



## CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 19, 2018

CASE NUMBER: 2018OPA-0247

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:	Not Sustained (Inconclusive)
# 2	8.400 - Use of Force Reporting and Investigation 8.400-TSK-2 Use of Force –RESPONSIBILITIES OF THE SERGEANT DURING A TYPE I INVESTIGATION	Not Sustained (Inconclusive)

**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	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Training Referral)
# 3	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Lawful and Proper)
# 4	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)
# 5	16.110 - Crisis Intervention 16.110 – POL	Not Sustained (Lawful and Proper)

**Named Employee #3**

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Training Referral)
# 3	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Lawful and Proper)
# 4	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)
# 5	16.110 - Crisis Intervention 16.110 – POL	Not Sustained (Lawful and Proper)

**Named Employee #4**

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



# 2	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Training Referral)
# 3	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Not Sustained (Training Referral)
# 4	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Lawful and Proper)
# 5	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)
# 6	16.110 - Crisis Intervention 16.110 – POL	Not Sustained (Lawful and Proper)

**Named Employee #5**

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Training Referral)
# 3	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Lawful and Proper)
# 4	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)
# 5	16.110 - Crisis Intervention 16.110 – POL	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:**

The Complainant alleged that the Named Employees engaged in a number of policy violations when they pulled his wife from a vehicle and arrested her. It was alleged that the Named Employees failed to de-escalate prior to using force, that they used excessive force, that they failed to report complaints of pain, that they did not properly exercise their discretion, and that they did not appropriately deal with the wife who was in crisis. Lastly, it was alleged that Named Employee #1, who was a supervisor, failed to properly classify the force and cause it to be investigated.

**ADMINISTRATIVE NOTE:**

After this DCM was written and this case closed, OPA discussed this matter with Named Employee #2 and Named Employee #3. Both expressed disagreement with OPA's discussion and analysis of Allegation #4, which deals with discretion. Specifically, the officers were frustrated with OPA's conclusion that, even though there was a lawful basis to arrest the Subject, the officers were not required to do so and that the Subject needed mental health treatment instead of incarceration. At their OPA interviews, both officers raised the fact that they had been trained by the Crisis Intervention Team (CIT) to charge individuals with crimes in these types of situations to ensure that the individuals would then go through mental health court. OPA also conferred with a Sergeant assigned to CIT who confirmed that this was the training the officers received. Given this, and even though I remain concerned that flaws with our health



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and criminal justice systems necessitated the Subject's arrest, I have amended the DCM to reflect the training received by the officers and that they acted in compliance with that training and the Department's expectations during this incident.

**STATEMENT OF FACTS:**

**A. The Incident**

The Complainant and his wife (referred to herein as the "Subject") drove to Harborview Medical Center (HMC). The Subject had earlier attempted suicide at their home by cutting her wrists. She suffered lacerations to her wrists that had previously been bleeding heavily but that largely stopped bleeding by the time of their arrival at HMC. The Complainant called 911 and stated that he and his wife were parked outside of HMC but that the Subject was refusing to get out of the car. The Complainant disclosed that his wife had "serious anxiety and mental health problems." The Complainant stated that the Subject was "terrified of doctors" and she believed that doctors were making her sick. The Complainant indicated that the Subject was not a danger to anyone and was not armed. The 911 operator told the Complainant that SPD officers and the Seattle Fire Department (SFD) would be responding shortly.

Two HMC nurses and a hospital security guard were present at the time. Multiple officers and SFD medics arrived. The Subject was sitting in the front passenger seat of the vehicle and was refusing to exit. Named Employee #2 (NE#2) and Named Employee #3 (NE#3) were the first officers to arrive on scene. They were followed by Named Employee #4 (NE#4) and Named Employee #5 (NE#5). At the time of the incident, NE#4 was a student officer in her third rotation. NE#5 was NE#4's Field Training Officer.

The officers' response to this incident, their interaction with the Complainant and the Subject, and the force ultimately used on the Subject were all captured on Body Worn Video (BWV).

NE#3 spoke to the Complainant. He informed NE#3 that the Subject was in the vehicle and was refusing to get out. The Complainant told NE#3 that the Subject was "freaked out" and was scared of medical staff and police. The Complainant told NE#3 that blood was no longer spurting out of the Subject's injury. He stated that he had the keys and could unlock the car. NE#3 approached the car with NE#2 and the Complainant. The Complainant unlocked and opened the front passenger door. The Complainant told the Subject that they just needed to get her arm looked at.

NE#3 stood near the door to prevent it from closing and began to interact with the Subject. At that time, the Complainant gave the car keys to NE#2. The Subject told the officers and the Complainant to get away from her. She attempted to close the door but was unable to do so. NE#3 told the Subject that they were concerned about her injuries and asked the Subject to let SFD examine her. The Complainant made the same request. The Subject said no to both. The Subject then began to move from the passenger seat to the driver's seat. NE#3 grabbed on to her. The Subject told NE#3 to let her go and NE#3 responded that she could not do that. The Complainant continued to ask the Subject to let the police and medical professionals help her.

At that time, the Subject yelled that NE#3 was hurting her and pulled further into the car. NE#2 and NE#3 worked together to pull the Subject part way outside of the vehicle. The Subject told the officers to stop and again stated that they were hurting her. NE#5 approached from the driver's side and attempted to assist. The Subject told the officers



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that if they kept hurting her, she was going to hurt them back. She then slapped NE#3 in the face. NE#5 told the Subject that she had just assaulted an officer.

The officers were then able to pull the Subject out of the vehicle. She was pulled out legs first and she hit the curb in a seated position. She was pulled around one foot forward so that she was fully on the sidewalk and was turned over on to her stomach. The officers held her arms and her legs and controlled her head while the Subject was in the prone position on her stomach. Medics approached and put gauze and bandages on the open wounds on the Subject's wrists. While on the ground, the Subject stated that she could not breathe, told the officers to let go of her, and stated that they were hurting her. NE#3 called for a supervisor to come to the scene.

The officers rolled the Subject over and began the process of sitting her up. She kicked at them and they placed her into a seated position. The Complainant stated multiple additional times that the officers were hurting her. The Subject was then placed onto a gurney. She continued to struggle against the officers until she was secured on the gurney. She was then transported to the entrance of the HMC emergency room where she was transferred into the custody of HMC staff.

NE#1 arrived at the scene. He was informed by a witness officer that the force used was de minimis and that the Subject had complained of pain from her handcuffs. He ordered NE#2 to complete a Type I use of force report to address the handcuffing discomfort. No other reports were ordered at that time. NE#1 later documented that he tried to interview the Subject at the time, but she was already sedated. NE#1 stated that she was not available after the sedation wore off as she was being treated by HMC staff. NE#1 did not appear to make any other efforts to interview the Subject at any later time. NE#1 also did not photograph the Subject's injuries and reported that she was too belligerent and aggressive at the time. NE#1 stated that she was later unavailable.

This case was reviewed by the Crisis Intervention Team (CIT). The CIT Sergeant asked the Named Employees' Lieutenant whether there was additional documentation relating to the case. The Lieutenant reviewed the video and heard the complaints of pain. He sent this matter back to NE#1 for further review and action. NE#1, in turn, ordered the officers to review their BWV and, if complaints of pain were captured on that video, to generate Type I use of force reports. The officers did so. The officers' chain of command then initiated Frontline Investigations for the officers' initial failures to report and document the complaints of pain. These Frontline Investigations resulted in retraining and Performance Appraisal System (PAS) entries for NE#2, NE#3, NE#4, and NE#5.

## **B. Use of Force Statements**

NE#2 reported that, when force was used, "it appeared that [the Subject] was attempting to flee the scene." NE#2 noted that he belatedly activated his BWV and, when he realized that it was not operating, he turned it on. NE#2 further stated that he was ordered to review his BWV and, when he did so, he determined that a Type I report was appropriate due to the Subject's complaints of pain. He then wrote a Type I report.

In explaining why the force was necessary, NE#3 stated that she was concerned that the Subject would drive the still-running vehicle away. As such, NE#3 reported that the force was justified by exigent circumstances. She wrote that she was later directed by NE#1 to review the BWV of the incident and, when she did so, she realized that the Subject had made multiple complaints of pain that constituted Type I force. She accordingly completed a Type I report.



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NE#4 reported that, at the time of the force, the Subject was bleeding substantially from the wounds on her wrist and that “exigent circumstances presented themselves as we knew we needed to stop [the Subject] from driving away.” NE#4, like the other officers, reported that she was directed by NE#1 to watch the BWV and, when she did so, she determined that the Subject had made numerous complaints of pain. She then wrote a Type I force report. NE#4 confirmed (as she previously noted in her General Offense Report) that she did not timely activate her BWV but that she turned it on as soon as she realized that she had not done so.

NE#5 stated that he believed the Subject was attempting to drive away in a still-running vehicle and that she posed a threat to the officers and community members. NE#5 wrote that verbal de-escalation was ineffective. NE#5 also failed to initially recognize that the Subject made complaints of pain. He watched the BWV after being ordered to do so by NE#1. He then wrote a Type I report.

### **C. Other Documentation**

In the SFD Patient Care Report, the medics wrote that the Subject was in her vehicle and was refusing to cooperate with SPD and SFD. The report stated that the officers used “necessary force” to remove the Subject from the vehicle and that the force was used when she was attempting to go from the passenger’s seat into the driver’s seat so that she could “pull away.” The report indicated that there was “minor oozing” from the lacerations to the Subject’s wrists.

OPA also obtained the user manual for the vehicle owned by the Complainant and the Subject. From a review of that manual, it appears that the Subject could have started and driven the car even though the key fob was not in her possession.

Lastly, OPA reviewed the docket for the Subject’s criminal case. The assault charge against the Subject was dismissed with prejudice due to “proof problems.”

### **D. OPA Interviews**

The interviews of the Complainant and the involved and witness officers are set forth in substantial detail.

#### **1. SFD Medic**

The Medic told OPA that, at the time force was used, it appeared to him that the Subject was attempting to drive her car from the scene. He believed that the Subject could have hurt someone had she driven away. He recalled that the car was running because either he or his partner eventually turned it off. The Medic stated that HMC staff were adamant that the Subject needed care. The Medic did not believe that the officers had any alternative to using force to remove the Subject from the car and to detain her.

#### **2. HMC Staff**

OPA interviewed two nurses employed by HMC that witnessed the incident. Nurse #1 stated that the Subject was agitated and went “ballistic” when the officers opened the car door. She stated that the officers tried to reason with the Subject but were unsuccessful. She told OPA that she did not believe that the officers had any other choice than using force. She stated that the Subject was a threat to herself and needed treatment. She concluded that the officers



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did the best they could under the circumstances. Nurse #1 did not believe that the car was running at the time the Subject was pulled from the car but she could not completely remember.

Nurse #2 recalled that the officers tried to negotiate with the Subject but she was not cooperative. She stated that the Subject's arm was cut and bleeding. She believed, like Nurse #1, that the officers did their best under the circumstances to deal with a difficult situation. Nurse #2 could not remember whether the car was running at the time the Subject was removed from inside.

**ANALYSIS AND CONCLUSIONS:**

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

***8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:***

SPD Policy 8.400-POL-1(3) provides that, upon responding to a use of force, the Sergeant reviews the incident and classifies the force by type and ensures that it is documented. There are three types of reportable force: Type I – which includes force that “causes transient pain or disorientation, but does not cause, and would not reasonably cause, injury or otherwise require a Type II investigation”; Type II – which includes force that “causes injury greater than temporary pain” or that “could be reasonably be expected to cause such an injury,” and force that results in the complaint of an injury that does not rise to the level of Type III; and Type III – force “that results in, or could reasonably be expected to result in, great bodily harm...or substantial bodily harm...to include broken bones and an admission to the hospital for treatment.” De minimis force, the lowest level, need not be reported.

NE#1 stated that, when he arrived at the scene, the involved officers screened the incident with him. He told OPA that a witness officer told him that the Subject had complained of pain from handcuffs. He ordered that officer to complete a Type I use of force report. He stated that he did not know of the other complaints of pain at the time and did not watch BWV, which he was not obligated to do under SPD policy.

NE#3 told OPA that she recalled informing NE#1 of the complaints of pain after watching BWV after the incident. NE#1 did not appear to recall this conversation. To the contrary, NE#1 stated that he was not informed of the complaints of pain that had been captured by BWV until four days after the incident when he was notified by his Lieutenant of this fact. He then ordered the officers to listen to their BWV to determine whether those complaints rose to the level of Type I force and, if so, to document that force. The officers reviewed the BWV and generated Type I reports. NE#1 reviewed those reports and forwarded the force review up his chain of command.

If, as NE#1 contended, the officers did not initially inform him of the complaints of pain, he could not have been required to classify force that he was not aware of. However, if, as NE#3 stated, she told him of the complaints of pain the night of the incident, it would have been a violation of policy for him to fail to then classify the force and order it to be investigated. Ultimately, I cannot make a conclusive determination on this question and, as such, I cannot conclude whether or not NE#1 violated this policy. Accordingly, I recommend that this allegation be Not Sustained – Inconclusive.

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



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

***8.400 - Use of Force Reporting and Investigation 8.400-TSK-2 Use of Force –RESPONSIBILITIES OF THE SERGEANT DURING A TYPE I INVESTIGATION***

SPD Policy 8.400-TSK-2 sets forth the responsibilities of a sergeant during a Type I force investigation. Among these responsibilities is the requirement that the sergeant “screens the incident in-person with the involved officer.” (SPD Policy 8.400-TSK-2(1).) In this regard the policy provides that: “If the sergeant responds to a scene in which there is [an] allegation of injury of pain, they will photograph the bodily area of the alleged injury or pain and an overall photo of the subject.” (*Id.*) Lastly, the policy states that: “When a subject is in custody, the sergeant will take photographs unless the subject refuses and safety dictates, after voluntary and non-coercive attempts fail.” (*Id.*)

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

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

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

***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. 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.*)

Here, NE#2, NE#3, NE#4, and NE#5 used force to pull the Subject from the vehicle and then to hold her to the ground until she could be bandaged and placed on to a gurney. This force was de minimis. The officers never struck the Subject and did not cause her to suffer any injuries.

As a threshold matter, I find that the force was reasonable. At the time, the officers were aware that the Subject had attempted suicide and had large cuts on her wrist that had been bleeding. They were concerned that she presented an ongoing serious danger to herself. All of the officers further asserted that, at the time they pulled the Subject from the car, they believed the car to be running and thought that she was attempting to get into the driver’s seat to leave the scene. They were worried that, if she did so, she could cause harm to herself and others. While the officers stated that the car was running, the Complainant denied that this was the case. One nurse stated that she believed it was not running but was not sure. The second nurse did not recall. The Medic corroborated the officers’ account that the car was running and stated that he knew this to be the case because he or his partner actually turned it off after the fact. When applying a preponderance of the evidence standard, I believe it more likely than not that the car was running at the time. As such, I conclude that, under the circumstances of this case, the force was reasonable.

I further find that the force was necessary. Again, crediting the officers’ account that the car was running at the time and given the threat of harm the Subject had already posed to herself, I find that there were no reasonable





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alternatives to using force to pull the Subject from the car. I also find that this force was necessary to effectuate the officers' goal of preventing the Subject from further harming herself or from putting others in danger.

Lastly, I find that the force was proportional. When, again, applying a preponderance of the evidence standard, I find that the de minimis force used by the officers was proportional to the threat reasonably perceived by the officers. The officers used only that force needed to remove the Subject from the car, to eliminate any threat to herself and others, and to hold her in place until she could be medically treated, secured, and taken in to HMC for treatment. Once these lawful goals occurred, the officers modulated and then ceased their force.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#2, NE#3, NE#4, and NE#5.

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

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

***8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force***

SPD Policy 8.400-POL-1 requires officers to report all uses of force except de minimis force. Officers are required to notify a supervisor of the force, accurately describe it, and then document the force in a report. (See SPD Policy 8.400-POL-1.)

Here, the Subject made numerous complaints of pain during this incident. However, none of these complaints of pain were reported at that time by NE#2, NE#3, NE#4, and NE#5.

NE#2 contended that he did not register the Complainant's complaints of pain. He stated that he later realized that she made such complaints and that they should have been reported as Type I force. NE#3 told OPA that, after the incident, she reviewed her video and recognized that complaints of pain had been made. She contended that she reported those complaints to NE#1; however, she did not complete a Type I report until several days later. NE#4 recalled hearing the complaints of pain. She also heard NE#2 call for a supervisor to come to the scene and she believed that he reported the complaints. She did not confirm that this occurred. NE#5 told OPA that he heard the complaints of pain at the time; however, for some unexplained reason, he did not notify a supervisor. He stated that he heard NE#2 report the handcuffing pain complaint but knew, at that time, that no other complaints of pain had been reported.

As discussed above, the lack of Type I reporting was identified during the review of this incident and these reports were later ordered and then completed by the Named Employees. The chain of command further ordered that NE#1 conduct Frontline Investigations into the failures to report, which he did. NE#2, NE#3, NE#4, and NE#5 were ultimately counseled concerning their oversights and received PAS entries.

Had these Frontline Investigations not been conducted and PAS entries not been generated, I would have recommended that this allegation be Sustained. Such a recommendation would be consistent with past OPA decisions. However, given that the officers have already been counseled concerning this matter, I find it unnecessary to do so here. Instead, I issue the below Training Referrals.





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- **Training Referral:** The chain of command for NE#2, NE#3, NE#4, and NE#5 should ensure that all of these officers understand the requirement that they report and document complaints of pain as Type I force. Given that these officers have already been counseled concerning this matter, no further retraining and counseling need be conducted if the officers' chain of command is confident that they have learned from this incident and will not repeat this conduct. These officers should be informed that if they do fail to report force in the future, it will result in a recommended Sustained finding. To the extent applicable, any retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

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

***5.001 - Standards and Duties 6. Employees May Use Discretion***

As indicated in SPD Policy 5.001-POL-5, "[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment." This policy further states that "[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed." (SPD Policy 5.001-POL-5.)

As discussed above, this was an unfortunate incident for everyone involved. The Complainant called the police seeking help but, instead, his wife was pulled out of their car, arrested, incarcerated, and prosecuted. However, I do not find that the officers' decision to forcibly remove the Subject from the vehicle violated Department policy. As such, I find that they properly exercised their discretion when they engaged in this conduct.

Moreover, I further note that the officers had a legal basis to place the Subject under arrest for assaulting NE#3. The Subject clearly struck NE#3 when the officers were trying to pull her out of the car.

In the initial DCM for this case, I discussed my concern with the decision to arrest the Subject for assault and to book her into the King County Jail. According to the Complainant, the Subject ended up being incarcerated for a number of days. As referenced above, after discussions with NE#2 and NE#3, as well as a conversation with a CIT Sergeant, it is clear to me that the officers acted consistent with their training when they arrested the Subject.

At the time of the incident, the Subject had just tried to kill herself, was suffering from significant and debilitating mental illness, and was, as the Complainant explained to the officers, terrified of doctors and police. She needed in-patient help, not to be booked in to the King County Jail. However, my criticism of this outcome is not directed towards the officers. Indeed, they did exactly what they had been trained to do and took the steps that they believed would get her the mental health care she needed. My criticism is, instead, of the health and criminal justice systems, which compelled the officers to arrest the Subject. Had these systems worked properly, this would not have needed to be the case.

Ultimately, with regard to the officers' conduct and decision-making, I find that they properly exercised their discretion during this incident. As such, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#2, NE#3, NE#4, and NE#5.



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

**Named Employee #2 - Allegations #4**

***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.

The officers explained that they attempted to communicate and reason with the Subject while she was in the car. NE#3, who was the primary officer dealing with the Subject, recounted that she appeared very distraught and seriously mentally ill. During this initial conversation, the Subject tried to pull the door closed, refused to get out of the car, and began to move away from the officers and towards the driver’s seat. Both of the HMC nurses



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interviewed by OPA, as well as the Medic, confirmed that the officers attempted to convince the Subject to get out of the car but were unsuccessful.

At that point, all of the officers asserted that further de-escalation was no longer safe or feasible. Fundamental to this determination was their belief that the car was still running and that the Subject was attempting to get in the front seat to drive it away. As discussed more fully above, I find, when applying a preponderance of the evidence standard, that the car was running at the time the officers first attempted to pull the Subject out. Moreover, even if it was not running at the time, given that the key fob was in the near vicinity of the vehicle, she could have started it remotely and driven it away. In addition, the officers' belief that de-escalation was no longer safe or feasible was also based on their concern that the Subject, who was already seriously injured, could start to bleed heavily or further harm herself.

From my review of the totality of the evidence, while further de-escalation may technically have been feasible, the officers reasonably believed that it was not safe under the circumstances. I note that this was a high-stress, intense situation. The officers were dealing with a seriously injured, upset, and mentally ill individual who needed medical care. The officers' options were limited here and they acted to the best of their abilities. Supporting this finding is the fact that both HMC nurses and the Medic, who were direct witnesses to this incident, all told OPA that the officers did the best that they could and that they had no choice but to act as they did.

In reaching this decision, I am mindful of how concerning and frightening this incident must have been for both the Complainant and the Subject. However, I am required to evaluate incidents applying a reasonable officer standard. As such, I must look at what a similar officer would have done under those same circumstances – not to instead apply 20/20 hindsight from the safety and calmness of an office and based on a detached and clinical review and analysis of the statements. In applying this standard, and even though this incident appeared traumatic to all involved, I find that the officers complied with policy.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#2, NE#3, video NE#4, and NE#5.

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

**Named Employee #2 - Allegation #5**  
***16.110 - Crisis Intervention 16.110 – POL***

SPD Policy 16.110 provides general guidance concerning crisis intervention. SPD Policy 16.110-POL-5 instructs officers on how to respond to subjects who are in behavioral crisis. SPD Policy 16.110-PRO-2 sets forth further information on this issue.

Based on my review of the record, and applying the same analysis as above, I find that the officers acted consistent with these policies in this case. The Subject was clearly mentally ill, presented an ongoing danger to herself, had already self-harmed, and needed medical care. As such, the officers appropriately determined that it was necessary and permissible to detain the Subject in order to admit her in to HMC.



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I note that NE#2, NE#3, and NE#5 had all received the eight and 40-hour crisis trainings. NE#4 had received the eight-hour training. They all believed that they were appropriately equipped to deal with this incident and that it was both unnecessary and impractical at the time to call for other crisis-trained responders. I agree.

When evaluating the totality of the circumstances, I find that the Named Employees acted consistent with the Department's expectations and their training during this incident. Accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#2, NE#3, NE#4, and NE#5.

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

**Named Employee #3 - Allegations #1**

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

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

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

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

***8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force***

For the same reasons as stated above (see Named Employee #2, Allegation #2), I recommend that this allegation be Not Sustained and refer to the above Training Referral. (*Id.*)

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

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

***5.001 - Standards and Duties 6. Employees May Use Discretion***

For the same reasons as stated above (see Named Employee #2, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #3 - Allegations #4**

***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***

For the same reasons as stated above (see Named Employee #2, Allegation #4), I recommend that this allegation be Not Sustained – Lawful and Proper.

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



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**Named Employee #3 - Allegation #5**  
**16.110 - Crisis Intervention 16.110 – POL**

For the same reasons as stated above (see Named Employee #2, Allegation #5), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #4 - Allegations #1**  
**8.200 - Using Force 1. Use of Force: When Authorized**

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

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

**Named Employee #4 - Allegation #2**  
**8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force**

For the same reasons as stated above (see Named Employee #2, Allegation #2), I recommend that this allegation be Not Sustained and refer to the above Training Referral. (*Id.*)

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

**Named Employee #4 - Allegation #3**  
**16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity**

NE#4 did not timely activate her BWV during her response to this call. NE#4 told OPA that she believed that she properly activated it, but realized that she did not do so after several minutes. She self-reported this late activation and documented it both in her officer statement and in her use of force report.

SPD Policy 16.090-POL-5 concerns when Department employees are required to record police activity. SPD Policy 16.090-POL-5(b) sets forth the categories of activity that must be recorded, which include: responses to dispatched calls starting before the employee arrives on the scene; traffic and Terry stops; on-view infractions and criminal activity; arrests and seizures; searches and inventories of vehicles, persons, or premises; and questioning victims, suspects, or witnesses.

It is indisputable that NE#4 was required to activate her BWV in response to this incident and to timely do so. When she failed to do so here, she technically acted contrary to policy. That being said, I believe that a Training Referral is the appropriate result for several reasons. First, this was clearly a mistake and not intentional misconduct. Second, NE#4 self-reported and properly documented the untimely activation. Third, NE#4 took responsibility for her mistake. Fourth, she was a probationary officer at the time and is thus entitled to more leeway for such errors. Accordingly, I recommend that this allegation be Not Sustained – Training Referral.



- **Training Referral:** NE#4 should be counseled by her chain of command concerning her late activation of BWV. She should be reminded to do her best to ensure that she properly turns on her BWV when responding to a scene. She should lastly be commended for self-reporting and properly documenting the late activation. No retraining need be provided unless the chain of command deems it appropriate. This counseling and any retraining should be documented and this documentation should be maintained in an appropriate database.

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

**Named Employee #4 - Allegations #4**

***5.001 - Standards and Duties 6. Employees May Use Discretion***

For the same reasons as stated above (see Named Employee #2, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #4 - Allegation #5**

***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***

For the same reasons as stated above (see Named Employee #2, Allegation #4), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #4 - Allegation #6**

***16.110 - Crisis Intervention 16.110 – POL***

For the same reasons as stated above (see Named Employee #2, Allegation #5), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #5 – Allegation #1**

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

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

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



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**Named Employee #5 – Allegation #2**

***8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force***

For the same reasons as stated above (see Named Employee #2, Allegation #2), I recommend that this allegation be Not Sustained and refer to the above Training Referral. (*Id.*)

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

**Named Employee #5 – Allegation #3**

***5.001 - Standards and Duties 6. Employees May Use Discretion***

For the same reasons as stated above (see Named Employee #2, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #5 - Allegations #4**

***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***

For the same reasons as stated above (see Named Employee #2, Allegation #4), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #5 - Allegation #5**

***16.110 - Crisis Intervention 16.110 – POL***

For the same reasons as stated above (see Named Employee #2, Allegation #5), I recommend that this allegation be Not Sustained – Lawful and Proper.

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