



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 25, 2020

CASE NUMBER: 2019OPA-0620

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 (Lawful and Proper) |
| # 2 | 5.001 - Standards and Duties 10. Employees Shall Strive to be Professional | Not Sustained (Unfounded) |

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 | 5.001 - Standards and Duties 10. Employees Shall Strive to be Professional | Not Sustained (Unfounded) |

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 | 8.100 - 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) |
| # 3 | 6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement | Not Sustained (Lawful and Proper) |
| # 4 | 5.001 - Standards and Duties 10. Employees Shall Strive to be Professional | Not Sustained (Unfounded) |

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 | 5.001 - Standards and Duties 10. Employees Shall Strive to be Professional | Not Sustained (Unfounded) |

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 Named Employee #3 caused an unlawful entry into her apartment and that he failed to abide by the Department's de-escalation policy during this incident. The Complainant further alleged that all of the Named Employees subjected her to excessive force and were unprofessional towards her.

SUMMARY OF INVESTIGATION:

The Named Employees were dispatched to a call concerning a woman – the Complainant in this case – who had attempted suicide. The call was placed by the Complainant's friend. The friend told 911 that the Complainant claimed



to have slit her wrists in the bathtub. The friend further relayed that the Complainant was “bleeding out.” The call was later updated to reflect that the bleeding had stopped. The officers were further informed that the Complainant had a dog in the apartment and that she suffered from borderline personality disorder.

Upon arrival at the apartment building, the officers spoke to the friend, who again relayed that the Complainant had attempted suicide. The friend told the officers that the Complainant had drained the water of the bathtub so that she would not be found in a bloody bathtub. The friend led the officers to the door of the Complainant’s apartment.

The officers, led by Named Employee #3 (NE#3), knocked on the Complainant’s door. She stated through the closed door that she was getting dressed. NE#3 documented that, at this point, he believed that he had the legal right to enter because the Complainant was a threat to herself. The Complainant cracked the door open and spoke to NE#3. He introduced himself and informed the Complainant that officers needed to make entry into the apartment to ensure her safety. The Complainant referenced the officers needing a warrant and began to close the door. NE#3 put his foot in the door to keep it from being shut. The Complainant told NE#3 that she did not want to interact with men and/or male officers. NE#3 reiterated to her that officers were required to enter. The Complainant continued to state that she did not want men to be inside of her apartment and grew increasingly agitated and began yelling. She began to try to close the door by pressing her body weight against it. NE#3 prevented her from doing so. He remained calm and told the Complainant that there was a female officer there – Named Employee #4 (NE#4). The Complainant said that NE#4 could come in and NE#3 told the Complainant that he was not going to have NE#4 come into the apartment alone. NE#3 tried to introduce NE#4 to the Complainant, but she continued to yell and spoke over him.

At that time, the Complainant was yelling, crying, and was nearly hysterical. She continued to say that she did not want to deal with men. The officers still remained calm and tried to communicate with her. NE#4 tried to speak with the complainant, but the Complainant remained focused on the male officers. NE#4 asked the Complainant if she would come out to them; however, the Complainant either did not hear or ignored what NE#4 said. NE#3 asked to see the Complainant’s wrists. He told her that, if the Complainant showed her wrists to the officers, they would leave. The Complainant refused to show her wrists to the officers and rejected the assistance of any male officers. NE#3 further observed that the Complainant’s hair was wet, consistent with her recently being in the bath. NE#3 attempted to tell the Complainant why the officers were there and why they were concerned for the Complainant’s safety. NE#3 again offered to have NE#4 speak with the Complainant. When these last efforts were not successful, NE#3 made entry into the apartment.

When NE#3 pushed the door open, the Complainant slapped him. NE#3 grabbed her hand and he and other officers took the Complainant down to the ground using a controlled takedown. The officers used their body weight, control holds, and other de minimis force to secure the Complainant’s person and to place her into handcuffs. The officers did not use anything other than low-level force at this time. Once the Complainant was no longer an active threat to herself and to the officers, the officers ceased using force. The Complainant remained very upset during this time and was uncooperative with officers. The decision was made to involuntarily detain her and to transport her to a medical facility for treatment. She was placed onto a gurney and was taken to the hospital.

The officers confirmed that the Complainant had, in fact, cut her wrists. They also found a knife in the Complainant’s bathroom next to the bathtub. The officers spoke with another one of the Complainant’s friends, who drove to the Complainant’s apartment from Kent based on concern for the Complainant’s safety. That friend verified that the Complainant texted her and indicated that she had slit her wrists and was bleeding heavily.



The Complainant later alleged that the officers improperly entered her apartment without a warrant. She also contended that the officers used excessive force to take her into custody and did not de-escalate prior to using force. Lastly, the Complainant asserted that the Named Employees were unprofessional towards her. This investigation ensued. As part of its review of this case, OPA interviewed the Complainant and NE#1.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

As discussed below, the Named Employees lawfully entered the Complainant's home in order to involuntarily detain her so that she could be provided medical treatment. While they did not have a warrant, they were still permitted to make entry based on the community caretaking exception to the warrant requirement.

As the officers had a lawful basis to make entry into the apartment and to involuntarily detain the Complainant, they were also permitted to use an appropriate level of force – if needed under the circumstances – in order to do so. Here, the Complainant initially refused to let officers enter. She further attempted to shut her door. NE#3 prevented her from doing so and he and the other Named Employees entered. The Complainant struggled against them at that time, including striking NE#3. The officers collectively took the Complainant down to the ground in a controlled manner and then held her there using their body weight and control holds until she could safely be handcuffed and removed from the apartment. Once medical professionals arrived, officers used low-level force to place her onto a gurney and to secure her there so that she could be transported to the hospital. No officer struck the Complainant or used force that was purposed to result in injury.

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.*)

The force used by the Named Employees to enter the Complainant's apartment, to control her person, to prevent her from resisting, to handcuff her, to place her on the gurney, and to secure her for transport was reasonable under the circumstances presented in this case. Notably, the officers believed that the Complainant was suicidal and made the determination that they could not leave her in her apartment for her own safety. As such, the use of force was reasonable to achieve their lawful goals and to take the Complainant into their custody. Moreover, the force used was necessary as there did not appear to be any other way to enter the Complainant's apartment and to take her into custody. In addition, the force used – which was low level – was a reasonable degree to effectuate the officers' lawful purposes. Lastly, the force was proportional to the threat the Complainant posed to herself and also to officers when they attempted to detain her. For these reasons, the force used by the Named Employees was consistent with policy.



For the reasons stated above, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against all of the Named Employees.

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

Named Employee #1 - Allegation #2

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

The Complainant alleged that all of the Named Employees were unprofessional during their interaction with her. She specifically identified that one of the officers insinuated that she was mistreating her dog.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (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.*)

The entirety of the Named Employees’ interaction with the Complainant was captured on Body Worn Video (BWV). The video established that the Named Employees, including NE#3, were calm and tried to reason with the Complainant. However, this was unsuccessful. OPA did not hear any inappropriate, rude, or disrespectful statements made by any of the officers. The video did capture NE#4 telling the Complainant with a raised voice that she needed to calm down because she was scaring her dog. This was not an unprofessional statement and was purposed to ensure that no harm came to the dog or anyone else in the apartment.

Ultimately, the officers were dealing with a difficult situation and a Complainant who was extremely upset and agitated. The officers remained calm and respectful, while exercising appropriate law enforcement authority. There is no evidentiary support for the assertion that any of the officers engaged in unprofessional conduct. As such, OPA recommends that this allegation be Not Sustained – Unfounded as against all of the Named Employees.

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

Named Employee #2 - Allegations #1

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

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

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



Named Employee #2 - Allegation #2

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

For the same reasons as stated above (see Named Employee #1, Allegation #2), OPA recommends that this allegation be Not Sustained – Unfounded.

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

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 #1, Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #2

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

“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.

(/d.) 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.

In his reports and at his OPA interview, NE#3 outlined how he attempted to de-escalate prior to using force. He stated that he used time by trying to reason with the Complainant and gain compliance prior to making entry. He ensured that there were a number of additional officers that were present at the scene and used appropriate tactics. He spoke to the Complainant calmly and respectfully, using the LEED model. He stated that only entered the apartment and used force when further de-escalation was no longer safe or feasible. He explained that he could not see the Complainant’s wrists as she would not show them, and she was actively trying to close the apartment door. As such, he reasoned that he could not let her close the door and could not wait to go hands-on as he felt that she could harm herself and/or gain access to a weapon.

NE#3’s accounting of the de-escalation that he engaged in is supported by the BWV. The video shows that he engaged in substantial efforts to gain compliance from the Complainant but that she would not engage with him. NE#3 told OPA that, if he were faced with a similar situation again, he might let a female officer be the primary contact with the subject. While OPA believes that this would be advisable depending on the circumstances, OPA concludes that not doing so here was a discretionary choice that was made during a fast-paced situation and that it did not violate policy.

Ultimately, OPA finds that NE#3 did his best to de-escalate in a challenging situation. He and the other officers only used force as a last resort and after they had exhausted all other strategies. As such, OPA finds that NE#3 acted consistent with Department policy and recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #3

6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement

As a general matter, officers must have a warrant prior to making entry into a constitutionally protected space, such as an apartment. SPD Policy 6.180-POL-2(b) outlines forth the exceptions to this general rule. One such exception is community caretaking, which is also referred to as the Emergency Doctrine. Community caretaking applies where the need to protect or preserve life, avoid serious injury, or protect property in danger of damage justifies an entry that would otherwise be illegal absent an emergency. This exception does not necessarily need to be supported by facts amounting to probable cause – it simply requires that the officer perceives a need to render aid or assistance. Further, while this exception permits the entry, it does not provide an additional basis for a search once inside of the residence.

Under caselaw, a warrantless entry to effectuate an ITA is permissible where the premises contain a person in imminent danger of death or harm. *See, e.g., State v. Loewen*, 97 Wn.2d 562, 568, 647 P.2d 489 (1982). Imminent



danger is further defined in the RCW as the “state or condition of being likely to occur at any moment or near at hand, rather than distant or remote.” RCW 71.05.020(20).

In justifying why warrantless entry was permitted based on community caretaking, NE#3 asserted his belief that the Complainant had previously attempted to commit suicide by slitting her wrists. He based this on the texts that she sent to her friends in which she stated that she had done so. In addition, NE#3 observed the Complainant’s extreme emotional response to the officers, which provided further evidence that an ITA was warranted. Further, NE#3 asked the Complainant to show him her wrists in order to rule out whether she had harmed herself, but she refused to do so. He also observed that her hair was wet, which was evidence that she had recently been in the bathtub and corroborated the texts she had sent. At that point, it would have been unsafe to allow the Complainant to close herself into her apartment where she could have again attempted to take her own life. Indeed, the officers ultimately determined that she had, in fact, slit her wrists and that there was a knife in the bathroom.

For these reasons, OPA finds that there was a sufficient basis supporting community caretaking and that NE#3 and other officers were permitted to enter the apartment, even in the absence of a warrant. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegations #4

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

For the same reasons as stated above (see Named Employee #1, Allegation #2), OPA recommends that this allegation be Not Sustained – Unfounded.

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

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 #1, Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #4 - Allegation #2

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

For the same reasons as stated above (see Named Employee #1, Allegation #2), OPA recommends that this allegation be Not Sustained – Unfounded.

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