictated action at the time force was used. As such, recommend that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

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

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

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

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

***8.200 – 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***

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

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