



CLOSED CASE SUMMARY

ISSUED DATE: MAY 21, 2019

CASE NUMBER: 2018OPA-0596

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.120 - Off-Duty Employment 4. Employees Must Request Approval for all Law Enforcement Related Off-Duty Employment and Business Activities	Not Sustained (Inconclusive)
# 2	6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained (Lawful and Proper)
# 3	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)
# 4	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:

The Complainant alleged that the Named Employee falsely arrested him. It was further alleged that the Named Employee may have failed to de-escalate this matter prior to using force and used excessive force on the Complainant. Lastly, it was alleged that the Named Employee may have not had a valid secondary work permit at the time of the incident.

SUMMARY OF INVESTIGATION:

Named Employee #1 (NE#1) was working off-duty at a venue and he and another officer were requested by venue security to assist with two intoxicated individuals. One of those individuals was the Complainant. The individuals refused to leave the venue and security asked that the officers assist in removing them. The officers escorted the individuals outside of the venue gate but they continued to refuse to leave the premises. The officers informed the individuals that if they reentered the venue they would be arrested for trespass. The officers then ceased contact with the individuals and walked away. Shortly thereafter, the individuals walked to a different entrance and tried to push their way past security guards and into the venue. The officers were again asked to respond to assist in removing the individuals from the venue. NE#1 reported that the individuals were belligerent, yelling, and refused to obey commands to leave the venue.

NE#1 again spoke with the individuals and told them that, if they had an issue with the venue, they should raise that issue at a later date with the venue management. However, NE#1 informed them that, given their behavior and the request that they be removed from the venue, they needed to leave at that time. NE#1 told the Complainant that, if



he did not do so, he would be arrested for trespassing. When the Complainant refused to comply, he was told that he was under arrest and was taken into custody.

The Complainant later sent a letter to OPA alleging that he was falsely arrested by NE#1. He denied engaging in any criminal behavior and stated that, at the time he was arrested, he was simply expressing his First Amendment rights. He told OPA that he was wrongfully evicted from the venue and, when he tried to get an explanation for why this occurred, he was then arrested. He stated that he was then “paraded” him through the venue in order to retaliate against him. Based on the Complainant’s complaint, this investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.120 - Off-Duty Employment 4. Employees Must Request Approval for all Law Enforcement Related Off-Duty Employment and Business Activities

As part of its investigation, OPA conducted a search to determine whether NE#1 had a valid secondary work permit for the date in question. SPD Policy 5.120-POL-4 requires such a permit prior to an officer engaging in off-duty employment. SPD Human Resources informed OPA that no permit could be located.

During NE#1’s OPA interview, he was asked whether he had a permit for the date in question. He told OPA that he did have a permit and that he submitted this permit to his Sergeant for approval. OPA also interviewed the Sergeant. The Sergeant stated that he had no recollection of NE#1 giving him the permit in question. The Sergeant said that, had he received the form, he would have forwarded it to the Lieutenant. The Sergeant told OPA that he did not keep copies of the forms and just sent them on and, as such, he could not conclusively verify whether or not he received it in this case.

Ultimately, there is insufficient evidence in the record to prove or disprove whether or not NE#1 had a secondary work permit during this incident. As such, I recommend that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #1 - Allegation #2

6.010 - Arrests 1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest

SPD Policy 6.010-POL-1 requires that officers have probable cause to believe that a suspect committed a crime when effectuating an arrest. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy.

Based on OPA’s review of the evidence, which included the documentation of this incident, the video provided by the Complainant, and witness statements, OPA finds that there was probable cause supporting the arrest of the Complainant. Most notably, the evidence indicated that venue staff requested that the Complainant be removed from the location and that he was directed to leave by NE#1. The evidence further reflected that the Complainant initially refused to do so and later tried to regain access to the venue. At that time, the Complainant was again asked



to leave and, when he did not, he was arrested. At that time, it was appropriate to take that law enforcement action.

In reaching this finding, OPA notes that the Seattle City Attorney's Office independently chose to file criminal trespass charges against the Complainant, thus determining that probable cause existed for his arrest. While no resisting arrest or obstruction charge was filed, that does not undercut the legal authority for the arrest. Moreover, that the trespass charge was later dismissed does not, standing alone, vitiate the probable cause for the arrest.

While the Complainant may disagree with the venue's request that officers remove him from the location, NE#1 was entitled to rely on this request and enforce the trespass. Lastly, there is insufficient evidence establishing that the Complainant's arrest was based solely on his statements to NE#1 or on the Complainant's demeanor. Instead, it was premised on the Complainant's conduct and repeated refusals to leave the venue.

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

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

Named Employee #1 - Allegation #3

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;



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- 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.

NE#1 explained that he attempted to reason with the Complainant for a sustained period of time in an attempt to gain his voluntary compliance. This is supported by witness accounts. However, these de-escalation efforts were unsuccessful, and the Complainant continued to refuse to leave the premises. NE#1 explained that, at the time he made the decision to effectuate the Complainant’s arrest and to use force to do so, he believed that further de-escalation was no longer safe or feasible.

Based on OPA’s review of the record, I agree that, at the time force was used, further de-escalation was not safe or feasible. I further find that there is insufficient evidence in the record to establish that NE#1 escalated this incident by his acts or statements. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegations #4

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.” (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 video, at the time of arrest, NE#1 grabbed hold of the Complainant’s arm and forcefully pulled the Complainant towards him. He then told hold of both of the Complainant’s arms and placed him into handcuffs.

At his OPA interview, NE#1 stated that he only used de minimis force during the arrest. NE#1 explained that he believed that the force was appropriate given the Complainant’s refusal to comply with the direction to leave the venue and his belligerent behavior. He explained that he pulled the Complainant’s arm in order to handcuff him, but that the Complainant was non-compliant. NE#1 stated that the force used permitted him to safely take the Complainant into custody.



With regard to the level of force that NE#1 used during this incident, OPA believes this to be a close call based on the video. While NE#1 did not strike the Complainant or use a high level of force, he did vigorously pull the Complainant towards him, which could have caused the Complainant to suffer injury to his arm. In OPA's experience, de minimis force usually does not consist of such forceful movements. However, there is no evidence in the record that the Complainant complained of pain or discomfort at any time or that he suffered any injuries from this incident.

Regardless, OPA finds that force was appropriate to take the Complainant into custody. Moreover, based a review of the video, the Complainant did, in fact, remain on the property, repeatedly gestured towards the officers, and appeared to be upset. This is consistent with NE#1's recounting that the Complainant was both uncooperative and belligerent.

For these reasons, I find that the force was reasonable, necessary, and proportional to effectuate the Complainant's arrest and was, thus, consistent with policy. Accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper.

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