



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 10, 2020

CASE NUMBER: 2020OPA-0023

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)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	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 Employee used excessive force on the Subject and that the Named Employee failed to de-escalate prior to using force.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the review and approval of the Office of Inspector General for Public Safety, 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.

In addition, during its intake investigation, OPA determined that, while the Subject was suffering from behavioral crisis during this incident, the Named Employee did not complete a Behavioral Crisis Report. Given that this was the Named Employee's first time failing to complete this report when required, OPA returned this matter to the chain of command for handling via a Supervisor Action.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #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

Officers, including Named Employee #1 (NE#1), were dispatched to a call concerning a male who had broken a restaurant window. The 911 caller indicated that the male – who was later identified as the Subject – was inside of the restaurant and was yelling. Lastly, the 911 caller provided a description of the Subject.

The officers' response to this incident was fully captured on Body Worn Video (BWV). The video showed NE#1 approach the entry to the restaurant. At that time, an individual who matched the description of the Subject was



exiting. The Subject, who had a bottle of orange juice in his hand, was acting erratically and in a manner that suggested that he was suffering a behavioral/mental health crisis.

NE#1 initially told the Subject to sit down. The Subject did not comply and stated “why” in response. NE#1 told him to drop the orange juice and took hold of the Subject’s right arm with his hand. The Subject again did not comply and pulled away from NE#1. NE#1 then used force to push the Complainant down to the ground. Once the Subject was on the ground, the officers ordered him to lay on his stomach. He did not initially do so and continued to physically resist the officers while making statements that were further indicative of crisis. The other officer, who was also attempting to hold the Subject down on the ground, pressed his knee onto the Subject’s legs and used his body weight to stop him from struggling. The officers were then able to handcuff the Subject. No further force was used.

The Subject was escorted to a patrol vehicle and was seated inside. He continued to make nonsensical statements. NE#1 interviewed the owner of the restaurant who confirmed that the Subject broke the window and acted erratically.

OPA later received a complaint concerning this incident from an anonymous Complainant. The Complainant, who described being in the restaurant at the time, observed the Subject enter the premises. The Complainant stated that it appeared that the Subject was suffering a “mental break” and the Complainant thought that the Subject was simply trying to get warm in the restaurant. The Complainant recalled that NE#1 entered the store and immediately ordered the Subject to sit down. The Complainant stated that, when the Subject did not do so, NE#1 “shoved” him and “kept pushing” the Subject. The Complainant told OPA that, during this struggle, the male kicked the glass window and caused it to break (OPA notes that this is conclusively disproved by the video evidence). The Complainant asserted that NE#1 should have used “verbal persuasion and de-escalation” prior to using force. The Complainant also alleged that the force ultimately used was excessive. 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.*)

Based on OPA’s review of the totality of the evidence, including the BWV, OPA finds that de-escalation by NE#1 was not safe or feasible. At the time NE#1 initially contacted the Subject, the Subject was leaving the restaurant and was walking right towards NE#1. NE#1 had no ability to avail himself of time, distance, and shielding given his proximity to the Subject and given the fluidity of the situation. Moreover, the Subject was clearly in crisis, was non-compliant with the officers, and physically resisted them. Given these factors, as well as the fact that the Complainant had just caused property damage in the restaurant, NE#1 was warranted in believing that it was not safe to de-escalate and that he needed to immediately go hands-on.



For these reasons, OPA finds that NE#1 complied with the Department's de-escalation policy and recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

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.*)

When considering the totality of the circumstances and based on a review of the BWV, OPA finds that the force NE#1 used on the Subject was consistent with policy. With regard to reasonableness, NE#1 had a lawful basis to detain the Subject and, if warranted, to use force to do so. The Subject did not comply with NE#1's initial orders and, to the contrary, physically pulled away. As such, the force was reasonable. The force was also necessary as there was no reasonably effective alternative at the time and only that force needed to control the Subject's person was used. Lastly, the force was proportional to the threat posed by the Subject. Moreover, after he was taken to the ground and his physical resistance stopped, the officers first modulated and then ceased the use of force.

For the above reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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