



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 3, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0347

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 #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)
# 2	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)

EXECUTIVE SUMMARY:

The Complainant alleged that the Named Employees subjected her to excessive force and did not first de-escalate. The Complainant further claimed that Named Employee #2 was unprofessional towards her.

SUMMARY OF INVESTIGATION:

The Named Employees were dispatched to a call of a possible DUI driver who had just gotten into a vehicle. When the officers responded, they observed a woman – the Complainant – seated in the front seat of a vehicle. She appeared to be asleep. The Named Employees discussed the incident and Named Employee #1 (NE#1) noted to Named Employee #2 (NE#2) that, under Washington State law, they had probable cause to arrest the Complainant for physical control of a vehicle while intoxicated. The officers knocked on the closed window and called out to the Complainant to wake her. The officers stated that they were Seattle Police. They directed her to turn the car off. NE#1 told her not to force him to break her window and tapped it with a baton. NE#2 was also trying to communicate with the Complainant on the driver's side. The Complainant, who stuck her tongue out at the officers, started her car. NE#2 told her to open her door and she did so. He told her to get out of the car and took hold of her arm. The Complainant said: "You don't have to pull my body." NE#2 again told her to get out of the car. She repeated that he did not have to pull her body and NE#2 instructed her to step out or to get pulled out. The Complainant continued to argue with NE#2 and did not exit the car.



NE#1 walked to where NE#2 was and the two of them began to pull the Complainant from the car. They each grabbed one of her arms and removed her. They then pulled her down to the ground and held her there. They informed her that she was under arrest for DUI and handcuffed her.

While on the ground, the Complainant used profanity towards the officers. She accused the officers of “crushing” her head into the ground, and NE#2 stated that this did not happen. NE#1 said to her: “You made this way more difficult than it should have been.” NE#1 asked her why she was not compliant, and the Complainant did not respond. The Complainant was read her Miranda warnings and she stated that she “kind of” understood. The officers walked her to a patrol vehicle and sat her in the backseat. They informed her that she had been arrested for physical control and obstruction.

A supervisor responded to the scene and screened the arrest. The Complainant asked NE#2 if he could loosen her handcuffs. NE#2 said that he did not feel comfortable taking the handcuffs off because of her earlier resistance. NE#2 ultimately inspected the handcuffs and deemed there to be sufficient space between her wrists and the handcuffs. He informed the Complainant of this. She again stated that she could not feel her hands and NE#2 told her that he did not feel comfortable removing the handcuffs. While in the patrol vehicle, the Complainant asserted that it was unfair that she was being taken to the precinct because someone had beaten her up earlier. While at the precinct, NE#2 again readjusted the Complainant’s handcuffs.

NE#1 transported the Complainant to the hospital for a blood draw. Once that was completed, NE#2 transported her to the King County Jail. Prior to leaving, NE#2 went over the radio and cancelled backing units. He stated: “We’re under control, she’s done with her temper tantrum...we don’t need those units.” When they arrived at the jail, the Complainant said: “This is so crazy to think like some dude can fucking sell coke and like beat me up and I’m the one in the back of the cop car.” NE#2 asked her: “Did you call the police?” The Complainant responded: “For what...cause that’s what happened to me?” NE#2 said: “Okay, so you didn’t call the police...so you can’t play victim if you didn’t call the police.” The Complainant stated: “I’m just saying dude...you haven’t really left any kind of...umm...lasting effect that I can really trust law enforcement.” NE#2 remarked that this was “unfortunate.” The Complainant continued: “Like literally this is what would happen to me if I were to reach out to law enforcement.” NE#2 replied: “You can sit here and play victim all you want...you’re the one who committed a crime.” Their contact ended shortly thereafter.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

SPD Policy 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.*)



The Named Employees used force to pull the Complainant out of the car, to bring her down to the ground, and to hold her there while they handcuffed her. Based on OPA's review of the evidence – most notably, the Body Worn Video (BWV), OPA concludes that this force was consistent with policy.

First, the force was reasonable as the officers had the legal right to extract the Complainant from the car in order to place her under arrest. At the time, they had probable cause to believe that she was intoxicated, she was refusing to exit the car even though she received numerous orders to do so, and she started her vehicle despite the officers' direction to the contrary.

Second, the force was necessary as the Complainant did comply with the officers' repeated orders and did not exit the car on her own power. Given that she was seated in the vehicle, there was not a reasonable alternative to pulling her out of the car and this appears to be the lowest amount of force that could be used to effect the officers' lawful goal.

Third, the force was proportional to the threat posed by the Complainant's actions. Again, she was intoxicated and was seated in a running car. She could have attempted to drive away, placing herself, the officers, and community members in danger. The force used was only that needed to get her out of the car and to place her into custody. Moreover, once she was under control, the officers modulated and then ceased using force altogether.

For these reasons, 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 #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.*)

(*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.



An analysis of the video yields the conclusion that the Named Employees complied with the Department's de-escalation policy. Most notably, the officers repeatedly attempted to convince the Complainant to voluntarily exit her vehicle so as to avoid the use of force. This included multiple clear and simple commands; however, the Complainant did not comply. After the Complainant's purposeful declination to exit her car and after she turned it on, further de-escalation was no longer safe or feasible. At that time, the Complainant could have driven away, placing numerous individuals, including herself and the officers at risk. As such, the officers were permitted to act at that point and to use appropriate force to take the Complainant into custody.

Given this, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

Named Employee #2 - Allegation #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.*)

Based on a review of the video, OPA finds portions of NE#2's interaction with the Complainant to have been problematic. Most notably, OPA had concerns with NE#2 telling the Complainant, in response to her assertions that she had been assaulted earlier, that she should have called the police and not to play the victim. OPA believes that these statements could be construed as disrespectful and, even though the Complainant was difficult at times, intoxicated, and potentially not telling the truth, NE#2's comments minimized a possible report of crime.

OPA does not believe that NE#2's interaction with the Complainant was so egregious to warrant discipline; however, OPA concludes that he would benefit from retraining on the Department's expectations of his professionalism. Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2's chain of command should discuss this incident with him and, specifically, go over the video of his comments to the Complainant referenced herein. NE#2's chain of command should remind him of the requirements of the Department's professionalism policy and the expectation that he will adhere to these requirements even when dealing with difficult individuals. This retraining and associated counseling should be documented, and this documentation should be maintained in an appropriate database.

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



Named Employee #2 - Allegation #2

SPD Policy 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 #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

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)**