



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 27, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0342

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)

Named Employee #2

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)
# 3	11.010 - Detainee Management 22. The Use of the Spit Sock Hood Requires Special Application, Reporting and Screening	Not Sustained (Lawful and Proper)
# 4	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)

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 used unnecessary and excessive force when arresting a mentally ill woman who was not resistant. OPA further alleged that the Named Employees' use of a spit sock hood on the woman may have violated numerous other Department policies.

ANALYSIS AND CONCLUSIONS:

On August 6th, 2019, at 1229 p.m., a 911 call was placed from a Metro PCS retail location. The 911 caller, an employee of the store, stated that a woman who appeared to be under the influence of unknown substance was inside the store causing a disturbance, and had refused to leave. Named Employee #3 (NE#3) arrived on scene and was told by Metro PCS employees that they wished to prosecute the woman if she refused to leave or returned to the store. Named Employee #1 (NE#1) and Named Employee #2 (NE#2), who were on patrol together, were present for this interaction, standing by as cover while NE#3 conducted his investigation. NE#3 advised the woman that she



would be arrested if she refused to leave or if she returned to the store. The woman gathered her belonging and left. The officers then departed from the scene.

At 12:46 p.m., Metro PCS staff contacted emergency services again, stating that the woman was back inside the store, this time with a large stick. While on their way to the store, officers found an arrest warrant for the woman. NE#3 arrived at the location to find the woman, who was standing outside holding the stick. NE#1 and N#2 also returned to the scene. After five verbal commands for her to drop the stick, the woman did so. All three Named Employees took part in placing the woman under arrest. She was non-compliant with their initial efforts to do so and all three officers participated in controlling and handcuffing her. The woman was arrested for criminal trespass and the previously discovered warrant. The woman was not read her Miranda warnings at the time of her arrest. When she was taken into custody, the woman was extremely agitated and was yelling. Additionally, bystanders in the area were attempting to interact with the Named Employees as they were attempting to complete the arrest.

After being handcuffed, the woman sat down on the ground and continued to yell while trying to look at the officers attempting to control her movements. Her yelling caused saliva to fly from her mouth, some of which landed on NE#2's face. NE#2 moved the woman's upturned head away from his so that she was not facing him. After doing this, he further moved his hand from her head and placed it in on her shoulder. NE#2 informed the woman that she was spitting, which she denied doing. NE#2 told NE#3 that they should utilize a spit sock hood on the woman. NE#3 went to retrieve a spit sock hood from his patrol vehicle. NE#3 and NE#2 placed the spit sock hood on the woman, which appeared to anger bystanders. NE#1 and NE#2 stood the woman up and walked her towards NE#3's patrol vehicle. While they were doing so, the woman turned to both sides and attempted to pull away from officers. NE#3 assisted with placing the woman into a patrol vehicle. While doing so, they directed bystanders to back away from them. The woman was then transported from the scene.

OPA later received a complaint concerning this incident and the officers' treatment of the woman. The Complainant was a bystander who observed and recorded the incident. The Complainant provided a video to OPA, which showed the officers' interaction with the woman after she had already been arrested. The video was consistent with the officers' BWV, which is described above.

Named Employee #1 - Allegation #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. Officers shall only use "objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective." 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 8.050.) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where "no reasonably effective alternative to the use of force appeared to exist" and "the amount of force used was reasonable to effect the lawful purpose intended." (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

Based on OPA's review of the evidence, the officers used control holds to prevent the woman from physically resisting and to handcuff her. They did not strike her, deploy any less-lethal tools, or use anything other than low-level force.



OPA finds that this force was reasonable. At the time force was used, there was probable cause to take the woman into custody for criminal trespass and an outstanding warrant. With that legal authority came the right to use force to do so, if needed. As the woman physically resisted officers' attempts to take her into custody, force was appropriate.

For the same reasons, the force was necessary. Given the woman's refusal to cooperate with the Named Employees and her repeated attempts to prevent them from arresting her, there did not appear to be any reasonable alternative available to the Named Employees other than the use of force. In addition, the force used was of a reasonable degree and was only that needed to stop the woman from continuing to resist the Named Employees' attempts to take her into custody.

Lastly, OPA finds that the force was proportional. The force used was de minimis in nature and was of an appropriate level given the physical threat posed by the woman if allowed to continue to resist. For the above reasons, OPA recommends that this allegation against be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #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.*

It was alleged that NE#2 may have escalated this incident when he applied the spit sock to the woman's face.

"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)

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." (SPD Policy 8.100-POL-1) 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.*)

(*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. 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 evaluating this allegation, OPA concludes, as a threshold matter, that saliva from the woman struck NE#2's face. While this may have been an inadvertent result of the manner in which the woman was speaking given her level of



agitation, the fact remains is that NE#2 was spit on. As such, he was permitted to take steps to prevent this from occurring, both by pushing the woman's face away – which is a trained tactic – and then applying a spit sock.

Though the application of the spit sock did appear to cause anger within the crowd, the bystanders were already upset about the arrest before that point and it did not seem to noticeably raise their level of anger. Similarly, the woman was upset and yelling at the officers prior to the application of the spit sock and, thus, was already escalated. Moreover, even if the spit sock did upset the crowd or the woman, this did not preclude NE#2 from using it. Stated differently, NE#2 was not required to be spat on in order to keep a crowd from growing angry. Again, de-escalation is only required if it will not compromise "law enforcement priorities." Not getting spit on is, in OPA's estimation, such a priority. Accordingly, NE#2 did not violate the de-escalation policy by taking this action.

While it would have been ideal for NE#2 to more clearly explain to the woman and the crowd what he was doing and why, sometimes this is simply impractical. Here, NE#2 and the other officers had the goal of completing the arrest quickly and while using as little force as possible. They were dealing with an agitated woman who had trespassed multiple times and, while doing so, had possessed a weapon, and were doing so amongst a crowd that was upset and likely did not know all of the facts and circumstances underlying the arrest. OPA finds that NE#2's failure to spend more time interacting with the crowd and the woman did not violate the de-escalation policy.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #2

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 this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #3

11.010 - Detainee Management 22. *The Use of the Spit Sock Hood Requires Special Application, Reporting and Screening*

SPD Policy 11.010(22) permits officers to use a spit sock hood on a detainee if they are "actively spitting on officers, or the officers have a reasonable belief that the detainee will spit on them." Use of the spit sock hood requires special application, screening, and reporting. The policy further instructs that officers must: (1) apply the spit sock hood only when the subject is under control; (2) affix the spit sock hood the subject's head using the built-in elastic band; (3) notify a sergeant the spit sock hood was applied; (4) observe the suspect continuously while they are wearing the spit sock hood and remove it and request medical assistance if there are any indication of respiratory distress; (5) assess the continued need for the spit sock hood; (6) dispose used spit sock hoods in a biohazard waste container; (7) document why the spit sock hood was applied and whether there were any ill effects to the subject – or lack thereof – caused by its application; and (8) indicate on the Detainee Log Sheet that the spit sock hood was applied. The sergeant who was notified of the use of the spit sock hood is responsible for screening the use of the device and the documents in the Arrest Screening Supplement (See, SPD Policy 11.010-PRO-2).



Based on OPA's review of the evidence, OPA finds that NE#2's use of the spit sock hood was consistent with policy. Although the woman was not intentionally spitting on officers, both NE#2 and NE#3 made it clear with both words and actions that the woman was spitting as she talked, and that some saliva had landed on NE#2's face and uniform. The officers were therefore permitted to apply the spit sock hood as outlined in Department policy. Further, OPA found no evidence to suggest that proper reporting and screening procedures were not followed.

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

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

Named Employee #2 - Allegation #4

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." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers" whether on or off duty. (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.*)

As discussed in the context of de-escalation, while it may have been optimal for NE#2 to provide explanations for his actions to both the Subject and the crowd, his failure to do so did not, by itself, serve to unduly escalate the situation. Similarly, it was not unprofessional.

OPA further understands the crowd's concern with how this incident unfolded. A woman of color, who was likely in crisis, was arrested by multiple officers and a spit sock was placed over her against her vocal resistance. Moreover, the application of the spit sock, in and of itself, can be difficult to watch and may seem dehumanizing. However, this also does not necessitate a finding that NE#2 was unprofessional. Indeed, the woman was arrested based on the request of business owners because she trespassed multiple times, including once while possessing a weapon. Multiple officers were needed to take her into custody because she strenuously physically resisted. Lastly, a spit sock needed to be used because saliva from her mouth struck the officers. The officers, including NE#2, did the best they could under these circumstances.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - Allegation #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 this allegation be Not Sustained – Lawful and Proper.

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