



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 10, 2020

CASE NUMBER: 2019OPA-0734

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	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)

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	8.100 - 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 Complainant alleged that the Named Employees failed to de-escalate prior to using force on the Subject, as well as that they subjected him to excessive force.

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 Employees. As such, the Named Employees were not interviewed as part of this case.

SUMMARY OF INVESTIGATION:

Officers, including the Named Employees, were dispatched to a report of a male who had assaulted several individuals and was armed with a metal chain. Named Employee #1 (NE#1) and Witness Officer #1 (WO#1) were the first to arrive on scene and they saw the male, who was later identified as the Subject. The officers confirmed that the Subject had a metal chain in his right hand. The Subject was directed by the officers to drop the chain multiple times but did not do so. He was also ordered to step back away from them, but he instead approached them aggressively. At one point, the Subject knelt down and appeared to be preparing to engage in a physical altercation with the officers. The officers then went hands-on with him. WO#1 grabbed the Subject and the Subject, who still maintained control of the chain, struggled with WO#1 and assaulted him. NE#1 hit the Subject multiple times with his baton in an attempt to get him to drop the chain. The officers took the Subject down to the ground and, at that time, NE#1 continued to strike the Subject's hand to prevent him from holding the chain. The Subject

was continually physically resistive and was assaultive towards the officers. At that point, Named Employee #2 (NE#2), who was equipped with a Taser, arrived and approached the Suspect.

The officers backed away from the Subject and NE#2 walked towards the Subject with his Taser drawn. NE#2 told the Subject to drop the chain but he did not do so. NE#2 told him to “prone out” (lie down) or else he would be tased. The Subject continued to kneel on the ground while holding the chain in his hand. The Subject raised up and, at that time, NE#2 tased him in the back. He moved forward briefly and then experienced neuromuscular incapacitation and fell to the ground. The Named Employees, WO#1, and other officers that had responded to the scene converged on the Subject. The Subject was rolled over and was handcuffed. While he was on the ground, no further force was used on him.

A supervisor responded to the scene and screened the incident. Given the nature of the force used and the injuries suffered by the Subject, the Department’s Force Investigation Team (FIT) also responded and took over the use of force investigation. During that investigation, FIT identified that the Complainant alleged that the Named Employees may have used excessive force. FIT accordingly made an OPA referral and this investigation ensued.

As part of its investigation, OPA reviewed the BWV, the In-Car Video, the underlying documentation, the FIT investigation, and the findings issued by the Force Review Board (FRB). The FRB did not raise any concerns with the Named Employees’ de-escalation and use of force.

OPA also interviewed the Complainant. She reiterated her belief that the Named Employees’ force was excessive. She had specific concerns regarding the fact that multiple officers were on top of him. She stated that it did not appear to her that the Subject presented a threat to the officers or anyone else. She indicated that she did not see the Subject engage in any assaultive behavior towards the officers.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - 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.*)

Reasonableness Factor

With regard to this first element, OPA finds that the force used was reasonable. At the time of the incident, the Named Employees were aware that the Subject was armed with a chain and had assaulted other community members. The Named Employees were further aware that the Subject was in a populous location at a busy time, which indicated that additional members of the public could be at risk of harm. The Named Employees gave the Subject multiple orders to drop the chain and gave him ample opportunity to comply with these directions. He did not do so. He instead crouched down, secured the chain around his hand, and appeared to be preparing to fight the officers. At that time, the Named Employees were justified in using force to take the Subject into custody and to prevent him from engaging in further dangerous and assaultive behavior. As such, the force was reasonable.

Necessary Factor

With regard to the second element, OPA concludes that, at the time force was used, the Named Employees did not perceive any reasonable alternatives to such force. OPA also determines that the force used, while initially a relatively high level, was reasonable to effect the Named Employees' lawful purposes.

Proportionality Factor

Lastly, with regard to the proportionality of the force, OPA finds that the force applied was proportional to the Subject's conduct and the threat of harm facing the officers and others. The Subject had previously been assaultive to community members and continued that behavior towards the officers. A high level of force was proportional to the harm posed by the Subject. Notably, once the Subject was subdued and no longer presented a threat of harm, the Named Employees modulated their force and then ceased using force altogether.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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

Named Employee #1 - 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.

(*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 above, the officers responded to a report that the Complainant, who was armed with a chain, had assaulted other community members. When they arrived on scene, the Complainant was, in fact, armed and did not drop the chain when directed to do so or otherwise comply with the directions given to him by officers.

These lawful orders constituted de-escalation. When the Complainant did not obey those orders, further de-escalation was no longer safe or feasible under the circumstances and the officers were justified in going hands-on. Accordingly, the Named Employees complied with the Department's de-escalation policy during this incident and OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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

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

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

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

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