



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 19, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0266

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 - Unfounded (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.

ADMINISTRATIVE NOTE:

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. Additionally, it was 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 employee.

SUMMARY OF INVESTIGATION:

An administrative lieutenant (AL#1) reviewed NE#1's body worn video (BWV) capturing a subject's (the Subject) arrest. During that review, she noticed, after her arrest, the Subject claimed she was tackled, beaten, and kned in the face. AL#1 sent an unsubstantiated misconduct screening¹ request to OPA. After reviewing the incident, OPA directed AL#1 to formally submit the allegation of potential misconduct to OPA. OPA opened an investigation.

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.² A radio dispatcher communicates with first responders in the field. *Id.* CAD data for this call showed the 9-1-1 call was made May 28, 2022, at 01:05 PM. The call taker noted:

Remarks: FEMALE IN FRONT OF BAR WITH BLK HANDGUN AND BRANDISHING IT AT PEOPLE.

¹ Allegations of misconduct that are clearly refuted by evidence can be investigated and documented by the chain of command and then screened with OPA via email. OPA Internal Operations and Training Manual 8.1. The OPA Director or their designee reviews the information and relevant video to determine if the allegation is disproved by the evidence or whether it is necessary for the supervisor to formally submit the allegation of potential misconduct to OPA. *Id.*

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



B. General offense (GO)/incident report

NE#1 wrote the related GO report. In summary, he described responding to the person with a gun call at a bar on May 28, 2022. The 9-1-1 caller described the offender as a Black female, 20-30 years old, 5'8, curly black hair, wearing a black shirt and pants. NE#1 spoke to the 9-1-1 caller, who stated the offender walked southbound on University Way NE when she realized police were en route. The 9-1-1 caller gave NE#1 a consistent description, adding her jeans were ripped, and stated she pulled a gun on a patron in the bathroom. The 9-1-1 caller also stated he saw the gun in her back waistband. While canvassing for the Subject, NE#1 flagged down the 9-1-1 caller. The 9-1-1 caller again confirmed the Subject's description and reported she was near 4145 University Way NE. He also described her gun as black with a silver extended magazine. NE#1 continued canvassing and found the Subject on the 4200 block of University Way. NE#1 saw several other young adults partially matching the description provided by the 9-1-1 caller, so he called the 9-1-1 caller to ask whether the offender's shirt had green letters. The 9-1-1 caller stated he "believed so." While talking to the 9-1-1 caller, NE#1 saw the Subject walk away from him toward 4217 University Way NE. The Subject walked southbound and turned west on University Way NE/NE 42nd Street. She ran southbound in an alley. NE#1 activated his emergency lights and ordered her to stop. The Subject kept running then slowed to a walk. NE#1 ordered her to raise her hands and get on the ground. The Subject raised her hands but kept walking. NE#1 re-issued the order, but she kept walking. NE#1 stated he "guided [the Subject] to the ground and took her into custody." A gun was recovered "in the knee rip of her jeans."

NE#1 returned to the bar and spoke to a security officer who reported someone telling him a female patron had a gun in the bathroom. The security officer reportedly entered the bathroom, saw the Subject place a gun in the small of her back, and hide in a stall. He told her to leave. The security officer said the Subject was reluctant but finally left. On scene, the security officer positively identified the Subject as the offender. NE#1 also spoke to the alleged victim. The victim stated she was in the bathroom with the Subject when the Subject retrieved a gun from a silver purse and talked about being raped when she was 14 years old. The victim described the Subject as "very upset." The victim attempted to console the Subject with a hug, but looked in a mirror and saw the Subject aiming the gun at the small of the victim's back. Another patron entered the bathroom, saw the interaction, and went for help.

C. Use of Force Statement

NE#1's Use of Force Statement significantly mirrored his GO report. Additionally, he noted, when he called the 9-1-1 caller to confirm whether the offender's shirt had green letters, the 9-1-1 caller indicated the Subject was "pretty drunk." Based on the 9-1-1 caller's account, NE#1 believed he "had probable cause to arrest [the Subject] for RCW 9A.12.270 – Weapons apparently capable of producing bodily harm and 12A.16.010 – Obstructing a public officer." NE#1 also described the force applied against the Subject prior to her arrest:

Officers proceeded to order [the Subject] to stop moving. She ignored my commands. I ran up to [the Subject], grabbed her right arm using both my left and right hands, proceeded to pull her toward the ground using a c-step to turn my body. This caused [the Subject] to hit her face on the ground.

NE#1 noted the recovered gun was loaded with 16 rounds in an extended magazine and verified as stolen.



D. Review of the Use of Force

A sergeant (SO#1) reviewed NE#1's use of force. SO#1 noted the incident happened when "bars start emptying" and "There were numerous heavily intoxicated potential victims walking around[.]" SO#1 also noted NE#1 approached the Subject with multiple officers and utilized time, distance, and shielding "by keeping his patrol vehicle in between [the Subject] and himself while giving commands and giving [the Subject] an opportunity to respond." SO#1 concluded "de-escalation was no longer feasible when [the Subject] continued to run towards an occupied apartment complex and forced officers into intervening." SO#1 described NE#1's force as "a modified armbar hold" applied to the Subject's right arm and "an armbar takedown" to put "[the Subject] on her stomach in a prone [handcuffing] position." SO#1 stated the takedown caused the Subject to strike her face on the pavement. SO#1 stated the Seattle Fire Department (SFD) arrived, examined the Subject, and determined the Subject's mouth injuries were from her braces.

AL#1 also reviewed NE#1's use of force. In addition to sending OPA an unsubstantiated misconduct screening, she contacted a lieutenant at SPD's Force Investigation Team (FIT) to screen the Subject's possible loss consciousness after hitting the pavement. The FIT lieutenant pointed out the Subject spoke after hitting the ground, which suggested she did not lose consciousness. Further, AL#1 found no BWV evidence substantiating the Subject's claim of being tackled, beaten, and kned in the face.

E. SFD Patient Care Record

SFD's Patient Care Record showed the Subject had blood in her mouth, a left knee scrape, and possible facial injury. It noted she had braces that impacted the back side of her lips. It also noted the Subject spoke "in complete sentences."

F. BWV

BWV materially mirrored NE#1's GO report.

The Subject fleeing in the alley.



The Subject running after NE#1 activated emergency lights and ordered her to stop.



The Subject running with her right hand at her hip, before NE#1 exits the patrol car and demands to see her hands.



The Subject walking away with her arms raised after being issued several orders to stop.



NE#1's applying an armbar to the Subject's right arm after she refused several orders to stop.



The Subject post-impact with the pavement.



Recovered gun.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1



8.200 – Using Force 1. Use of Force: When Authorized

It is alleged NE#1 used unauthorized force to arrest the Subject.

An officer's use of force must be reasonable, necessary, and proportional. SPD Policy 8.200(1). 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 officer when force is applied 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, an officer's application of force must be proportional to the threat posed to the officer. *Id.*

Here, prior to applying force, NE#1 knew the Subject reportedly threatened another with a firearm, was reportedly intoxicated, and eluded police. After issuing several failed orders to stop, NE#1 grabbed the Subject's arm to apply what appeared to be a textbook armbar takedown. Specifically, NE#1 controlled the Subject's right arm, stepped back with his outside leg, and guided her toward the ground in a C-like motion.

Armbar takedown demonstration.



Unbeknownst to NE#1, as determined by SFD, the Subject's braces exacerbated her impact with the ground. OPA acknowledges performing that type of takedown on pavement could foreseeably result in the Subject's sustained injuries. However, as SO#1 noted, bars were closing and there were several vehicles on the road and residences in the area making the uncooperative Subject, who already demonstrated a willingness to use the gun, an imminent threat. While an unsophisticated description of NE#1's use of force could reasonably interpret it as a tackle, no reasonable review would suggest she was beaten or kned in the face as she reported. Overall, where the evidence shows NE#1 intended to use a relatively low level of force³ to apprehend an armed, dangerous, and uncooperative individual, OPA found his actions objectively reasonable, necessary, and proportional.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

³ NE#1 apparently intended to apply *de minimis* or at best Type 1 force. *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. It includes the "use of control holds or joint manipulation techniques in a manner that does not cause any pain." *Id.* Type 1 is "force that causes transitory pain or the complaint of transitory pain." *Id.* However, NE#1's application of force on pavement which coupled with the Subject's braces resulted in her mouth injury, elevated it to Type II force. Type II is "Force that causes or is reasonably expected to cause physical injury greater than transitory pain but less than great or substantial bodily harm." *Id.*



Seattle
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Recommended Finding: Not Sustained (Unfounded)