




## CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 22, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0207

### **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 - Lawful and Proper (Expedited)
# 2	5.001 – Standards and Duties. 6. Employees May Use Discretion	Not Sustained - Lawful and Proper

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

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper (Expedited)

***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) and Named Employee #2 (NE#2) used unjustified force during his arrest. Sergeant Officer #1 (SO#1), who screened the incident with the Complainant, submitted the OPA complaint on his behalf. Additionally, this investigation, as with all OPA investigations, was reviewed and certified by the Office of Inspector General (OIG). OIG found it timely, objective, and thorough. Moreover, the excessive force allegations against both officers were classified for Expedited Investigation. That means OPA, with the Office of Inspector General's concurrence, believed it could reach and issue a recommended finding based solely on its intake investigation without interviewing the involved employees. Accordingly, NE#2, who only had an excessive force allegation, was not interviewed.

### **SUMMARY OF INVESTIGATION:**

Following receipt of the complaint, OPA opened an investigation. That investigation included reviewing the complaint, Computer-Aided Dispatch (CAD) data, general offense (GO)/incident report, Community Member #1's (CM#1) and the Complainant's medical records, body worn video (BWV), in-car video (ICV), and photos. OPA also interviewed NE#1.<sup>1</sup>

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<sup>1</sup> OPA made efforts to locate the Complainant for an interview, including contacting the King County District Court to identify his attorney and canvassing the incident location. KCDC informed OPA prosecutors dropped charges against the Complainant.



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**A. Computer-Aided Dispatch (CAD) data**

When 9-1-1 is called, a call taker enters information into the Computer-Aided Dispatch (CAD) system which routes the call to the appropriate sector for deployment.<sup>2</sup> A radio dispatcher communicates with first responders in the field. *Id.* CAD data for this call showed the 9-1-1 call was made on July 6, 2022, at 12:45 AM. The call taker noted:

*Remarks: MALE WALKED UP TO [reporting party] SAYING HE WAS ATTACKED THEN WALKED AWAY 30 SECONDS AGO [last seen eastbound] ON BROUGHAM,, HAS A HEAD [INJURY], [Seattle Fire Department] SCREENED AND RESPONDING DUE TO MALE WALKING*

The incident location was listed as 6<sup>th</sup> Avenue S and Royal Brougham Way. Officers arrived at 12:54 AM and found the Complainant and CM#1. At 12:55 AM, SFD was noted as en route. The Complainant's arrest for assault was also noted.

**B. General offense (GO)/incident report**

NE#1 wrote the GO report. In summary, NE#1 stated upon arrival he found "[the Complainant and CM#1] involved in the physical altercation just east of the intersection." The Complainant "had some type of cloth material wrapped around his head, the front of which was wet with what appeared to be blood." CM#1 "[held] his left arm as if it were injured." First, NE#1 spoke with CM#1, who stated the Complainant attacked him with a metal pipe. CM#1 stated the altercation stemmed from a confrontation the prior night, where they argued about the Complainant making a female guest uncomfortable. Prior to police arriving, the Complainant approached CM#1 armed with a metal pipe and struck his arm. CM#1 reportedly hit the Complainant's head with a belt. The Complainant walked off and returned armed with a metal pipe in each hand. The Complainant struck CM#1 several times with those pipes, causing CM#1 to fall. The Complainant and CM#1 wrestled, causing the Complainant to fall on pavement. CM#1 believed his arm was broken and stated he was unable to move his fingers.

Next, NE#1 spoke with the Complainant, who he described as "uncooperative and not completely answering my questions." The Complainant also referenced the argument the prior night. He also claimed CM#1 initiated the physical altercation that night by throwing chairs and other items at him and striking the Complainant's head with a belt. The Complainant admitted to defending himself but would not elaborate. SFD arrived and treated both. SFD stated CM#1's forearm was possibly broken, and the Complainant's head sustained a minor laceration. An AMR transported CM#1 to a hospital. The Complainant was arrested. An officer tried issuing *Miranda* warnings, but the Complainant was "too argumentative." The King County Jail initially rejected the Complainant due to his head injury. The Complainant was taken to a hospital, medically cleared, and returned to the jail, where he was booked for Assault in the 2nd Degree. See RCW 9A.36.021.

**C. CM#1's medical records**

CM#1's medical records indicated a forearm injury reportedly caused by a blunt object. Specifically, CM#1 had a "linear bruise mid forearm." CM#1 declined a "sling/swath."

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<sup>2</sup> CSCC. CSCC - Police. (n.d.). Retrieved January 16, 2023, from <https://www.seattle.gov/police/about-us/about-policing/csc>



#### **D. The Complainant's medical records**

The Complainant's medical records indicated a two-inch laceration on his forehead, reportedly caused by a belt buckle. He had minor bleeding. The wound was dressed, and the Complainant was released.

#### **E. Body worn videos (BWV)**

BWV captured the officers' full response to the incident, including NE#1 inspecting CM#1's injury, CM#1's interview, NE#1 asking bystanders whether they witnessed the altercation, and NE#1's attempt to interview the Complainant. It also showed the officers discuss who was the primary aggressor, with them settling on the Complainant. NE#1 grabbed the Complainant's wrist to apply handcuffs, and the Complainant replied, "You don't even have to grab me like that." While escorting the Complainant, he stated "I just told you, I'm fucking disabled right there. Why the fuck y'all dragging me like that? My fucking leg fucked up." NE#1 replied, "Your pace." The Complainant stated, "All right then. So, stop fucking pulling on me." NE#2 replied, "You're pulling on us, man." The Complainant stated, "No. You're fucking pulling on my fucking leg." NE#2 replied, "I'm not. I'm pulling on you jacket." The Complainant again stated he was being dragged: "Man, stop fucking dragging on my fucking leg. I told you I'm fucking disabled." NE#1 replied, "You're moving pretty good for me." The Complainant stated, "So what? Stupid ass bitch." At the patrol vehicle, the Complainant was searched, and officers tried to issue *Miranda* warnings. The Complainant interrupted, "Man, fuck you and your mama." NE#1 asked the Complainant to sit, but the Complainant instructed NE#1 to call him mister. NE#1 replied, "Mister [Complainant's last name], can you sit down please?" The Complainant stated, "Don't intimidate me." NE#1 replied, "I'm not trying to intimidate you." Still outside the patrol car, NE#1 held the Complainant's left elbow area. The Complainant stated, "Let me the fuck go." NE#1 released him, and the Complainant entered the patrol car unassisted. The Complainant asked for a cigarette, which NE#1 refused. The Complainant stuck his leg out the door to prevent NE#1 from closing it. NE#1 starts to slowly close the door and the Complainant yelled "You're hurtin me. You're hurtin me. You're hurtin me" and "Police brutality." There is further back and forth about NE#1 not letting the Complainant smoke and them taking CM#1's "punk ass side." Finally, the Complainant puts his leg back inside the patrol car and demands NE#1's supervisor. SO#1 arrived to screen the incident.

#### **F. NE#1's OPA interview**

On October 10, 2022, OPA interviewed NE#1. His account materially mirrored his GO report and OPA's BWV review. Additionally, he stated they determined the Complainant was the primary aggressor largely based on him reportedly being armed, them finding the alleged weapon on scene, and the significance of CM#1's injury (a possibly broken arm) versus the Complainant's "minor laceration."

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

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

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

An officer will use only the force objectively reasonable, necessary, and proportional to effectively bring an incident or person under control, while protecting the life and safety of all persons. SPD Policy 8.200- POL-1. In other words, officers will only use objectively reasonable force, proportional to the threat or urgency of the situation, when



necessary, to achieve a law-enforcement objective. The force used must comply with federal and state law and Seattle Police Department policies, and rules for specific weapons and tools. *Id.*

Here, the Complainant alleged NE#1 and NE#2 forcefully grabbed his wrist to handcuff him, dragged him to a patrol car, and closed the patrol car door against his leg. However, BWV dispelled all those allegations. BWV showed the Complainant was aggressive and uncooperative throughout the encounter. After establishing probable cause the Complainant unjustifiably used a metal pipe to possibly break CM#1's arm, the officers used *de minimis*<sup>3</sup> tactics to arrest him. NE#1's wrist grab was objectively reasonable, necessary, and proportional to execute a lawful arrest of a belligerent subject. While being escorted to the patrol car, the Complainant complained about being dragged. NE#1 indicated they would move at the Complainant's pace. While sitting in the patrol car, upset he was not allowed to smoke, the Complainant intentionally stuck his leg out the door so NE#1 could not close it. NE#1 slowly closed it, without appreciable force, and the Complainant finally moved his leg.

Overall, OPA found the officers were respectful (even calling the Complainant "mister" at his request) and patient with the Complainant. Accordingly, OPA recommends this allegation be Not Sustained-Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

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

##### ***5.001 – Standards and Duties. 6. Employees May Use Discretion***

Employees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the Department and duties of their office and assignment. SPD Policy 5.001-POL-6. Discretion is proportional to the severity of the crime or public safety issue being addressed. *Id.*

Here, the officers had little discretion where they established probable cause to arrest the Complainant for Assault in the 2nd Degree. Specifically, they had a significantly injured victim (CM#1) whose account was corroborated by the metal pipe found on scene. Given the severity of the crime and the Complainant's relentless aggression in their presence, officers had arguably no discretion. They also screened the incident with SO#1, who approved the arrest. Accordingly, OPA recommends this allegation be Not Sustained-Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

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

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

For the reasons outlined at Named Employee #1 – Allegation #1, OPA recommends this allegation be Not Sustained-Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

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<sup>3</sup> De Minimis Force is physical interaction meant to separate, guide, and/or control without the use of control techniques that are intended to or are reasonably likely to cause any pain or injury. SPD Policy 8.050.