



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 18, 2022

FROM: DIRECTOR GINO BETTS JR.
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0131

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 (Eff. 06/19/2020)	Sustained
# 2	8.400 - Use of Force Reporting and Investigation 8.400-POL-1 Use of Force Reporting and Investigation 1. Officers Shall Document in a Use-of-Force Report All Uses of Force Except... (Eff. 06/19/2020)	Sustained

Imposed Discipline

Written Reprimand

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation 8.400-POL-1 Use of Force Reporting and Investigation 3. Officers, Including Witness Officers, Will Verbally Notify a Supervisor (Eff. 06/19/2020)	Not Sustained - Training Referral

Named Employee #3

Allegation(s):		Director's Findings
# 1	8.400 - Use of Force Reporting and Investigation 8.400-POL-1 Use of Force Reporting and Investigation 4. The Sergeant Will Review the Incident and Do One of the Following (Eff. 06/19/2020)	Not Sustained - Training Referral

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 excessive force and failed to adequately document use of force. Named Employee #2 (NE#2) allegedly failed to accurately report NE#1's use of force to the screening supervisor. Finally, Named Employee #3 (NE#3), an acting sergeant, allegedly failed to fully screen the use of force.



SUMMARY OF INVESTIGATION:

On May 2, 2022, the Complainant filed a Claim for Damages with the City of Seattle. That claim alleged she was “[a]ssaulted by Seattle Police while engaged in protest,” causing a “[h]ead injury without concussion,” “[a]brasions of multiple sites including hands and knees,” and “[s]tress and adjustment reaction.” Due to the alleged SPD employee misconduct and pursuant to the agencies’ joint protocol, on May 2, 2022, the Department of Finance and Administrative Services forwarded the claim to OPA. OPA opened an intake investigation.

During its intake, OPA identified NE#1 as the officer who used force against the Complainant. OPA alleged NE#1 failed to adequately document use of force, NE#2 failed to accurately report NE#1’s use of force to a supervisor, and NE#3 failed to fully screen the incident.

OPA opened a full investigation. During its intake and investigation, OPA reviewed the Claim for Damages, Computer-Aided Dispatch (CAD) Call Report, NE#1’s Incident Report and Use of Force Statement, Seattle Fire Department (SFD) Patient Care Report (PCR) for the Complainant, Body Worn Video (BWV), and the named employees’ training records. OPA request an interview with the Complainant but did not receive a response.¹ Finally, OPA interviewed the named employees.

A. Background

This case arose out of demonstrations in response to George Floyd’s murder by a Minneapolis police officer. After days of continuous protests, SPD evacuated the East Precinct. *See* 2020OPA-0354. Thereafter, protesters established a “police free” zone—widely referred to as “CHOP” or “CHAZ.” CHOP/CHAZ remained until July 1, 2020, when SPD cleared the area and reoccupied the East Precinct. On August 24, 2020, during the third month of ongoing protests, the Complainant participated in a demonstration near the East Precinct. During the demonstration, a group piled and ignited trash against the East Precinct’s sally-port door. That group also attempted to blockade an adjacent door with crowbars and cement-like materials to keep officers inside. Officers ultimately exited the building. Seattle Police and SFD members extinguished the fires.²

B. Body Worn Video

BWV captured the named employees’ response and relevant portions of NE#3’s force screening.

BWV depicted a group of officers, including the named employees, on foot near 13th Avenue and E Pine Street. NE#3 instructed the officers, “we’re going to move in, as soon as we get to the block, we’re going to line up, we’re going to spread out, and we’re move towards that door.” A radio dispatch indicated the fire outside the East Precinct was

¹ OPA spoke to the Complainant’s attorney’s paralegal to request an interview with the Complainant. The paralegal said she would speak with the Complainant’s attorney and respond to OPA’s request.

² *See* Press Release, United States Department of Justice, Alaska man who conspired to set fire to the Seattle Police East Precinct pleads guilty (January 25, 2021), <https://www.justice.gov/usao-wdwa/pr/alaska-man-who-conspired-set-fire-seattle-police-east-precinct-pleads-guilty>. *See also* Associated Press, Alaska man admits setting fire at Seattle police precinct, <https://apnews.com/article/alaska-arson-racial-injustice-fires-conspiracy-92cd9e0318d9d49829c3f7a8e7119c43>.



getting bigger. NE#3 led the officers westbound on E Pine Street. As officer's neared 12th Avenue and E Pine Street, NE#3 yelled, "I want a line as soon as we break this."

Officers rounded the corner, facing southbound on 12th Avenue, encountering a large civilian group dressed in dark clothes.³ A fire burned along the East Precinct's east-facing wall. NE#3 repeatedly yelled for the officers to "line it up." Despite NE#3's orders, some officers, including NE#1 and NE#2, ran towards the civilian group. NE#3 yelled, "Hey, slow down and line it up!"

NE#1 and NE#2 ran side-by-side as they approached the civilian group. Someone in the civilian group (Community Member #1 or CM#1) fell approximately 15-25 feet in front of NE#1 and NE#2. Two others, the Complainant and Community Member #2 (CM#2), helped CM#1 up.

BWV showed NE#1, NE#2, and Witness Officer #1 (WO#1) running towards CM#1, CM#2, and the Complainant.⁴ As NE#1 approached CM#1, CM#2, and the Complainant, NE#1 slowed and raised his riot stick.⁵ NE#1 clutched his raised riot stick with both hands, just below shoulder level. NE#1 held the riot stick horizontally, one hand gripping an end of the stick and the other hand gripping the opposite end, with his arms fully extended. NE#1 moved closer and appeared to jump into CM#1, CM#2, and the Complainant. NE#1's riot stick appeared to collide against CM#1 and the Complainant. CM#1, CM#2, and the Complainant fell on what appeared to be an asphalt road and concrete sidewalk.⁶ The Complainant fell forward, apparently striking her head against the sidewalk.

NE#1 and NE#2 handcuffed CM#2 and the Complainant.⁷ The Complainant stated, "I hit my head when I fell. Let me go. I hit my...I hit my head." CM#1, CM#2, and the Complainant were stood up and escorted into the East Precinct. The Complainant yelled several statements, including "I hit my head when they fucking knocked me down," "I hit my head when I fell...please," and "I hit my head really hard." Inside the East Precinct, the Complainant told NE#1 and WO#1, "I feel really strange from hitting my head so hard." NE#1 responded, "We'll get the Fire Department to take a look at you."

CM#2 and the Complainant were taken to separate holding cells. NE#1 searched and processed CM#2. NE#2 searched and processed the Complainant. The Complainant told NE#2, "I'd like to see someone about my head injury.... I've hit my head...times before and I'm very susceptible to concussions." NE#2 responded, "I understand, I'll get a sergeant in

³ OPA estimates there were at least 25-50 people—possibly as many as 75-100—standing in the group of dark clad individuals, most of whom stood near a fire along the East Precinct east facing wall.

⁴ During its investigation, OPA found NE#1 may have confused CM#1 and CM#2 such that, in later documentation, NE#1 stated CM#2—not CM#1—was the individual who fell. While OPA notes this potential error, it found no evidence the misidentification was willful, nor does this misidentification impact OPA's findings in this case.

⁵ SPD-issued riot sticks are wooden sticks used for crowd management. The riot sticks are about three feet long and an inch in diameter.

⁶ It is unclear whether NE#1 or his riot stick contacted CM#2. CM#2 fell, but it is unclear whether NE#1 made direct contact with CM#2 or if CM#1 pulled CM#2 down after CM#1 was shoved by NE#1

⁷ BWV did not depict CM#1 being handcuffed. However, BWV does depict a SPD officer holding a handcuffed CM#1 to the ground then walking CM#1 into the East Precinct.



here for you to talk to.” NE#2 asked the Complainant, “What part was it when you fell?” The Complainant responded, “It was the front above my eye.” NE#2 asked, “Let me rephrase my question. How did you fall? When you came back to pull the person and you fell to the ground?” The Complainant replied, “I turned around because I saw someone in my peripheral vision fall. And as I did that I was knocked to the ground.” The Complainant also had bloody knuckles, which she showed NE#2.

After placing CM#2 and the Complainant in holding cells, NE#1 and NE#2 spoke. NE#2 asked NE#1, “did you start the arrest first?” NE#1 responded, “Yep. The force was mine. Yours is the one complaining of a head, right?” NE#2 replied, “yeah.... She ah, she tried pulling...she tried pulling the girl you arrested away from you while you were making the arrest.” NE#1 responded, “yup.” About four minutes later, SFD arrived to examine the Complainant. NE#1 was present as the Complainant told SFD, “When I got knocked down I hit my head. And I’m concerned because I received multiple concussions in the past. And I’m susceptible to them. I feel very nauseous and I know that’s a symptom.”

NE#1 screened the arrest with NE#3. NE#1 told NE#3: “So, one was on the ground and both were trying to drag him up. I went down and held that one down and then two others.... As they are trying to drag him down, I came in with my stick and knocked all three of them to the ground.” NE#3 asked, “So, they’re trying to take someone in custody. There were trying to stop them?” NE#1 answered, “two were trying to stop. So, they’re all criminal mischief. And then one (CM#1) and two (the Complainant) are also for obstruction.” NE#2 approached and said, “two (the Complainant) is for interference. She was trying to pull his arrest.” NE#1 told NE#3, “this one’s complaining...Number Two (the Complainant) is complaining of a head injury.” NE#2 stated, “she’s complaining of a head in...in... She’s complaining of it, but she doesn’t think it happened due to the arrest. She felt that she was pulled down by the people that were...his arrestee. Cause he...she as trying to pull on her.”

Next, NE#3 spoke to CM#1, CM#2, and the Complainant. NE#3 spoke with CM#2 first. CM#2 showed NE#3 a scrape and told NE#3 it occurred from “being tackled.” NE#3 spoke with CM#1 second. CM#1 told NE#3, “I got pushed.” NE#3 spoke with the Complainant last. NE#3 explained to the Complainant, “what I was told that they were trying to arrest this main instigator and you interfered with that arrest; and that’s why you were also arrested for obstruction.” The Complainant responded, “I saw somebody fall and I turned to see...and I got knocked to the ground...and I hit my head.” NE#3 asked the Complainant whether SFD examined her, which she confirmed.

C. Patient Care Report

SFD’s PCR stated the Complainant had an “injury to head” and suffered pain and a headache. The PCR further noted Complainant’s primary complaint was hitting her head on the ground “as she was arrested,” and was worried due to a history of head traumas. The Complainant denied loss of consciousness and head pain. SFD described the Complainant as alert, oriented, and appropriately answering questions. The PCR reflected no visible signs of injury. The Complainant was treated and released.



D. Incident Report and Supplements

NE#1 wrote an Incident Report and a Use of Force Statement.

In his Incident Report, NE#1 stated the incident started around 11:30pm when a group of about 150 people gathered outside the East Precinct and tried to burn it down. NE#1 also noted the group was dressed in black and several wore gas masks and helmets. NE#1 documented the fire burned about ten minutes prior to officer action, and there was no possibility those in the area did not know what happened. NE#1 also wrote he saw CM#2⁸ fall as he approached. NE#1 noted, "I ran towards [CM#2] and held him down to prevent him from continuing to flee. I saw two other subjects [CM#1] and [Complainant] attempt to drag [CM#2] from my grasp, so I tried to drag [CM#1] and [Complainant] to the ground." NE#1's Incident Report did not mention his riot stick use.

NE#1's Use of Force Report documented, as NE#1 approached CM#2, he saw CM#1 and the Complainant "move to try and pick [CM#2] up from the ground." NE#1 continued, "I ran to the three, who at this point were crouched, and pushed [CM#2] back to the ground and [positioned] myself over their lower back, holding them in place." NE#1's Use of Force Report did not mention his riot stick use.

In his Use of Force Review, NE#3 wrote, "[NE#1] told me that he was moving toward the crowd and saw [CM#2] fall giving him the opportunity to arrest him. As [NE#1] was getting close to [CM#2] he was getting up off the ground with the assistance of two other rioters. [NE#1] pushed [CM#2] back to the ground trapping his arms under him." NE#3's Use of Force Review did not mention his riot stick use, force used against the Complainant or CM#1, or the Complainant's reported injuries.

E. Named Employee Interviews

OPA interviewed the named employees.

a. Named Employee #1

NE#1 stated he was part of a "foot task force" responding to protests on August 24, 2020. NE#1 recalled a large group formed around the East Precinct. That group piled material around the sally port door, poured Quickcrete⁹ to seal the doors shut, and built a fire along the eastside of the building.

NE#1 recalled his team was directed to "form a line and then approach at a walk." However, NE#1 stated other officers ran towards the protesters. NE#1 ran with those officers "to maintain cohesion" and avoid a fragmented response.

⁸ As noted at footnote 3 above, NE#1 was most likely confusing CM#1 with CM#2. OPA believes that it was CM#1 who originally fell to the ground. NE#1 identified the person who fell as CM#2 in both his Incident Report and Use of Force Report.

⁹ A concrete mix.



NE#1 recalled someone in the group fell. NE#1 remembered orders stating, “if you can safely do so, make arrests, even if it’s for minor things.” NE#1 said that instruction came from a primary lieutenant he worked under at the time. NE#1 continued, “So seeing one person isolated, I decided to make an arrest of that individual. I saw two others go to help him up. And I decided that I needed to make sure that my individual didn’t escape.” NE#1 jogged towards the individual “placing [his] stick sideways.” NE#1 stated he used his stick to “push them to the ground.” NE#1 stated he thought his riot stick “wound up colliding with all three of them, forcing them all – forcing them all from basically their hands and knees back to the ground.”

After pushing the three individuals to the ground, NE#1 recalled the Complainant said, “she had struck her head.” NE#1 recalled calling SFD for the Complainant. NE#1 stated he briefed NE#3 on the use of force and NE#3 spoke to the arrestees. NE#1 stated NE#3 instructed him to write a Type II Use of Force report only for his “primary intended arrestee.”

NE#1 was asked to explain why he did not give verbal commands to CM#1, CM#2, or the Complainant prior to pushing them. NE#1 explained he did not think it was feasible due to the crowd size and amount of noise. When asked about de-escalation tactics, NE#1 explained he believed dispersal orders were given prior to officers rounding the corner onto 12th Avenue. Additionally, NE#1 noted de-escalation is “very difficult ... on someone who is attempting to flee” and the circumstances “forced you to take physical measures in order to prevent them from flight.”

NE#1 was asked whether his use of force on CM#1, CM#2, and the Complainant was appropriate. NE#1 explained he initially planned to arrest them for criminal mischief, which NE#1 stated was “a felony.”¹⁰ When asked to describe his threat assessment of the three people he pushed, NE#1 stated, “I wouldn’t say there was an immediate threat to myself. And once their flight had begun, that threat had diminished. But with the understanding that this was a nightly situation and apprehending individuals, as directed by command, the intent is to disrupt their nightly violent activities within the city.”

NE#1 was asked to describe why his use of force was necessary. NE#1 responded, “So the only other alternative that I would see, other than – other than preventing them from getting up and allowing them to run away ... would be to allow them to rise and run with them and hopefully tire them out.”

NE#1 characterized his use of force as Type II given the risk of abrasion when pushing people onto pavement. NE#1 was asked why Type II force was justified. NE#1 responded, “[b]ecause these individuals were working as a group to try to flee. This was a – this was multiple people that, at the time I was using the force, I was using it alone.” NE#1 was asked to explain why he chose to use force instead of letting them rise and run away with the group. NE#1 responded he understood command orders were “We want you to make arrests so that hopefully this will stop.”

¹⁰ Criminal mischief is a gross misdemeanor unless the actor is armed with a deadly weapon, in which case it is a class C felony. See RCW 9A.84.010.



NE#1 explained he did not write a use of force report for the Complainant because NE#2 stated “her head injury had been caused by somebody dragging her to the ground. ... [S]pecifically, she believed that somebody in the crowd dragged her to the ground.” NE#1 also stated, after NE#3 spoke to the arrestees, NE#3 only directed him to write a Type II Use of Force Report for CM#2. NE#1 agreed it would have been “reasonable” for him to ask NE#3 why he only needed to write a Use of Force Report for CM#2 since he also used force on CM#1 and the Complainant.

b. Named Employee #2

NE#2 stated he was outside the East Precinct when demonstrators “lit a fire along the building.” NE#2 stated he and other officers were ordered to clear the area. NE#2 recalled turning the corner and seeing “the big blaze of the fire.” NE#2 saw another officer take “a couple people to the ground to effect an arrest on someone.” NE#2 said, “[a]nother person was trying to pull the one that he was trying to arrest. She was trying to stop the arrest.” NE#2 stated he put that person—the Complainant—in custody.

NE#2 took the Complainant inside the East Precinct, where she mentioned she “hit her head and that she also had prior she had a prior head injury.” NE#2 recalled telling NE#3 the Complainant, “reported she had injuries but she couldn’t specify if it was actually from the arrest or not because she thought she might have been pulled down by somebody else.”

NE#2 recalled the Complainant stating she hit her head “when they fucking knocked me down,” but did not recall screening that statement with a supervisor. Similarly, NE#2 did not recall why he told NE#3 the Complainant did not think her head injury happened during the arrest, but thought it was based on her statements in the jail cell. NE#2 did not recall what, if anything, he did after learning about the Complainant’s scraped knuckles.

c. Named Employee #3

NE#3 stated he worked for the Department for sixteen-and-a-half years. NE#3 explained he worked as an “acting sergeant,” which is when “someone (takes) a squad and be the supervisor of that squad who is not typically a sergeant, so you fill in as a sergeant.” As of August 24, 2020, NE#3 served as acting sergeant about twenty times over six-and-a-half years.

As acting sergeant on August 24, 2020, NE#3 stated he was directed to take a squad to monitor the East Precinct demonstration. NE#3 stated, once demonstrators started a fire, he tried to “get the squads lined up and to move into the East Precinct area.” NE#3 described his orders were to line up and push southbound down 12th Avenue. NE#3 did not want officers “chasing the crowd.” However, NE#3 stated, after rounding the corner and seeing the fire “officers decided they wanted to make sure that street was clear so we could get to the precinct. And people just started – saw people running, and we started – and they started running after them to get them out of the street and to effect arrest for people that just started trying to burn down the precinct.”



NE#3 denied he was trained to properly screen use of force incidents. NE#3 said, “[t]hat was one of the -- I think one of the things that people complained about when we went through sergeant school. That we didn’t get actual training on how we’re supposed to do investigation-type stuff like this.” NE#3 stated he completed sergeant school in 2013 or 2014, but the curriculum was different at that time. NE#3 stated, prior to August 24, 2020, he may have screened one use of force matter.

BWV recorded NE#1 telling NE#3, “As they are trying to drag him down, I came in with my stick and knocked all three of them to the ground.” NE#3 was asked to evaluate NE#1’s reported level of force. NE#3 stated it was Type II level of force for the three people knocked to the ground. NE#3 stated using a stick to push people to the ground was a “version of a takedown. ...you’re using force to take someone to the ground.” NE#3 stated a person with a head injury caused by an officer’s use of force constituted a Type III use of force, requiring Force Investigation Team (FIT) screening.

When asked about his screening of the Complainant’s head injury, NE#3 recalled NE#2 telling him the Complainant stated her injury was caused by other people in the crowd.

NE#3 was asked why he did not ask follow-up questions after the Complainant told him she “got knocked to the ground and hit [her] head.” NE#3 thought he factored in NE#2’s report and, in his experience, complainants are typically willing to make direct allegations against officers. However, NE#3 stated, looking back, he could have asked more questions to clarify what occurred. NE#3 did not recall hearing about the Complainant’s scraped knuckles. NE#3 recalled ordering NE#1 to complete a Type II Use of Force report for CM#2. NE#3 said, even given NE#1’s admission to knocking the arrestees to the ground, NE#3 credited his understanding of CM#1 and the Complainant’s accounts as more reliable because “it’s their personal account.”

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized (Eff. 06/19/2020)

The Complainant alleged NE#1 used excessive force against her.

SPD Policy 8.200(1) requires 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 to weigh 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.* Last, the force used must be proportional to the threat posed to the officer or others. *Id.*

NE#1’s use of force against the Complainant—as well as CM#1 and CM#2—was excessive. NE#1’s use of force was not reasonable, necessary, or proportional.



a. Reasonableness

NE#1's use of force was unreasonable. In summary, the risk of injury based on his actions significantly outweighed his need to use force under the circumstances.

Here, NE#1 used his riot stick to push three crouched subjects with force sufficient to knock them all to the pavement.¹¹ Even factoring in the seriousness of the crime, the nearby burning of a police precinct, NE#1 had insufficient information to determine the arrestees were involved in arson. NE#1's assumption was based on their proximity to the fire and them wearing dark clothing and protective gear. In NE#1's OPA interview, he acknowledged his focus was directed toward the arrestees after CM#1 fell, separating him from the group. NE#1 could not articulate any threat posed by the arrestees. Instead, he said they were running away when officers approached. NE#1 speculated CM#2 and the Complainant helping CM#1 off the ground indicated CM#2 and the Complainant attempted to "un-arrest" CM#1, but that assumption is not supported by evidence.

When asked about the arrestees' conduct prior to his use of force, NE#1 spoke at length about the conduct of the collective group of demonstrators, and demonstrators in Portland and Minneapolis. OPA found NE#1 was concerned about the events he referenced, but those concerns were not reasonably attributed to the arrestees. NE#1 also apparently undervalued the presence of his colleagues, who could have applied team tactics, rather than him engaging in a three-on-one takedown (NE#1 told OPA, "This was multiple people that, at the time I was using the force, I was using it alone.") Finally, NE#1 did not observe the arrestees with weapons but assumed "most" demonstrators were likely "armed in some way."¹²

Further, the risk of injury to the arrestees far exceeded NE#1's apparent appreciation of the involved risks. In his interview, NE#1 suggested completing a Type II Use of Force report was routine because a takedown on pavement could cause "road rash" or abrasions. However, NE#1's actions—using a riot stick to shove three crouched people, who were looking away, onto a hard surface—was reasonably likely to cause harm much greater than road rashes or abrasions.

b. Necessary

NE#1's use of force was also unnecessary. Here, NE#1 failed to consider reasonably effective alternate response options. NE#1's assessment identified two options other than using force: 1) prevent the subjects from getting up or 2) chase them until they tired. However, NE#1 made no attempt to take CM#1 into custody without force. If, for whatever reason, NE#1 thought that was too dangerous, he could have allowed the arrestees to stand up and flee.

NE#1's decision-making was highly influenced by his understanding of an order to "make safe, isolated arrests." However, NE#1 allowed that secondary objective to override the primary task: clearing non-emergency personnel from the East Precinct so that fires could be extinguished, and the building made safe. Consequently, NE#1 overvalued the law enforcement need to prevent the arrestees from fleeing, particularly where there were questionable grounds

¹¹ BWV captured two officers speaking after NE#1 pushed the subjects to the ground. One officer, who ran behind NE#1, NE#2, and WO#1 stated, "I don't know who it was...somebody. I think it was [WO#1]. Just annihilated...people... I think. I'm not sure."

¹² When NE#2 secured the Complainant, the Complainant appeared to hold a metal stick or pole. However, there is no indication the Complainant used or threatened to use it as a weapon. Nor did NE#1 suggest he saw the metal object or that it factored into his decision-making.



for their arrests.¹³ Moreover, NE#1 and NE#2's separation from their unit caused NE#3, their supervisor, to spend considerable time searching for them as he sought to organize a police line at 12th Avenue and E Pike Street.

Finally, NE#1's decision to forcefully arrest CM#1 violated the order he thought he was given: "make safe, isolated arrests." The situation presented did not allow for "safe, isolated arrests." First, it was unsafe because the scene was indisputably chaotic, including fires and an amped up crowd. Second, CM#1 was not isolated, where CM#2 and the Complainant surrounded him.

c. Proportional

NE#1's use of force was not proportional, where it exceeded the totality of circumstances he confronted. Particularly, as noted above, the "nature and immediacy" of threats the arrestees posed to officers or others are unclear. Policy requires "reasonable and sound judgment" to dictate the force option to be employed. Here, NE#1's choice of force was clearly disproportionate and unreasonable where no other officer assessed the situation in accordance with NE#1 or applied similar force. When NE#1 encountered CM#1, CM#2, and the Complainant, they posed no immediate threat and were about to run. NE#1's assumption CM#2 and the Complainant planned to un-arrest CM#1 was speculative and failed to justify his applied level of force.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

8.400 - Use of Force Reporting and Investigation 8.400-POL-1 Use of Force Reporting and Investigation 1. Officers Shall Document in a Use-of-Force Report All Uses of Force Except... (Eff. 06/19/2020)

It was alleged NE#1 failed to properly document his use of force in a report.

SPD Policy 8.400-POL-1(1) requires officers report all uses of force except *de minimis* force. That policy defines different levels of force and is intended to devote greater resources to reviewing more serious types of force. *Id.* For a Type II Investigation, SPD Policy 8.400-TSK-5 provides further instructions to officers concerning their reporting requirements.

Here, NE#1 failed to properly document his force use in two ways. First, NE#1 did not complete a Type II Use of Force Report for the three individuals he pushed. However, NE#1, NE#3, and BWV evidenced NE#3 specifically instructed NE#1 to only complete a Type II Use of Force Report for CM#2. If that was NE#1's only error, OPA would have recommended a training referral, given NE#3's misdirection.

However, NE#1 also failed to provide a "detailed description of any force...used." NE#1's Use of Force Report described his application of force:

¹³ NE#1 intended to arrest them for criminal mischief. However, while the arrestees clearly participated in the protest, there was minimal evidence they "knowingly" acted with others to use or threaten force or in any way participated in the use of force. See RCW 9A.84.010.



I ran to the three, who at this point were crouched, and pushed [CM#2] back to the ground and positioned myself over their lower back, holding them in place. I then ordered [CM#2] to place their hands behind their back and lie on their stomach while observing to see if the other two subjects would attempt to intervene further. It was at that time that other officers arrived and took [Complainant] and [CM#1] into custody as well. [CM#2] was compliant so I modulated my force and placed them in handcuffs, frisked them for weapons, then walked [CM#2] into the East Precinct for processing. At this point [CM#2] had not complained of pain nor injury.

NE#1's report made no mention of using a riot stick to push the arrestees, nor does it state NE#1 simultaneously pushed CM#1, CM#2, and the Complainant to the ground. Overall, it understated the nature and level of force used. Moreover, NE#1's statement that he looked to see if CM#1 and the Complainant "would attempt to intervene further" falsely suggested they previously intervened in an arrest. Finally, NE#1's statement that other officers arrested CM#1 and the Complainant omitted his participation in their arrests by pushing them to the ground.

First, NE#1's Use of Force Report's narrative should have documented his use of force on all individuals, even if the report was only addressed CM#2, because he used the same force on all three individuals at the same time. His failure to reference that in his report may have prevented his chain of command's timely and accurate review. Second, NE#1 received a training referral in 2019OPA-0479 for failing to verbally notify a supervisor of another use of force in a similar set of circumstances. As such, OPA cannot find NE#1's failure here was unwillful.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

8.400 - Use of Force Reporting and Investigation 8.400-POL-1 Use of Force Reporting and Investigation 3. Officers, Including Witness Officers, Will Verbally Notify a Supervisor (Eff. 06/19/2020)

It was alleged NE#2 failed to report information concerning the cause of the Complainant's injuries to NE#3.

SPD Policy 8.400-POL-1(3) requires officers, including witness officers, verbally notify a supervisor following a reportable use of force.

Implicit in SPD Policy 8.400-POL-1(3) is that officers must *accurately* notify a supervisor about reportable uses of force. NE#2 did not do so here and his failure to do so significantly confused NE#3's investigation and shaped the instructions NE#3 gave NE#1 about how to report the incident.

NE#2 reported to NE#3 that the Complainant was "complaining of [a head injury], but she doesn't think it happened due to the arrest." NE#2 also told NE#3, "she felt that she was pulled down by the people that were...his arrestee. Cause he...she was trying to pull on her." OPA found no basis in what the Complainant communicated to NE#2 for him to have made these statements.



While the Complainant did tell NE#2 she had prior head injuries, she clearly stated that history caused her concern about the present injury where “they fucking knocked me down.” Additionally, NE#2 escorted the Complainant into the East Precinct as she repeatedly yelled about hitting her head. NE#2 asked the Complainant how she fell. She said, “I turned around because I saw someone in my peripheral vision fall. And as I did that I was knocked to the ground.” The Complainant never said she was pulled to the ground by the protestors. Relatedly, NE#2 also failed to report the Complainant’s scraped knuckles.

NE#2 exhibited questionable care while listening to important information from the Complainant and relaying that information for NE#3 to screen. NE#2’s miscommunication likely caused NE#3 to improperly screen the matter and misinform NE#1 about his reporting obligation. However, OPA appreciates human error does occur, especially in chaotic and stressful situations. Further, such oversights do not necessarily constitute willful misconduct.

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2’s chain of command should discuss OPA’s findings with NE#2, review SPD Policies 8.400-POL-1(1), 8.400-POL-1(3), 8.400-TSK-5, and 8.400-TSK-6 with NE#2 and provide any retraining and counseling it deems appropriate. The retraining and counseling conducted should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

Named Employee #3 - Allegation #1

8.400 - Use of Force Reporting and Investigation 8.400-POL-1 Use of Force Reporting and Investigation 4. The Sergeant Will Review the Incident and Do One of the Following (Eff. 06/19/2020)

It was alleged NE#3 failed to adequately screen NE#1’s use of force.

SPD Policy 8.400-POL-1(4) requires sergeants reviewing uses of force to either: (1) classify the handcuff discomfort, Type I, or Type II incidents appropriately; (2) call FIT to screen all Type III uses of force; or (3) call FIT to screen any contact with a subject’s neck causing or reasonably likely to cause injury or loss of consciousness.

NE#3 failed to classify the Complainant’s injuries as a Type II incident cause by NE#1’s use of force. NE#1 told NE#3 he used his riot stick to knock all three individuals to the ground. However, NE#2 erroneously told NE#3 the Complainant stated her injury was caused by a demonstrator pulling her down, rather than NE#1. NE#3 explained he gave greater weight to the Complainant’s account than NE#1’s account. That was error.

First, NE#3 did not have a statement “from” the Complainant. He had a statement from NE#2 attributed to the Complainant. NE#3 should have further explored NE#1’s account, which indicated a Type II Use of Force. Relatedly, based on NE#1’s statement alone, NE#3 should have considered it a Type II, where pushing someone onto asphalt or concrete is reasonably expected to cause physical injury greater than transitory pain. Finally, NE#3 spoke with the Complainant, who told him she was “knocked” to the ground and hit her head. NE#3 should have done more follow up, especially where being “knocked” to the ground is different from being “pulled” to the ground. NE#3 should have clarified the discrepancy.



Although NE#3 is a seasoned officer, he was not a permanent sergeant or even permanent acting sergeant at the time in question. NE#3 filled in as sergeant during a stressful and chaotic time. According to NE#3, he had minimal force screening experience, and his training was out of date or incomplete. Moreover, NE#2 further complicated NE#3 screening by inaccurately reporting information that tainted NE#3's assessment.

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#3's chain of command should discuss OPA's findings with NE#3, review SPD Policies 8.400-POL-1(4), 8.400-POL-4, and 8.400-TSK-8 with NE#3 and provide any retraining and counseling it deems appropriate. The retraining and counseling conducted should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**