



## ***CLOSED CASE SUMMARY***

ISSUED DATE: OCTOBER 24, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0466

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Inconclusive
# 2	8.200 2. Use of Force: When Prohibited. - Officers are prohibited from using neck and carotid restraints in all circumstances, including any action that involves kneeling on a subject's neck.	Not Sustained - Inconclusive

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper
# 2	8.200 2. Use of Force: When Prohibited. - Officers are prohibited from using neck and carotid restraints in all circumstances, including any action that involves kneeling on a subject's neck.	Not Sustained - Unfounded

#### **Named Employee #3**

Allegation(s):		Director's Findings
# 1	5.001 Standards and Duties. 10. Employees Will Strive to be Professional	Sustained
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper

#### **Imposed Discipline**

Written Reprimand

***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 that Named Employee #1 (NE#1) and Named Employee #2 (NE#2) may have used unauthorized force and prohibited force during their arrest of the Subject.

OPA alleged that Named Employee #3 (NE#3) was unprofessional and may have used unauthorized force during the arrest of the Subject.



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**SUMMARY OF INVESTIGATION:**

This complaint was submitted by the Witness Supervisor #1 (WS#1) via Blue Team. WS#1 stated that NE#1 and NE#2 responded to a video alarm at a construction site. WS#1 stated that, there, NE#1 and NE#2 encountered the Subject holding a spool of copper wire. WS#1 stated that the Named Employees attempted to take the Subject into custody, but the Subject resisted, including by placing one of the Named Employees in a headlock and attempting to remove his firearm from its holster. WS#1 stated that this resulted in a city-wide “help the officer” to which WS#1 responded. WS#1 wrote that, after arriving at the scene, he observed that NE#2 had injuries to his face and the Subject “reported that he was choked by the officers.” WS#1 noted that both NE#1 and NE#2 denied having any contact with the Subject’s neck and that the Subject provided very little additional information besides claiming “he was strangled by the officers with his own jacket.” WS#1 noted that the Subject would not let him check his face or neck for markings. WS#1 also noted that SFD responded and cleared the Subject medically. OPA initiated this investigation.

During its investigation, OPA reviewed the complaint, Computer Aided Dispatch (CAD) records, the Incident/Offense Report (Incident Report), Type II Use of Force paperwork, SFD CAD, photographs, surveillance video, and BWV. After reviewing BWV, OPA added allegations of professionalism and unauthorized force against NE#1. OPA attempted to contact the Subject through his attorney, but the Subject’s attorney preferred that the Subject not be interviewed until after his criminal charges had been adjudicated. OPA interviewed all three Named Employees and two witness officers.

*i. CAD Records*

CAD records showed that NE#1 and NE#2 were in a two-officer unit and responded to a silent alarm at a construction site. Another two-officer unit was dispatched, but NE#1 and NE#2 were the first to arrive. CAD records showed that NE#1 and NE#2 advised that they were contacting the Subject and, about one minute later, a “help the officer” was broadcast. Other units responded about two minutes later and SFD was requested for an injured officer.

*ii. BWV*

BWV for both NE#1 and NE#2 documented their arrival and contact with the Subject. After arriving on scene, NE#1 and NE#2 walked the perimeter of the construction site and observed the Subject inside the fence. NE#2 identified himself as an SPD member and ordered the Subject to stop. NE#2 explained to the Subject that he was being detained. NE#1 provided an update over the radio that he and NE#2 were “contacting one” and requested another unit. NE#2 took control of the Subject’s left arm by grabbing it near the Subject’s left wrist. NE#1 then took control of the Subject’s right arm by using two hands to grab the Subject’s right wrist. During this time, the Subject repeatedly asked “for what?” The Subject then turned and twisted his body and, apparently, a struggle ensued. Due the speed and proximity of the people, neither NE#1 nor NE#2’s BWV fully captured the physicality of the struggle. However, BWV did appear to show the Subject with his jacket up over his shoulders at various points. The Named Employees were also heard on BWV stating “chill out” and “relax.” The Subject was also heard stating “please stop, I can’t breathe,” “stop doing that,” and “it hurts.” The Subject and NE#1 also engaged in a back-and-forth where the Subject twice stated “you are choking me” to which NE#1 twice responded “I am not choking you.” NE#2 requested other officer “step it up”—meaning to hurry the police response—over the radio. NE#1’s BWV was knocked off during the struggle and NE#2’s BWV shut off after about three minutes. The struggle lasted approximately two-and-a-half minutes.



A short time later, additional officers arrived and helped restrain the Subject and place him in handcuffs. BWV from responding officers showed that NE#1 and NE#2 had the Subject held on the ground. BWV showed that the Subject's jacket was still on his arms but had come over his head and was positioned in the front of the Subject's body such that the Subject's head, neck, and upper chest were lying on the jacket. BWV from this time period also showed that the Subject was breathing heavily. NE#3's BWV showed that, after arriving, NE#3 stated to the Subject "give me your f\*\*\*ing hand before I break your f\*\*\*ing arm." The Subject was placed in handcuffs and into the recovery position. Later, NE#3 stated to the Subject "just shut the f\*\*\* up, ok?" and "Sorry you ended up being a victim in all this. It must be a tough life you live."

BWV from WS#1 depicted the Subject standing, restrained in handcuffs after the struggle. At this point in WS#1's BWV, the Subject is rear-cuffed while wearing his jacket on his arms, but the back portion of his jacket had come up over his head and was wrapped across his upper chest.

*iii. NE#1's OPA Interview*

NE#1 was interviewed by OPA. NE#1 stated to OPA that he and NE#2 were investigating a burglary at the time they stopped CM#1. NE#1 stated that he is approximately 5 feet, 5 inches tall and weighs approximately 160 pounds. NE#1 estimated that the Subject was 6 feet, three inches and weighed about 280 to 300 pounds. NE#1 stated that, after arriving at the construction site, he observed a fence with No Trespassing signs "all over it" and saw the Subject inside the fenced area holding some wire.

NE#1 stated that NE#2 announced their presence and told the Subject to drop the wire. NE#1 stated he radioed an update. NE#1 stated that NE#2 then went "hands on" and NE#1 did the same thereafter to take the Subject into custody. NE#1 stated that they had probable cause at this point for burglary. NE#1 recalled that the Subject then pulled away from him and NE#2 and "started resisting," and due to the Subject's considerable size advantage, the Subject "threw us around." NE#1 described giving the Subject verbal commands to "stop resisting" and "calm down," but stated that the Subject ignored these instructions.

NE#1 stated that, during the struggle, the Subject threw NE#2 through a two-by-four piece of lumber and that, seconds later, the Subject and NE#1 went to the ground. NE#1 stated that, as he and the Subject continued to struggle, he felt the Subject's hand reaching around NE#1's belt. NE#1 stated that he responded by using "pressure" to restrict the Subject's movements and prevent the Subject from accessing items on NE#1's belt, including his firearm. NE#1 described using a "sprawl" positing to hold the Subject down, but NE#1 stated that the Subject continued to resist and try to get up. NE#1 described the "sprawl" as using his body weight on the Subject with NE#1's head at the Subject's shoulder blades. NE#1 stated as he felt the Subject's "should blades trying to come up," the Subject started yelling that "he couldn't breathe, that he was choking, and that I was strangling him." NE#1 recalled replying to the Subject that he was not choking him. NE#1 stated he did not know any reason why the Subject would have perceived being choked. NE#1 stated he did not know how the Subject's jacket came up over his head, but speculated that it "probably came to be over his head when he shoved, pushed, manipulated [NE#2] into going to the ground. And he, [NE#2] was probably still holding onto him, causing him to go forward, causing his jacket to go up and over. That is my best guess. I did not see it happen."

NE#1 denied using any kind of neck restraint or force other than his own bodyweight.

*iv. NE#2's OPA Interview*



NE#2 was interviewed by OPA. NE#2 recalled contacting the Subject inside the construction site, identifying himself as a police officers, and informing the Subject that he was being detained. NE#2 stated that he is 5 feet, 8 inches tall and weighs 175 pounds. NE#1 estimated that the Subject was over 6 feet tall and weighed “at least” 200 pounds.

NE#2 stated that, at the time of contacting the Subject, he did not see that the Subject had a large screwdriver in his back pocket, as BWV depicted. NE#2 recalled taking hold of the Subject’s left arm and believed that NE#1 took control of the Subject’s right arm. NE#2 stated he was able to apply one handcuff to the Subject before the struggle but was afraid to let go of this hand so that the handcuffs could not be used by the Subject as a weapon. NE#2 stated that the Subject was able to get behind him during the struggle, and that the Subject put his right arm around his neck as if to strangle him. NE#2 stated that at this point he felt his life was in danger. NE#2 stated he escaped the Subject’s grasp, but that he and NE#1 struggled to get the Subject to the ground. NE#2 stated that the Subject pushed him onto a wood two-by-four. NE#2 stated he was then either pushed or fell to the ground, at which point the Subject was able to put him “in his guard” by wrapping his legs around NE#2’s waist. NE#2 stated he was unable to get up at this point but he maintained “control of [the Subject’s] left arm, which had the handcuff on it. NE#2 stated “I was afraid that if he would get up, you know, we would have to use force, and/or you know, injure, possibly injure him or against him injure us.” NE#2 recalled hearing the Subject complain at that time “you’re hurting me; you’re choking me,” but that NE#2 did not use any reportable force against the Subject. NE#2 stated he and NE#2 then held the Subject on the ground until other officers arrived.

When asked about how the Subject’s jacket came over his head, NE#2 stated that the Subject was wearing multiple layers of clothes, including an unzipped jacket, and that the Subject bent forward at one point in the struggle. However, other than that, NE#2 was unable to elaborate on how the Subject’s jacket came over his head.

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

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

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

The Complainant alleged that NE#1 used unauthorized force.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” (SPD Policy 8.050.) The policy lists several factors that should be weighed when evaluating reasonableness. (See *id.*) Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

NE#1 and NE#2 both stated—and BWV largely corroborated—that they did not use any force against the Subject besides their own bodyweight and holds. This level of force was reasonable to overcome active resistance by the Subject who twisted his body, pulled away, and struggled to avoid being placed in handcuffs as well as threw NE#2 into a wood two-by-four, put his arm around NE#2’s neck, and attempted to access NE#1’s firearm. Moreover, the Subject was significantly larger than either NE#1 and NE#2 and struggled with both officers to the point of exhaustion



for all parties. This level of force was necessary because there was no reasonable alternative to the force they used to effect their lawful purpose—physical control of an actively resisting Subject and the Subject’s custodial arrest based on probable cause. Finally, this level of force was proportional to the threat posed by the Subject to the officers. Notably, NE#1 and NE#2 used less force than the Subject, who caused notable injury to NE#2 requiring stitches.

The Subject alleged that the Named Employees used his jacket to strangle him. Both NE#1 and NE#2 denied this allegation but were only able to speculate as to how the Subject’s jacket came over his head. OPA was unable to take a statement from the Subject to further clarify this allegation. Although no BWV depicts the entire physicality of the struggle between NE#1, NE#2, and the Subject, OPA finds that, more likely than not, neither NE#1 nor NE#2 intentionally used the Subject’s jacket to “strangle” him. Snapshots from NE#1 and NE#2’s BWV during the struggle show that, for most of the struggle while the parties were standing, the Subject’s jacket had not come over his head in a way that could choke him. Instead, the Subject claimed that the Name Employees were choking him while they were holding him on the ground. NE#1 immediately responded twice that he was not choking the Subject, although no video depicted this. The Subject also claimed that the officers were choking him a third time, after backup officers had arrived. Here, a backup officer’s BWV depicted that that the Subject was not being choked at the time he made this third allegation. Instead, OPA finds that it was far more likely that the Subject’s jacket—which was worn loose and unzipped—inadvertently came up over his head as the Subject violently resisted his lawful arrest for about two and a half minutes.

However, OPA cannot conclude that the control hold NE#1 used on the Subject did not—even if inadvertently—pull on the Subject’s jacket or apply pressure to the Subject’s neck. It is possible that the Subject’s own jacket pressed against his neck due to the jacket’s positioning, NE#1’s control hold, and the fact that the arms of the jacket were still on the Subject’s arms. Coupled with physical exhaustion, the Subject may have simply perceived this as being intentionally choked. It is also possible that the Subject made these statements not because he thought they were true, but to get NE#1 and NE#2 to hesitate or let go. However, BWV from NE#3 shows that it is also possible that NE#1’s arm applied pressure to the Subject’s neck or caused the Subject’s jacket to do so.

NE#3 was the first responding officer to approach as NE#1 and NE#2 held the Subject on the ground. As such, NE#3’s BWV captured the positioning of NE#1, NE#2, and the Subject in this moment and as the officers worked to place the Subject in handcuffs. NE#1 was positioned on his knees, laying perpendicularly across the Subject’s shoulder area. Although it is unclear exactly where NE#1’s right arm is in this moment, as the officers work to place the Subject in handcuffs, NE#3’s BWV captured NE#1 pulling his right arm up from the front of the Subject’s neck area. At his OPA interview, NE#1 explained his hold on the Subject in this way:

I placed my hands towards [the Subject’s] stomach going through his shoulders. I made the point of that was to continue pressure to restrict his movements. So he could not grab my gun or anything else for that matter or get up because that's what he was trying to do. . . .

The Subject was shifting around, he continued to shift around, he was trying to get up, which is why I reached my hands towards his stomach to try to prevent him from getting up. And I was not going to move from my position just because we were at that moment in time restricted with all three of us. I heard lights and sirens. At that time, he then was, the Subject was trying to work harder, I could feel his shoulder blades trying to come up. He then started yelling that I was that he couldn't breathe, that he was choking, and that



I was strangling him or something of that nature. I then replied to him that I was not. And to please stop accusing me of such precisely exactly for this reason. And we stayed there for probably I don't know, I guess a minute. And then other units arrived. . . .

[My hands were] going through his shoulders, right here and towards his stomach to keep him down to keep pressure down. Because I'm then able to not only use my bodyweight, but I'm able to use my strength to keep his upper half to the ground, which he was not by the way. He was sideways, his body. . . .

[My hands were] on the ground towards his stomach.

SPD Policy forbids the use of both Neck and Carotid Restraints (SPD Policy 8.200-POL-2), the definitions of these prohibited techniques both imply that there is an intentional “attempt to control or disable a subject **by applying pressure**” to block the passage of air (Neck) or blood (Carotid). SPD Policy 8.050 (emphasis added). Here, if NE#1’s arm position was applying any pressure to the Subject’s neck, OPA is unable to conclude that it was brief, incidental, and inadvertent. Here, the Subject made two statements in the moment to NE#1 that he was being choked, which NE#1 twice denied. Conversely, NE#1 provided a credible, but uncorroborated, explanation that he was reaching towards the Subject’s stomach and was not strangling the Subject. On this evidence, OPA is unable to reach a conclusion as to whether NE#1 used a prohibited neck restraint.

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

Recommended Finding: **Not Sustained - Inconclusive**

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

***8.200 2. Use of Force: When Prohibited. - Officers are prohibited from using neck and carotid restraints in all circumstances, including any action that involves kneeling on a subject’s neck.***

The Complainant alleged that NE#1 “choked” him with his jacket.

SPD Policy forbids the use of specific types of force and in specific circumstances. Among these, SPD policy forbids the use of “neck and carotid restraints in all circumstances, including any action that involves kneeling on a subject’s neck. Officers are further prohibited from intentionally placing a knee on a prone subject’s neck while taking them into custody.” SPD Policy 8.200-POL-2. Definitions of Neck and Carotid Restraints are provided in SPD Policy 8.050.

For the reasons set forth above at Named Employee #1, Allegation #1, OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**

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

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





As set forth more fully above at Named Employee #1, Allegation #1, there is no evidence to suggest that NE#2 used an impermissible restraint on the Subject and all other force used by NE#2 was reasonable, necessary, and proportional. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

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

***8.200 2. Use of Force: When Prohibited. - Officers are prohibited from using neck and carotid restraints in all circumstances, including any action that involves kneeling on a subject's neck.***

As set forth more fully above at Named Employee #1, Allegation #1, there is no evidence to suggest that NE#2 used an impermissible restraint on the Subject. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

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

***5.001 Standards and Duties. 10. Employees Will Strive to be Professional***

The Complainant alleged that NE#3 was unprofessional.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (Id.) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (Id.)

NE#3 made several potentially unprofessional statements to the Subject. NE#3 candidly acknowledged that he made the statements in his interview with OPA.

The first of these statements occurred as NE#3 contacted the Subject—who was still struggling with NE#1 and NE#2—and attempted to handcuff the Subject. NE#3 described trying to bring one of the Subject’s arms down to the Subject’s lower back in order to get the Subject in handcuffs. NE#3 stated that he felt the Subject “tensed up,” so he told him “give me your f\*\*\*ing hand before I break your f\*\*\*ing arm.” NE#3 explained that he intended for this statement to mean “I was about to use whatever force was necessary and reasonable to get his hand behind his back to get him in handcuffs.” OPA appreciates that NE#3 made this statement in the heat of the moment with a Subject who was already violently resisting two uniformed police officers. OPA also appreciates that NE#3 believed that this verbal tactic was effective in gaining compliance. However, to the extent that it would not have been reasonable, necessary, or proportional to intentionally break the Subject’ arm in this scenario, the threat to do so possibly violated policy. If this statement stood on its own, OPA would be inclined to issue a training referral for these reasons



NE#3's other two statements—both made after the Subject was restrained—are more straightforward. NE#3 explained to OPA that he told the Subject to “just shut the f\*\*\* up, ok?” because NE#3's stress level was still high, NE#3 was concerned what else needed to be done to make the scene safe, and the Subject continued to make noise. While it is perhaps understandable that NE#3, as a human being, lost his temper and used unprofessional language here, the fact would remain that telling another person to “just shut the f\*\*\* up” is, at minimum, disrespectful and possibly outside policy. On balance, this statement, even considered together with the previous comment, would likely have resulted in a training referral given the residual stress of the situation.

However, after the Subject was restrained NE#3 attempted to get the Subject's name, but the Subject declined to provide it. NE#3 stated to the Subject “Sorry you ended up being a victim in all this. It must be a tough life you live.” When asked to provide context to this statement, NE#3 candidly acknowledged that he was “extremely frustrated” with the call and that he felt like, by refusing to give his name, the Subject was “trying to make himself out to be the victim” after attacking two police officers, one of whom ended up going to the hospital to get stitches as a result. This comment was unprofessional and outside of policy. On its own, this comment was both contemptuous and disrespectful, but considered together with his previous comments it reflects escalatory taunting by NE#3 against the Subject. Moreover, when compared with the absence of such comments from his colleagues, the unnecessary nature of NE#3's comments is even more apparent.

For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

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

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

It was alleged that NE#3 used unauthorized force.

NE#3 stated that the only force he used was taking hold of the Subject's arm and bringing it to his lower back to be handcuffed. BWV corroborates this. This level of force was *de minimis* and plainly reasonable, necessary, and proportional.

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

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