



CLOSED CASE SUMMARY

ISSUED DATE: JULY 30, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0056

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 #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)

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 Named Employees used excessive force and failed to de-escalate while involuntarily detaining the Subject.

SUMMARY OF INVESTIGATION:

The Complainant filed a complaint with OPA in which they alleged that the Named Employees used excessive force on a woman in crisis who posed no threat of harm to them or anyone else. The Complainant further alleged that the officers failed to de-escalate prior to using force. The Complainant had specific concerns with Named Employee #2 (NE#2), who they described as initially exiting the patrol vehicle with a baton out and aggressively interacting with the Subject. The Complainant recalled that NE#2 continued to behave in this manner even though community members told him to “calm down.” The Complainant also asserted that NE#2 appeared “eager” to use force. The Complainant felt that Named Employee #1 (NE#1) handled the incident better until force was used by both officers. The Complainant was also concerned with NE#1’s failure to step in and prevent NE#2 from acting inappropriately. Overall, the Complainant characterized the incident as a “disgusting and unprompted use of force.” The Complainant declined to participate in an interview with OPA, relying on their written submissions. OPA commenced this investigation.



OPA determined that the Named Employees were dispatched to a call of a potentially suicidal person. This individual – who is the Subject in this case – called 911 and asked for police assistance. Body Worn Video (BWV) captured the officers' response. The video showed that the officers approached the Subject and calmly spoke to them. The Subject confirmed that they were considering harming themselves. Both officers ultimately determined that they had a legal basis to involuntarily detain the Subject so that the Subject could be taken to a hospital and receive mental health treatment. The officers called an ambulance to the scene in order to transport the Subject to the hospital. When the ambulance arrived, NE#1 told the Subject that they were going to be transported to the hospital. The Subject said that they had changed their mind and did not want to go; however, NE#1 explained that he had a legal duty to involuntarily detain the Subject given his determination that the Subject presented a threat of bodily harm to himself.

NE#1 told the Subject, who was sitting on the steps to their residence, that they had two choices. First, to walk to the gurney or, second, that the officers would lift them up and carry them to the gurney. The Subject eventually walked downstairs to the gurney. The Subject did not get on the gurney and NE#2 told them to do so, for the first time raising the tone of his voice. The Subject sat on the gurney but did not allow for restraints to be put on. The Named Employees moved forward and held the Subject's arms with AMR staff. NE#1 told the Subject not to kick and the Subject said that they would not do so because they did not want to be tased. The Subject was then secured to the gurney. The Subject screamed and cried at this time but did not appear to be injured. Aside from holding the Subject's arms and moving them on the gurney, no other force was used by the Named Employees. The Subject appeared to calm down once they were secured on the gurney and transported from the scene.

The BWV indicated that the officers engaged with the Subject for nearly 34 minutes prior to having them sit on the gurney. During this time, the video reflected that they were patient and that they did not act aggressively. There was no evidence from the video that NE#2 ever brandished his baton or even held it in his hand during this incident.

OPA lastly interviewed two community members who witnessed the incident and the Named Employees' actions. Community Member #1 ("CM#1") recalled that the officers tried to speak with the Subject who was clearly in crisis. CM#1 noted that the officers did not touch the Subject for more than 15 minutes and remained calm even through the Subject was disrespectful. CM#1 said that, when the ambulance arrived, the officers asked the Subject to get on the gurney, but the Subject refused and walked away. The Subject screamed and continued to be disrespectful. The Subject said that they wanted to smoke a cigarette and the officers let the Subject do so. CM#1 stated that, ultimately, the officers did grab the Subject and seat the Subject on the gurney. CM#1 felt that the officers did not have any choice at the time given the Subject's condition and refusal to comply. CM#1 recalled that the officers just held the Subject down until the Subject could be secured. CM#1 did not see any evidence of misconduct on the part of the Named Employees.

Community Member #2 (CM#2) recalled that the Subject was sitting on their porch and was distressed and calling for the police. CM#2 recalled that the Subject had threatened to jump off of their roof and that the Subject suffered from mental illness. The officers arrived and spoke with the Subject. The Subject refused to get on the gurney but ultimately seated themselves on it. The Subject eventually had to be held to the gurney by the officers. CM#2 said that the Subject pushed against the officers but that the officers were not doing anything out of the ordinary. CM#2 did not believe that the officers had any alternatives available to them other than what they did. CM#2, like CM#1 did not identify any misconduct on the part of the Named Employees.

ANALYSIS AND CONCLUSIONS:



Named Employee #1 - Allegations #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. 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 BWV indicated that the only force used by NE#1 and NE#2 was that applied to hold them down on the gurney, move them on the gurney, and then to hold them still while they were secured by AMR staff.

Based on OPA’s review of the BWV, it appears clear that the officers had a sufficient legal basis to take the Subject into custody. The Subject presented an imminent threat of harm to themselves. The Subject had already indicated that they were considering self-harm and, in fact, had called police for assistance in the first place because they were suicidal. OPA believes that the officers were correct to determine that leaving the Subject alone in the state that they were in was not an option as a matter of law. Given this and after the Subject refused to allow restraints to be applied, the officers were permitted to use force to hold the Subject down and to assist AMR staff. This force was both reasonable and necessary. The force – which was very low-level – was also proportional given the Subject’s refusal to comply with staff and the need to secure the Complainant prior to transport. Lastly, once the Subject was secured, the officers ceased using any further force.

As the force was reasonable, necessary, and proportional, OPA finds that it was consistent with policy. Accordingly, 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 #1 - Allegations #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.*)



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.

In articulating why the Named Employees failed to de-escalate, the Complainant pointed to NE#2 emerging from the patrol vehicle with a baton, NE#2 interacting with the Complainant aggressively and inappropriately, NE#2 acting in this manner even though others in the crowd told him to "calm down," and NE#2 appearing "eager" to use force.

As indicated above, all of these allegations were disproved by the video. Both officers listened to the Subject calmly and respectfully and interacted with them in the same manner. The officers did not use any force at all for 34 minutes, during which time they tried to convince the Subject to voluntarily go to the hospital. NE#2 only raised his voice once when the officers had been repeatedly unsuccessful in getting the Subject to sit on the gurney.

OPA's believes – and CM#1 and CM#2 agreed – that the officers took numerous steps to try to gain voluntary compliance prior to using force. It was only when the Subject was seated on the gurney and needed to be secured that they touched the Subject at all. Indeed, as both CM#1 and CM#2 indicated, the officers had no other options available to them at the time given the Subject's conduct and current condition.

OPA struggles to understand how the Complainant's perception of this incident could be so different from the accounts of the other witnesses and from the objective video evidence. It is almost like the Complainant was watching a totally different occurrence. Unfortunately, without the benefit of the Complainant's interview, OPA could not explore this more. However, based on the record, OPA can definitively conclude that any allegation that the officers failed to de-escalate prior to using force is without any merit whatsoever.

Accordingly, 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 - 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

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)**

Named Employee #2 - Allegations #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 that this allegation be Not Sustained – Lawful and Proper.

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