



## **CLOSED CASE SUMMARY**

ISSUED DATE: AUGUST 9, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0073

### **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 Will Use De-Escalation Tactics in Order to Reduce the Need for Force	Sustained

#### **Imposed Discipline**

Resigned Prior to Proposed DAR

***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 Named Employee #1 (NE#1) may have used excessive force on a Community Member #1 (CM#1) while effecting their arrest for shoplifting.

### **SUMMARY OF INVESTIGATION:**

Further to an initial screening by OPA, a complaint was received via the Chain of Command relating to the potential violation of policy by NE#1 relating to an excessive use of force. OPA commenced an investigation. OPA reviewed the complaint, Computer Aided Dispatch (CAD) Call Report, Incident Report and Body Worn Video (BWV). OPA also interviewed the Complainant and Named Employee. NE#1's entire response to, and investigation of, this incident was recorded on his BWV. As such, these underlying facts are not in credible dispute.

NE#1 responded to a report of shoplifting at Safeway store. The call stated that female shoplifters were in the store, talking to each other about items that they were going to steal, while placing the unpaid merchandise in a bag.

NE#1 arrived and was informed of the shoplifting by staff there. Of note is that at this juncture, CM#1 had not left the store. Staff identified CM#1 to NE#1. NE#1 approached CM#1 who was in an agitated state and was talking unintelligibly. NE#1 stated to CM#1, "Don't steal anything". CM#1 picked up a plastic bag full of merchandise from the ground as NE#1 told her a second time not to steal.

CM#1 walked away from NE#1 while carrying the plastic bag and picked up her purse. NE#1 warned CM#1 that she would be arrested if she stole. CM#1 picked up her purse and told NE#1 "I don't give a f\*\*\*, don't touch me, get the f\*\*\* away from me b\*\*\*h." NE#1 warned CM#1 a second time that she will be arrested if she stole. CM#1 continued to walk around the store shouting. CM#1 then stopped and continued to shout, three times, at NE#1 shouting, "Get



the F\*\*\* away from me!" NE#1 again told CM#1 he would arrest her if she left the store with the merchandise. CM#1 stepped up to NE#1 and said "yeah" in his face.

As CM#1 turned and moved away from NE#1, while repeating "Get the f\*\*\* away from me," NE#1 grabbed the plastic bag from CM#1. CM#1 pushed NE#1 with her hands outstretched and NE#1 responded in a similar manner. NE#1 struggled with CM#1 and they fell to the ground. While on the ground, CM#1 kicked out at NE#1 and ran further down the aisle. A store employee intervened and grabbed CM#1 by the arm until NE#1 regained contact and took CM#1 down to the floor.

BWV depicted NE#1 controlling CM#1 by placing her right arm across her upper body and applying pressure. BWV showed that NE#1 was not applying pressure to her abdominal area. CM#1 continually shouted, "Get off of me." CM#1 continued to struggle and resist detention. CM#1 told NE#1 "Get off of me, you're crushing my child." NE#1 requested assisting units to "Step it up."

Six assisting officers subsequently attended and assisted in the restraint of CM#1.

#### **ANALYSIS AND CONCLUSIONS:**

##### **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.)

As discussed more fully below, OPA finds that NE#1 failed to de-escalate prior to using force. As such, OPA concludes that NE#1, through his actions, increased the likelihood that force would need to be used. While the failure to de-escalate was contrary to policy, the use of force itself was not. Although a related allegation, there is separation between a failure to de-escalate and an improper use of force. This separation recognizes the connection between the act, or lack of, de-escalation and the use of force.

In this case the BWV indicated that, when NE#1 grabbed the bag, CM#1 pushed him back and attempted to flee from his grip. In the tussle that ensued, both NE#1 and CM#1 fell to the ground. CM#1 kicked out at NE#1 and removed herself from his grip. She was then detained by a store assistant and NE#1 made contact again. Although not captured on BWV, CM#1 was taken to the ground and detained as described above.

CM#1 continually made references to the fact that her baby (unborn) was being crushed by NE#1. Neither BWV nor medical records corroborated this allegation.



While that force was low-level, it must still have been reasonable, necessary, and proportional. While OPA thinks it likely that, had NE#1 engaged in de-escalation, this force would have been avoided, OPA does not find that the use of force violated SPD policy. Minimum Force was used which was, in the circumstances, reasonable proportional and necessary.

Accordingly, 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 Will 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)

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.

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.

OPA believes that NE#1 failed to abide by the Department’s de-escalation policy. When asked about his de-escalation during an OPA interview, NE#1 stated, “In terms of De-Escalation, [CM#1] made her intent clear when she stated that she could steal whatever she wants.” NE#1 reported that CM#1 told him to get away from her and continued to walk out of the store. NE#1 stated that he was unsure if he was cable of reasoning with CM#1 based on her escalated behavior, but he did believe that he was physically capable of handling the situation without causing harm to CM#1. In interview, NE#1 reported that it was not feasible to de-escalate the situation with CM#1 based on her agitated state and intentional acts of defiance. NE#1 stated that he believed that CM#1 was impaired by an illicit substance. NE#1 believed that his backup was nearby and that the suspect would drop the merchandise when confronted.

On arrival, NE#1 was made aware that CM#1 was in an agitated state. On NE#1’s initial contact with CM#1 it was clear that she was not agreeable. When confronted and told that she would be arrested for stealing, CM#1 did not drop the



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merchandise. Rather than waiting for backup however, NE#1 continued to follow CM#1 in the store. NE#1 did not wait for assistance and went hands-on with CM#1 which, rather than slowing down the situation as required by policy, he then appeared to escalate it. This ultimately resulted in injuries, albeit minor, to himself.

In interview, NE#1 acknowledged that if the incident was to arise again that he might have waited for back-up before making contact. On meeting CM#1, NE#1 instructed CM#1, "Do not steal or I will arrest you". NE#1 did not take appropriate time to engage in any communication with the CM#1, let alone to assess whether any potential mental illness or intoxication was impacting her ability or willingness to comply.

NE#1 also did not apply time, distance, and shielding. Instead, he did the opposite by continually advancing directly up to CM#1 and making physical contact with her by grabbing the bag. There was no justification for NE#1 immediately going hands-on. It was certainly safe and feasible to employ de-escalation tactics as CM#1 had not left the store and, so had not, in effect, shoplifted.

Though NE#1 appears to have been trying to do what he felt was right, his decision to abandon time, distance, and shielding improperly created a use of force situation which resulted in minor injuries to himself. Given this, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**