



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 15, 2019

CASE NUMBER: 2016OPA-0793

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 (Inconclusive)
# 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)
# 3	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	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 Employee used force on the Complainant that may have been outside of policy. It was further alleged that the Named Employee may have failed to de-escalate prior to using force. Lastly, it was alleged that the Named Employee may have arrested the Complainant without probable cause to do so.

ADMINISTRATIVE NOTE:

This case was initiated on July 13, 2016. After receiving several extensions, it was submitted by the assigned investigator to her supervisor, a Lieutenant, on May 4, 2017. The case was then submitted to the Auditor but the Auditor did not certify the case and requested additional investigation. The Lieutenant routed the case to former OPA Director Murphy on May 16, 2017 for completion of the DCM. Director Murphy did not read the routing until May 25, 2017, eight days after the 180-day deadline expired, and requested that the Lieutenant complete further workup and obtain a certification. The case was sent back to the assigned investigator and it appears that no significant action was taken for close to a year. When the case was finally re-reviewed by the Office of Inspector General, it was over two years after the case had been filed and well outside of the 180-day period. As such, this DCM is untimely submitted.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

Officers, including Named Employee #1 (NE#1), responded to a report of an individual in a City park who was using drugs and alcohol, was acting aggressively, and was publicly masturbating. NE#1 and other officers located the



individual and attempted to trespass him from the park. When he refused to leave, the officers attempted to place him under arrest. In order to do so, NE#1 used force.

Three civilian witnesses alleged that NE#1 used what appeared to them to be a chokehold on the Complainant. NE#1 denied that he did so. He stated that he, instead, used his arm to secure the Complainant and that it was placed across the Complainant's body and on top of the Complainant's shoulders. NE#1 stated that his arm was "by" the Complainant's neck but was not around his neck in the manner described by the witnesses.

While In-Car Video (ICV) was recorded of this incident, it did not capture the moment that force was used. There was no other video of the incident.

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.*)

Had NE#1 intentionally used a chokehold on the Complainant, it would have been inconsistent with policy; however, NE#1 denied doing so. He stated that he used minor force and body holds to control the Complainant's person and then to prevent him from physically resisting. If NE#1 used only that force he described, it would have been reasonable, necessary, and proportional. Ultimately, given the dearth of video evidence and the inconsistent accounts between NE#1 and the civilian witnesses, I cannot reach a conclusive determination as to whether the force he used in this instance was consistent with policy. As such, I recommend that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

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

"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.

It was alleged that NE#1 may have failed to de-escalate prior to using force. During its investigation of this incident, the Force Investigation Team obtaining an opinion from a Sergeant assigned to the Training Unit. The Training Sergeant, who evaluated the evidence in this case, opined that NE#1 did attempt to de-escalate this matter – by giving verbal commands and by trying to gain voluntary compliance – prior to using force. The Training Sergeant further reasoned that, at the time the force was used, further de-escalation was no longer safe or feasible. OPA defers to the Training Sergeant’s opinion in this regard and agrees that NE#1 attempted to de-escalate prior to using force. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #3

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.

As discussed above, officers responded to a call that a male was inside of the park engaging in numerous crimes. The Complainant matched the description of the perpetrator. The officers directed the Complainant to leave the park, which they were permitted to do. When the Complainant refused to do so, they placed him under arrest. That arrest was supported by probable cause.



Accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper.

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