



## CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 24, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0232

### **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

***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 use de-escalation techniques to prior to applications of force.

### **ADMINISTRATIVE NOTE:**

On July 26, 2022, the Force Review Board (FRB) examined this incident. The incident involved NE#1's use of force on a reportedly in crisis community member (the Subject). FRB found NE#1's use of force reasonable, necessary, and proportional. However, FRB made an OPA referral regarding NE#1's de-escalation techniques and decision making. Specifically, FRB noted NE#1 conducted a solo officer contact, failed to issue a radio update about the contact or request a backing unit prior to conducting an area search. During its intake investigation, OPA reviewed BWV, CAD data, incident reports, PAS entries and an FRB report. OPA concluded NE#1 may have failed to properly communicate his status with CSCC radio, which would violate SPD policy 12.010 - Communications 12.010-POL-4 Radio Procedures 1. Radio Communications Will Follow Protocols. OPA forwarded that allegation to NE#1's chain of command for Supervisor Action:

**Requested Action of the Named Employee's Supervisor:** Please document by completing a Chain of Command Report, attaching the report to this case, and sending it to OPA through Blue Team.

- Discuss complaint with Named Employee.
- Please document in PAS. Please copy and paste the text of the PAS entry into the Chain of Command Report.

Therefore, this DCM only covers NE#1's alleged failure to de-escalate.



Further, pursuant to SPOG CBA Article 3.6(B)(iii), the 180-day timeline started April 27, 2022<sup>1</sup>, fourteen days after the incident was submitted for chain of command review. On July 29, 2022, seventy-three days before the 180-day timeline expired, FRB referred it to 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:**

#### *a. Computer Aided Dispatch Call Report and Incident Report*

CAD showed, on April 6, 2022, at 5:46 PM, the related 9-1-1 call was made. NE#1 dispatched at 8:10 PM and arrived at 8:22 PM. At 8:26 PM, NE#1 radioed “fighting with one.” By 8:28 PM, several officers arrived and arrested the Subject by 8:31 PM.

Witness Officer #1 (WO#1) wrote the incident report. In summary, on April 6, 2022, around 8:26 PM, WO#1 and Witness Officer #2 (WO#2), his partner, responded to a “help the officer call” after NE#1 radioed he was in a fight. When WO#1 and WO#2 arrived, other on scene officers already diffused the fight and secured the Subject. WO#1 spoke with the Subject’s grandmother. She stated the Subject behaved strange throughout the day. She stated he threw his dinner against a wall and broke a window. The Subject’s grandmother reported he ripped down curtains and his bedroom door off the hinges. She further stated the Subject broke various items in the house and left with his bedroom door. The Subject returned, threw the door on the yard, and left prior to NE#1’s arrival. WO#1 also spoke with the Subject’s sister, who reported he spent two years in a mental health hospital and was diagnosed with bipolar disorder and possibly schizophrenia.

WO#1 also spoke with NE#1. NE#1 stated he responded to the call and recognized the Subject based on the description given to the 9-1-1 dispatcher. NE#1 then spoke with the Subject’s grandmother, who briefed him about the Subject’s actions. NE#1 stated he then contacted the Subject. The Subject tried to grab NE#1’s head, but NE#1 avoided it. NE#1 stated he tried speaking with the Subject, but the Subject grabbed NE#1. NE#1 stated they fell and the Subject forcefully grabbed NE#1’s genitals and screamed he intended to take NE#1’s firearm. Back up officers responded and secured the Subject. The Subject sustained a “red mark under his eye.” NE#1 sustained elbow, forearm, and hand abrasions and genital pain.

#### *b. Use of Force Documentation*

NE#1 prepared a Type II Use of Force Statement. NE#1 wrote his legal authority and lawful purpose was community caretaking. NE#1 was working alone. He considered the call more of an Involuntary Treatment Act situation, rather than a criminal call. The Subject’s sister, who called 9-1-1, told NE#1 about the Subject’s actions prior to NE#1’s arrival, his hospital stint, his diagnoses and medication noncompliance. The family waited in a car for two hours until NE#1

<sup>1</sup> “[N]o discipline may result from the investigation if the investigation of the complaint is not completed within one-hundred eighty (180) days after the 180 day start date.” SPOG CBA Article 3.6(B).



arrived. They indicated they wanted the Subject to get help. NE#1 decided to approach the Subject to “gauge his mental state.” After the Subject tried to grab NE#1, NE#1 tried to de-escalate by pushing the Subject and telling him to “calm down.” While wrestling with the Subject, NE#1 repeatedly told him to “get on the ground” and “calm down.” NE#1 took the Subject to the ground to control his movement with NE#1’s body weight. NE#1 thought the Subject yelled, “give me your gun.” However, later, BWV showed he yelled, “get my gun.” The Subject forcefully grabbed NE#1’s genitals, which led NE#1 to believe the Subject intended to cause harm. When they both got on their feet, NE#1 threw two punches at the Subject, striking him once and causing both to fall again. NE#1 was able to control the Subject on the ground until back up arrived.

Sergeant Officer #1 (SO#1) reviewed NE#1’s force. SO#1 concluded NE#1 gave clear verbal commands throughout the encounter. NE#1 sustained scratches and abrasions on his knuckles, hands, and arms. The Subject had an abrasion under his right eye. The Subject was uncooperative with SO#1’s attempt to interview him. The Subject’s behavior also made the Seattle Fire Department’s evaluation unsafe. SO#1 noted the importance of de-escalation using the contact/cover training method, which SO#1 covered the following day during a roll call training.

NE#1’s Acting Lieutenant #1 (AL#1) concluded further de-escalation was unfeasible under the circumstances NE#1 faced. That determination was based on the Subject’s sudden attack on NE#1. AL#1 also noted NE#1’s de-escalation attempts including creating space, trying to converse with the Subject, and pushing the Subject away. AL#1 also highlighted NE#1’s modulated applications of force. However, AL#1 did flag NE#1 response to a crisis call alone without notifying dispatch. In response, NE#1 was counselled on contact/cover and officer safety concerns. A Performance Appraisal System (PAS) entry was also included in NE#1’s file.

NE#1’s Acting Lieutenant #2 (AL#2) also unsuccessfully attempted to interview the uncooperative Subject. Like SO#1 and AL#1, AL#2 flagged NE#1’s decision to respond alone. However, AL#2 also noted updates prior to NE#1’s arrival suggested “the scene was no longer active” and there was no report of the Subject assaulting people, only property damage. AL#2 concurred with AL#1’s opinions on NE#1’s de-escalation attempts and modulated force. Further, AL#2 recommended contact/cover training and a PAS entry.

NE#1’s captain concurred with counselling and training on de-escalation using the contact/cover method.

*c. Body Worn Video*

NE#1’s BWV captured the moments leading up to the use of force as well as the use of force itself. BWV materially mirrored NE#1’s Type II Force Statement.

*d. OPA Interview – NE#1*

On November 18, 2022, OPA interviewed NE#1. NE#1 was an officer over 17 years and part of SPD’s Hostage Negotiation Team over 10 years. His interview materially mirrored his Type II Force Statement. Additionally, he explained the delayed officer response to the initial call. The initial call concerning the Subject was made at 5:43 PM,



but officers were redirected to “a shooting call,” so NE#1’s first availability was when he self-dispatched at 8:10 PM. NE#1 also explained, prior to his arrival, updates indicated the Subject left, so NE#1 only intended to respond to “determine what resources [the Subject’s family] needed.”

#### **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.*

Here, SPD policy encourages coordinated team approaches to potentially volatile situations. Ideally, NE#1 would have responded with backup and a plan prior to engaging the Subject, who reportedly ripped a door off its hinges and caused significant property damage. While NE#1 noted there was no indication the Subject was a threat to people, the Subject’s own family was so scared of him they hid in a car over two hours until police arrived. Overall, as NE#1’s chain of command concluded, it was not a great idea to respond alone. Similarly, NE#1 should have utilized distance to assessed the Subject’s threat level, rather than pulling his patrol car near him and exiting. Particularly, where NE#1 knew the Subject reportedly demolished his house, had significant mental health diagnoses, and was medication noncompliant. While OPA notes NE#1 attempts to utilize verbal techniques, like “Listen and Explain with Equity and Dignity (LEED) to calm an agitated subject and promote rational decision making,” NE#1’s failure to assess the threat at a safe distance led to avoidable applications of force, a citywide “help the officer” call, and injuries to NE#1 and the Subject. Further, NE#1’s approach, as his chain of command concluded, disregarded shielding to create a tactical advantage.

Overall, while better decision making is expected from an officer with NE#1’s experience, OPA is prohibited from recommending discipline where the 180-day timeline as contemplated under the SPOG CBA expired.

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 consider including training unit members in ordered retraining to review NE#1’s BWV and offer guidance for other techniques NE#1 could have employed. Any retraining and counseling conducted should be documented and maintained in Blue Team.

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