



## **CLOSED CASE SUMMARY**

ISSUED DATE: JANUARY 2, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0281

### **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	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force.	Not Sustained (Training Referral)
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Allegation Removed

**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	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force.	Not Sustained (Training Referral)
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Allegation Removed

***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 Employees used excessive force and failed to de-escalate matters during an arrest. The Complainant also alleged that the Named Employees’ actions in handling the arrestee led to the exposure of the woman’s breast in front of onlookers.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #1**

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

On May 7, 2020, Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were dispatched to the 300 block of Bellevue Avenue in response to a report of a trespasser in the area. Upon arrival at that location, the Named Employees spoke with the 911 caller/property manager, who stated that a female had broken through a gate on the property. The property manager indicated that he had succeeded in removing the female from his building, noting



that she had relocated to the building across the street. Upon receipt of this information, the Named Employees walked across the street and found the female lying down in a basement stairwell, surrounded by various possessions. The Named Employees instructed the female to come up the stairs so as to be at ground level, which the female eventually agreed to do. Once she did so, the female turned around and walked down the stairs. The Named Employees again instructed the female come up the stairs. She did so, but then walked past the officers. NE#1 instructed the female to turn around and face them, at which point the female turned around with her hands positioned at her sides.

NE#1 then told the female to “put [her] hands where [he could] see them.” He then moved forward and attempted to take control of the female’s left arm. In response, the female made a verbal expression of disgust, then again turned away from the officers. At this point in time, both of the Named Employees moved forward and took hold of the female’s arms, causing her to tense up and to ask why she was being detained. Despite NE#2’s efforts to calm the female, she continued to tense up and resist the detention. The Named Employees brought the female down to the ground. Once the female was on the ground, she crouched into the fetal position and continued to resist the detention, claiming that she was on site in order to go to the bathroom. As the Named Employees maintained their hold on the female’s arms, a bystander approached and began questioning the officers about the propriety of the arrest and their actions. Other bystanders came to the scene.

The struggle between the Named Employees and the female continued on the ground for approximately four minutes. During that time, the female continued to assert that she was on scene to urinate. The bystander also continued to question the Named Employee’s basis for the detention. At one point, the female’s left breast became exposed and remained so for approximately one and a half minutes. NE#1 ultimately covered the female’s breast. As the female continued to struggle, her left breast again became exposed. While this struggle on the ground continued, the female and bystander made claims that the Named Employees were applying excessive force and that Named Employees had hit the female’s head on the ground. Once backing officers arrived on scene, the Named Employees were better able to control the female, allowing them to successfully place her in handcuffs. The 911 caller/property manager was then brought to the scene in order to verify the female as the trespass suspect and he did so.

Under SPD policy, “An officer shall use only the force objectively reasonable, necessary, and proportional to effectively bring an incident or person under control, while protecting the life and safety of all persons.” (SPD Policy 8.200 §1). 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 8.050). The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

As discussed above, the Named Employees had probable cause to arrest the female for trespass and were permitted to take her into custody. They were further permitted to use force to do so, if needed. Once the officers tried to take hold of the female’s arms, she tensed up and attempted to pull away from them. At this time, the officers used control holds to stop the female from moving and to handcuff her. The officers further brought the female down to the ground in a controlled takedown when her resistance continued. OPA finds that this force, which was all low-level, was reasonable under the circumstances. OPA similarly finds that the force was necessary given the female’s non-compliance and continued resistance. Lastly, the force was also proportional. Again, the female repeatedly



kicked her legs and hid her arms. The Named Employees used firm grips on her body and softly took her to the ground to control her and to prevent her from continuing to do so. No other force was used, including no strikes and no force that could be considered high-level. In addition, once the female stopped resisting, the officers ceased using force altogether.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as to both Named Employees.

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

**Named Employee #1 - Allegation #2**

***8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force.***

Under SPD policy, “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)

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.” (SPD Policy 8.100-POL-1) 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

(*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.



While OPA recognizes that the Named Employees had the legal authority to arrest the Complainant and finds that the force they used to do so was within policy, OPA believes that they could have taken more time to de-escalate. Specifically, the Named Employees could have more fully explained to the female what was happening and tried to further reason with her. From a review of the Body Worn Video, there did not appear to be a need to immediately go hands-on and, indeed, that decision resulted in a prolonged physical interaction that drew bystanders to the scene. The Named Employees had time to call for backing officers, which is an element of de-escalation, and to take further steps to determine whether the female's non-compliance was the result of mental illness and/or substance abuse. At the very least, this may have reduced the negative perception of this incident by the bystanders, which certainly undermined their trust and confidence in SPD.

Lastly, while OPA was, like the bystanders, disturbed that the female's breast became visible during her struggle with the officers, this was not intentional on the officers' part and was the result of the female's continued resistance. In any event, while unfortunate, this did not constitute a violation of policy (either de-escalation or professionalism) by the Named Employees.

Ultimately, OPA does not conclude that the Named Employees violated policy. However, their handling of this incident was imperfect. OPA strongly believes that they would benefit from a thorough debrief of this incident and a critical assessment of whether there were things that they could have done better. This is particularly important given that both Named Employees are newer officers who are going to make mistakes that they need to learn from. This case presents an excellent opportunity to do so and to improve as officers.

For these reasons, OPA recommends that both NE#1 and NE#2 receive the below Training Referral.

- **Training Referral:** NE#1 and NE#2 should debrief this incident with their chain of command, including a discussion on whether there were other steps they could have taken to better de-escalate and to lessen tensions with the female and the bystanders. As part of this debrief, the chain of command should provide the Named Employees with additional training on de-escalation, ideally emphasizing interaction with unsheltered individuals who are undergoing crisis events. This training and any associated counseling should be documented, and this documentation should be maintained in an appropriate database.

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

**Named Employee #1 - Allegation #3**

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

OPA finds that this allegation is completely subsumed in Allegation #2 and, accordingly, recommends that it be removed as against both NE#1 and NE#2.

Recommended Finding: **Allegation Removed**

**Named Employee #2 - Allegation #1**

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

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



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

**Named Employee #2 - Allegation #2**

***8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, 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), OPA recommends that this allegation be Not Sustained – Training Referral.

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

**Named Employee #2 - Allegation #3**

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

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**