



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 22, 2019

CASE NUMBER: 2018OPA-0341

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	Sustained
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
Imposed Discipline		
Suspension without Pay – 2 days		

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 failed to engage in de-escalation and was unprofessional during his response to an incident.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #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

Officers, including Named Employee #1 (NE#1), responded to a residence regarding a report of threats. An individual, who was later identified as the Subject, was standing on the victim’s balcony without the victim’s permission. The victim asserted that the Subject had threatened to kill him. The officers were aware of information indicating that the Complainant was likely in crisis. Most notably, the officers learned that the Subject was claiming that he was at the victim’s residence to look for his wife and that the actors Robert De Niro and Joe Pesci told him that she would be there.

NE#1 arrived on scene at approximately 0343 hours. Shortly after getting out of his patrol vehicle, NE#1 made the following statement to the Subject: “Come on down. Come on down. You come down here now or I’m going to drag you down...your choice, I don’t give a shit. We can do this the easy way or hard way, come down here now. Alright, I’ll come up and get you, that’s cool.” Within less than a minute and after the Subject contended that he would comply, NE#1 again stated: “Hey dude, the easy way or the hard way, come on down.” At approximately the two-minute mark, NE#1 grabbed the Subject, who was standing behind a balcony. He continued to order the Subject to come towards him and to come over to the railing. During that time, the Subject told NE#1 to stop and relax. The



Subject further stated that he would walk down on his own power. NE#1 continued to issue orders and again grabbed onto the Subject when the Subject neared him. Nearly three minutes into the interaction, NE#1 stated to the Subject: "Step over the railing. I'm going to count to three. If you don't step over this railing, I'm going to throw you over the railing." Shortly thereafter, another officer asked whether everything was under control inside of the victim's residence. At around four minutes into the interaction, NE#1 tried to pull the Subject over the railing. The other officer then stated: "Relax everyone, relax." Additional officers arrived and, at around seven minutes into the officers' response to the residence, two officers went around the side of the railing where the Subject was standing and handcuffed him without any other force being used.

After the incident concluded, the officer who had asked that everyone "relax," spoke to a supervisor and raised concerns regarding NE#1's de-escalation efforts, demeanor, and professionalism. After reviewing Body Worn Video (BWV) and consulting with a Lieutenant, the supervisor agreed that NE#1 had engaged in potential misconduct and made an OPA referral. This investigation ensued.

OPA interviewed NE#1, the officer who additionally raised concerns regarding this incident, and the supervisor who made the OPA referral. OPA further reviewed the paperwork that was generated by the involved officers and the BWV, which captured what occurred in its entirety.

At his OPA interview, the supervisor noted his concern with NE#1's handling of this incident. He stated that, had he been the involved officer, he would have waited for backing units to arrive prior to attempting to go hands on with the Subject. He reasoned that NE#1 could have taken additional steps to try to verbally de-escalate. He further noted that, had NE#1 pulled the Subject over the railing, they both could have fallen down the stairs and suffered injury due to the wet conditions on that day. The supervisor told OPA that NE#1 had time to engage in de-escalation tactics and could have better utilized time, distance, and shielding. Lastly, he stated that he did not believe that the totality of NE#1's conduct was professional, particularly given his use of profanity and threats towards the Subject.

The witness officer told OPA that, when he arrived at the scene, he observed NE#1 standing on the stairs and at the railing. He described hearing NE#1 and the Subject yelling at each other. He stated that he was concerned by NE#1's conduct. The officer told OPA that it was clear to him from the call that the Subject was in crisis. He stated that he would have approached the call by trying to engage with the Subject first from a distance, while observing the scene to ensure that there were no immediate threats of harm. The officer stated that, in his opinion, NE#1 should have de-escalated more. He stated that NE#1 appeared to lose his patience and, as a result, actually escalated this situation. The officer contended that he thought NE#1 had sufficient time to use time, distance, and shielding. Lastly, the officer asserted that NE#1's conduct during portions of this incident was not professional.

NE#1 acknowledged that he knew that the Subject was in crisis at the inception of the call. NE#1 denied failing to de-escalate or acting unprofessionally. He told OPA that there was only one other unit working at that time, but acknowledged that he could have waited for that unit to arrive before taking action. NE#1 stated that he handled the call "a little aggressive[ly]," but that was based on him being the only officer on scene at the time he arrived. He told OPA that he did not believe that he had time to de-escalate due to the exigency of the situation and the threats being made by the Subject. When NE#1 was asked about the threats that he made, NE#1 stated that he was trying to bluff the Subject into compliance.



“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.

Based on OPA’s review of the record, NE#1 failed to properly de-escalate during this incident. I reach this finding for multiple reasons. First, the evidence does not support NE#1’s assertion that he did not have the opportunity to use time, distance, and shielding. Notably, NE#1 recognized that he could have waited for a backing officer – who he knew was on the way – prior to engaging with the Subject. He further acknowledged that the reason he acted aggressively during the call was because he did not do so. That there was an opportunity to utilize time, distance, and shielding is further supported by the OPA interviews of both the supervisor and witness officer. Instead of doing so, however, NE#1 approached the Complainant, threatened him, and tried to grab him in an attempt to pull him over a railing. As the supervisor indicated, this could have caused significant injury to both NE#1 and the Subject. Moreover, these actions were tactically unsound. Second, NE#1 failed to use LEED or other similar verbal techniques to attempt to de-escalate the incident. To the contrary, NE#1 threatened and used profanity towards the Subject. This was the case even though NE#1 knew that the Subject was almost certainly in crisis prior to interacting with him



and even though the Subject, at least by his statements, appeared willing to cooperate with NE#1's commands. Third and last, there was no exigent need to go hands on at the time NE#1 chose to do so. As indicated by the BWV, the Subject was not armed. He was not actively threatening anyone and he did not appear to represent an immediate threat of harm. NE#1 should have instead either contained the threat until the witness officer arrived and/or used other tactics, consistent with his CIT training, rather than going hands on when he did.

For these reasons, I recommend that this allegation be Sustained. In making this determination, I appreciate that this was a fast-evolving incident. However, this was largely the case because NE#1 made it so. I also rely heavily on the accounts of the supervisor and the witness officer, both of whom recognized that NE#1's actions were out of policy and made the difficult but appropriate decision to initiate this complaint.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

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

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-10.) The policy further states the following: "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person." (*Id.*) Lastly, the policy instructs Department employees to "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." (*Id.*)

NE#1's comments and conduct during this incident were unprofessional in two main respects. First, NE#1's threats to throw the Subject, who he knew was very likely in crisis, over the railing and his use of unnecessary profanity towards the Subject was directly contrary to policy and undermined public trust in both him and the Department. Second, as discussed more fully above, NE#1's statements and conduct unnecessarily and inappropriately escalated this situation.

For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**