



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 30, 2018

CASE NUMBER: 2018OPA-0561

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 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)
# 3	5.160 - Observation of Officers 5.160-POL It is the policy of the Seattle Police Department that a person not involved in an incident may remain in the vicinity of any stop	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 Employee may have subjected the Complainant to excessive force and that he may not have engaged in de-escalation prior to using that force. It was further alleged that the Named Employee may have impermissibly prevented the Complainant from remaining in the vicinity of the detention of a third party.

STATEMENT OF FACTS:

Named Employee #1 (NE#1) and other officers were investigating narcotics activity. They effectuated the arrest of an individual and began the process of taking him into custody. Another individual – the Complainant in this case – approached the officers. The Complainant had metal crutches with him at the time.

The officers repeatedly asked the Complainant to move back and the Complainant refused. NE#1 stepped between the arrest and the Complainant and again asked the Complainant to move back. When the Complainant refused, NE#1 guided him away using his hand on the Complainant’s upper right arm. NE#1 informed the Complainant that, by remaining in the officers’ immediate vicinity, he was making the scene unsafe. The Complainant responded by saying “so what.” After a further exchange, the Complainant stated to NE#1: “do you want me to fight ya?” The Complainant also lifted his crutches in front of his body. NE#1 seized the crutches and tossed them aside and again told the Complainant to go. NE#1 took hold of the Complainant’s arm and wrist and moved him away. NE#1 then told the Complainant to sit down multiple times and, when the Complainant did not do so, NE#1 softly took him to the ground and placed him into a seated position. The Complainant began to use expletives towards the officers.

The Complainant ultimately stood up and re-obtained his crutches. Another community member came by and made a comment concerning “donuts” that was directed at the officers. The Complainant began speaking to that individual,



as well as using expletives directed towards NE#1 and the other officers. The Complainant began to move closer to NE#1 and NE#1 told him that he needed to stay back and that he was interfering in a police investigation. The Complainant stated that he did not care and continued to use expletives towards NE#1.

At that point, NE#1's Sergeant arrived on-scene. The Sergeant spoke with NE#1, who advised him that he had confiscated the Complainant's crutches because the Complainant had been threatening to fight him. NE#1 also informed the Sergeant that, due to the Complainant's behavior, NE#1 had been required to go "hands on" with him. The Complainant threatened to fight NE#1 and continued to use expletives towards him. NE#1 noted to the Sergeant that, in addition to the crutches, the Complainant had a knife in his pocket. The officers eventually placed the arrestee in the rear of a patrol vehicle and all of the officers, including NE#1, left the scene.

The Complainant's case worker later contacted the Sergeant and indicated that the Complainant wished to file an excessive force complaint. Accordingly, the Sergeant referred this matter to OPA and this investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

At the time that the caseworker initiated this complaint, the caseworker did not provide any details the nature of the excessive force claim. OPA was later able to interview the Complainant. The Complainant stated that he was observing an arrest while standing approximately 10 to 15 feet away. He told OPA that he started to walk away when he was pushed by an officer. The Complainant alleged that he then fell down on his knee and hit both his elbow and his head, causing him to suffer injuries. He told OPA that the officer did not say anything to him and did not help him up.

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.*)

Based on OPA's review of the BWV, the Complainant's account of the force used by NE#1 is inconsistent with the evidence in this case. The video shows that, at the time the force was used, the Complainant was within a foot of NE#1, not 10 to 15 feet away as he described. The video also showed that NE#1, after telling the Complainant to back away multiple times and after the Complainant asking NE#1 whether he wanted to fight, took hold of the Complainant's arm and moved him into a seated position using what NE#1 described as an escort hold. Again, based on the video, NE#1 did not throw the Complainant onto the ground and, instead, used a controlled takedown. There is no evidence that the Complainant ever hit his knee, elbow, and head, or, for that matter, that he suffered any pain or discomfort from the force that was used.



This de minimis force was reasonable under the circumstances as the Complainant refused to back away from the officers, causing them concern for their safety. The force was also necessary as the Complainant continually failed to comply with the officers' directions, remained in their near vicinity, threatened to fight NE#1, and was in possession of two metal crutches that could potentially have been used as weapons. Lastly, the force was proportional to the threat posed by the Complainant that was exemplified by his aggressive demeanor, his inebriated state, and his threats to cause NE#1 harm.

For these reasons, I find that the minimal force used by NE#1 was consistent with policy and, as such, I recommend 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 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.)

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.

When the Complainant first approached the officers, they asked him to leave their immediate vicinity, which included using verbal persuasion. The Complainant refused to comply, potentially based on his level of intoxication. When the Complainant declined to cooperate, moved closer to the officers, and became increasingly aggressive and threatening, further de-escalation was no longer safe or feasible. At that point, physical force was appropriate to stop the Complainant from continuing to escalate his behavior. Accordingly, I find that NE#1 complied with this policy when he attempted to de-escalate this situation prior to using de minimis force on the Complainant.

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

Named Employee #1 - Allegation #3

5.160 - Observation of Officers 5.160-POL It is the policy of the Seattle Police Department that a person not involved in an incident may remain in the vicinity of any stop

SPD Policy 5.160 states that:

[A] person not involved in an incident may remain in the vicinity of any stop, detention, arrest, or other incident occurring in a public place, and observe or record activity and express themselves, including making comments critical of an officer's actions, so long as the person's conduct and presence are otherwise lawful.

The policy provides several factors that may be relevant to determining whether it was permissible to remove an individual from the vicinity of law enforcement activity, which include: "officer safety, the protection of the suspect or person being detained, including his or her right to privacy, and the safety of onlookers." (SPD Policy 5.160.)

At the time that the Named Employees were trying to take the third party into custody, they were approached by the Complainant. He was clearly intoxicated and spoke to the officers aggressively. The Complainant then moved closely to the officers, at one point being within an arm-length. Given how close the Complainant was to them, his possession of a potential weapon in the form of his crutches, and his condition and behavior, the officers were justified in asking him to move away from them. Moreover, when he refused to do so, continued to stand closely to the officers, and threatened to assault NE#1, the officers were permitted to forcibly remove him from their immediate vicinity.

Neither SPD policy nor the law contemplates giving a community member free reign to stand immediately next to officers who are effectuating an arrest. Where, as here, there are concerns of officer safety, officers are permitted to ask the community member to stand a safe distance away, as long as the community member can still observe the law enforcement activity from that location. As such NE#1 was justified in asking the Complainant to move back from his near vicinity and, when he refused to do so, to use de minimis force to remove the Complainant from the area. This is particularly the case where, as here, the observer is intoxicated, potentially armed, and threatening physical violence towards the officers. Ultimately, neither officer ever told the Complainant that he was not allowed



to observe the arrest nor, in OPA's opinion, did the officers impair the Complainant's constitutional rights in any impermissible respect.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

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