




CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 1, 2024

FROM: DIRECTOR GINO BETTS, JR. 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2024OPA-0113

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.300 – Use of Force Tools, 8.300-POL-2 Use of Patrol Canines, 4. Canine Officers May Use Direct Apprehension to Physically Apprehend a Subject (Effective April 24, 2023)	Not Sustained - Timeliness

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:

Named Employee #1 (NE#1)—a canine handler—responded to a burglary call and deployed Canine #1 on Community Member #1 (CM#1) during a foot chase. The Complainant—SPD’s Force Review Board (FRB)—alleged the canine deployment may have violated SPD’s policy.

ADMINISTRATIVE NOTE:

On March 5, 2024, the Complainant submitted an OPA complaint via Blue Team. OPA initially used that date as the reported date for calculating the 180-day deadline. See Ordinance 125315, section 3.29.130(B) (the 180-day clock “begins on the date OPA initiates or received a complaint”). Accordingly, OPA had until September 1, 2024, to complete its investigation and issue findings. However, OPA’s review of the Blue Team routings showed that the initial supervisor submitted the incident for review to the chain of command on September 7, 2023, making the 180-day date March 19, 2024. See the Seattle Police Officers’ Guild Collective Bargaining Agreement (SPOG CBA), section 3.6(B)(iii): The 180-day clock starts “fourteen (14) days after the date on which the initial supervisor submits the incident for review to the Chain of Command.” Consequently, OPA’s standard 180-day process was reduced to an inadequate fourteen-day window. Under the SPOG CBA, no discipline could result for the named employee since OPA’s recommendation was not issued by March 19, 2024. See SPOG CBA, Article 3.6(B).

SUMMARY OF INVESTIGATION:

A. OPA Complaint

On March 5, 2024, the Complainant submitted an OPA complaint indicating that NE#1 “may not have followed” SPD policy when he deployed Canine #1 to apprehend CM#1. The Complainant wrote that NE#1’s reasons for believing CM#1 posed an imminent threat, including his belief that CM#1 would commit another crime, were speculative.



OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, body-worn video (BWV), police reports, use of force reports, and FRB findings. OPA also interviewed NE#1.

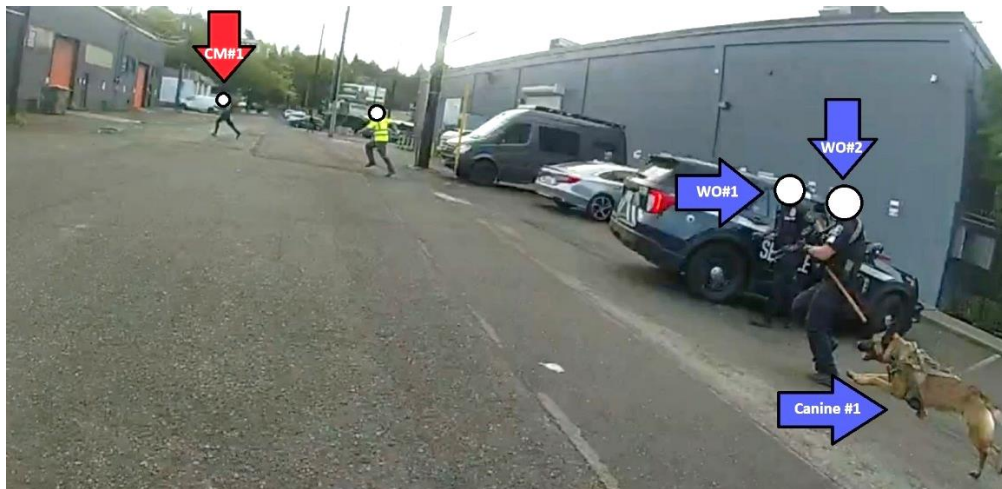
B. Computer-Aided Dispatch (CAD) Call Report

On August 30, 2023, at 7:27 AM, CAD call remarks noted, "BURG[LARY] TO [BUSINESS], [REPORTING PARTY] CAN SEE A MALE WALKING AROUND LOOKING IN [OFFICE], PUBLIC ARE NOT TO BE IN THIS AREA. NO [WEAPONS] SEEN. CAD noted the male's physical features, clothing, and backpack.

C. Body-Worn Video (BWV)

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

Officers staged around a building that CM#1 reportedly occupied.¹ Using a public address system, an officer ordered CM#1 to exit with his hands up, advised CM#1 that officers would search the building, and warned CM#1 about a possible canine bite. NE#1 opened the rear door of his patrol vehicle and began harnessing Canine #1 when someone shouted, "Right here, right here!" CM#1, wearing a backpack, exited the building and ran. NE#1 turned around and chased CM#1 with Canine #1, whose harness was not fully secured:



WO#1 and WO#2 ran behind NE#1, who shouted, "Take him!" Canine #1 ran toward an employee wearing a neon-colored vest. NE#1 shouted, "Here! Here! Here!"² Canine #1 chased CM#1, who ran into an alley between two buildings. Canine #1 and NE#1 closed the distance, and CM#1 dropped his backpack as Canine #1 approached. NE#1 shouted, "Take him!"

¹ NE#1's police report documented that CM#1 reportedly entered the building while multiple employees were inside working.

² NE#1's use of force statement indicated that he redirected Canine #1 to CM#1 because Canine #1 initially ran toward the employee wearing a neon-colored vest.



Canine #1 stopped and faced NE#1. NE#1 shouted, "Take him!" Canine #1 resumed chasing CM#1, ran in front of CM#1, went on his hind legs, and appeared to bite CM#1's left shoulder. NE#1 caught up and pushed CM#1's back, propelling CM#1 onto his stomach:





Canine #1 released his bite. CM#1 rolled onto his back and used his hands to cover his face. Canine #1 appeared to bite CM#1's right shoulder:



NE#1 grabbed Canine #1's collar and pulled Canine #1 away. WO#2 shouted, "Get on the ground!" WO#1 and WO#2 approached, and WO#1 handcuffed CM#1 as WO#2 held his rifle aimed downward. NE#1 stayed back as Canine #1 repeatedly barked at CM#1. NE#1 returned Canine #1 to his patrol vehicle.

The Seattle Fire Department (SFD) evaluated CM#1. A sergeant screened the arrest. WO#1 and WO#2 exposed CM#1's shoulders and photographed them. WO#1 and WO#2 transported CM#1 to the East Precinct.

D. Police Reports, Use of Force Reports, and Force Review Board (FRB) Findings

Police Reports



NE#1's and the witness employees' police reports were consistent with BWV observations. WO#1's report documented that security cameras captured CM#1 stealing merchandise from the same business two prior days. NE#1's report documented his and Canine #1's certification as a police dog generalist team with over 200 training hours, meeting Washington State Criminal Justice Training Commission and Washington State Police Canine Association standards. NE#1 wrote that his canine team is trained to track human scents, locate humans hiding in buildings, suspect apprehension, and locate evidentiary items. NE#1 wrote that he routinely trains Canine #1 throughout their shifts.

Use of Force Statement: Named Employee #1

NE#1's type II³ use of force statement was consistent with the abovementioned evidence. NE#1 wrote that he had probable cause to arrest CM#1 for burglary. NE#1 planned to surround the building with officers and obtain CM#1's voluntary surrender or search the building using Canine #1. NE#1 cited three reasons for deploying Canine #1 when CM#1 fled. First, employees called 9-1-1 when CM#1 forcibly entered the building during work hours and refused to leave despite their being employees present. Second, CM#1 was potentially armed and dangerous. NE#1 wrote that burglary suspects are often armed with weapons. NE#1 noted several factors suggesting CM#1 was dangerous, like forcibly entering the building, showing no hesitation about confronting employees, continuing to burglarize the building even after the police arrived, potentially using items inside the building as an improvised weapon, and potentially running into bystanders and other occupied businesses in the area. NE#1 expressed concern that CM#1 could run into traffic and attempt to steal someone's vehicle. Third, after CM#1 dropped his backpack during the chase, CM#1's right hand was concealed.

NE#1 indicated that he could call off Canine #1 had CM#1 surrendered, as demonstrated when he called off Canine #1 from biting the employee wearing the neon-colored vest who briefly chased CM#1. NE#1 wrote that CM#1 refused to surrender. NE#1 wrote that he removed Canine #1 from CM#1 after determining that CM#1's hands were empty. NE#1 wrote that SFD did not find puncture wounds or injuries from Canine #1's bite.

Use of Force Reports: Chain of Command

NE#1's watch lieutenant and captain found the canine deployment objectively reasonable, necessary, and proportional.

Force Review Board Findings

FRB found the canine deployment was inconsistent with SPD policy, reasoning that NE#1's belief that CM#1 posed an imminent threat or would likely commit another crime was speculative.

E. OPA Interview

On April 29, 2024, OPA interviewed NE#1. NE#1's statements were consistent with the abovementioned evidence. NE#1 disagreed with FRB's finding and cited several factors suggesting CM#1 was dangerous. NE#1 said CM#1's forced entry into the building for the third time in one week suggested he had a tool that he used to enter and that he could use as a weapon. NE#1 said he did not know whether CM#1 was armed and could not see CM#1's right hand during

³ Type II is force that causes, or is reasonably expected to cause, physical injury greater than transitory pain but less than great or substantial bodily harm. SPD Interim Policy 8.050 (effective May 19, 2023). Type II force includes a canine physical contact with less than type III injury or a takedown that causes or is reasonably expected to cause injury. SPD Interim Policy 8.400-POL-1 (effective May 19, 2023).



the chase. NE#1 thought he needed to forcefully stop CM#1 to prevent him from entering traffic or another building. NE#1 noted that his chain of command approved his canine deployment.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 – Allegation #1

8.300 – Use of Force Tools, 8.300-POL-2 Use of Patrol Canines, 4. Canine Officers May Use Direct Apprehension to Physically Apprehend a Subject (Effective April 24, 2023)

The Complainant alleged that NE#1’s canine deployment may have violated SPD policy.

Canine officers may use direct apprehension to detain a subject. SPD Interim Policy 8.300-POL-2(4) (effective April 24, 2023). Direct apprehension is when a handler commands a canine to bite and hold an individual. SPD Interim Policy 8.050 (effective April 24, 2023). Direct apprehension will be used only when the canine officer has probable cause that the subject has committed a crime listed in SPD Interim Policy 16.300-POL-1(3) or the subject has a warrant for committing a crime listed in SPD Interim Policy 16.300-POL-1(3) and (1) the canine officer reasonably believes that the subject poses an imminent threat of harm to the officers or others or (2) the subject is trying to escape, such as by immediate flight from a crime against persons with aggravating factors (e.g., crime involving a firearm or the subject is reasonably believed to be possessing a firearm or other potentially deadly weapon, etc.). SPD Interim Policy 8.300-POL-2(4) (effective April 24, 2023). Additionally, Canine handlers may deploy their canine to protect officers or the public when a subject causes an imminent threat of harm to any person. *Id.* An “imminent threat” for the use of less than lethal force means a threat “ready to take place, near at hand, hanging threateningly over one’s head or menacingly nearby.” *Id.* See also RCW 71.05.020 (defining imminent as “the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote.”).

As an initial matter, the interim policy in place when this incident occurred was confusingly drafted. There was no comma preceding the word “and,” making a plain reading suggest that an officer could use a direct apprehension whenever they had *probable cause* for a crime listed in Interim Policy 16.300-POL-1(3) and that the additional requirements for “imminent threat” or “flight from a crime against persons” only applied when the officer had a warrant for crimes listed in Interim Policy 16.300-POL-1(3). The department intends to correct this issue by adding a comma and italicizing the word “and” to clarify that the additional requirements apply to probable cause and warrant scenarios. That said, NE#1 had probable cause to believe CM#1 committed second-degree burglary⁴—among the crimes listed in SPD Interim Policy 16.300-POL-1(3). Given the policy’s ambiguity, NE#1 may have reasonably believed that probable cause alone was enough to use a direct apprehension.

However, NE#1’s canine deployment was likely inconsistent with the policy’s intended application. While NE#1 use of force statement listed several possible threats CM#1 posed, none were “ready to take place, near at hand, hanging threateningly over one’s head or menacingly nearby.” There was insufficient evidence that CM#1 intended to harm officers or civilians. Although CM#1 was inside a business during work hours, there was no suggestion that he threatened or even confronted employees. The 9-1-1 caller also indicated that no weapon was observed. Further, CM#1 carried a backpack, but there was no indication that he tried accessing it during the chase. Moreover, while CM#1’s intent to escape was established, his possessing a deadly, or any, weapon was not.

⁴ A person is guilty of second-degree burglary if, with the intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a building other than a vehicle or a dwelling. RCW 9A.52.030(1).



Overall, NE#1's concerns about CM#1 harming someone, running into traffic, or concealing a weapon fell within the realm of possibilities. Still, they were not imminent threats, justifying his canine deployment.

Accordingly, due to the expired 180-day timeline noted in the "Administrative Note," OPA recommends this allegation be Not Sustained – Timeliness.

Recommended Finding: **Not Sustained - Timeliness**