



## CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 14, 2024

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0449

### **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 (Effective April 24, 2023)	Not Sustained - Lawful and Proper
# 2	8.200 – Using Force, 2. Use of Force: When Prohibited (Effective April 24, 2023)	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:**

The Complainant alleged Named Employee #1 (NE#1) used unauthorized and prohibited force during his arrest.

### **ADMINISTRATIVE NOTE:**

On January 31, 2024, the Office of Inspector General certified OPA's investigation as thorough, timely, and objective.

### **SUMMARY OF INVESTIGATION:**

#### **A. OPA Complaint**

On October 11, 2023, a sergeant submitted an OPA complaint on the Complainant's behalf. The sergeant wrote that the Complainant alleged excessive force during a Force Investigation Team (FIT) interview.

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, incident and supplement reports, body-worn video (BWV), and FIT interviews. OPA also interviewed NE#1. OPA could not contact the Complainant for an interview.

#### **B. Computer-Aided Dispatch (CAD) Call Report and Incident Report**

On August 13, 2023, at 6:10 PM, CAD call remarks noted, "CHECK FOR MALE BRANDISHING A KNIFE AT PASSING [VEHICLES] AT THE END OF THE TUNNEL."

Witness Officer #1's (WO#1)—the primary officer—incident report documented the following:



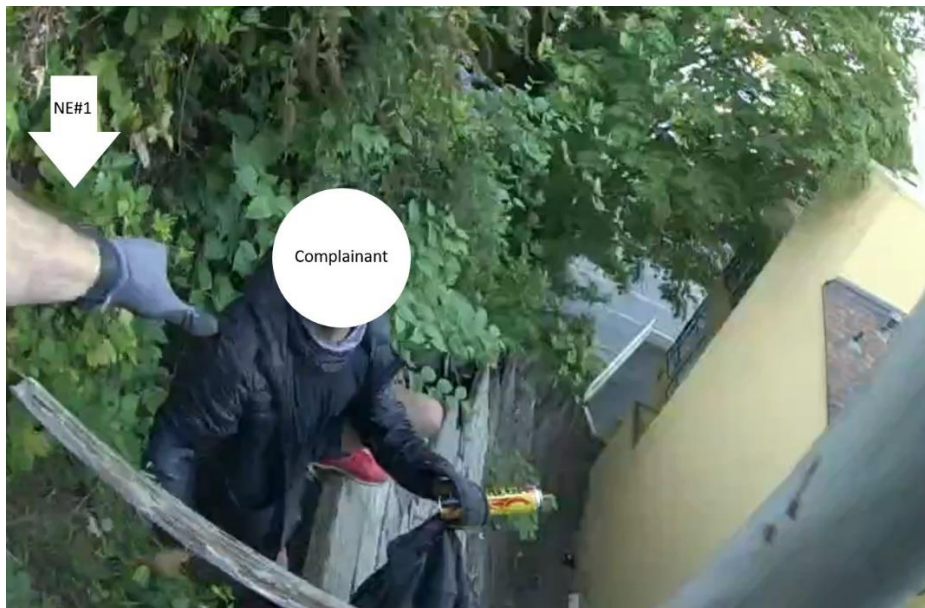
There were eight additional 9-1-1 calls reporting that the Complainant brandished knives at passing vehicles, blocked traffic, damaged passing cars with his body or a baseball bat, assaulted community members, and attempted three carjackings. WO#1 wrote that she found the Complainant in the middle of a road and ordered him to drop the items he held, but he refused and fled. WO#1 concluded, “[The Complainant] caused thousands of dollars in property damage, created substantial fear in several members of the public, feloniously assaulted several victims, and put the well-being of officers trying to apprehend him at significant risk.”

### **C. Body-Worn Video (BWV)**

NE#1 and his partner, Witness Officer #2 (WO#2), responded to the tunnel and activated their BWV, capturing the following:

NE#1 and WO#2 searched for the Complainant. In a residential neighborhood, NE#1 saw the Complainant and said, “Seattle police. Get your hands up. Turn around and get on the ground. Get on the ground right there.” The Complainant fled. NE#1 chased and shouted, “Seattle police! Stop!” WO#2 followed.

NE#1 jumped a guardrail atop a steep hill with dense vegetation. NE#1 caught the Complainant, who appeared cornered near a steep ledge.



NE#1 grabbed the Complainant’s right arm while the Complainant held a canister in his left hand. NE#1 said, “Get on the ground!” NE#1 pulled the Complainant from the ledge and maneuvered him face down on the ground. NE#1 said, “Do not reach!” NE#1 attempted to move the Complainant’s arms behind his back, but the Complainant rolled onto his back and freed his left arm. NE#1 grabbed the Complainant’s left arm and ordered him to stay on the ground. The Complainant freed his body from NE#1’s hold, moved toward the ledge, and stood up. NE#1 grabbed the Complainant



from behind and maneuvered him onto his back on the ground. BWV recorded a struggle between the Complainant and NE#1.<sup>1</sup> The Complainant said, "Go home," and kicked at NE#1. NE#1 shouted, "Get on your stomach!"

WO#2 and Witness Officer #3 (WO#3) arrived. WO#2 shouted, "You are going to be Tased! Follow instructions!" A Taser arc could be heard. NE#1 said, "Ah, I'm getting stung, dude!" Bees swarmed and landed on the officers and the Complainant. NE#1 and WO#3 pulled the Complainant into a sitting position. WO#3 stood next to the ledge. WO#2 said, "Yeah, watch, watch that fall, [WO#3]. Watch that fall." A laceration on NE#1's right arm bled. NE#1 said, "Oh, fuck! [There're] hornets everywhere!" NE#1 and WO#3 stood the Complainant up and escorted him from the ledge. WO#3 said, "Ah, fuck! I got stung everywhere." NE#1 said, "Yellowjackets everywhere, dude." The Complainant fell onto his stomach and was nonresponsive. WO#2 radioed, "Suspect's passed out [possibly due to] stings of some kind." NE#1, WO#2, WO#3, and another responding officer carried the Complainant uphill and over the guardrail. Officers maneuvered the Complainant to the ground on his stomach, then WO#3 handcuffed him.

#### **D. Supplemental Report**

NE#1 wrote a supplemental report consistent with the events captured on BWV. NE#1 also described the portion of the struggle BWV did not capture:

*During the struggle, [the Complainant] put me in a headlock/chokehold, holding his right arm tightly around my neck. Though my breathing was not fully cut off, it was restricted significantly. I realized if I did not get out of the chokehold, [the Complainant] might seriously injure me, kill me, or get my firearm. I was able to get out of the chokehold and subdue [the Complainant].*

NE#1 stated over 50 bee stings covered his body. NE#1 also wrote, "In addition to the laceration on my forearm, I had numerous small lacerations, abrasions, and red marks/bruising all over my body. I received [five] stitches on my forearm, and two lacerations on my ears were glued."

#### **E. FIT Interviews**

On August 14, 2023, FIT interviewed the Complainant. The Complainant said, "They beat the shit out of me. Like, like worse than an animal." The Complainant clarified, "Assault with the hand. No mercy. Closed. Somebody hit you with the elbow." The Complainant also clarified that the police repeatedly hit him and deployed bees to poison him. The Complainant said officers placed their arms against the back of his neck and pushed his head forward but denied anyone constricting his airway. The Complainant said he complied with police commands, but they nevertheless tried to kill him.

On August 15, 2023, FIT interviewed NE#1. NE#1 said handcuffing the Complainant was impractical, so he held the Complainant against the ground until backup officers arrived. NE#1 said the Complainant freed himself and attempted to flee, so NE#1 grabbed and pulled the Complainant to the ground. NE#1 acknowledged that he briefly contacted the Complainant's neck, so he repositioned his hand from the Complainant's neck. NE#1 said the Complainant grabbed NE#1 and pulled NE#1 to the ground. NE#1 decided he "needed to hit this guy," so he punched the Complainant's

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<sup>1</sup> BWV did not clearly capture the struggle due to NE#1 and the Complainant's proximity, but the recorded sounds were consistent with NE#1's description of the struggle. NE#1's supplemental report and FIT and OPA interviews detailed the struggle.



head or chest area two or three times. NE#1 said the Complainant put him in a “tight” headlock. NE#1 was concerned about passing out or the Complainant reaching for his gun. NE#1 said he freed himself from the Complainant’s headlock, and then the Complainant attempted to flee. NE#1 said he grabbed the Complainant, the Complainant fell on his back, and NE#1 landed on him. NE#1 said the Complainant resisted and was noncompliant, so he punched the Complainant’s face five to ten times. NE#1 described the altercation as “the worst fight” of his career, the “scariest time” as an officer, and a fight for his life.

#### **F. OPA Interview**

On December 21, 2023, OPA interviewed NE#1. NE#1’s statements were consistent with the evidence summarized above. NE#1 said officers usually force compliance when someone is noncompliant with police commands, threatening, or under the influence. NE#1 said the Complainant was “driven to do whatever he could to get away from us.” NE#1 said he caught the Complainant but saw no backup officers with him, so NE#1 decided to confront the Complainant, fearing he would assault a community member if he were not apprehended. NE#1 concluded he needed to use force to gain compliance.

NE#1 said he could not handcuff the Complainant, so he used his body weight to pin the Complainant until backup officers arrived. NE#1 said their awkward position on a downhill slope prevented him from applying his total body weight, allowing the Complainant to free himself. NE#1 expressed concern about the Complainant arming himself with the knife reported earlier. NE#1 believed the Complainant put him in a headlock twice. NE#1 expressed concern that backup officers would use deadly force if they saw the Complainant with NE#1 in a headlock, endangering the Complainant and NE#1. NE#1 believed that had he lost that fight, the Complainant would incapacitate him and seize his gun. NE#1 said he punched the Complainant’s face five to ten times to end the struggle, believing that the Complainant intended to flee and assault officers and community members.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 – Allegation #1**

##### ***8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)***

The Complainant alleged that NE#1 used unauthorized force during a fight on a hill.

Officers will only use objectively reasonable, necessary, and proportional force to the threat or urgency of the situation to achieve a law enforcement objective while protecting the life and safety of all persons. SPD Interim Policy 8.200(1) (effective April 24, 2023). Reasonableness must consider that officers are often forced with split-second decisions about the force necessary in a situation under tense, uncertain, dynamic, and rapidly evolving circumstances. *Id.* The reasonableness inquiry is objective—whether the officers’ actions are objectively reasonable considering the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Id.* Several factors should be weighed when evaluating reasonableness. *See id.* Force is necessary under the totality of the circumstances where a reasonably effective alternative to physical force or deadly force does not appear to exist, and the type and amount of physical force or deadly force is a reasonable and proportional response to effectuate the legal purpose intended or to protect against the threat posed to the officer or others. SPD Interim Policy 8.050 (effective April 24, 2023). A proportional use of force must reflect the totality of circumstances surrounding the situation, including the nature and immediacy of any threats posed to officers and others. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force. *Id.*



Here, NE#1 fought the Complainant on a hill near a ledge. During this, NE#1 punched the Complainant several times. NE#1 estimated he punched the Complainant as many as twelve times. NE#1's use of force was objectively reasonable, necessary, and proportional for the following reasons:

First, NE#1's use of force was objectively reasonable since the Complainant endangered the public, requiring immediate police action. Nine 9-1-1 calls reported that the Complainant brandished knives at passing vehicles, blocked traffic, damaged passing cars with his body or a baseball bat, assaulted community members, and attempted three carjackings, creating a significant government interest in apprehending him. When police arrived, the Complainant refused to comply with their commands and fled. NE#1 followed the Complainant down a steep hill near a ledge. The situation was dangerous due to the dense vegetation, wasp nest, and ledge. Bees swarmed and stung them. A prolonged struggle could have caused NE#1, the Complainant, or both to fall off the cliff, resulting in severe injury or death. Yet, the Complainant, reportedly armed with a knife, intended to fight and flee. During the struggle, the Complainant actively resisted, was noncompliant, and, according to NE#1, put NE#1 in a headlock twice. The evidence supports NE#1's characterization that he was fighting for his life. Therefore, NE#1's punches were objectively reasonable to end the struggle.

Second, NE#1's use of force was necessary since there was no reasonably effective alternative. The Complainant actively resisted and attempted to flee. NE#1 described the Complainant as "driven to do whatever he could to get away from us." NE#1's use of force was necessary to gain compliance. Additionally, the force used was reasonable and proportional to effectuate the Complainant's arrest and protect against the imminent threat posed to NE#1. NE#1 concluded that he could not handcuff the Complainant, so he decided to pin him until backup officers arrived. However, the Complainant resisted, fought, and attempted to flee. Because NE#1 was in a precarious situation, NE#1's punches were necessary to overcome the danger he faced.

Third, NE#1's force was proportional. The Complainant led NE#1 onto a cliff where injury or death was foreseeable, then actively resisted. NE#1 justifiably used force to prevent the Complainant's escape, but NE#1 could not effectively pin the Complainant, who freed himself and attempted to flee. NE#1 struggled with the Complainant before the Complainant put him in a headlock. The Complainant's noncompliance and resistance led NE#1 to deploy a direct intervention tactic to terminate the struggle. NE#1's force was proportional under the circumstances, especially considering the level of resistance and threat posed by the Complainant and the dangerous location where they struggled.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

**Named Employee #1 – Allegation #2**

***8.200 – Using Force, 2. Use of Force: When Prohibited (Effective April 24, 2023)***

The Complainant alleged that NE#1 used prohibited force on his neck.

Officers are prohibited from using neck and carotid restraints in all circumstances, including any action that involves kneeling on a subject's neck. SPD Interim Policy 8.200(2) (effective April 24, 2023). Officers will not use force to punish or retaliate. *Id.*



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Here, NE#1 admittedly contacted the Complainant's neck when he grabbed and pulled the Complainant to the ground. However, NE#1 said he immediately repositioned his hand, recognizing it as a prohibited force. The Complainant said NE#1 "chopped" his neck by placing NE#1's arms against the back of his neck, pushing his head forward. However, the Complainant's description is consistent with the department's trained takedown tactic. The Complainant confirmed NE#1 never touched the front of his neck or constricted his airway. The evidence—including the Complainant's statements—suggests that NE#1 made incidental and unintentional contact with the Complainant's neck, not prohibited force against his neck.

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

Recommended Finding: **Not Sustained - Unfounded**