




CLOSED CASE SUMMARY

ISSUED DATE: JULY 25, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0058

Allegations of Misconduct & Director’s Findings

Named Employee #1

| Allegation(s): | | Director’s Findings |
|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|
| # 1 | 8.300-POL-10 Use of Force- 40 mm Less Lethal Launcher 9. Officers Will Not Target a Subject's Head, Neck or Genitals | Not Sustained - Inconclusive |
| # 2 | 8.300 Use of Force Tools POL-10 Use of Force 16. Officers Will Summon Medical Aid as Soon as Feasible, Whenever a Subject Has Been Struck by a 40mm LL Launcher | Sustained |
| # 3 | 5.001 POL 2. Employees Must Adhere to Laws, City Policy and Department Policy | Not Sustained - Management Action |
| # 4 | 16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity b. When Employees Record Activity. | Sustained |

Imposed Discipline

| |
|-------------------|
| Written Reprimand |
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Named Employee #2

| Allegation(s): | | Director’s Findings |
|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
| # 1 | 8.400-TSK-8 Use of Force - Responsibilities of The Sergeant During a Type II Investigation 4. Confirms that appropriate medical aid is offered to any injured party | Not Sustained - Unfounded |
| # 2 | 5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation | Not Sustained - Unfounded |
| # 3 | 5.001 - Standards and Duties POL-2. Employees Must Adhere to Laws, City Policy, and Department Policy | Not Sustained - Unfounded |

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 Named Employee #1 (NE#1) violated department policy while participating in a federal task force. It was also alleged that Named Employee #2 (NE#2), a screening supervisor, failed to aid an injured subject and investigate or report NE#1’s possible violations.



ADMINISTRATIVE NOTE:

On June 16, 2023, the Office of Inspector General (OIG) certified OPA’s investigation as thorough, timely, and objective.

Additionally, OPA referred the case to the Snohomish County Prosecutor’s Office (SCPO) for prosecutorial consideration. SCPO sent it to the Snohomish County Sheriff’s Office for investigation. The Snohomish County Sheriff’s Office did not refer an investigation to SCPO for prosecutorial consideration.

SUMMARY OF INVESTIGATION:

On January 26, 2023, NE#1 participated in a United States Marshals Pacific Northwest Violent Offenders Task Force mission in Snohomish County. The task force sought Community Member #1 (CM#1), who had an extraditable felony warrant. Snohomish County deputies also participated in the task force.

A. General Offense/Incident Report

NE#1 wrote the general offense report. He noted that CM#1 had a warrant out of Idaho on an unlawful possession of a firearm case. NE#1 stated that CM#1 was charged with home invasion, robbery, and escape. NE#1 wrote that CM#1 was found inside a vehicle behind a credit union in Everett, WA. NE#1 stated that a Snohomish County deputy initially contacted CM#1, who “...tried to get away.” NE#1 wrote, “After a short foot pursuit and struggle, [CM#1] was arrested.” NE#2 also emailed Witness Employee #1 (WE#1)—an acting captain—explaining that NE#1 attempted a vehicle pin/pinch to stop CM#1’s fleeing vehicle but was unsuccessful. NE#2 indicated that CM#1 then fled on foot. He stated that NE#1 confronted CM#1, who ignored commands and appeared to reach toward his waistband, causing NE#1 to deploy a 40 mm, striking CM#1’s pelvis or upper thigh area.

B. Significant Incident Report (SIR)

NE#2 wrote a SIR. He documented that Type 2 force was used to apprehend CM#1. Specifically, NE#2 documented that NE#1 used vehicle tactics and a 40 mm launcher during the operation.

C. Use of Force Documents

NE#1’s use of force statement noted his task force participation on the day in question. It also stated that he completed SPD’s anti-crime team (ACT) training, covering vehicle tactics like blocking and pinning.¹ NE#1 further indicated that, as a task force officer, he received federal vehicle tactics training: *“I have been trained by the US Marshals to use our vehicles to block doors of vehicles from opening, so that we can gain compliance from suspects and remove them from the vehicle at our pace.”* NE#1 wrote that before participating in the task force mission, he sent the operations order to his chain of command. During the operation, NE#1 wore plain clothes, a ballistic carrier with police markings, and a tactical helmet. He also drove an unmarked federally-owned sports utility vehicle.

¹ OPA confirmed NE#1 completed ACT training in 2015.



NE#1 wrote that task force officers located a van that surveillance officers indicated was associated with the Complainant. It was parked behind a closed credit union against a low curb. The van's windows were foggy, so the task force believed it was occupied. The team planned to block the van to prevent it from driving off during the officers' approach. NE#1 wrote:

"[Task force officers] would also move into the lot in their unmarked vehicles. If the suspect was in the vehicle and readily compliant, [task force officers] would move in and take him into custody. If the suspect was not compliant, we would "pin" the vehicle and gain compliance. This "pin" would include the unmarked vehicle that had blocked it pulling forward and [task force officers] using their issued vehicles to contact the sides of the vehicle. This would impede the suspect from escaping and help control the vehicle if the suspect were to try to drive away. An ideal pin would have a Police vehicle at the front and rear, but because the vehicle was rear-blocked, this was the best option available."

NE#1 was assigned a 40 MM launcher as a less lethal option. NE#1 entered the parking lot and saw the Complainant's known associate outside the van. Officers ordered the associate to move away from the van. He complied but left the van's door open. NE#1 saw the Complainant enter the driver's seat and reversed the van before officers boxed it in. Officers ordered the Complainant to stop. NE#1 said they planned to pin the van if it drove off. So, NE#1, positioned to pin the van's passenger side, collided with the van at low speed to immobilize it. NE#1 estimated he drove less than 10 miles per hour leading up to the collision. As another task force vehicle attempted to pin the van's driver's side, the Complainant exited and fled on foot. The Complainant squeezed into bushes behind the van to escape the officers. Officers issued further commands to stop. NE#1 was within 10 feet of the Complainant and saw him reach toward his waistband:

"Given the historical information about [the Complainant], the nature of the crime, and his continued effort to secure something around his waist feared that he had a gun. I told [the Complainant] to show me his hands. He quickly complied but just as suddenly dove his left hand towards his waist and leaned to his left. In this instant, I feared that [the Complainant] may be trying to draw [a] weapon."

NE#1 deployed the 40 MM at the Complainant. NE#1 wrote that he was roughly five feet from the Complainant when he deployed the 40 MM. NE#1 also indicated that he targeted the Complainant's stomach, but the Complainant screamed, "You shot me. You shot me in the nuts," and fell. Task force officers handcuffed the Complainant, and NE#1 applied no further force and did not hear complaints of pain or injury.

NE#2 responded to the incident location to screen NE#1's force applications. NE#2 spoke with NE#1, whose account generally mirrored his use of force statement. NE#2 also talked to the Complainant, who had abrasions on the right side of his face.² The Complainant said, "They fucking jumped me and beat the fuck out of me. You can't you tell?" NE#2 asked whether the Complainant had other injuries, to which he replied, "...[it] didn't matter." NE#2 asked whether the 40 MM deployment caused injury, and the Complainant said, "It's all good." The Complainant would not indicate where the 40 MM struck him. NE#2 documented that the Complainant was transported to the Snohomish County Jail, where he was medically evaluated. NE#2 also noted that NE#1 told him that the task force did not summon medical aid for the Complainant. NE#2 wrote that he did not think it made sense "to stop the transport to call for a

² NE#2 noted that the Complainant's facial injuries were unrelated to NE#1's force applications.



fire department response [to provide medical aid]" since the Complainant was en route to the jail, which was a block away and would provide medical aid.

D. Task Force Officer Statements

Task Force Officer #1 (TFO#1)—a Department of Corrections officer—stated that briefings before the operation indicated the Complainant was likely armed and would flee from police. TFO#1 said that after the Complainant exited the van, he saw him running through bushes and heard someone yell, "Gun!" TFO#1 heard a pop but did not see its source. TFO#1 saw the Complainant crawl toward the parking lot. TFO#1 said he stepped on the Complainant's arm to prevent him from accessing a weapon. TFO#1 said the Complainant reached toward his waistband and began to roll onto his stomach, leading TFO#1 to step on the Complainant's left leg.

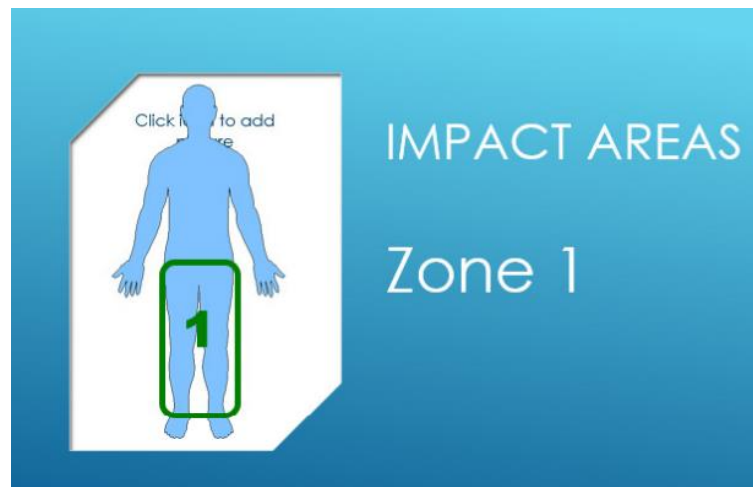
Task Force Officer #2 (TFO#2)—another Department of Corrections officer—also stated that a briefing suggested the Complainant was armed and would flee. Like TFO#1, TFO#2 saw the Complainant flee from the van into bushes when someone yelled, "Gun!" TFO#2 ran toward the yell and saw NE#1 with a 40 MM ordering the Complainant to show his hands. TFO#2 said the Complainant ignored the order, and NE#1 deployed the 40 MM, striking the Complainant. TFO#2 said the Complainant crawled into the parking lot, where he reached toward his waistband. TFO#2 also said a firearm magazine was near the Complainant's head.³ TFO#2 said he controlled the Complainant's upper movements by placing a knee against the back of the Complainant's head until he was handcuffed. TFO#2 said the Complainant declined medical aid.

Task Force Officer #3's (TFO#3)—a Snohomish County Sheriff's Office deputy—statement materially mirrored the other officers' statements. Additionally, TFO#3 said that after NE#1 hit the Complainant with a 40 MM, TFO#3 applied a "stop kick" to the Complainant's stomach and another to his left thigh "as a distraction tactic." TFO#3 said that after the Complainant was handcuffed, there were abrasions on his face, but he declined medical aid.

E. 40 MM Training

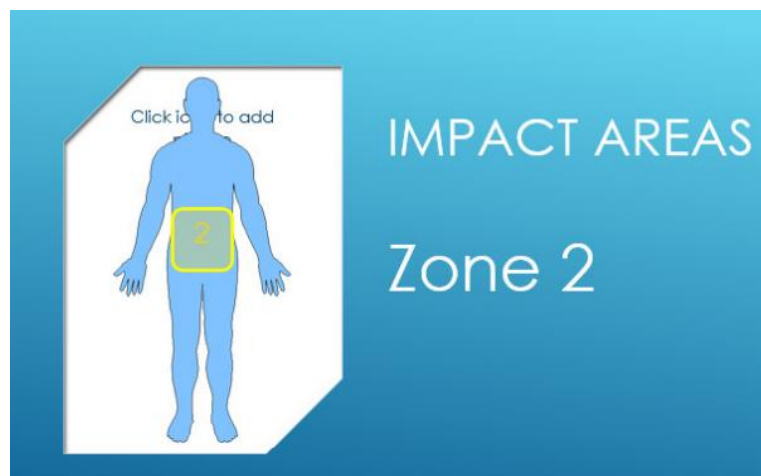
SPD's 40 MM training covers target areas and the ideal deployment range. That training identifies a subject's lower body/Zone One as the preferred impact area:

³ The magazine was later determined to belong to an officer.



Zone One is the area with the greatest amount of muscle mass and least number of vital organs. As such, this zone is least likely to result in serious injury when struck...An impact to this zone will generally generate enough painful stimuli to gain compliance from the suspect when struck. When the threat level is appropriate and this zone viable, it should be considered first due to its lower potential for injury and the ability to still cause painful stimuli. The injury most commonly seen in this zone will be contusions (bruises) and abrasions.⁴

The training also covers unpreferred target areas.



Waist below sternum...has greater potential for causing serious injury when struck. In most cases, these areas lack the muscle density found in Zone One. That muscle density absorbs much of the kinetic energy...minimizing impact energy. Without this density, the energy is

⁴ Slide 18.



transferred into the body. This increases the painful stimuli, as well as the potential for injury. In addition to the types of injury seen in Zone One, a strike to Zone Two may result in a laceration or fracture.⁵

The training lists 5-120 feet as an effective deployment range but 10-75 feet as the optimal range.⁶ NE#1's training records show that he attended this training on September 6, 2022. NE#1 also attended the following ACT trainings:

- ACT Team Basic School [external training]- May 14, 2007
- ACT Supervisor Training [external training]- June 12, 2013
- ACT Refresher (Vehicle Take Down) [SPD training]- December 21, 2015

F. Body-Worn Video (BWV)

NE#1's BWV captured the Complainant's associate standing outside the van's open front passenger door.⁷



It also showed NE#1 confronting the Complainant with a 40 MM after the Complainant reversed the van, abandoned it, and ran into bushes.

⁵ Slide 19.

⁶ Slide 40.

⁷ NE#1 had yet to activate his BWV at that point. He started it a minute after when task force officers struggled to handcuff the Complainant. However, when BWV is activated, the preceding one-minute buffering period is captured. That period only captures visuals, not audio.



BWV captured the Complainant's raised right hand, but the 40 MM blocked the left, as NE#1 shot the 40 MM.

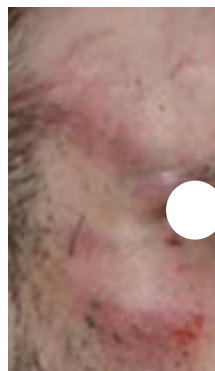


After the 40 MM deployment, the Complainant hunched and retreated into the bushes.



Task force officers, including a K-9, surrounded the Complainant in the parking lot. TFO#3 appeared to stomp the Complainant several times while other officers handled him on the ground.⁸ NE#1 tapped his BWV device repeatedly.⁹ TFO#3 yelled, apparently directed at the Complainant, “What the fuck you doing, huh?” NE#1 announced, “Hey, we’re recording,” after TFO#3’s last “stop kick.” Another officer, handling the Complainant on the ground, immediately got up and walked out of the frame.

When NE#2 arrived, NE#1 told him that he drove “Maybe four miles per hour” to pin the van. NE#2 spoke with the Complainant, questioning him about the injuries on his face.



Other than saying, “Yeah, they fucking jumped me. Beat the fuck out of me,” the Complainant did not provide details about how he sustained the injuries, like which officer did what. He also declined to identify where the 40 MM struck him. NE#2 asked NE#1 whether the fire department was requested to offer medical aid. NE#1 said no. NE#2 replied,

⁸ NE#1’s BWV angle did not capture TFO#1’s foot connecting with the Complainant. However, TFO#3’s upper body indicated he forcefully raised and lowered his foot against the Complainant, who was on the ground.

⁹ There was no audio before that.



“It’s their guy, so I don’t know how we manipulate that, you know what I mean? It’s kind of their call for injuries at this point.”

G. OPA Interviews

OPA reached out to the Complainant to arrange an interview. His attorney replied, saying he would let OPA know if they decided to participate in an interview. OPA has yet to hear back.

OPA attempted to interview the Complainant’s associate, who was present during the operation. However, OPA’s calls were not returned. OPA did review NE#2’s recorded interview with the Complainant’s associate at the scene. According to that interview, the associate did not witness the 40 MM deployment. Regarding NE#1’s vehicle pinning, the associate stated that NE#1 did not collide with the van at high speed.

OPA spoke with a US Marshal service supervisor who confirmed that the task force members had classroom and field training on vehicle tactics, including vehicle pinning.

OPA interviewed NE#1 and NE#2, whose accounts materially mirrored their use of force statements.

H. Chain of Command Review

Witness Employee #1 (WE#1)—an administrative lieutenant in SPD’s Special Operations Bureau—reviewed NE#1’s and NE#2’s actions during and responses to the task force operation and noted the following issues:

1. Late BWV activation and early de-activation
2. Vehicle pinch has training requirements listed in the [chief of police’s] interim policy email.
3. a traffic or patrol sergeant did not investigate the collision.¹⁰
4. The fire department was not called to the scene to treat the suspect for the face abrasions, the suspect complaint of a broken leg, and the possible close-range groin shot with the 40 MM.
5. Details of the suspect’s injuries and statements may have required a [Force Investigation Team] screening.
6. The suspect yelled, “You broke my leg,” and “They beat the fuck out of me.” Those statements required an OPA referral.
7. The expended [40 MM projectile] was picked up by [NE#1] and returned to the spot where he found it for [NE#2] to take photos. That should have been documented in his statement.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.300-POL-10 Use of Force- 40 mm Less Lethal Launcher 9. Officers Will Not Target a Subject's Head, Neck, or Genitals

It was alleged that NE#1 targeted an unauthorized area on the Complainant’s body with a 40 mm launcher.

¹⁰ WE#1 noted that it was unclear whether the incident involved a reportable collision under policy.



40 mm less lethal launchers are designed to temporarily interrupt the behavior of a dangerous subject so that officers can take enforcement action with less danger of injury or death to themselves and others. SPD Policy 8.300-POL-10. The extended standoff distance that the 40 mm launcher may decrease officers' exposure and provide additional time to bring the situation to a safe resolution. *Id.* Officers will not target a subject's head, neck, or genitals. SPD Policy 8.300-POL-10(9). The preferred target areas are the buttocks, thigh area, calf, and large muscle groups. SPD Policy 8.300-POL-10(10).

Here, NE#1 came face-to-face with the Complainant in an enclosed area after the Complainant attempted to flee officers. They stood less than five feet apart. NE#1 estimated they were about two feet apart. Given their proximity, height difference¹¹, the Complainant's sudden emergence, and the launcher's length, NE#1 told OPA he could not execute an ideal deployment. NE#1 said he intended to strike the Complainant's stomach. While SPD policy does not forbid targeting the abdomen, training identifies it as an unpreferred target area. Given NE#1's height advantage, causing him to aim the launcher downward at the Complainant, NE#1 had a clear shot toward the preferred target area: the Complainant's thighs and legs.



NE#1 told OPA he elected to target the Complainant's stomach since he proved to be a flight risk and "...moving the legs can be tough." However, the Complainant was stationary when NE#1 deployed the 40 MM. If NE#1 intended to target a preferred area but missed it due to circumstances beyond his control, that would be understandable. But that was not the case. NE#1 intentionally targeted an area that training made clear was much more likely to result in injury. Nevertheless, where there is insufficient evidence that NE#1 targeted the Complainant's genitals, which policy prohibits, OPA cannot conclude that NE#1 violated policy.

Accordingly, OPA recommends this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**

¹¹ NE#1 said he was significantly taller than the Complainant.



Named Employee #1 - Allegation #2

8.300 Use of Force Tools POL-10 Use of Force 16. Officers Will Summon Medical Aid as Soon as Feasible, Whenever a Subject Has Been Struck by a 40mm LL Launcher

It was alleged that NE#1 failed to summon medical aid after striking him with a 40 mm launcher.

Officers will summon medical aid as soon as feasible after hitting a subject with a 40 mm launcher. SPD Policy 8.300-POL-10(16).

Here, NE#1 deployed a 40 mm launcher at the Complainant within five feet. The Complainant immediately yelled, "You shot me. You shot me in the nuts." Had NE#1 struck a Zone One area rather than the Complainant's genitalia, he was required to summon medical aid. Given the proximity of the deployment and the impacted area, NE#1's duty to call for medical assistance was more significant. Moreover, after the Complainant was handcuffed, the right side of his face was covered with abrasions—another reason to seek medical attention. Although NE#1 told OPA that the Complainant did not complain of pain or injury, the nearby jail would conduct a medical screening, and the Complainant declined medical aid, NE#2 told OPA it took him about an hour to arrive at the scene after he was notified about NE#1's use of force. That means the Complainant sat at least an hour without medical attention after enduring significant physical trauma.

Accordingly, OPA recommends this allegation be Sustained.¹²

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

5.001 POL 2. Employees Must Adhere to Laws, City Policy and Department Policy

It was alleged that NE#1 violated an SPD directive by performing a vehicle pin and failed to intervene after witnessing officers using unauthorized force against the Complainant.

SPD employees must adhere to laws, City policy, and Department policy. SPD Policy 5.001-POL-2. On-duty officers who witness excessive force by another officer must intervene when in a position to do so. RCW 10.93.190. A witnessing officer must also report any wrongdoing, or a good faith reasonable belief of wrongdoing, committed by another officer to a supervisor. *Id.*

Vehicle Pin

Here, SPD's chief of police emailed a directive on January 13, 2023, covering vehicle tactics. That directive limited vehicle pinning to officers with practical training using that tactic. Specifically, it required training to include learned maneuvers in a real-world setting in a controlled environment with an instructor present. The directive also required the training to be added to the officer's training record. However, it is unclear whether prior vehicle tactic training listed on officers' records satisfied the directive. NE#1 had several ACT courses covering vehicle tactics on his record. NE#1's 2015 ACT training solely covered vehicle tactics. Further, he had US Marshal vehicle pinning training, including

¹² NE#1 told OPA that the task force agreed to follow SPD's 40 MM policy going forward.



practice in a controlled environment led by an instructor. Similarly, it is unclear whether that met department standards.

Accordingly, OPA recommends a Management Action to address ambiguities.

Duty to Intervene

Regarding NE#1's alleged failure to intervene against other task force officers using force against the Complainant, TFO#3 was the only officer OPA observed using questionable force. The other officers were mainly out of BWV's frame, and there was no audio until TFO#3 last "stop kick." TFO#3 applied "stop kicks" for about eight seconds, leaving little time for NE#1 to intervene. Moreover, NE#1's announcement that he was recording appeared to stop further force applications, whether intended or not.¹³ While NE#1 told OPA he did not believe he witnessed wrongdoing, OPA's BWV review suggested there was "a good faith reasonable belief" that TFO#3 crossed the line. Nevertheless, NE#1 reported his observations to NE#2—his supervisor, that evening.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Management Action**

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 - Allegation #4

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity b. When Employees Record Activity.

It was alleged that NE#1 delayed a body-worn video activation.

SPD employees must record police activity on body-worn video (BWV). SPD Policy 16.090-POL-5. BWV should capture video and audio. Recordings without audio or video potentially violate the policy. See SPD Policy 16.090-TSK-1.

Here, NE#1 failed to activate his BWV until after he conducted a vehicle pin and deployed a 40 MM launcher at the Complainant. Luckily, the buffering period captured both force applications, but there was no sound. NE#1 acknowledged the oversight to OPA and attributed it to the then-new department requirement for BWV activations for task force operations.

Recommended Finding: **Sustained**

¹³ NE#1 told OPA he announced he was recording because SPD policy required him to alert the Complainant, suggesting it was not his intention to alert the officers applying force against the Complainant. Notably, NE#1's BWV was aimed squarely at TFO#3 when he made the announcement, rather than the Complainant, who was on the ground screaming in apparent pain.



Named Employee #2 - Allegation #1

8.400-TSK-8 Use of Force - Responsibilities of The Sergeant During a Type II Investigation 4. Confirms that appropriate medical aid is offered to any injured party

It was alleged that NE#2 failed to offer medical aid to the Complainant.

Here, NE#2 estimated he arrived at the scene roughly an hour after he was summoned. NE#2 knew the Complainant was hit with a 40 MM but did not know where he was hit. Upon arrival, he asked the Complainant where he was hit, but he would not answer. NE#2 also saw the Complainant's bruised face and inquired whether the fire department was summoned to provide medical aid. Although NE#1 told NE#2 that medical assistance was not summoned, at that point, the Complainant was inside a law enforcement vehicle about to be transported to jail, about a block away, where a medical screening would be conducted. NE#2 told OPA that medical aid would have been requested within five minutes of the Complainant being handcuffed if he had been present during the operation. NE#2 also said he contacted the jail to ensure the Complainant was medically cleared and requested medical records but was refused due to HIPPA laws.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 - Allegation #2

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

Depending on the severity, supervisors who learn of potential policy violations must investigate or refer the allegations to OPA. SPD Policy 5.002-POL-5. A supervisor may investigate minor misconduct allegations, while allegations of serious misconduct – like excessive force – must be referred to OPA. *Id.*

It was alleged that NE#2 failed to investigate or refer potential policy violations.

Here, BWV showed NE#2 thoroughly screened police actions upon arrival. NE#2 interviewed NE#1 and the Complainant's associate. He tried interviewing the Complainant, but he was uninterested beyond stating that officers "jumped" him. Although the Complainant had visible facial abrasions, NE#1's screening determined NE#1—the only task force member under OPA's jurisdiction— was not the cause.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 - Allegation #3

5.001 - Standards and Duties POL-2. Employees Must Adhere to Laws, City Policy, and Department Policy

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy.



It was alleged that NE#2 failed to report an observation of excessive force against the Complainant.

For the reasons at Named Employee #1 – Allegation #3, along with NE#2 elevating the task force officers' force applications to his supervisor, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**