




## CLOSED CASE SUMMARY

ISSUED DATE: JUNE 21, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0353

### 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 - 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 that the Named Employee (NE#1) used unauthorized force against Community Member #1 (CM#1) during an arrest.

### ADMINISTRATIVE NOTE:

On May 24, 2023, the Office of Inspector General certified this investigation as thorough, timely, and objective.

### SUMMARY OF INVESTIGATION:

NE#1 and several other officers prepared to execute an extraditable warrant<sup>1</sup> from Wisconsin issued against CM#1. NE#1 saw CM#1 near 1<sup>st</sup> Avenue and Vine Street, where a foot chase ensued.

BWV Image of CM#1 Fleeing

<sup>1</sup> The warrant was for violating parole on a sexual assault of a child case. The Wisconsin Department of Corrections reported that CM#1 was released on an ankle monitor but later cut it off. Community Member #2—a resident at a shelter where CM#1 was banned—told officers CM#1’s description, where he worked, and that he was “likely to be armed.” CM#2 previously aided officers with unrelated investigations. Officers staged at CM#1’s job to execute the warrant.



Witness Employee #1 (WE#1) and NE#1 ordered CM#1 to stop but were ignored. NE#1 yelled, "You're going to get TASED! You're going to get TASED! Get on the ground!" before unholstering his TASER. NE#1 arched the TASER to gain CM#1's compliance. CM#1 stopped and raised his hands.



NE#1 performed a double-leg takedown, grabbing CM#1's legs and forcing him to the ground.

View from NE#1's BWV



View from WE#2's BWV



CM#1 fell onto his back, and NE#1 and Witness Employee #2 (WE#2) rolled him onto his stomach for handcuffing. As WE#2 issued *Miranda* warnings, CM#1 asked, "What is going on? What am I being detained for?" Seconds later, after

<sup>2</sup> The red arrow points to NE#1 tackling CM#1's legs.



adjusting CM#1's handcuffs, NE#1 explained, "You're under arrest for your warrant." During a search, WE#2 suggested officers search the backpack CM#1 wore, "Let's make sure it's not a gun or something that going to go off in the backpack." NE#1 grabbed and searched it, finding nothing noteworthy. While screening the incident with Witness Employee #3 (WE#3)—a sergeant—NE#1 explained why he performed a takedown after CM#1 surrendered, saying he was unsure whether CM#1 was trying to "fake [him] out" since he had officers chasing him "a whole block."

OPA interviewed NE#1. In summary, NE#1 said:

He joined the department in 2019 and completed field training in 2020. While investigating a reported sexual assault involving CM#1 at the shelter that banned him, NE#1 learned about CM#1's Wisconsin fugitive warrant. CM#2—the reporting party for the sexual assault at the shelter—suggested the offense occurred more than once, and CM#1 was "likely armed with a firearm." CM#2 also provided updates over the phone about CM#1's whereabouts. Officers located CM#1, who wore a large backpack. CM#1 fled on foot, ignoring commands to stop. CM#1 ran into traffic in "disregard for his safety and the safety of others." NE#1 unholstered his TASER while issuing commands. NE#1 arched his TASER. CM#1 stopped, raised his hands, and turned toward NE#1. NE#1 was unsure whether CM#1 surrendered or looked to "maneuver around" him. NE#1 listed three concerns that made him question CM#1's intent:

- *First and foremost, [CM#1] had just sprinted away from officers while disregarding lawful orders and stopped because he was under arrest.*
- *Secondly, [CM#1] already showing off his athletic ability to suddenly and without warning change directions and create distance.*
- *Third, even though I did see that [CM#1] hands had started to raise, under the totality of the circumstances, that motion could have indicated multiple options.*

NE#1 reasoned that CM#1's raised hands could have been a "defensive posture. Could be reactionary to protect himself for when I could contact and utilize a controlled takedown" or an "offensive in preparation to take a hold of me and use my momentum against me to carry me away from him, which would allow him to flee." Further, NE#1 argued, "[CM#1] had a strong incentive to continue to evade apprehension as he was facing a serious prison sentence for his crimes and was constantly arrested." Therefore, NE#1 decided "to seize this opportunity to gain control of [CM#1] to prevent him from continuing to flee." NE#1 thought other officers were close but did not know their proximity.

OPA was unable to contact CM#1, who was extradited to Wisconsin, for an interview.

### **ANALYSIS AND CONCLUSIONS:**

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

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

The Complainant alleged that NE#1's takedown was unauthorized force.

An officer's force must be reasonable, necessary, and proportional. SPD Policy 8.200(1). Officers shall only use "objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective." *Id.* 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 8.050. Reasonableness must consider that officers are often forced to make “split-second decisions” in tense, dynamic circumstances. *Id.* The policy also lists several factors that should be weighed when evaluating reasonableness. *See id.* Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” *Id.* Last, the force used must be proportional to the threat posed to the officer. *Id.*

Here, officers sought to arrest CM#1, a parolee with an active Wisconsin Department of Corrections warrant. NE#1 knew CM#1 was released for a sexual offense involving a child. He also knew CM#1 was accused of sexually assaulting CM#2 more than once. Moreover, NE#1 learned from CM#2—a proven reliable source—that CM#1 “likely carried a firearm.” NE#1 also noted that CM#1’s flight through traffic was a public safety risk for drivers and CM#1. Last, NE#1 suggested the risk of CM#1’s continued flight, and his limited time to act made the takedown reasonable. Overall, had CM#1 not surrendered, OPA would have found NE#1’s takedown objectively reasonable, necessary, and proportional to the need for his apprehension. However, CM#1 stopped and raised his hands high, the universal sign of surrendering. NE#1 told OPA that had CM#1 articulated his intent to surrender; he may not have used force. Yet, CM#1 had no way of knowing that was required. CM#1 had already submitted to NE#1’s TASER arching. If CM#1 decided to run suddenly, NE#1 was roughly five feet away, with a TASER aimed squarely at CM#1. Had NE#1 waited a moment to assess the situation, he would have seen backing officers prepared to assist—particularly WE#3, who also had a TASER aimed at CM#1.

WE#3’s BWV View as NE#1 Prepared to Takedown CM#1



Together, as the department encourages<sup>3</sup>, they could have used a team approach to mitigating risks CM#1 presented. Instead, NE#1 singlehandedly tackled CM#1 on a sidewalk, causing him to fly backward, almost hitting his head on a parking garage arm.

<sup>3</sup> See SPD Policy 8.100-POL-1.



Nevertheless, NE#1's act is best categorized as miscalculated rather than misconduct. It was not a willful policy violation, and it is best addressed by counseling and possible retraining for the relatively new officer.

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **Required Training:** NE#1's chain of command should discuss OPA's findings, review SPD Policy 8.200-POL-1, and provide NE#1 training and counseling deemed appropriate. Retraining and counseling should be documented and maintained in Blue Team.

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