



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 15, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0757

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)
# 3	5.001 - Standards and Duties 7. Employees Engaged in Department-Related Activities Identify Themselves When Requested	Not Sustained (Training Referral)

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 may have used out of policy force and failed to de-escalate prior to doing so. It was further alleged that the Named Employee did not identify himself when requested.

SUMMARY OF INVESTIGATION:

On December 18, 2020, SPD personnel were assigned to assist Parks Department employees in clearing out Cal Anderson Park. Community members gathered to observe these actions and, in some cases, to demonstrate against them. A City dump truck began to drive away from the park. A community member – who is referred to here as the Subject – stood in front of the truck and prevented it from proceeding. Named Employee #1 (NE#1) contacted the Subject to request that she move out of the road. His actions in this regard were captured on Body Worn Video (BWV).

NE#1's BWV showed that he approached the Subject, who was standing in the street. She said to NE#1: "What's up, what you want?" At that time, she had her hands clasped in front of her and she took a step towards NE#1. NE#1 touched the Complainant's arm, making contact with his fingers. He asked her: "You want to move out of the road please?" She replied: "Don't touch me." Another demonstrator echoed that statement. The Subject also motioned with her hand as if to brush NE#1's hand away. The Subject again told NE#1 not to touch her. Another demonstrator said either: "I got your number, bitch" or "I got you on camera, bitch."

NE#1 turned to face the truck and began to motion it to drive through the intersection. As the truck began to do so, the Subject stepped back into the street and up to the moving truck. She held up both of her hands with her middle fingers outstretched towards the truck. NE#1 took hold the Subject and pulled her back and away from the truck. She



spun around and turned to face NE#1 while saying: "Hey." Her right fist was raised at the time and was lifted up by her right shoulder. NE#1 pointed at the Subject and told her to step out of the way. The Subject moved back towards a group of other individuals, some of whom appeared to be recording NE#1. NE#1 then turned back to face the intersection and continued to direct the truck forward. The Subject again moved into the street and up to the truck with her arms up and middle fingers directed towards the truck. NE#1 stepped between the Subject and the truck and extended his hand. The Subject retreated back towards the group of other individuals. NE#1 did not appear to touch her at that time. She told NE#1 not to touch her and NE#1 directed her and others to stay back.

NE#1 turned again towards the intersection and observed officers setting up yellow caution tape. The Subject stepped back into the street and walked towards NE#1. She told him that she needed his "card." He pushed her back towards the sidewalk and told her to stay out of the street. She yelled at NE#1, as did the other people she was with. She further swept her hands as if to push him back. The Subject and the individuals with her with continued to yell at NE#1 as he helped put up the tape. Once the tape was up, the Subject walked into the street and stood on the other side of the tape facing NE#1. The Subject again told NE#1 to give her his "card." He told her that he did not have one and he directed her to his name tag. The Subject became upset and yelled: "Gimme." She leaned over the tape towards NE#1. He asked if she could see what he was doing at that point. She yelled: "I don't give a fuck bro." She jumped up and down and leaned towards NE#1. NE#1 again pushed her back and told her to get out of his face. NE#1 then walked away from the line.

OPA later alleged that NE#1 may have violated the Department's policies concerning force, de-escalation, and identification during this incident. As part of its investigation, OPA reviewed BWV. OPA could not identify the Subject and, thus, was unable to interview her. OPA lastly interviewed NE#1.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.010 – Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

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.*)

At his OPA interview, NE#1 asserted that the force he used was consistent with policy. He said that the pushes were de minimis in nature and were purposed to move the Subject out of the street and away from him. He described the Subject as aggressive and uncooperative. He noted that she continued to step into the street despite being told not to and that her conduct necessitated the force used.

Ultimately, based on OPA's review of the video, OPA agrees that the force used by NE#1 was appropriate. The Subject did not have a legal right to stand in the street and block the egress of the truck. Moreover, prior to being pushed, NE#1 politely asked her to get out of the street and she declined. She later made the purposeful choice to walk back into the street multiple times, including walking right up to the truck that was trying to maneuver out of the area.



Lastly, OPA finds that NE#1's perception that the Subject was aggressive was reasonable. She continually raised her voice at him, made clear that she was not going to cooperate, positioned herself close to NE#1 and leaned towards him at times, and twice tried to slap his hands away from her and once raised her fist towards him. The open hand pushes to move her away were not purposed to cause the Subject pain and did not appear to do so. They were used to create space between NE#1 and the Subject, which was a completely legitimate exercise of NE#1's legal authority.

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

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.*)

During the inception of NE#1's contact with the Subject, he asked her to move out of the street in a calm and polite manner. She did not do so. To the contrary, she continued to stand in the street, including blocking a truck. NE#1 again asked the Subject to move and, in response, she responded aggressively and tried to swipe NE#1's hands away from her. She then again went into the street and engaged in the exact same behavior. At this point, any further de-escalation was not feasible. The Subject had shown through her actions, demeanor, and statements that she was not going to comply regardless of what NE#1 said to her or how he tried to reason with her.

Once de-escalation was no longer feasible, NE#1 was permitted to act. Again, de-escalation is not purposed to prevent an officer from performing their law enforcement duties, including using force, because an individual is non-complaint and non-responsive. NE#1 was permitted to take steps to ensure that law enforcement priorities were not compromised, and he did so here by repeatedly moving the Subject out of the road and out of his immediate vicinity.

Given this, OPA finds that NE#1 acted in compliance 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 #3

5.001 - Standards and Duties 7. Employees Engaged in Department-Related Activities Identify Themselves When Requested

SPD Policy 5.001-POL-7 requires that officers who are engaged in Department-related activities identify themselves when requested.

Here, the Subject asked NE#1 for a business card twice and then asked for his name and badge number. NE#1 did not provide the Subject with a business card because he did not have one on him. He told her that she could read his name and badge number off of his shirt and she said that she could not. He did not verbally provide his name or badge number to her. When asked by OPA why he did not do so, NE#1 said that “a verbal answer was not going to do it.” He further stated that, after he walked away, he thought that a Lieutenant was going to pass his personal information on to the Subject because that Lieutenant began speaking with her and others.

OPA does not believe that it was unreasonable for NE#1 to decline to provide the Complainant with a business card. However, he should have orally provided his name and badge number upon request. There is no reason why he could not have done so and providing this information when asked for it is expected under policy.

The above being said, OPA finds that this is a minor policy violation that is mitigated by the circumstances of this incident. As such, OPA recommends that NE#1 receive retraining rather than a Sustained finding.

- **Training Referral:** NE#1 should be reminded of the obligation that he provide his name and serial number upon request. This includes doing so orally when asked and when feasible under the circumstances. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

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