



## CLOSED CASE SUMMARY

ISSUED DATE: JULY 16, 2019

CASE NUMBER: 2018OPA-0245

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Sustained
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Sustained
# 3	8.200 - Using Force 2. Use of Force: When Prohibited	Sustained
# 4	8.300-POL-10 Use of Force – NECK AND CAROTID RESTRAINTS 1. Officers Are Prohibited From Using Neck and Carotid Restraints Except When Deadly Force is Justified	Sustained
# 5	8.200 - Using Force 4. Use of Deadly Force	Sustained
# 6	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Sustained
# 7	5.170 - Alcohol and Substance Use 1. Employees Shall not Report for Duty Under the Influence of any Intoxicant	Not Sustained (Inconclusive)
# 8	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	Sustained
# 9	6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop	Sustained
# 10	6.010 - Arrests 1. Officers Must Have Probable Cause that a Suspect Committed a Crime in Order to Effect an Arrest	Sustained

**Imposed Discipline**

**Suspension without Pay – 30 days**

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:	Sustained
# 2	8.400-POL-3 Use of Force – TYPE II INVESTIGATIONS 3. The Sergeant Will Make Appropriate Notifications When He or She Believes that Criminal Conduct or Serious Misconduct May Have Occurred	Sustained
# 3	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	Sustained



# 4	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Sustained
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**Imposed Discipline**

<b>Suspension without Pay – 1 day</b>
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**Named Employee #3**

Allegation(s):		Director's Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Inconclusive)

***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 violated multiple Department policies arising out of an incident where he used a neck hold on the Subject. It was also alleged that Named Employee #2 failed to appropriately document and investigate Named Employee #1's use of force and did not report potential misconduct to OPA. Lastly, it was alleged that Named Employee #3 failed to report potential misconduct to either a supervisor or OPA.

**SUMMARY OF INVESTIGATION:**

Named Employee #1 (NE#1) and Named Employee #3 (NE#3) responded to a "disturbance" call at a church. It was reported that there was an individual outside who was yelling and pacing around. The caller asked that the individual be "moved along." A description was given of the individual. The caller did not report seeing any weapons.

NE#1 and NE#3 made contact with a male – later identified as the Subject in this case – who matched the description provided by the caller. NE#1 informed the Subject that he was standing on church property and had been asked to move. The Subject asked NE#1 "why" and then said "can you verify this?" NE#1 responded: "Do you think I'm here because I just saw you standing here?" NE#1 then asked the Subject for his identification. The Subject replied no and stated to NE#1: "you look kinda drunk." NE#1 asked the Subject whether he wanted to speak with a supervisor and the Subject said that he did. The Subject continued to opine that NE#1 appeared to be intoxicated.

At that point, NE#1 demanded the Subject's identification and, eventually, grabbed hold of him. A review of Department video indicated that only one minute and six seconds elapsed from the time that NE#1 first made contact with the Subject to the time that he went hands on. NE#1 began struggling with the Subject. NE#3 then came over to assist him. During this time, the Subject continuously alleged that NE#1 was intoxicated. Department video, and particularly the Body Worn Video (BWV) for NE#3, indicated that NE#1 used or attempted to use neck holds on the Subject on what appeared to be three distinct occasions during this struggle. When he did so, the video captured his arm around the neck area of the Subject. Moreover, at those moments, the Subject's voice became strained and he had trouble vocalizing. During the struggle, NE#1 told the Subject to stop biting him. NE#3 called for other units to assist them and he stated to NE#1: "Let's wait for other units to get here." NE#1 took the Subject down to the ground by using his arm around the Subject's neck area. NE#1 further struck the Subject twice in the face with a closed fist. While the Subject was on the ground, NE#1 said to him, "you lose, you lose."



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Ultimately, both officers took the Subject into custody and handcuffed him. The officers then walked the Subject to a patrol vehicle and placed him in the rear. At that time, NE#3 said to NE#1: "Alright, I'm out."

NE#1 remarked to the Subject: "welcome to my car." The Subject continued to state that NE#1 was drunk. NE#1 walked over to the rear door, reached his hand into the patrol vehicle, put his hands around the Subject's neck, and appeared to squeeze. At that time, he told the Subject to put his foot in the patrol vehicle. The Subject, whose voice changed and became raspier, told NE#1 to get his hand off of his throat

A supervisor, Named Employee #2 (NE#2), responded to the scene. The supervisor screened the force and the arrest with NE#1 and NE#3. NE#1 informed NE#2 that he had used Type II force. When NE#1 was asked if the Subject was injured, NE#1 stated that he was not. NE#1 disclosed to NE#2 that the Subject alleged that NE#1 was intoxicated. NE#2 then spoke with Subject. The Subject told NE#2 that he believed that NE#1 was intoxicated. He further alleged that NE#1 had tried to choke him and "applied pressure." The Subject also stated that he was punched in the eye by NE#1. The Subject said that he wanted to press charges against NE#1 and NE#2 said no. The Subject repeated his claims that he had been choked and that NE#1 was intoxicated during an audio recorded statement taken by NE#2. The Subject also told Seattle Fire Department (SFD) medics that he had been choked. He stated: "He could have damaged my throat, he was trying to squeeze." SFD medics identified petechial hemorrhaging in the Subject's eye and conveyed this information to NE#2. The Subject was ultimately charged with several crimes, including assault on NE#1.

A force investigation was conducted by NE#2. He did not include any reference to the allegation of being choked or that NE#1 was claimed to be intoxicated. He did not identify that there was apparent neck holds on the video and did not deem any aspect of the force to be potentially inconsistent with policy. The incident was then reviewed by the West Precinct Administrative Lieutenant. The Administrative Lieutenant identified that NE#1 may have used neck holds and notified the Department's Force Investigation Team (FIT). The Administrative Lieutenant also made an OPA referral. In that referral, he further noted that NE#2 failed to identify that a neck hold had been used and did not screen the incident with FIT or report potential serious misconduct to OPA. FIT conducted a preliminary review and also made an OPA referral based on the apparent neck holds.

OPA was able to locate the Subject, who was in custody at the King County Jail. OPA interviewed him jointly with FIT investigators. The Subject reiterated his belief that NE#1 was intoxicated and confirmed that NE#1 attempted to choke him and, at least once, actually did so. Based on this interview and OPA's review, it was believed that NE#1 may have engaged in criminal conduct during this incident. OPA referred this matter back to SPD for criminal investigation and the case was assigned to the Homicide Unit. During its investigation, the Homicide Unit also interviewed the Subject and he provided a consistent statement. After conducting its criminal investigation, the Homicide Unit found that there was probable cause to believe that NE#1 assaulted the Subject. The Homicide Unit referred the case to the Seattle City Attorney's Office (SCAO) for criminal prosecution. The SCAO charged NE#1 with assault; however, the case was later dismissed. The SCAO cited the inability to locate the Subject and "proof" issues as the basis for the dismissal. Once the case was dismissed and returned to OPA, this investigation ensued.



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**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegations #1**

***5.001 - Standards and Duties 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.

As discussed above, after conducting its criminal investigation, the Homicide Unit determined that there was probable cause to believe that NE#1 assaulted the Subject. The Homicide Unit then referred the case to the SCAO and NE#1 was criminally charged with assault. The SCAO later dismissed the case citing the inability to locate the Subject and undefined “proof” issues.

When prosecuting criminal offenses, a prosecuting attorney is required to apply a beyond a reasonable doubt standard. In this administrative investigation, however, OPA applies a lower standard – preponderance of the evidence. Under this burden of proof, OPA must be able to establish that it is more likely than not that a criminal offense was committed.

Based on OPA’s review of the evidence, including the BWV, the criminal investigation conducted by the Homicide Unit, and the statements made by all of the involved parties, I agree with the Homicide Unit that there is a sufficient basis to determine that NE#1 assaulted the Subject. He did so when he choked or attempted to choke the Subject on multiple occasions and where there was no probable cause to arrest the Subject and the Subject did not present a threat of death or imminent serious bodily harm to NE#1. When applying this lower evidentiary burden, I have no difficulty establishing that his acts were criminal and that he violated the law when he engaged in this conduct.

For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #2**

***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.*)



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As discussed more fully below, I find that NE#1 used or attempted to use four neck holds on the Subject. Doing so constituted potential deadly force which, under the circumstances of this case, was not reasonable, necessary, or proportional. When NE#1 used this force he, thus, violated Department policy. For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #3**

***8.200 - Using Force 2. Use of Force: When Prohibited***

SPD Policy 8.200-POL-2 provides guidance as to when force is prohibited. Specifically, officers are proscribed from using force: “to punish or retaliate”; “against individuals who only verbally confront then unless the vocalization impedes a legitimate law enforcement function”; and “On restrained subjects (e.g. including handcuffed or contained in a police vehicle) except in exceptional circumstances when the subject’s actions must be immediately stopped to prevent injury, or escape, destruction of property. All such force shall be closely and critically reviewed.”

NE#1 violated this policy in virtually all respects. First, from a review of the BWV, OPA concludes that NE#1 used force against the Subject, and particularly the neck hold when the Subject was in the patrol vehicle, to punish him. This is clear from NE#1’s visceral reaction to the Subject’s statements that he was intoxicated, his demeanor during the incident, his statements, and how quickly he decided to use force. Second, NE#1’s actions appeared to be motivated not by a legitimate need to take law enforcement action towards the Subject but, instead, to retaliate against him for repeatedly stating that NE#1 was drunk. Indeed, this seemed to greatly anger NE#1 and this anger was the apparent basis for the force that he used. Third, at the time he used a neck hold on the Subject in the patrol vehicle, the Subject was in handcuffed. There was no evidence supporting the conclusion that the Subject was imminently going to injure NE#1, escape, or destroy property at that time. Indeed, any such argument would be contradicted by NE#1’s own words at the time. He did not warn the Subject to not harm him or to not try to escape, instead he told the Subject to put his foot in the patrol vehicle.

For the above reasons, I find that NE#1 violated this policy and I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegations #4**

***8.300-POL-10 Use of Force – NECK AND CAROTID RESTRAINTS 1. Officers Are Prohibited From Using Neck and Carotid Restraints Except When Deadly Force is Justified***

The video evidence established that NE#1 restrained or attempted to restrain the Subject’s neck on four separate occasions. Each was captured on Department video. NE#2’s BWV provided the best evidence of the first three times that NE#1 made contact or tried to make contact with the Subject’s neck, all of which occurred when NE#1 was involved in the altercation with the Subject outside of the church. For each of those three incidences, NE#1’s arm was encircled around the Subject’s neck. The video evidence established that he further applied pressure each time. This was proven by the impact to the Subject’s voice. His voice clearly became strained and he had difficulty vocalizing on each occasion that NE#1’s arm went around the vicinity his neck.



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That pressure was being applied is particularly evident given that, when NE#1's arm was not around the Subject's neck, the Subject had no difficulty speaking clearly and loudly.

NE#1 denied using neck restraints at that time. He stated that he simply had his arms across the Subject's shoulder area in order to secure him and to prevent him from resisting. The Subject, to the contrary, described that NE#1 attempted to choke him. He stated that he moved around and scrunched up his neck to prevent NE#1 from doing so, which caused NE#1's arm to move towards the Subject's mouth. The Subject indicated that, due to his resistance, he could still breathe.

NE#1 used a neck hold on the Subject on one more occasion. This neck hold was clearly captured by NE#1's BWV. At that time, the Subject was sitting in the rear of the patrol vehicle. NE#1 had his left hand around the Subject's neck with his thumb pressing into the Subject's windpipe. The Subject's eyes and face grew red and, again, his voice was strained and his vocalization impeded.

When asked about this neck hold at his FIT interview, NE#1 stated that he did not remember putting his hand on the Subject's neck. At his OPA interview, NE#1 acknowledged that he made contact with the Subject's neck when he pushed him back down into the patrol vehicle. He stated: "I don't think that it caused any pain. It was very brief, it was very quick. It wasn't like I grabbed him and held hold of him, I just pushed him quickly." However, a video analysis that was part of the FIT investigation showed that the neck hold in the patrol vehicle lasted for approximately 11.6 seconds.

Neck restraints, such as those used in this case, are a Type III use of force and are only appropriate where deadly force is justified. (See SPD Policy 8.300-POL-10.) Based on the documentation relating to this case and the video evidence, no such justification existed here. There was no danger of imminent serious bodily harm or death to the officers or others and, as such, deadly force was not authorized.

Moreover, NE#1 further violated this policy when he failed to immediately place the Subject in the recovery position after each neck hold was used.

For the above reasons, I find that NE#1 used neck restraints contrary to policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #5**  
**8.200 - Using Force 4. Use of Deadly Force**

As discussed above, NE#1 used four neck holds on the Subject. None of these neck holds were consistent with policy as deadly force was not appropriate in this situation.



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Notably, under SPD Policy 8.200-POL-4, deadly force may only be used “where threat of death or serious physical injury to the officer or others is imminent.” The policy further instructs that such a danger is imminent where a reasonable officer would believe that: “A suspect is acting or threatening to cause death or serious physical injury to the officer or others; and [t]he suspect has the means or instrumentalities to do so; and [t]he suspect has the opportunity and ability to use the means or instrumentalities to cause death or serious physical injury.” (SPD Policy 8.200-POL-4.)

Based on the objective evidence in this case, it is implausible to suggest the Subject presented a threat of imminent death or serious physical injury to NE#1 or, for that matter, any other officer. There was no evidence that he was armed and he never gave the officers any indication that this was the case. Moreover, at virtually all times, he was being subdued by two officers. As such, he would not have had the opportunity or the means to cause such harm.

For these reasons, I find that deadly force was not justified under the facts of this case and, as such, NE#1 violated this policy. Accordingly, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

#### **Named Employee #1 - Allegation #6**

##### ***8.400 – Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force***

SPD Policy 8.400-POL-1 states that officers shall report all uses of force except for de minimis force. The policy stresses that: “Officers shall thoroughly document all reportable uses of force to the best of their ability, including a description of each force application.” (SPD Policy 8.400-POL-1.)

In his use of force report, NE#1 wrote that he punched the Subject twice in the face. He further indicated that he used control holds on the Subject, including positioning his arm across the Subject’s upper torso, and that he took the Subject down to the pavement. He did not divulge, however, that he attempted to use or did use multiple neck holds on the Subject while they were struggling in front of the church. Moreover, he made no mention of the fact that he grabbed the Subject’s neck and applied pressure when the Subject was sitting in the rear of the patrol vehicle.

Based on OPA’s review of the video evidence, NE#1 did not thoroughly report the force that he used. The BWV established that NE#1 used multiple neck holds on the Subject; however, none of this force was described in NE#1’s report. Indeed, there was an explicit omission of this conduct. When he failed to accurately and completely document the force he used, he acted inconsistent with policy. I further note that, when evaluated in conjunction with the video and NE#1’s later statements, NE#1’s use of report suggests that he may have been potentially dishonest in this case when he apparently purposefully failed to document the neck holds. However, as a dishonesty allegation was not classified in this case, I do not reach a finding on that issue here.

For the above reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**



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**Named Employee #1 - Allegation #7**

***5.170 - Alcohol and Substance Use 1. Employees Shall Not Report for Duty Under the Influence of any Intoxicant***

SPD Policy 5.170-POL-1 prohibits officers from reporting to duty while under the influence of any intoxicant, including alcohol.

As discussed above, the BWV indicated that the Subject alleged multiple times that NE#1 appeared to be intoxicated. NE#1 denied that this was the case. OPA notes that it does not readily appear from the video that NE#1 was intoxicated at the time of the incident. Moreover, I note that, when he was being treated by SFD medics, the Subject appeared to intimate that one of them was intoxicated as well. This supports a determination that NE#1 was not, in fact, drunk at that time.

However, OPA notes that NE#2 was aware of this allegation against NE#1, but took any steps to verify whether NE#1 was fit for duty. He had done so, he could have dispositively resolved this issue. NE#2 did not do so and this ultimately prevents OPA from reaching a conclusive determination on this question.

Accordingly, I recommend that this allegation be Not Sustained – Inconclusive.

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

**Named Employee #1 - Allegations #8**

***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:





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- 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;
  - 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.

At his OPA interview, NE#1 asserted that he attempted to de-escalate but that the Subject’s demeanor and behavior yielded further de-escalation to be neither safe nor feasible. NE#1 contended that, at this point, law enforcement priorities compelled him to go hands-on with the Subject.

Based on OPA’s review of the video, I disagree. While NE#1 was conversational upon his initial approach, he became aggressive towards the Subject shortly thereafter. This coincided with the allegations from the Subject that NE#1 was drunk. At that point, and just over a minute after making contact with the Subject, NE#1 went hands on and engaged in a physical struggle with him.

At that time, NE#1 had multiple other options rather than using force. Most notably, he could have attempted to gain voluntary compliance by trying to reason with the Subject and by using the LEED model. It is unclear why he did not do so. The Subject did not present a physical threat at that time and, even if he was being uncooperative and even assuming that NE#1 had the right to compel his identification, there was no reason to use force at that time. Indeed, NE#1 could have simply detained the Subject where he was and called for a mobile fingerprint reader to be brought to the scene.

Moreover, there is no evidence in the record that NE#1 ever considered whether the Subject was non-compliant based on impairment, mental illness, or crisis. This is a requirement of the de-escalation policy.

Further, there were other tactical approaches that NE#1 could have taken that would have decreased or potentially eliminated the need to use force. For example, he could have called for other units, including for officers certified in crisis intervention. He also could have engaged in a team approach with NE#3, who was his backing officer. Instead, NE#1 acted unilaterally and without any communications or tactical planning with NE#3. When he did so, he made it significantly more likely that force – and a high level of force – would be used.

Lastly, NE#1 simply failed to abide by the directive in this policy that he avoid physical confrontation unless immediately necessary to protect someone or stop dangerous behavior. Instead, he appeared to actively seek out a physical confrontation with the Subject.



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For the above reasons, and when applying a preponderance of the evidence standard, I find that NE#1 violated the Department's de-escalation policy during this incident.

In reaching this decision, I note that, NE#3, who had a virtually identical vantage point to this incident as NE#1, disagreed that further de-escalation would not have been safe or feasible at the time NE#1 went hands on. Moreover, NE#3 stated that, contrary to NE#1's assertion, law enforcement priorities would not have been compromised by additional de-escalation prior to using force.

As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #9**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 6. Officers Cannot Require Subjects to Identify Themselves or Answer Questions on a Terry Stop***

SPD Policy 6.220-POL-6 holds that "officers cannot require subjects to identify themselves or answer questions on a Terry stop." While officers are entitled to request this information, they cannot mandate it.

At the time of the detention, NE#1 demanded the Subject's identification repeatedly. As discussed below, there was no probable cause to arrest the Subject at that time. At most, NE#1 had reasonable suspicion and, as such, he was conducting a *Terry* stop and was not permitted to compel the Subject to provide his identification at that time.

As such, when attempted to do so here and went hands on the Subject failed to immediately provide his identification, he violated Department policy.

For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegations #10**

***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.

NE#1 contended that, at the outset of his contact with the Subject, he had probable cause to arrest him for criminal trespass. He further stated that, based on the Subject's later conduct, he also developed probable cause to arrest the Subject for obstruction and assault. OPA's disagrees with NE#1 in both respects.



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First, with regard to criminal trespass, NE#1 was required to engage in a preliminary investigation to determine whether someone with control of the property had revoked the Subject's license to remain on the premises, or that the Subject had been previously informed that his license to remain had been revoked. He did not do so. Notably, he did not interview the 911 caller or any other employee of the church prior to taking law enforcement action towards the Subject.

During its investigation, the Homicide Unit referenced the report written by NE#1 and, specifically, the assertion therein that the Subject had approached church staff in a "threatening manner" and "lunged" at them. However, when interviewed by the Homicide Unit, the staffers did not say that they were "menaced" or "threatened" by the Subject and did not say that he ever approached them. To the contrary, the staffers said that the Subject, who was a regular in that location, was yelling at vehicles that were passing by. The staffers indicated that the Subject had been coming to the church for around three years and he had never been trespassed from that location. Moreover, there was no signage prohibiting trespassing at that location during the time at which the Subject was there. The only posted sign precluded sleeping in that location and trespassing only from 9 p.m. to 9 a.m. The Subject was not in violation of either restriction. As such, without conducting additional investigation, NE#1 did not have sufficient probable cause to determine that the Subject was trespassing at the time he initially contacted the Subject.

Second, the obstruction charge stemmed from the Subject's refusal to provide his identification and his struggling against NE#1. However, the Subject was legally justified in refusing the demand for identification. Moreover, the Subject's resistance was borne out of NE#1's unlawful attempts to arrest him. As such, this cannot constitute criminal conduct on the Subject's part. Similarly, the Subject physically preventing NE#1 from harming and choking him cannot constitute an assault. Indeed, OPA finds that NE#1, not the Subject, engaged in assaultive behavior.

For these reasons, I find that there was no probable cause to arrest the Subject for any offense. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #2 - Allegations #1**

***8.400 - Use of Force Reporting and Investigation 3. The Sergeant Will Review the Incident and Do One of the Following:***

SPD Policy 8.400-POL-1(3) provides that, upon responding to a use of force, the Sergeant reviews the incident and classifies the force by type. The policy explains that force should be classified as Type III (the highest level) where it "results in, or could reasonably be expected to result in, great bodily harm...or substantial bodily harm..., to include broken bones and an admission to the hospital for treatment." (SPD Policy 8.400-POL-1(3).) In such cases, the Sergeant is required to screen the force with FIT in order to allow that unit to decide whether to respond to the scene and take over the investigation. (*Id.*)



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Here, NE#2 was aware that the Subject alleged that he had been choked. This was an allegation of serious and/or deadly force that was required to be screened with FIT. Moreover, when he watched the BWV, he should have identified the neck holds and this should have provided him with an additional basis for screening this matter with FIT. When NE#2 did not do so, he violated this policy.

For the above reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #2 - Allegation #2**

***8.400-POL-3 Use of Force – TYPE II INVESTIGATIONS 3. The Sergeant Will Make Appropriate Notifications When He or She Believes that Criminal Conduct or Serious Misconduct May Have Occurred***

SPD Policy 8.400-POL-3(3) sets forth the responsibilities of a Sergeant during a Type II force investigation. The policy cross-references SPD Policy 8.400-TSK-3, which, in turn, itemizes the specific tasks that the Sergeant is expected to complete during the investigation.

There are three main areas in which NE#2's Type II investigation in this matter was deficient. First, the force used by NE#1 included four neck restraints. Even if NE#2 did not believe that these neck restraints were purposeful or identified that several were attempted and not effectuated, he was still required by policy to screen this matter with FIT. He failed to do so.

Second, as discussed more fully below, NE#2 failed to recognize potential misconduct on the part of NE#1 and, as such, failed to properly notify FIT and OPA. Notably, this was the case even though NE#2 confirmed that he watched the BWV for NE#1 and NE#3.

Third, NE#2 failed to ensure that the use of force reports submitted by NE#1 was "full and accurate." Indeed, as discussed above, NE#1's report was deficient in its description of the nature and scope of the force that was used.

Given the above, I find that NE#2 failed to comply with the requirements of this policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #2 - Allegation #3**

***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***

SPD Policy 5.002-POL-5 requires supervisors who become aware of a potential policy violation to investigate or refer the allegations depending on their severity. Minor allegations of misconduct may be investigated by a supervisor, while allegations of serious misconduct – such as the use of excessive force – must be referred to OPA. (SPD Policy 5.002-POL-5.)



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When he screened this incident, NE#2 was informed by NE#1 that the Subject claimed that he was intoxicated. Moreover, when NE#2 interviewed the Subject, the Subject stated multiple times that he had been choked and that NE#1 was drunk. However, NE#2 did not investigate either of these allegations, which suggested potential serious misconduct. Further, he did not refer either allegation to OPA.

In addition, in his use of force review, NE#2 noted that he watched the BWV for both NE#1 and NE#3. Even though he did so, he failed to either identify or refer the neck holds to FIT or OPA.

When NE#2 failed to do so, he violated this policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #2 - Allegations #4**

***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations***

SPD Policy 5.002-POL-6 concerns the reporting of misconduct by Department employees. It specifies that minor misconduct must be reported by the employee to a supervisor, while potential serious misconduct must be reported to a supervisor or directly to OPA. (SPD Policy 5.002-POL-6.) The policy further states the following: "Employees who witness or learn of a violation of public trust or an allegation of a violation of public trust will take action to prevent aggravation of the incident or loss of evidence that could prove or disprove the allegation." (*Id.*)

As indicated above, NE#2 stated in his force review that he watched the BWV for NE#1 and NE#3. However, even though he did so, he failed to identify clear potential misconduct engaged in by NE#1. Most notably, NE#2 failed to report to OPA that NE#1 used force outside of policy in the form of neck holds and that NE#1 may have effectuated an arrest without probable cause.

Ultimately, NE#2, as a Sergeant is held to a high standard. He is a frontline supervisor who is tasked with ensuring that his officers act according to law and policy on a day-to-day basis. Part of that responsibility includes critically evaluating the conduct of his officers and calling out and reporting that conduct when required under the circumstances. He failed to meet that standard here and, in doing so, acted contrary to the Department's expectations of its supervisors. For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #3 - Allegations #1**

***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations***

From a review of NE#3's video, he was in the immediate vicinity of NE#1 when three of the neck holds were used, as well as when NE#1 punched the Subject twice in the face. However, NE#3 did not report the neck holds and did not inform a supervisor or OPA that NE#1 had potentially engaged in serious misconduct.



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Throughout his interviews with FIT, the Homicide Unit, and OPA, NE#3 consistently stated that he did not see NE#1 use neck holds or any other force that appeared to him to be outside of policy. Based on OPA's review of the BWV, it appears unlikely that NE#3 did not witness NE#1's misconduct in this case; however, OPA cannot disprove his claims in this regard.

As such, OPA recommends that this allegation be Not Sustained – Inconclusive.

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