



## CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 12, 2018

CASE NUMBER: 2018OPA-0153

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)
# 2	8.300 - Use of Force Tools 4. Officers Shall Only Deploy CEW When Objectively Reasonable. See Section 8.000	Not Sustained (Lawful and Proper)
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)
# 2	8.300 - Use of Force Tools 4. Officers Shall Only Deploy CEW When Objectively Reasonable. See Section 8.000	Not Sustained (Lawful and Proper)
# 3	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:**

It was alleged that the Named Employees may have failed to engage in sufficient de-escalation prior to using force. It was further alleged that the Named Employees may have used excessive force when they each utilized their Taser on the subject while attempting to effectuate his arrest.

**STATEMENT OF FACTS:**

On the date in question, multiple community members called 911 to report a man who was talking to himself while waving a knife (approximately 5 inches long) in the air. One caller reported that the man, who was later identified as the subject, could be high or intoxicated. A description of the subject’s appearance and clothing was provided. Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were dispatched and located the subject, who matched the description. NE#1 and NE#2 were equipped with both Body Worn Video (BWV) and In-Car Video (ICV) on the date in question.



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The officers drove their vehicle, which had its emergency equipment activated, up to where the subject was standing on a street corner. NE#1 reported that, while he did not observe a knife in the subject's hands at that time, he saw the subject stick his hands in his pockets and then run away. The ICV was consistent with NE#1's description.

NE#1 and NE#2 directed the subject to stop, but he kept running. NE#1 and NE#2 then gave chase. As the officers began to catch up to and near the subject – NE#2 was closest, the subject turned around and drew the knife. At that point, however, NE#2 pushed the subject from behind, causing him to fall to the ground and drop the knife. Both officers went hands-on in an attempt to take the subject into custody. The subject continued to physically resist them and did not comply with the officers' commands. The officers' BWV recorded them stating: "stop, stop reaching" and "roll over on your stomach." Several seconds later, NE#2 drew his Taser and yelled: "I will fucking tase you, I will fucking tase you." When the subject did not stop resisting, NE#2 used his Taser. Both officers reported that this tasing was not effective as one probe hit the subject's jacket and the other probe missed. The subject was again told to stop resisting, but continued to do so. NE#1 then drew his Taser and used it on the subject in drive stun mode for approximately three seconds. This application was successful and caused the subject to lessen his physical resistance. The officers were then able to pull the subject's arms behind his back and handcuff him. No further force was used after that point.

The officers reported the force to their sergeant and documented the force in Type II reports. The sergeant attempted to interview the subject but the subject would not verbally respond to her. Both the sergeant and the officers' lieutenant approved the force as consistent with policy. The lieutenant noted several training issues, including that NE#2 drove his vehicle directly up to the subject. The lieutenant advised the officers to give "themselves a safer distance to the suspect upon approach." She further counseled the officers that: "Best practice warrants utilizing time, distance and shielding when safe to do so." The officers' captain also approved the force and noted the counseling provided to NE#2 concerning his approach of the subject with his vehicle.

The incident was later reviewed by the Force Review Board (FRB). After deliberating on this case, the FRB found that it could not determine whether the officers properly de-escalated in this incident. The FRB noted its belief that the officers should have better articulated in their reports "why they closed the distance between themselves and the subject, prior to giving him a chance to comply." Based on its conclusion, the FRB referred this matter to OPA and this investigation ensued.

As part of its investigation, OPA reviewed the documentation and video (both Department and third party) related to this case. OPA also interviewed both of the Named Employees.

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

##### **Named Employee #1 - Allegation #1**

##### ***8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, 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.)



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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.*)

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. (*Id.*) Other examples of de-escalation include, but are not limited to:

- Placing barriers between an uncooperative subject and officers;
- Containing the threat;
- Decreasing exposure to the potential threat by using distance, cover and concealment;
- Avoidance of physical confrontation unless immediately necessary to protect someone or stop dangerous behavior;
- Using verbal techniques, such as “Listen and Explain with Equity and Dignity” (LEED) to calm an agitated subject and promote rational decision making;
- Calling extra resources, including CIT officers and officers equipped with less-lethal tools; and
- Using “any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject.

(*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.

As noted by their chain of command and by the FRB, the officers’ tactics during their initial response to this instance were perhaps not optimal. By driving their car directly in front of the subject with its emergency equipment activated, the officers did not use time, distance, and shielding, nor did they appropriately use a barrier. That being said, I do not find that their initial tactics yielded the totality of their actions outside of policy.

When they arrived at the scene, the officers were aware that the subject was armed with a knife and that he had been brandishing that knife. The officers were further aware that the subject was in a heavily populated area in the middle of the day. As such, it was possible that he could be intermingling with numerous community members while in possession of a dangerous weapon. Indeed, when the officers first saw the subject, he was walking next to a woman. Based on their concern about the active threat the subject presented, they drove to where they believed him to be with their lights and sirens activated. The subject then ran from them. At this point, de-escalation was no longer safe or feasible. The officers did not have the opportunity to use verbal techniques, call additional resources, or to use further time, shielding, distance, or barriers. Moreover, even though NE#1 was a CIT trained officer, he did not have the opportunity to use that training.



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The officers provided a clear and compelling explanation concerning their actions and the unfeasibility of de-escalation during their OPA interviews, which was much improved over that set forth in their use of force reports. They described a complex situation with a subject that was possibly violent and impaired/in crisis. They explained that they engaged in their best efforts to appropriately respond to and deal with a fast-evolving situation, but that they ultimately had to act to take the subject into custody and protect the community from an armed and fleeing threat. Based on this more detailed and thoughtful recounting, as well as based on my review of the evidence and the Department video, I find that de-escalation was no longer safe or feasible at the time that the officers arrived on the scene. I further find that the subject's actions in fleeing the scene necessitated the officers' response and that the officers' conduct did not increase the need for the use of force. I agree with NE#1 when he contended at his OPA interview that he was "between a rock and a hard place" and I believe that the officers acted to the best of their ability under the stressful circumstances of this instance. As such, I recommend that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

**Named Employee #1 - Allegation #2**

***8.300 - Use of Force Tools 4. Officers Shall Only Deploy CEW When Objectively Reasonable.***

SPD Policy 8.300-POL-3 concerns the use of Tasers. The policy mandates that Tasers may only be used when objectively reasonable, and refers to SPD Policy 8.000. (*See* SPD Policy 8.300-POL-3(4).) The policy specifically delineates two scenarios in which Taser use is appropriate: first, "when a subject causes an immediate threat of harm to the officer or others"; or second, "when public safety interests dictate that a subject needs to be taken into custody and the level of resistance by the subject is likely to cause injury to the officer or to the subject if hands on control tactics are used." (*Id.*) Notably, the policy is silent on the use of Tasers on fleeing subjects. (*See id.*)

When NE#1 and NE#2 used their Tasers, they acted consistent with both prongs of this policy. First, based on the officers' account, my review of the video, and the undisputed fact that the subject was armed, I find that there was an immediate threat of harm to the safety of the officers and others. Second, I find that public safety interests necessitated the subject being taken into custody and that it was likely that further injury to the officers, the subject, and/or others would have occurred if hand-on tactics were used. As the Taser application was consistent with this policy, I find that it was reasonable.

I further find that the force was necessary to effectuate the lawful arrest of the Complainant and that neither officer believed that there was any reasonably effective alternative to using that force. Lastly, I conclude that the force was proportional to the threat facing the officers. The subject was armed, he fled from the officers, he physically resisted the officers when he was on the ground, and, as recounted by the officers, he continuously reached towards the middle of his body. Notably, NE#1's Taser application lasted three seconds and NE#2's Taser application was unsuccessful. Moreover, once the subject's physical resistance ceased, the officers did not further use their Tasers.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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



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**Named Employee #1 - Allegation #3**

***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.” (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 force used by NE#1 included trying to physically control the subject’s body, attempting to pull the subject’s arms behind his back, applying his Taser, and handcuffing the subject. NE#2 used similar force to that of NE#1 and, additionally, tackled the subject to the ground. Only the force used to take the subject down to the ground, control his body and handcuff him is evaluated here, as the Taser applications are discussed above.

This force was reasonable based on the circumstances of this case. The subject was armed with a knife, he had fled from the officers, and he physically struggled against them when on the ground. The officers were legally justified in placing him under arrest and, when the subject resisted, were permitted to use force to do so. The force was particularly justified based on the fact that the subject had been armed and the officers were legitimately concerned that he could have more weapons on his person. Both officers described him as reaching towards the center of his body and expressed their fear that he was seeking a knife or another weapon. The force was also necessary as it was reasonable to effect the officers’ lawful purpose of taking the subject into custody and preventing him from fleeing and I find that the officers rationally believed that there was no reasonably effective alternative to using that force. Lastly, the force was proportional to the threat facing the officers. Once the threat was quelled, no further force was used.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

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

**Named Employee #2 - Allegation #1**

***8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, 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 #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

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



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**Named Employee #2 - Allegation #2**

***8.300 - Use of Force Tools 4. Officers Shall Only Deploy CEW When Objectively Reasonable. See Section 8.000***

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #2 - Allegation #3**

***8.200 - Using Force 1. Use of Force: When Authorized***

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Not Sustained – Lawful and Proper.

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