



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 24, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0533

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Allegation Removed
# 2	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
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Sustained
# 4	8.400-POL-1 Use of Force Reporting and Investigation 3. Officers, Including Witness Officers, Will Verbally Notify a Supervisor...	Sustained
# 5	8.400-POL-1 Use of Force Reporting and Investigation 1. Officers Will Document in a Use-of-Force Report All Uses of Force Except De Minimis Force	Sustained

Imposed Discipline

Suspension Without Pay – 1 day

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.400-POL-1 Use of Force Reporting and Investigation 3. Officers, Including Witness Officers, Will Verbally Notify a Supervisor...	Not Sustained - Training Referral

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 Named Employee #1 (NE#1) may have failed to de-escalate prior to pushing a woman—the Subject—to the ground. It was also alleged that NE#1 may have used out of policy force when he pushed the Subject. It was further alleged that NE#1 did not report the force, which was higher than *de minimis*, or the Subject’s complaint of pain, which constituted a Type 1 use of force, to a supervisor, nor did NE#1 document the force. It was additionally alleged that NE#1 arrested the Subject without probable cause. Lastly, it was alleged that Named Employee #2 (NE#2) did not notify a supervisor of the Subject’s complaint of pain even though it was a Type 1 use of force.



ADMINISTRATIVE NOTE:

A Discipline Meeting was held with the Named Employees' chain of command on June 23, 2022. At the Discipline Meeting, the chain of command argued persuasively that a training referral would be a more appropriate finding with respect for NE#1. OPA agreed and amended its findings as noted herein.

SUMMARY OF INVESTIGATION:

The Named Employees' supervisor, Witness Supervisor #1 (WS#1), filed this complaint through BlueTeam. During a review of NE#1's General Offense and Crisis Reports for the incident, WS#1 reviewed Body Worn Video (BWV) from the incident. After reviewing the BWV and speaking with NE#1, WS#1 filed this complaint, in which WS#1 alleged facts in which NE#1 may have used unauthorized force, failed to report force to a supervisor, failed to document the use of force as a Type I use of force, and failed to de-escalate. OPA initiated this investigation.

During its investigation, OPA reviewed the BlueTeam Complaint, Computer Aided Dispatch (CAD) Call Report, General Offense and Crisis Reports, as well as Body Worn Video (BWV) and In-Car Video (ICV). OPA also reviewed the Use of Force Paperwork that was completed after the Complaint was filed. Finally, OPA interviewed WS#1, NE#1, and NE#2. OPA attempted to contact the Subject but was unsuccessful.

The entirety of NE#1 and NE#2's interactions with the Subject were recorded from different angles on BWV and ICV. The relevant facts are not in dispute, although varying interpretations of those facts were offered by NE#1, NE#2, WS#1, and the Lieutenant who reviewed the Type I Use of Force paperwork.

NE#1 and NE#2 responded to the incident location to assist with another unit with handling an occupied stolen vehicle. The incident location was immediately adjacent to an encampment. While other units were attending the stolen vehicle, NE#1 and NE#2 stood on the edge of a sidewalk facing the encampment. NE#1 then observed the Subject about 30-50 feet away,¹ walking within the encampment. NE#1 asked whether the Subject was holding a knife in her hand. NE#2 stated that he thought the Subject was holding a "socket." The Subject continued walking in the general direction of the officers but did not appear to be paying any attention to them. As the Subject exited the encampment along a dirt pathway, she stopped about 20-30 feet away from the officers and appeared to fold the blade of her knife into the handle. While still holding her knife—which was now folded up—the Subject continued walking along the dirt path in the direction of the officers, who were still standing on a public sidewalk. As she approached, the Subject asked the officers something like "you guys are stealing another one?"

The Subject then stepped onto the sidewalk, appearing to turn to walk along the sidewalk and no longer in the direction of the officers. At this point the Subject was about 4-8 feet away from NE#2 and NE#1, respectively.² NE#1 ordered the Subject to "put the knife down" three times in quick succession. The Subject turned to face NE#1, then complied and dropped the knife. NE#1 and the Subject then both stepped towards the knife—which was still folded—and the Subject stepped on the knife first. NE#1 extended his arms towards the Subject, placing his right hand on her right shoulder and his left hand near her right elbow. While keeping his arms mostly extended towards the Subject,

¹ Distances in this DCM are estimated based on BWV observations.

² In his Type I Use of Force Statement, NE#1 estimated this distance to be about 3-5 feet. OPA estimates the relevant distance to be somewhat further.



NE#1 stepped towards the Subject while grasping her coat. This caused the Subject to move backwards and say “ow.” In stepping back, the Subject crossed her right foot over her left, then appeared to trip over either her feet, a nearby rock, or both. The Subject fell to the ground, again saying “ow” as she fell. A short time later, the Subject stated she needed the sergeant or whoever was “in charge.” NE#1 responded, “probably one of these guys with the highest serial number.” Neither NE#1 nor NE#2 requested a supervisor. Neither NE#1 nor NE#2 completed Type I Use of Force paperwork until after they were directed to do so by a supervisor.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy. Probable cause exists when the facts and circumstances within an officer’s knowledge are sufficient in themselves to support a reasonable belief that an offense has been or is being committed.

NE#1 did not arrest the Subject. NE#1 neither placed the Subject in handcuffs or completed the steps necessary for the Charge-By-Officer (CBO) program. Although NE#1 used more than *de minimis* force on the Subject (see below at Named Employee #1, Allegations #3-5), confiscated the Subject’s knife, and wrote a General Offense report that purported to articulate probable cause for SMC 12A.16.010(A)(3), OPA finds that this interaction did not rise to the level of a *de facto* arrest. Instead, NE#1’s probable cause statement appeared more likely to be an effort to justify his use of force under RCW 10.120.020 as it was then in effect.³

For the reasons articulated below at Named Employee #1, Allegation #3, OPA finds that NE#1 did not have probable cause to arrest the Subject when he used force against her. However, as the Subject was not arrested here, this allegation should not have been classified and is removed.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #2

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

“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)

³ On the date of this incident, RCW 10.120.020 permitted a peace officer to use force only when necessary to “protect against criminal conduct where there is probable cause to make an arrest; effect an arrest; prevent an escape as defined under chapter 9A.76 RCW; or protect against an imminent threat of bodily injury to the peace officer, another person, or the person against whom force is being used.” RCW 10.120.020 has since been amended.



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.

As discussed below at Named Employee #1, Allegation #3, NE#1’s use of force was not authorized even at the point he used it. However, even considering NE#1’s stated concern—that the Subject was approaching the group of officers with a knife in her hand and that the Subject “appeared to be in crisis”—he failed to effectively use time, distance, or shielding to minimize the odds that force would be used against the Subject.

NE#1 observed the Subject with what he believed to be—and which was in fact—a knife in her hand from about 30-50 feet away. Over the course of more than 20 seconds, the Subject continued to walk in the generally direction of the officers with the knife still in her hand, stopping at one point to fold the blade down. However, NE#1 did not use any verbal questions, instructions, or orders to address his concern until the Subject was within 4-8 feet of himself and NE#2. At this point, NE#1 had squandered ample time and distance to address his stated concern. Nor did NE#1 make any effort to use shielding to his advantage. Moreover, after ordering the Subject to “put the knife down”—which she did—NE#1 did not use any other verbal techniques to minimize the possibility of force being used. Instead, NE#1 stepped towards the Subject. When the Subject stepped closer to NE#1 and on the knife, NE#1 used force to move her backwards causing her to fall.

In his OPA interview, NE#1 conceded that he could have addressed the Subject earlier, but characterized this as having the benefit of hindsight and that he “wanted to try and avoid contact with her if at all possible, because again, someone in crisis is one—like very, very unpredictable.” NE#1 also stated that he “tried to use the time, distance to



observe [the Subject] and take in as much information about her behavior as humanly possible before engaging her.” Finally, NE#1 repeatedly characterized the Subject as “not compliant” because it “took her three commands to comply with the . . . verbal orders.” NE#1’s explanation is not sufficient. NE#1 did not take any steps to avoid contact with the Subject; he permitted the Subject, with knife in hand, to walk within 4-8 feet of NE#2 and himself. Also, while de-escalation certainly encompasses an element of information gathering, it is not clear what information NE#1 gathered during this time or how he used it to his advantage. Nor did NE#1 appear to have factored in the fact that the Subject stopped to fold her knife before coming near the officers. Finally, while NE#1 may have subjectively perceived the Subject as not compliant, this perception was not objectively reasonable. In the short span of about two seconds, NE#1 gave three orders to put the knife down and the Subject complied. NE#1 did not give the Subject any other orders. While it may have seemed perfectly clear to NE#1 that he wanted the Subject to stand still while he physically secured the knife, he did not use any verbal techniques to communicate that to the Subject.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

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

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.)

a. Reasonableness

SPD Policy 8.050 sets forth a number of factors to consider when determining the objective reasonableness of force. OPA acknowledges the seriousness of NE#1’s concerns based on some of these factors. NE#1 subjectively perceived that the Subject was attempting to retake control of the folded knife and had, in fact, beaten him to stepping on the knife. NE#1 had a limited amount of time to decide how to react to the Subject stepping on the knife and her proximity to the knife posed the potential—if low probability—of deadly injury.

However, the remaining factors set forth in policy did not support NE#1’s decision to use force. First, NE#1 did not have probable cause to arrest the Subject for any offense, let alone a serious one. Carrying a small, folded, folding knife is not a crime. Nor did the Subject engage in any overtly threatening behavior towards the officers. That she was walking in the officers’ direction was hardly suspicious; the officers were standing at the edge of a public sidewalk near the entrance to the Subject’s encampment. Similarly, the Subject’s question to the officers (“you guys are stealing another one?”) appeared only to question what the officers were doing, albeit in a pointed manner. In fact, the only discernable action the Subject took with respect to the knife was to fold it up so as to make it safer.



More specifically, NE#1 did not have probable cause to arrest the Subject for obstructing a public officer by “refusing to cease an activity or behavior that creates a risk of injury to any person when ordered to do so by a public officer.” Decisively, the only order NE#1 issued was to “put down the knife.” The Subject did so and did not bend down or make any effort to pick the knife back up again. Moreover, stepping on a folded knife that is on the ground does not, on its own, create a “risk of injury” to any person.

The Subject did not threaten or resist the officers or pose an “immediate threat” to anyone. At the time NE#1 used force on the Subject, the knife was folded on the ground, (presumably) underneath the Subject’s foot, and the Subject was standing up with her hands at her sides. There was no risk of “escape” and there would have been no government interest in preventing the Subject from leaving. Additionally, although NE#1 is a newer officer, he stated at his OPA interview that he trains defensive tactics and is a black belt in karate. There were multiple other officers present and NE#1 was significantly larger, taller, and better equipped than the Subject.

Accordingly, OPA finds that the force NE#1 used was not reasonable based on the totality of the circumstances when weighing the actions of the officer against the rights of the Subject.

b. Necessity

SPD Policy defines “necessary” to mean that “no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose.” SPD Policy 8.050.

In his Type I Use of Force statement, NE#1 stated that his lawful purpose was to “secure the knife for officer safety.” NE#1 stated that he had probable cause to arrest the Subject for obstructing a peace officer and that the Subject was “an imminent threat to officers as she was armed with a knife and non-compliant after interjecting herself into an investigation that she had no part in.” OPA finds that NE#1’s perception of the threat the Subject posed—while perhaps genuinely felt—was not reasonable. At no point did the Subject or her folded knife pose an “imminent”⁴ threat to the officers: she held a folded knife, dropped it when ordered to do so, then stepped on the folded knife when NE#1 stepped towards it. That NE#1 could articulate the *possibility* of the knife being used improperly did not make such a threat likely or imminent. Moreover, as discussed above, NE#1 did not have probable cause to arrest the Subject, nor was the force he used justified under House Bill 1310 (codified under RCW 10.120.020, later amended). In short, what lawful purpose NE#1 may have had in making sure the Subject did not use her knife in a threatening manner, reasonably effective alternatives existed to attempting to forcibly seize the Subject’s lawfully possessed folded knife and pushing the Subject back in doing so.

Accordingly, OPA finds that NE#1’s use of force was not necessary.

⁴ “‘Imminent’ means the state or condition be being **likely to occur at any moment** or near at hand, rather than distant or remote.” RCW 71.05.020(28) (effective until July 1, 2022). Cf. SPD Policy 8.200-POL-4 which states, in the context of using deadly force, that a danger is imminent when an objectively reasonable officer would believe that “[a] suspect is acting or threatening to cause death or serious physical injury to the officer or others.”



c. Proportionality

To be proportional, the “level of force applied must reflect the totality of circumstances surrounding the situation at hand, including the nature and immediacy of any threats posed to officers and others.” SPD Policy 8.050. OPA acknowledges that NE#1 used a relatively low level of force. In another environment, the level of force NE#1 employed could have been *de minimis*. However, in this case, the Subject fell onto what appeared to be concrete and made two complaints of pain (“ow”), the result of which constituted a Type I Use of Force. While OPA agrees with the NE#1’s reviewing sergeant and lieutenant that the amount of force used by NE#1 was not proportional to the nature and immediacy of any threats posed by the Subject (if any), the bigger issue in this case was that force as used at all.

Accordingly, OPA finds that NE#1’s use of force was not proportional.

After NE#1 allowed the Subject to approach within about 4-8 feet of NE#2 and himself, NE#1’s options and time to address his concerns about the Subject and her folded knife narrowed. As discussed above, NE#1 did not employ de-escalation principles appropriately. But after he and the Subject both stepped forward towards the folded knife, NE#1’s decision to use the force that he did appeared grounded in his unreasonable subjective belief that the Subject posed an imminent risk, not any objective fact suggesting that he or any other officer was in imminent danger.

For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #4

8.400-POL-1 Use of Force Reporting and Investigation 3. Officers, Including Witness Officers, Will Verbally Notify a Supervisor...

SPD Policy 8.400-POL-1(3) requires that a sergeant review a force incident and classify the force as either Type I, Type II, or Type III for investigation.

SPD Policy defines *de minimis* force as a physical interaction to separate, guide, or control and that is not “reasonably likely to cause any pain or injury.” SPD Policy 8.050. SPD policy defines a Type I use of force as force that “causes transitory pain or the complaint of transitory pain.” *Id.* SPD Policy 8.400 provides an example of Type I Use of Force that includes “Controlled placement/takedown that results in a complaint of pain or causes/*is likely to cause transitory pain or disorientation.*” (emphasis added). Type I uses of force are reportable.

The Subject stated “ow” twice during and after NE#1’s use of force. As a threshold matter, this is a textbook “complaint of pain” that would qualify an otherwise *de minimis* use of force as a Type I. NE#1 stated in both his Use of Force report and to OPA that he did not hear the Subject state “ow.” NE#2 also stated in his OPA interview that he did not hear the Subject make these statements. Both NE#1 and NE#2 attributed not hearing the Subject’s statements, at least in part, to traffic noise from nearby I-5. Although the Subject’s statements are heard on both NE#1 and NE#2’s BWV, significant traffic noise is also heard. OPA finds the Named Employees’ explanations to be plausible and takes them at their word.



However, even if neither NE#1 nor NE#2 heard the Subject state “ow” twice, both Named Employees should have recognized this as a reportable use of force. While NE#1’s intent may have been to use *de minimis* force, the result of his actions caused the Subject to fall to concrete behind her. Common sense dictates that any unexpected fall from a standing position to a hard concrete surface is likely to cause at least transitory pain and could possibly cause an abrasion (which would be a Type II). OPA finds that NE#1 should have reported this as a Type I to a supervisor.

OPA notes two additional issues with respect to NE#1’s failure to report this use of force to a supervisor as a Type I. First, in explaining the threat he perceived when the Subject stepping on her folded knife, NE#1 stated to OPA that “it doesn’t take much for her to kick it back and then turn and grab it, and now we’re fighting with someone in a pile of trash behind her that has who knows what, needles, knives, broken glass, other—other, you know biohazards.” OPA notes that NE#1’s use of force caused the Subject to fall back in exactly the direction that NE#1 said was so concerning for himself. The Subject landed mere inches away from—if not in—the “pile of trash” NE#1 referenced. Second, after NE#1’s use of force, the Subject asked to speak to a sergeant or whoever was in charge. NE#1 heard this statement and responded, on BWV, by saying it was “probably one of these guys with the highest serial number.” Not only should this have been a reminder to NE#1 to screen this incident with a supervisor—which he ignored—but his response was unacceptable.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #5

8.400-POL-1 Use of Force Reporting and Investigation 1. Officers Will Document in a Use-of-Force Report All Uses of Force Except De Minimis Force

SPD Policy 8.400-POL-1 requires that officers report all uses of force except de minimis force. This policy defines different levels of force and is intended to devote greater resources to reviewing more serious types of force. Id.

For the reasons set forth above at Named Employee #1, Allegation #4, NE#1 should have recognized that this was a Type I use of force, even if he did not hear the Subject say “ow.” NE#1 did not complete a Type I Use of Force report until directed to do so by WS#1.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

8.400-POL-1 Use of Force Reporting and Investigation 3. Officers, Including Witness Officers, Will Verbally Notify a Supervisor...

For the same reasons set forth above at Named Employee #1, Allegation #4, NE#2 should have recognized that this was a reportable Type I use of force, even if he did not hear the Subject say “ow.” For these reasons, OPA originally recommended that this allegation be Sustained.



At the Discipline Meeting, NE#2's chain of command argued persuasively that NE#2's involvement in—and responsibility for—this incident was less than NE#1. Relatedly, it was less clear that NE#2 heard the Subject's request to speak with a supervisor. Finally, NE#2's lengthy engagement with the Subject following the use of force suggested that his possible violation of policy here was not willful misconduct. OPA agrees and now finds that a training referral is the most appropriate finding in this situation. However, NE#2 is put on notice that any future finding of failure to report required information to a supervisor will result in a sustained finding.

Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2's chain of command should discuss OPA's findings with NE#1, review relevant BWV from this incident with him, and discuss the requirements of SPD Policy 8.400-POL-1(3) with NE#2. NE#2's chain of command should also provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in BlueTeam.

Recommended Finding: **Not Sustained - Training Referral**