



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 16, 2019

CASE NUMBER: 2019OPA-0417

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 Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	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 Force Review Board referred the question of whether the Named Employee made sufficient efforts to de-escalate prior to arresting the subject who had fled from an automobile stop.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General's review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employee. As such, the Named Employee was not interviewed as part of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

Named Employee #1 (NE#1) was working patrol when he responded as a backing officer to a vehicle stop. The primary officer had attempted to stop a vehicle without license plates that was driving erratically and had eluded him for several blocks. The primary officer stated on his call that he suspected the driver was DUI. When the primary officer stopped the vehicle, one passenger surrendered at the scene, but the driver and another passenger fled on foot. NE#1 assisted with taking the first passenger into custody at the car. He then pursued the second passenger, a female, who is referred to here as the "Subject."

A witness pointed out the Subject and said that she had been seen running south. NE#1 pursued in his vehicle with lights and sirens on and encountered the Subject. NE#1 exited his vehicle and shouted: "Seattle Police! Get on the ground or you're gonna get tased." NE#1's Body Worn Video (BWV) recorded the Subject walking away from NE#1. NE#1 ran toward her and shouted: "Want me to tase you? Get on the fucking ground!" The Subject turned to look at NE#1 while still walking away. The Subject seemed to ask NE#1 a question that was not fully audible on BWV, but sounded like: "what the hell?" NE#1 drew his Taser and the Subject turned away. NE#1, now in arm's reach of the



Subject, grabbed her by the back of her jacket and pushed her to the ground. NE#1 instructed the Subject to “put [her] arms out like an airplane, do it now or you’re gonna get tased.” The Subject initially did not follow NE#1’s directives and attempted to roll onto her side, asking NE#1: “why?” NE#1 again directed the Subject to put her arm out and placed the Subject in handcuffs. Eight seconds elapsed from when NE#1 identified himself as a police officer to when he used force to push the Subject to the ground.

Once the Subject was on the ground and in custody, NE#1 said: “You have to do what police tell you, it’s not that hard.” NE#1 informed the Subject that she was under arrest and explained that she had been taken into custody because she fled after being involved in a pursuit. NE#1 then sat the Subject up and began speaking with her calmly. NE#1 advised the Subject of her Miranda rights, which she acknowledged. However, based on observing the Subject’s eyes and delayed responses to his questions, NE#1 believed that she was impaired. When asked, the Subject initially claimed that she had not been in the car. After being told that she was observed by the primary officer and a witness, the Subject ultimately admitted to being in the car and consuming marijuana.

On June 11, 2019 the Force Review Board (FRB) conducted a review of NE#1’s use of force. The FRB found that NE#1’s use of force did not appear to violate policy because it was reasonable, necessary, and proportional under the circumstances. However, the FRB did not determine whether NE#1 made reasonable efforts to de-escalate prior to using force and referred that question to OPA. This OPA investigation ensued.

“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.

Based on OPA's review of the BWV, OPA concurs with NE#1 that, at the time he went hands on with the Subject and threatened to tase her if she did not comply, de-escalation was neither safe nor feasible. Notably, prior to contacting the Subject, NE#1 was aware that she had been in a vehicle that was involved in a pursuit and that had later crashed. He was further aware that she had fled the scene. NE#1 did not know, however, whether she was armed, and this was certainly a possibility given the circumstances of the underlying crime. At the time NE#1 approached the Subject, he had the legal right to use force to take her into custody. Moreover, due to the exigency of the situation – the Subject fleeing from a crime scene, he had the right to do so immediately. In OPA's opinion, this exigency did not dissipate simply because the Subject was walking at the time of NE#1's initial contact with her. Indeed, she was non-responsive to all of NE#1's warnings and orders until he went hands on and took her to the ground.

For these reasons, OPA concludes that NE#1 acted consistent with the Department's de-escalation policy during this incident. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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