



## ***CLOSED CASE SUMMARY***

ISSUED DATE: JUNE 17, 2020

CASE NUMBER: 2019OPA-0755

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

<b>Allegation(s):</b>		<b>Director's Findings</b>
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 2	8.200 - Using Force 7. Recognizing the Urgency of Providing Medical Aid and the Importance of Preserving Human Life, Following a Use-of-Force, Officers Will ...	Sustained
# 3	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	Sustained
# 4	5.001 - Standards and Duties 6. Employees May Use Discretion	Allegation Removed
# 5	16.130 - Sick and Injured Persons 1. Employees Assist Sick & Injured Persons	Not Sustained (Training Referral)

#### **Imposed Discipline**

Four Day Suspension

***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 violated multiple Department policies during an incident that occurred in West Seattle.

### **ADMINISTRATIVE NOTE:**

In the initial DCM, OPA recommended that Allegation #5 be Sustained against the Named Employee. In reaching this finding, OPA reasoned as follows:

The BWV for this incident indicated that, on numerous occasions, the female subject requested medical assistance. She claimed to be feeling sick and referenced her kidney being "inflamed." She further asserted that she had been raped by the male subject. However, the officers did not perform any substantive inquiry into the nature of her injury/illness and, instead, continued with their investigation. Moreover, they did not provide any first aid to the female subject or ever call medical assistance for her. She only received medical assistance once it was summoned for the male subject.

At the discipline meeting in this matter, OPA and the chain of command discussed whether it was appropriate to also sustain this allegation, given that Allegation #2 was deemed Sustained and because the female subject was ultimately



provided medical treatment. After further deliberation, OPA believes it warranted to reverse this finding. OPA now recommends that Allegation #5 be Not Sustained and, instead, issues the Named Employee a Training Referral.

**SUMMARY OF INVESTIGATION:**

On June 29, 2019, Named Employee #1 (NE#1) and Witness Officer #1 (WO#1) were conducting emphasis patrol activities in West Seattle. As part of those duties, they were citing vehicles that were illegally parked in boat loading zones. WO#1 observed a parked vehicle that was occupied by a male and a female. WO#1 observed the subjects drinking from open containers. WO#1, who was standing by the vehicle at that time, asked what one of the subjects was reaching for. WO#1 then directed the subjects to exit the vehicle. They did so. WO#1 asked the subjects where the drugs were. The male subject denied having drugs. WO#1 told him to go to the back of the car. The female subject told WO#1 that she did not feel well and WO#1 informed her that she was not free to go because of her alcohol consumption in public. NE#1 then arrived on scene.

WO#1 walked the female subject to the front of the vehicle. She again stated that she was sick and asked to go to the hospital. The female subject disclosed to WO#1 that the male subject hid a meth pipe in the vehicle and had meth in his pocket. WO#1 left the female subject at the front of the vehicle and went to speak with NE#1. During that conversation, the male began to walk from the back to the front of the vehicle. WO#1 told the male subject to stop and directed him back to the rear of the vehicle. He again went to speak with the female subject. She asked for medics and WO#1 told her that they would call medics to the scene once the investigation was completed. WO#1 then said to the male subject: "You have no problem with me going through your car, right?" The male subject's response was unintelligible on video. WO#1 did not go into the vehicle at that time.

WO#1 asked the male subject if he had drugs on him and asked whether he could go through the male subject's pockets. The male subject initially responded no, but then said yes and indicated that he would empty his pockets. At this time, NE#1 was looking up the male subject's identifying information in his patrol vehicle, which was parked approximately 20 feet away from where WO#1 and subjects were. NE#1 asked whether the male subject was 58 years old and then announced, again from 20 feet away, that the male subject had an open warrant. At that point, WO#1 moved in to take the male subject into custody and the male subject put his hand up to his mouth. WO#1 went hands on and told the male subject to stop. WO#1 said "spit it out" several times. From his position, approximately 20 feet away, NE#1 said: "oh, he ate the dope. Are you kidding me, he just ate the dope?" NE#1 began walking slowly towards them. WO#1 put his hand on the male subject's neck in an apparent attempt to prevent him from swallowing what was in his mouth. NE#1 said: "You gotta be kidding me." WO#1, who was struggling with the male subject, told him to give him his hand and then took the male subject down to the ground. WO#1 handcuffed the male subject while he was in the prone position.

At that point, NE#1 walked up to where WO#1 and the handcuffed male subject were. NE#1 referred to the male subject by his first name and said: "come on." NE#1 went over the radio and stated that they tried to arrest someone who had swallowed a bunch of meth. NE#1 also requested a supervisor. The female subject told NE#1 that she needed to go to the hospital because her kidney was "inflamed."

While the male subject was on the ground, WO#1 referred to him as a "fucking idiot." NE#1 told WO#1 to sit the male subject up onto the car. WO#1 loudly directed the male subject to stand up. WO#1 picked the male subject up and positioned him in a seated fashion against the patrol vehicle. NE#1 told WO#1: "He can do this all he wants, but he's got to sit up." The male subject slumped over on his side and WO#1 directed him to stop. While lying on his side, the



male subject made unusual guttural noises and groaned. WO#1 asked the male subject if he needed water but there was no response. NE#1 again told WO#1 to sit the male subject up. NE#1 told the male subject that he should stop and that he was not going to jail. NE#1 twice told the male subject to: "Throw it up, if it's a problem." The male subject continued to make noises and remained on the ground.

NE#1 and WO#1 then began to discuss the incident. NE#1 asked WO#1 whether he had the female subject's identity because she wanted to go to the hospital "all of a sudden." WO#1 gave NE#1 that information and he ran her name for warrants. NE#1 stated to the female that he was "very disappointed" with the male subject's behavior. During this time, WO#1 told the female subject to "shut up." WO#1 approached the male subject, who was still making noises. WO#1 told the male subject to "puke it up." The male subject asked why he had been arrested. WO#1 informed the male subject that he had resisted arrest, but the male subject denied doing so. WO#1 asked the male subject if he wanted to sit up and the male subject alleged that WO#1 broke his leg. NE#1 and WO#1 discussed whether they should put the male subject in the rear of the patrol vehicle. The officers attempted to lift the male subject up, but he did not comply with those efforts and slid back to the ground. WO#1 told NE#1 that the male subject did not want to stand up. NE#1 responded that the male subject "doesn't dictate it" and said that the male subject was "gonna sit up." After the male subject continued to remain on the ground, the officers lifted and dragged him to the patrol vehicle. At this time, NE#1 told the male subject to stop it and asked why he was doing this to NE#1. The male subject also did not comply with officers' attempts to get him into the back seat. NE#1 first tried to place the male subject inside and appeared to be frustrated with the male subject at that time. WO#1 then placed the male subject into the patrol vehicle. NE#1 stated to the male subject: "Shame on you. Shame on you..."

NE#1 yelled to the female subject that he was "very disappointed" in the male subject's behavior. They argued about whether the female subject had an open warrant from Spokane and whether the female subject provided NE#1 with a false name. The female subject stated that her name was not incorrect, and NE#1 replied by stating and yelling five times: "de-escalate your behavior!" NE#1 walked over to his patrol vehicle and WO#1 yelled at the female subject to sit down. NE#1 checked the warrant from his patrol vehicle and yelled over to the female subject: "Since you challenged me on your warrant, it's for trespass." NE#1 repeated that he was very disappointed with the subjects' behavior. WO#1 walked back over to the patrol vehicle and spoke with the male subject who had been left handcuffed in the rear seat. WO#1 asked him: "Are you going to be a big man now..." The male subject was learned over in the rear seat and was moaning. Several minutes later, WO#1 re-opened the door and spoke with the male subject. WO#1 asked the male subject whether he was ready to stand up. The male subject asked WO#1 why he "stomped" him. WO#1 and NE#1 discussed whether WO#1 was going to sit on the male subject at the hospital. WO#1 responded: "fuck no." A supervisor arrived on scene and the officers screened the incident. WO#1 disclosed his contact with the male subject's neck and the Department's Force Investigation Team (FIT) was notified. The Seattle Fire Department (SFD) responded to the scene and NE#1 told them, referring to the male subject: "We put him in the car. He's really making a big show at this point."

After that point, WO#1 asked the female subject to retrieve contraband from the car. He gave her a plastic glove to do so. After the fact, WO#1 asked the female subject whether she was doing so of her own free will and she said that she was. The female subject then retrieved the meth pipe. Moreover, after the female subject spoke with the screening supervisor, WO#1 approached her and asked her what the supervisor asked her and what she told the supervisor.

FIT came to the scene and took over the investigation. WO#1 was interviewed by FIT that same day and acknowledged making contact with the male subject's neck to prevent him from swallowing drugs. As this was inconsistent with



Department policy, that aspect of the case was referred to OPA. WO#1 recognized that he acted contrary to policy in this respect and accepted a Sustained finding via Rapid Adjudication. The case continued through FIT's investigation. During that investigation, FIT identified a number of issues concerning the handling of this matter by NE#1 and WO#1 but did not make a supplemental OPA complaint. Once FIT's review was completed, this case went before the Force Review Board (FRB). The FRB, like FIT, identified substantial issues with the officers' conduct and demeanor. FRB made an OPA referral and this investigation ensued against NE#1 given that NE#1 had not previously availed himself of Rapid Adjudication. As part of its investigation, OPA interviewed NE#1 and a Sergeant assigned to the Training Unit.

### **ANALYSIS AND CONCLUSIONS:**

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

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

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.*)

OPA concludes that NE#1 violated the Department's professionalism policy in multiple respects. He repeatedly yelled at the subjects and told them that he was disappointed. NE#1, who acknowledged that he was frustrated, admitted that his statements to the subjects could have been perceived as belittling. OPA agrees with NE#1 in this respect and concludes that his statements were disrespectful and contemptuous towards the subjects. OPA further notes that NE#1 was dismissive and sarcastic when requesting medical assistance over the radio, which serves as further evidence of unprofessionalism.

OPA's review of the BWV indicates that NE#1 was argumentative towards both subjects from virtually the inception of the call, as well as that he acted aggressively at times towards them. OPA believes that his demeanor in this regard, coupled with the tactical issues discussed in the context of Allegation #3, served to unduly escalate this incident when such escalation was both avoidable and unnecessary.

Ultimately, OPA credits NE#1 for recognizing that his conduct during this incident was unprofessional. At his interview, NE#1 seemed genuinely embarrassed and remorseful regarding how he handled this call. As discussed by the FRB, NE#1's conduct was well outside of the expectations of the Department, as well as significantly inconsistent with Department policy and training. Moreover, NE#1's behavior, demeanor, and treatment of the subjects served to undermine public trust and confidence in him and in the Department. For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**



---

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

***8.200 - Using Force 7. Recognizing the Urgency of Providing Medical Aid and the Importance of Preserving Human Life, Following a Use-of-Force, Officers Will...***

SPD Policy 8.200-POL-7 concerns the provision of medical aid after a use of force. The policy states that: “When safe and feasible, officers will request a medical aid response for any apparent injury, complaint of injury, or sign of medical distress for subjects and others even if the aid is declined. Officers will closely monitor subjects taken into custody.” (SPD Policy 8.200-POL-7.) The policy further instructs that: “After requesting a medical aid response, officers will render aid within the scope of their training unless aid is declined.” (*Id.*)

As a starting point, NE#1 did not summon aid to treat the injuries suffered by the male subject relating to the use of force. While medical attention was later summoned, it was because the male subject was believed to have swallowed narcotics. NE#1 explained that he did not think that the male subject actually suffered an injury from the force and, as such, he did not feel that medical aid needed to be called. However, this is inconsistent with NE#1’s statements at his OPA interview concerning his realization that WO#1 had made intentional contact with the neck, as well as with the hard takedown of the male subject onto the concrete that was clearly captured on the BWV and that NE#1 watched occur.

Even if NE#1’s failure to summon aid for injuries stemming from the force used did not rise to the level of a policy violation, NE#1 still acted contrary with this policy when he failed to “closely monitor” the male subject and when he did not render aid to the male subject consistent with his training. Notably, even though the male subject was lying on the ground and making guttural noises and groans, NE#1 tried to force him into a seated position and to stand him up multiple times. He did so instead of keeping the male subject in the recovery position until SFD arrived. Moreover, the officers placed the male subject into the rear of the patrol vehicle, closed the door, and left him unattended for a period of time.

OPA interviewed the Training Unit Sergeant, who stated that forcing a sick or injured individual out of their position of comfort is contrary to Department training. The Training Unit Sergeant also explained that leaving an individual who was believed to have swallowed narcotics in the rear of a closed patrol vehicle was also inconsistent with SPD training.

Based on OPA’s review of the totality of the evidence, OPA concludes that NE#1 acted contrary to his training on when and how to offer medical assistance, as well as violated the express terms of this policy. Notably, this policy does not provide an exception for when an officer believes that an individual is fabricating an injury, as NE#1 posited. As such, this does not excuse NE#1’s non-compliance. For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**



---

**Named Employee #1 - Allegation #3**

***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.

The evidence in this case – most notably the BWV – indicates that NE#1 failed to apply either the verbal or tactical elements of de-escalation.

There were a number of problems with NE#1’s tactics. Both NE#1 and WO#1 had poor scene and suspect control. Indeed, for virtually the entirety of the inception of the contact, NE#1 remained twenty feet away from WO#1, who was by himself with the subjects. In addition, and again from 20 feet away, NE#1 called out that the male subject had a warrant, which caused, at least in part, the male subject to try to secrete the drugs. This, in turn, resulted in NE#1 going hands on. Moreover, NE#1’s distance from WO#1 limited the force options available to WO#1 and





resulted in WO#1's hard takedown of the male subject onto the concrete. Even after all of this occurred, NE#1 was still not in the immediate vicinity of WO#1 as WO#1 handcuffed the male subject alone. Instead, NE#1 walked over to where they were without an apparent sense of urgency. Lastly, neither officer called for backing units, even though it would have been appropriate, and it would have likely slowed down the incident and reduced the need to use force.

During his OPA interview, the Training Unit Sergeant confirmed that NE#1's handling of this incident did not appear to follow Department training on contact/cover or best practices for scene and suspect control.

While poor tactics, standing alone, will not always rise to the level of violation of the de-escalation policy, NE#1's tactics here were so outside of the Department's expectations that a Sustained finding is warranted. This decision is bolstered by the fact that NE#1's words, demeanor, and treatment of the subjects would, independently, support a finding that NE#1 acted contrary to policy. As discussed in the context of Allegation #1, NE#1 was aggressive, argumentative, rude, and belittling towards the subjects. Moreover, his repeated admonitions and scolding, as well as his yelling "de-escalate your behavior" to the female subject, were not consistent with this policy's express direction to use the LEED model to "calm an agitated subject and promote rational decision making."

For the above reasons, OPA finds that NE#1 failed to comply with the Department's de-escalation policy. As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

#### **Named Employee #1 - Allegations #4**

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

While OPA concludes that NE#1's conduct was significantly outside of the expectations of the Department, OPA believes that this is better captured by the other policy violations that are alleged. As OPA already recommends that those other allegations be Sustained, OPA finds that this allegation is duplicative and recommends that it be removed.

Recommended Finding: **Allegation Removed**

#### **Named Employee #1 - Allegation #5**

##### ***16.130 - Sick and Injured Persons 1. Employees Assist Sick & Injured Persons***

SPD Policy 16.130-POL-1 directs SPD employees to assist sick and injured persons. The policy provides the following instruction: "Employees assisting a sick and/or injured person will attempt to determine the nature and cause of the person's injury or illness, provide first aid, and initiate Emergency Medical Services (EMS) as needed." (SPD Policy 16.130-POL-1.)

As discussed above, the BWV reflected that, on multiple occasions, the female subject requested medical assistance. However, at no point did NE#1 call medical attention for her. Moreover, NE#1 did not explore the nature or extent of her injuries, or, for that matter, provide her with any first aid. While the female subject did ultimately receive medical assistance, policy required that NE#1 take these other steps. While NE#1 acted contrary to policy when he did not do so, OPA recommends that this allegation be Not Sustained and that he receive a Training Referral.



- **Training Referral:** NE#1's chain of command should discuss this incident with him, including watching the BWV and ICV. The chain of command should specifically go over the requirements of SPD Policy 16.130-POL-1. NE#1 should be counseled to ensure compliance with this policy in the future. To the extent this retraining and counseling has already been completed, no further action needs to be taken. Any retraining and counseling that is completed should be documented, and this documentation should be maintained in an appropriate database.

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