



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 3, 2023

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0478

Allegations of Misconduct & Director’s Findings

Named Employee #1

| Allegation(s): | | Director’s Findings |
|----------------|---|-----------------------------------|
| # 1 | 8.100 - De-Escalation 1. When Safe, Feasible and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force | Sustained |
| # 2 | 8.200 - Using Force 1. Use of Force: When Authorized | Not Sustained - Lawful and Proper |
| # 3 | 5.001 - Standards and Duties 10. Employees Will Strive to be Professional | Sustained |

Imposed Discipline

Resigned Prior to Proposed Discipline Action Report

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:

OPA alleged that while conducting an on-scene investigation Named Employee #1 (NE#1) failed to properly de-escalate and used excessive force resulting in injury to the subject, Community Member #1 (CM#1). OPA also alleged that NE#1 was unprofessional during the encounter.

SUMMARY OF INVESTIGATION:

OPA responded to a Force Investigation Team (FIT) callout concerning a Level 3 Use of Force (UOF). See SPD Policy 8.400-POL-5, Use of Force – Type III Investigations, subsection 2 (“FIT Responses will be tailored to the circumstances, but will normally include . . . an OPA Representative”). After evaluating the incident, OPA alleged that NE#1 may have failed to de-escalate with CM#1 while conducting an accident investigation. OPA also alleged that NE#1 may have used excessive force when effecting CM#1’s arrest of CM#1 and violated SPD’s professionalism policy.

During its investigation, OPA reviewed the Computer Aided Dispatch (CAD) Call Report, Incident/Offense Report and Supplements (Incident Report), Body Worn Video (BWV), In-Car Video (ICV), Photographs, Seattle Fire Department (SFD) Patient Care Records, FIT File, Force Review Board (FRB) Action, and Level 3 UOF Documentation. OPA also interviewed NE#1.

The entire interaction between NE#1 and CM#1 was recorded on NE#1’s BWV. Accordingly, the relevant facts are not in credible dispute. NE#1 provided his perspective of the incident through a written UOF statement, statement to FIT investigators, and OPA. Additionally, a witness SFD employee, Firefighter #1 (FF#1), provided his perspective in a statement to FIT. CM#1 declined to provide a statement to both FIT and OPA investigators.



NE#1 responded to a call that a vehicle struck a power pole resulting in low power lines and possible injuries. NE#1 was the first SPD officer to arrive on scene; SFD personnel were already present. NE#1 exited his vehicle and approached the accident site. As NE#1 reached the accident site, a uniformed SFD firefighter identified CM#1 and stated, “driver’s right here, no injuries.” CM#1 stated that he was not hurt, was on his way to pick someone up at the airport in that person’s car, and that “actually they’re calling me right now.” CM#1 then answered a call on his cell phone. NE#1 asked CM#1 for his driver’s license, CM#1 responded, “what do you need?” NE#1 replied, “your driver’s license.” CM#1 stated, “yes sir,” while reaching into his short’s pocket.

CM#1 then continued engaging in a conversation on the phone while holding his wallet and looking in NE#1’s direction. After about twenty seconds, NE#1 stated, “I need your driver’s license info man.” CM#1 continued talking on the phone while holding his wallet but did not provide NE#1 with his driver’s license. After about ten seconds, NE#1 raised his voice and stated “hello, Seattle Police Department, I need your driver’s license and insurance, thank you.” CM#1 then held the face of his phone up in towards NE#1 and smirked at NE#1. NE#1 replied, “I don’t care if you’re on the phone, that’s not going to help you, I’m the one who’s helping you. Thank you.” CM#1 continued speaking on the phone saying, “yeah, that’s who’s talking to me, so anyway,” as he struggled to open his wallet with only one hand. NE#1 then raised his voice again stating, “you can call her, after, and tell her what’s going on.” CM#1 then appeared to hang up the phone and NE#1 stated, “...there we go.”

CM#1 looked at NE#1 and said “...k, thanks...” and NE#1 interrupted, demanding “drivers license” while extending his left hand. NE#1 then asked CM#1, “you been drinking sir?” CM#1 responded, “no sir.” NE#1 replied, “you sure, sir?” CM#1 said, “yes.” NE#1 then asked, “why your pupils so big?” CM#1 responded, “I don’t know.” NE#1 asked, “did you take any narcotics?” CM#1 responded, “at times.” NE#1 asked, “did you take any recently?” At this point, CM#1—who had been struggling to remove his driver’s license from his wallet for about a minute—removed his license and handed it to NE#1. CM#1 responded, “nope.” NE#1 asked, “when was the last time you took any narcotics?” A person (presumably a firefighter) interjected, asking everyone to move away from the accident scene.

As NE#1, CM#1, and FF#1 prepared to move away from the accident scene, NE#1 asked, “So you didn’t drink today, but you might have taken some narcotics?” CM#1 responded, “I have.” NE#1 replied, “what kind of narcotics might you have taken?” As NE#1, CM#1, and FF#1 starting walking away from the accident scene, CM#1 stated, “Is this per, uh...” NE#1 interjected, “per what? Per the fact that you crashed into a pole? You having a little hard time moving? So when’s the last time you took anything Mr. [CM#1]?” CM#1 then mumbled something that ended in “...persistent to the rule of...” and NE#1 interjected, “what’s that?” Persistent to the what? Persistent to the what?” NE#1 then stated, in a notably higher pitched tone of voice, “you having a hard time following directions today? What’s going on Mr. [CM#1]?” CM#1 then stated, “no, no.” NE#1 then returned to a his normal tone of voice asking, “how do you crash into a pole...by yourself? Your pupils are very big...” CM#1 then stated, “I believe I actually might need a lawyer then.” NE#1 stated, “you do? Ok, cool, No problem.”

FF#1 stated to CM#1, “I gotta take your vitals.” FF#1 said, “let me see your wrist sir,” while taking hold of CM#1’s right wrist. CM#1 appeared to tense up and pull his right arm away. NE#1 stated, “he’s the fire department,” and FF#1 told CM#1 to relax. CM#1 then pulled his right arm away from FF#1 and stated, “might I have my license back.” NE#1 responded, “no, you’re not, you’re being detained right now...yeah.” NE#1 then asked, “do you know where you’re at?” CM#1 responded, “yes, I do.” NE#1 asked, “where’re you at? Where’re you at Mr. [CM#1]?” After a delay, NE#1 said, “...hello, Mr. [CM#1]?” CM#1 then muttered something and then said, “sir, I’m in Seattle.” NE#1 stated “perfect, do you know where in Seattle you’re at right now?” CM#1 responded, “Burien.” NE#1 then asked CM#1 about which direction the airport was.



CM#1 then stated, “actually, I’m-ah actually ask for a lawyer now, an attorney,” then raised his voice, finishing, “at this moment, sir!” NE#1 stated, “right this moment, okay,” and stepped towards CM#1 and took control of CM#1’s left arm by pulling it behind CM#1’s back. NE#1 positioned himself behind CM#1. NE#1 stated, “then you can turn around. Relax, if you give me any static you’re going to go to the ground, okay. So that you know, you’re under arrest for investigation of DUI. You’re more than welcome to get your lawyer.” NE#1 applied handcuffs to CM#1’s left wrist.

NE#1 then instructed CM#1 to bring his right hand back and stated, “I’ll put your wallet in your pocket.” CM#1 was still holding his wallet in his right hand at this time and attempted to place his wallet in his right pocket. However, CM#1 was unable to put his wallet in his pocket apparently because he lacked the dexterity to either locate his pocket or manipulate his wallet into his pocket. NE#1 stated that he was not preventing CM#1 from putting his wallet in his pocket and waited as CM#1 continued to try to put his wallet in his pocket. When CM#1 asked if he could put his wallet in his pocket, NE#1 responded, “you can go ahead, you’re having a hard time, it’s not me doing anything.” CM#1 asked, “really?” NE#1 responded, “yeah, it’s you, look at my hand, it’s right here, see that? That’s your hand. You can’t seem to get your wallet in your pocket, why is that?” CM#1 replied, “because it’s a small f***ing thing dude.” NE#1 said, “okay, so you want to bring your hand back and I’ll take care of that for you?”

NE#1 then reached out and grabbed CM#1’s right hand and brought it behind CM#1’s back. While trying to place CM#1’s right hand in handcuffs, CM#1 appeared to tense his right arm and pull away. NE#1 stated, “relax...hey relax...if you don’t, you’re going to go to the ground, you understand that? Give me your hand. No? Okay.” NE#1 then brought CM#1 to the ground using a trained “C-step” technique.

When NE#1 brought CM#1 to the ground, they were positioned adjacent to FF#1’s open medical kit, which appeared to be a rigid, plastic box, about the size of a briefcase or small suitcase. As CM#1 was moving towards the ground, NE#1 continued to hold onto CM#1’s arms, but CM#1 hit his head on FF#1’s medical kit.

NE#1 appeared unaware that CM#1 had hit his head. However, after landing on the ground, CM#1 appeared to stop moving entirely. FF#1 intervened and, along with other firefighters, began to render medical aid to CM#1. One firefighter noted, “he went down hard,” and the firefighters agreed that they should apply a neck collar to CM#1. One firefighter stated, “he’s knocked out.” Ultimately, CM#1 was transported to the hospital for medical treatment.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

OPA alleged that NE#1 may have failed to use de-escalation tactics in compliance with 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.

(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.

NE#1 violated SPD's de-escalation policy. NE#1 not only failed to de-escalate this situation, but unnecessarily escalated this situation both verbally and physically.

NE#1 was the first officer to arrive on scene and, from that time until after NE#1 took CM#1 to the ground (somewhat less than five minutes), was the only officer on scene engaged with CM#1. CM#1 also showed multiple signs of intoxication and, later, admitted to having consumed narcotics earlier. Moreover, CM#1 did not attempt to flee or show any signs of flight. In fact, CM#1 was identifiably in a poor position to successfully flee—his vehicle was disabled, he was intoxicated, it was dark and raining, CM#1 was wearing what appeared to be slippers, athletic shorts, and an easily visible, light colored tee shirt. Also, at first, CM#1 was largely cooperative with NE#1, even if somewhat rude, distracted, disengaged, or obnoxious. Finally, and most importantly, CM#1 posed no visible threat to either NE#1 or any other individual on scene. He was not apparently armed, was relatively calm throughout all but the very end of the encounter, made no threats, and his clothing would not have easily concealed most weapons.

NE#1's discussion with CM#1 violated SPD's de-escalation policy. A key tenet of de-escalation is the use of time to minimize the need to use force. In this situation, NE#1 could have used time to his advantage and waited for backing officers to arrive. Indeed, NE#1 stated at his OPA interview that his goal was to "establish rapport with him" and that the phone call seemed to be CM#1's "primary focus." If that was truly NE#1's goal, his words and actions during this encounter showed extremely poor execution. Instead, NE#1 chose to verbally escalate the situation, even at specific moments where CM#1 could have been distracted with another benign task, such as: (1) demanding NE#1's license instead of continuing to wait while CM#1 was on a phone call with another person; and then, after obtaining CM#1's



license, (2) pointedly asking CM#1 about alcohol and narcotics use instead of asking broad questions about the nature of the accident; and (3) verbally engaging with the subject while FF#1 was checking CM#1's vital signs.

In OPA's view, NE#1's verbal exchanges with CM#1 were not organized around common-sense de-escalation or trained crisis intervention principles. Instead, NE#1 appeared to be antagonizing CM#1 with barbs and unnecessary commentary, the subtext of which was obvious: NE#1 suspected CM#1 was intoxicated and NE#1 wanted CM#1 to know that. This verbal "cat-and-mouse" game was needless, unprofessional, and escalatory.

NE#1 also physically escalated the situation by going hands-on, alone, to handcuff CM#1. When asked to explain this decision, NE#1 stated that he already had probable cause and had given backup "ample time." NE#1 also explained that CM#1 had pulled away from FF#1 which EN#1 interpreted as a type of "resistance and aggression," and a sign of "fight or flight." NE#1 also explained that he decided to go hands on immediately after CM#1 demanded to speak to an attorney because CM#1 "gave me that aggressive tone. That was, that was basically like, he's taking the next level up." NE#1 also explained that he did not check on the status of his back-up because he suspected "they will be here anytime, any moment," and he wanted to remain focused on CM#1.

NE#1's explanation, while perhaps sincere, inappropriately focuses holistic de-escalation principles on only the behavior of CM#1. NE#1 had probable cause to arrest CM#1 since at least the moment CM#1 admitted to using narcotics "at times." Moreover, NE#1's explanation that he'd already given backup enough time to arrive misses the point entirely—actually having additional officers on scene, not just expecting their imminent arrival, reduced the likelihood that the subject is going to offer resistance and given the officers additional physical control of the situation. Moreover, in OPA's view, the signs of aggression that CM#1 was showing towards NE#1 were a direct result of NE#1's antagonistic behavior towards CM#1. Most notably, CM#1 loudly demanded an attorney because NE#1 had already failed to scrupulously honor CM#1's previous request for an attorney. Finally, SPD policy notes that an example of de-escalation is "Avoidance of physical confrontation unless immediately necessary to protect someone or stop dangerous behavior." OPA finds NE#1's decision to go hands-on was not "immediately necessary" to protect anyone or stop any dangerous behavior.

Of particular note in this case is that NE#1's failure to wait for backing officers made the exact harm that occurred here particularly more likely. More likely than not, had NE#1 waited for additional officers arrive on scene, not only would CM#1 have been less likely to resist arrest, but also would have been much less likely to have fallen to the ground with such force that he would have been rendered unconscious.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

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

OPA alleged that NE#1 may have used unauthorized force.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Officers shall only use "objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective." 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 an initial matter, in sustaining the de-escalation allegation at Named Employee #1, Allegation #1, OPA finds that NE#1’s use of force did not “comply with...Seattle Police Department Policies.” OPA also finds that NE#1’s failure to use de-escalation more likely than not led to the circumstances resulting in NE#1’s decision to go hands on. In that sense, this allegation is partially duplicative of Allegation #1. But, to the extent that NE#1’s decision to go hands on was distinct from his decision to take CM#1 to the ground, OPA considers the takedown separately below.

Once NE#1 decided to go hands on with CM#1—in the absence of any backing officers—NE#1’s options for responding to resistance from CM#1 were much more limited. As NE#1 attempted to secure CM#1’s right hand, BWV showed that CM#1 continued to resist. Under the totality of the circumstances, when CM#1 started tensing and pulling his right arm away, NE#1’s decision to take CM#1 to the ground was reasonable, necessary, and proportional. The use of force was reasonable because CM#1 was resisting arrest by tensing and pulling away. CM#1’s left hand was already in handcuffs—a possible weapon if CM#1 were able to successfully pull away—and NE#1 gave CM#1 sufficient time to try to put his wallet in his pocket and surrender his right hand. NE#1 also gave multiple warnings during their interaction that resistance would result in NE#1 taking CM#1 to the ground. Moreover, no other officers were present to help NE#1 restrain CM#1 while remaining standing. It was also necessary for NE#1 to take CM#1 to the ground—CM#1 was under arrest, NE#1 needed to place him in handcuffs, and NE#1’s previous efforts to do so through voluntary compliance while standing were ineffective.

The proportionality of NE#1’s takedown bears further discussion. It was proportional for NE#1 to take CM#1 to the ground. Typically, a controlled takedown is a Type I use of force that is likely to cause transitory pain only but may also result in a complaint of pain. However, in this particular instance, FF#1’s medical kit was on the ground and, as NE#1 took CM#1 to the ground, CM#1’s head hit the medical kit. While NE#1 certainly intended to take CM#1 to the ground, OPA finds that CM#1 hitting his head on the medical kit was inadvertent. In reaching this finding, OPA principally relies on NE#1’s BWV, NE#1’s warnings to CM#1 that he would be taken to the ground if he resisted, and the fact that CM#1 continued to resist following these warnings. Moreover, based on the positioning of NE#1 behind CM#1, it is likely that NE#1 was entirely unaware that the FF#1’s medical kit was on the ground in front of CM#1. Ultimately, while this specific takedown ultimately resulted in a Type III level injury, NE#1 could not have reasonably expected to cause this level of injury when he decided to use a trained takedown maneuver.

Accordingly, OPA recommends that the allegation the NE#1’s takedown of CM#1 may have constituted unauthorized force be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**



Named Employee #1 - Allegation #3

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

OPA alleged that NE#1 may have been unprofessional during this encounter.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (SPD Policy 5.001-POL-10.) 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.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

For the reasons set forth above at Allegation #1, OPA finds that NE#1 violated SPD’s professionalism policy by failing to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.”

Separately, NE#1 was unprofessional because several of his comments were derogatory, contemptuous, or disrespectful. Specifically, OPA highlights the moment where NE#1 interrupted CM#1 to state “per what? Per the fact that you crashed into a pole? You having a little hard time moving? So when’s the last time you took anything Mr. [CM#1]?” At this time, CM#1 had already confirmed to NE#1—twice—that he had consumed narcotics. CM#1 was obviously trying to ask a question and was having difficulty verbalizing it. Interrupting CM#1 to state, “per what? Per the fact that you crashed into a pole? You having a little hard time moving?” was obviously mocking. Moreover, immediately prior to CM#1’s first request to speak to a lawyer, CM#1 started saying, “...persistent to the rule of...” when NE#1 interjected, “what’s that?” Persistent to the what? Persistent to the what?” NE#1 then stated, in a notably higher pitched tone of voice, “you having a hard time following directions today? What’s going on Mr. [CM#1]?” Interrupting a detained individual, who is obviously attempting to invoke a legal rule (“persistent to the rule of...”) in order to cut them off, then impliedly mock their level of intoxication is unacceptable.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**