



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 24, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0231

Allegations of Misconduct & Director's Findings

Named Employee #1

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

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 Named Employee #1 (NE#1) failed to de-escalate and was unprofessional.

ADMINISTRATIVE NOTE:

This incident occurred on February 20, 2022. On July 26, 2022, the Seattle Police Department's (SPD) Force Review Board (FRB) examined the incident. On July 29, 2022, FRB referred two allegations to OPA: (1) de-escalation, and (2) professionalism. Witness Supervisor #1 (WS#1)'s, NE#1's acting sergeant, Type II force review flagged both issues. On February 22, 2022, WS#1 submitted this incident for a chain of command review. Pursuant to SPOG CBA Article 3.6(B)(iii), the 180-day timeline started March 8, 2022. Accordingly, the SPOG CBA 180-day timeline expired on September 4, 2022, thirty-seven days after the case was first received by OPA. Given that short investigative window, OPA did not complete its investigation within the SPOG CBA timeframe. However, OPA completed this investigation within 180 days of receiving the complaint, as required under SMC 3.29.130.

SUMMARY OF INVESTIGATION:

On February 20, 2022, NE#1, Witness Officer #1 (WO#1), and Witness Officer #2 (WO#2) used force to arrest a suspect (the Subject). During that arrest, NE#1 Tased the resisting Subject.

On July 26, 2022, FRB reviewed the officers' applications of force. FRB found NE#1's force was reasonable, necessary, proportional, and consistent with policy. However, FRB alleged NE#1 violated the Department's de-escalation policy by quickly going hands-on with the Subject, not discussing team tactics prior to going hands-on, and going hands-on with the Subject when the immediate need to do so was unclear. FRB also noted NE#1 was unreceptive to WS#1's de-escalation coaching and mentoring.



OPA opened this investigation. During its investigation, OPA reviewed the OPA complaint, Computer-Aided Dispatch (CAD) data, general offense (GO)/incident report, use of force documents, a TASER report, body worn video (BWV), and SPD's edged weapons training material. OPA also interviewed NE#1, WO#1, WO#2, and WS#1.

a. Computer-Aided Dispatch data and incident and supplemental reports

CAD data showed a Seattle Fire Department (SFD) member called 911 at 2:25pm on February 20, 2022, for an "expedited response" to a male reportedly throwing rocks at a fire engine. WO#1 and WO#2 were dispatched at 2:26pm, NE#1 was dispatched at 2:28pm. At 2:28pm, dispatch updated the call to note the male was throwing rocks "at everything," but not at people. All three officers arrived at 2:29pm.

WO#1 wrote the incident report, which WS#1 approved. WO#1 also wrote that an on scene SFD member identified the Subject as the offender. WO#1 wrote he followed the Subject and observed the Subject with a large rock in hand. The Subject slammed the rock against a fence. WO#1 documented he and WO#2 ordered the Subject to drop the rock, get on the ground, and told the Subject he was not free to leave. WO#1 wrote the Subject slammed the rock to the ground but refused further compliance. WO#1 documented when NE#1 arrived the officers guided the Subject to the ground and used force to handcuff the Subject. WO#1 documented that a subsequent investigation established the Subject caused over \$1,000 damage to an apartment building.

WO#2 prepared a supplemental report. WO#2 added that the Subject was noncompliant with orders and acted erratically, which made it unfeasible to assign contact team roles. WO#2 also documented the Subject's admissions of guilt.

b. Use of Force Documentation

NE#1 prepared a Type II Use of Force Statement. NE#1 wrote, upon arrival on scene, he observed WO#1 and WO#2 give verbal commands to the Subject. NE#1 noted all officers were uniformed and there were marked SPD vehicles. NE#1 wrote WO#1 and WO#2 gave multiple verbal commands and pointed TASERS at the Subject. NE#1 wrote the Subject turned and started evading the officers. NE#1 wrote he advised WO#1 and WO#2 that NE#1 would go "hands," signaling he would go hands-on to secure the Subject.

NE#1 documented that, prior to his arrival, he knew two other officers contacted the Subject. From that, NE#1 surmised the Subject was noncompliant. Upon arrival, NE#1 witnessed the Subject's noncompliance. NE#1 wrote he heard another officer "arc tested" a TASER to gain compliance but that display of force was unimpactful. NE#1 wrote he concluded further de-escalation was unsafe and unfeasible and would only give the noncompliant Subject further opportunity to damage property. NE#1 determined the Subject was an immediate threat when officers found him armed with a rock, but NE#1 believed it was safe to arrest the Subject after he dropped it. NE#1 also documented there were other officers on scene and a less lethal option (TASER) was available if the Subject escalated.



WS#1 reviewed NE#1's Use of Force report. WS#1 documented that she provided "coaching and mentoring" to NE#1 on the Department's de-escalation policy. Specifically, WS#1 wrote she discussed with NE#1, "slowing or stabilizing the situation to allow for team approach in establishing a tactical plan for contact and roles among officers, using communication to build rapport and gain voluntary compliance from the subject, and maximizing tactical advantage by increasing distance to allow for greater reaction time." WS#1 wrote NE#1 was "less than receptive" to this feedback and "failed to recognize the additional opportunities for de-escalation."

Additional members of NE#1's chain of command endorsed WS#1's assessment that NE#1 could have attempted further de-escalation techniques prior to going hands-on. However, NE#1's captain appeared to disagree and noted the officers "went hands on when it was safe and feasible to do so" and "worked well together in communicating their plan to each other."

c. TASER Report

NE#1's TASER report showed NE#1 deployed one of two charges in his TASER for a duration of five seconds at 2:32:47pm (time in hour, minutes, seconds).

d. Body Worn Video (BWV)

NE#1's BWV captured the moments leading up to the use of force and the application of force.

NE#1 arrived on scene and spoke with an SFD member. The SFD member noted the Subject attempted to damage their vehicle with a rock. The SFD member indicated the Subject's direction of flight. NE#1 returned to his vehicle and drove in the Subject's direction.

NE#1 arrived in the vicinity of the Subject, who was already contacted by WO#1 and WO#2. As NE#1 exited his vehicle, WO#1 and WO#2 were giving the Subject commands. Five seconds later, as NE#1 approached the Subject, WO#1, and WO#2, a TASER "arc test" is heard. WO#1 was captured pointing his TASER at the Subject. A second later, as NE#1 approached the Subject, WO#1 was observed pointing his TASER at the Subject. Either WO#1 or WO#2 ordered the Subject to get down on his knees. The Subject did not comply and continued walking.

Nine seconds after exiting his vehicle, NE#1 approached the Subject over a five-second timespan while stating "one voice, one voice, one voice, I got hands, I got hands." During that time, NE#1 got within arms' reach of the Subject. NE#1 reached for the Subject, who raised his arms towards NE#1. NE#1, with the assistance of WO#1, took the Subject to the ground using control holds and guiding techniques. Specifically, NE#1 grabbed the Subject's right arm to guide him to the ground while ordering "get on the ground, get on the ground, you are under arrest."



NE#1 contacted the ground in a seated position facing NE#1. NE#1 ordered the Subject to “get on your stomach” three times. The Subject refused to get on his stomach, appearing to brace himself with his left arm to avoid being rolled onto his stomach. The Subject asked, “what did I do, man?”

WO#2 assisted NE#1 and WO#1 with placing the Subject on his side. The Subject continued to resist being turned onto his stomach, moving his legs and using his hands to hold himself up. NE#1 advised the Subject he would be tased if he did not stop resisting. NE#1 again warned the Subject he would get tased if he did not stop resisting. As the Subject continued to resist by pushing his body off the ground with his hands, NE#1 stated “TASER, TASER, TASER,” and again stated, “TASER, TASER, TASER,” before deploying his TASER on the still actively resisting Subject. After NE#1 deployed his TASER, NE#1 ordered the Subject to put his hands behind his back. The Subject complied and was handcuffed. NE#1 requested SFD respond to check on the Subject due to the TASER deployment.

NE#1 went hands-on with the Subject thirteen seconds after NE#1 exited his vehicle. NE#1 deployed his TASER twenty-five seconds after going hands-on with the Subject.

e. OPA Interview – Witness Officer #1

OPA interviewed WO#1, whose recollection of the incident was materially consistent with BWV.

WO#1 thought there was nothing else NE#1 could have done to de-escalate, where the Subject was actively attempting to evade three officers. Moreover, WO#1 opined that, in light of the Subject’s recent property damage, the Subject could present a danger to someone else if he was not stopped.

f. OPA Interview – Witness Officer #2

OPA interviewed WO#2, whose recollection of the incident was materially consistent with BWV.

WO#2 also opined that further de-escalation by NE#1 was unfeasible because the Subject “showed no thought or action of staying put.” Due to the “dynamic” nature of the situation, WO#2 opined it was unfeasible for the officers to assign team tactic roles.

g. OPA Interview – Witness Supervisor #1

OPA interviewed WS#1, who was not on scene for the use of force but arrived shortly thereafter.

WS#1 explained her role as an acting sergeant. WS#1 stated she reviewed the BWV of the incident and identified further opportunities for de-escalation such as “slowing down and stabilizing the scene in order to create a tactical plan . . . and to establish roles.” WS#1 stated all officers on scene should know “who’s hands, who’s gonna be communication, who’s gonna be less lethal, and if there’s a fourth officer needed, if they’re gonna be deadly force.” WS#1 also noted NE#1 did not attempt to build rapport and gain voluntary compliance with the Subject himself, even if he was aware WO#1 and WO#2 had done so. WS#1 also noted that NE#1 could have used distance to de-escalate.



WS#1 explained she discussed de-escalation opportunities with NE#1. WS#1 noted it was a “training” conversation and was not a serious policy violation.

WS#1 indicated NE#1 expressed understanding of the policy, but did not believe further de-escalation was feasible or necessary as WO#1 and WO#2 had already attempted to de-escalate and the Subject was still non-compliant. WS#1 recalled she discussed with NE#1 that, despite WO#1 and WO#2’s efforts, there were still safe and feasible opportunities for newly arriving officers to make their own efforts so long as there was not active threat to the public or officers. WS#1 stated this “was not received well” by NE#1. WS#1 elaborated that there was just “more of a conversation” concerning “how much time is necessary” satisfy the “threshold” of the de-escalation policy. WS#1 recalled responding that the necessary time depended on the “totality of the circumstances.” WS#1 stated she and NE#1 were “going back and forth in regard to that topic.”

h. OPA interview – Named Employee #1

OPA interviewed NE#1.

NE#1 recounted that, when he arrived on scene, the Subject was noncompliant with officer commands. NE#1 also said he observed by the officers’ actions that they had designated themselves as less-lethal, so he designated himself “hands on” by stating “I’ve got hands” multiple times. NE#1 said he stated “one voice” to indicate he would be giving commands.

NE#1 described the de-escalation techniques that were used, including verbal commands, the presentation of TASERS, and having multiple officers on scene. NE#1 stated that, when he arrived, he knew the Subject was noncompliant with officers for at least twenty seconds, was ignoring verbal commands, and was walking away from officers. NE#1 stated he felt further de-escalation was unsafe because the Subject could rearm himself with rocks if they allowed him to escape. NE#1 also stated he gave the Subject multiple commands before he deployed his TASER. NE#1 acknowledged he thought the Subject was in crisis but did not believe this impacted the Subject’s ability to understand or comply with commands.

NE#1 expressed surprise that WS#1 completed the Blue Team review for his use of force as she was not his supervisor, she was acting sergeant that day. NE#1 recalled WS#1 saying NE#1 should have built “rapport” with the Subject. NE#1 said he thought that was dangerous given the Subject’s prior noncompliance. NE#1 recalled asking WS#1 how long he should have followed the Subject before going hands on. NE#1 said he asked this to gain a better understanding of the policy. NE#1 recalled WS#1 responding, “This is not a debate. I’m just telling you what I’m going to put in the use of force review and the Blue Team.”

NE#1 said he did not believe WS#1’s counseling was consistent with policy or training. NE#1 cited the Department’s training on responding to Subject’s armed with edged weapons. NE#1 understood the training to encourage officers to move in when individuals posed a threat to others. NE#1 also recalled a former OPA director encouraging officers to respectfully question information they believed to be outside policy or training. NE#1 stated he did not understand how asking for clarification could be unprofessional, especially where his watch lieutenant and precinct captain disagreed as to whether his actions complied with policy.



i. SPD Edged Weapons Training Material

OPA reviewed the training material referenced by NE#1 in his interview. While that training noted a dangerous subject in a crowded area may require immediate action, it also provided a list of other factors to consider to reach that determination, including: whether the situation is an arrest or community caretaking, the seriousness of the crime, legal authority to intervene, environmental factors, location of suspect and access to possible victims, available tools or resources, and reported injuries. Training also emphasized the factors of time, distance, shielding, leadership, pre-arrival planning, tools, and dialogue.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

It was alleged NE#1 did not use de-escalation tactics when safe and feasible to do so.

SPD Policy instructs that: “When safe, feasible, and without compromising law enforcement priorities, officers will use de-escalation tactics in order to reduce the need for force.” SPD Policy 8.100-POL-1. Officers are also encouraged to use team approaches consider whether any officer has successfully established rapport with the subject. *Id.* The selection of de-escalation options is to be guided by the “totality of the circumstances.” The policy gives several examples of de-escalation emphasizing the use of communication, time, distance, and shielding to minimize the need for force. *Id.*

This situation presents a close call when evaluating whether NE#1 was required to use further de-escalation tactics without compromising law enforcement priorities. The difficulty in determining whether NE#1 violated policy is underscored not only by the disagreement between NE#1 and WS#1, but WO#1 and WO#2’s opinions, as well as NE#1’s watch lieutenant and captain.

On one hand, WO#1 and WO#2 had already unsuccessfully engaged with the Subject, who was acting erratically, evasive, and ignored orders. When NE#1 arrived, WO#1 and WO#2 had made efforts to enclose the Subject and create stand-off distance. However, the Subject appeared non-compliant and continued to walk away. WO#1 and WO#2 had their TASERS drawn and the Subject appeared unphased by TASER arc tests, verbal commands, or the presence of a third officer. NE#1 observed an opportunity when the Subject was unarmed and used short but effective team communication to delegate roles and apprehend the Subject.

Conversely, BWV showed the location was not busy and there was no obvious, immediate need to go hands-on with the Subject when NE#1 chose to do so. Moreover, as noted by NE#1’s watch lieutenant, NE#1 did not appear to stop or pause after exiting his patrol vehicle and making physical contact with the Subject, who was unarmed the entire time NE#1 was in his presence. To the extent NE#1 could have safely and feasibly taken additional time to gather resources, engage with the Subject, and stabilize the dynamic scene, he could have minimized the likelihood force would be needed in this situation. NE#1 should have done so.

While OPA finds NE#1 possibly violated the de-escalation policy in this instance, OPA also recognizes reasonable minds could differ—as many did throughout the documented force review of this incident.



Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1, review SPD Policy 8.100-POL-1 with NE#1, and provide any further retraining and counseling it deems appropriate. NE#1's chain of command should also consider including members of the training unit in this retraining to review NE#1's BWV and offer guidance for other techniques NE#1 could have employed. The retraining and counseling conducted should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 5.001-POL 10. Employees Will Strive to be Professional

The Complainant alleged NE#1 was unprofessional.

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.

As described by WS#1 and NE#1, the two had a good faith disagreement regarding the requirements of the de-escalation policy in this situation. There is no evidence to suggest that disagreement crossed the line into unprofessionalism or insubordination. WS#1 explained her position to NE#1 and documented it accordingly. NE#1 was unreceptive to her feedback because he disagreed that policy required him to do more and he wanted more specific guidance. Notably, neither WS#1 nor another supervisor who was present during their exchange felt the interaction serious enough to warrant an OPA referral. OPA only became aware of the disagreement as it was mentioned by FRB in Blue Team.

As stated at Allegation #1, OPA ultimately finds WS#1 had the clearer view of the policy requirements in this situation. NE#1 is not required to agree with either OPA or WS#1, but he is required to understand the de-escalation policy and conform his behavior to it in the future. To that end, OPA issued a training referral for Allegation #1.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**