



## CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 24, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0297

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

#### Named Employee #1

Allegation(s):		Director's Findings
# 1	8.000 - Use of Force Core Principles 8.000 - POL 4. An Officer Will Use Only Force That Is Objectively Reasonable, Necessary, and Proportional to the Threat or Resistance of a Subject.	Not Sustained - Lawful and Proper (Expedited)

#### Named Employee #2

Allegation(s):		Director's Findings
# 1	8.000 - Use of Force Core Principles 8.000 - POL 4. An Officer Will Use Only Force That Is Objectively Reasonable, Necessary, and Proportional to the Threat or Resistance of a Subject.	Not Sustained - Lawful and Proper (Expedited)

#### Named Employee #3

Allegation(s):		Director's Findings
# 1	8.000 - Use of Force Core Principles 8.000 - POL 4. An Officer Will Use Only Force That Is Objectively Reasonable, Necessary, and Proportional to the Threat or Resistance of a Subject.	Not Sustained - Lawful and Proper (Expedited)

#### Named Employee #4

Allegation(s):		Director's Findings
# 1	8.000 - Use of Force Core Principles 8.000 - POL 4. An Officer Will Use Only Force That Is Objectively Reasonable, Necessary, and Proportional to the Threat or Resistance of a Subject.	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.***

It was alleged that, on August 28, 2022, the Named Employees used unnecessary force during a subject's domestic violence arrest. It was further alleged that the use of force caused the subject to call out in pain several times. The subject further claimed the use of force exacerbated a pre-existing leg injury.

### **ADMINISTRATIVE NOTE:**

This case was designated an Expedited Investigation. That means OPA, with the Office of Inspector General's review and agreement, believed it could reach and issue recommended findings based solely on its intake investigation, without interviewing the involved employees. As such, OPA did not interview the involved employees.



During the incident, the subject repeatedly alleged the Named Employees were racist. That allegation was processed through a Bias Review, which determined it was unsubstantiated. See OPA Manual, section 8.6; SPD Manual 5.140-POL-5, -POL-6, and -PRO-1.

**SUMMARY OF INVESTIGATION:**

OPA reviewed the Blue Team complaint, Computer-Aided Dispatch (CAD) data, incident and supplemental reports, Use of Force reports, and Body-Worn Video (BWV). The subject declined to participate in an OPA interview.

*A. Computer-Aided Dispatch (CAD)*

On August 28, 2022, at 3:25 AM, the Named Employees responded to a domestic violence call. The call taker noted:

*[Reporting Party] IS SAYING HIS CHILD'S MOTHER IS REFUSING TO LET HIM INTO THE UNIT. HE'S BANGING ON THE DOOR AND REFUSING TO ANSWER QUESTIONS.*

*B. Body-Worn Video (BWV)*

OPA reviewed the Named Employees' BWV, which in summary showed:

NE#1 and NE#4 arrived on scene and contacted the subject. The subject indicated he called 911 but did not want to speak to the officers. NE#1 and NE#4 contacted Community Member #1 (CM#1) who reported the subject assaulted her at a nearby bar. Specifically, CM#1 stated the subject threw coins at her face and chased her, causing her to fall to her knees. She also stated the subject kicked her. CM#1 had a small cut under her right eye and scrapes on her knees.

NE#1 and NE#4 relocated to the subject, who sat at a picnic table outside the building. NE#2 and NE#3 arrived on scene. NE#1 approached the subject's right side and told him he was under arrest. NE#1 grabbed the subject's right arm and NE#2 grabbed the subject's left arm. NE#1 and NE#2 positioned the subject's arms behind his back. NE#2 handcuffed the subject.

Officers told the subject he was arrested for a domestic violence assault. Officers helped the subject stand and they escorted him out the gated complex. As they approached the gate, the subject turned towards NE#2. NE#2 pushed the subject towards the gate and stated, "Why you turning on me?" Officers then guided the subject toward the front of a patrol vehicle. NE#2 and NE#3 leaned the subject onto the hood and performed a custodial search. After the search, NE#2 grabbed the subject's upper left arm and told him to stand. The subject exclaimed, "Ow! Ow! Quit grabbing my arm."

NE#2 and NE#3 escorted the subject to the back of the patrol vehicle. The subject stiffened his legs to impede their progress. At the open back door, NE#2 repeatedly told the subject to sit in the vehicle. The subject responded with profanity and demanded to sit without assistance. NE#2 released the subject to allow him to sit. The subject leaned within inches of NE#2's face and said "I can get in myself." NE#2 pushed the subject into the back of the patrol car, placed his legs inside, and shut the door. NE#2 told his partners, "I thought he was gonna headbutt me."



Witness Supervisor #1 (WS#1), the Named Employees' supervisor, arrived on scene to screen the subject's arrest. WS#1 asked the subject whether he was injured. The subject stated his leg was broken. The Subject further stated NE#2 exacerbated a pre-existing leg injury and requested to be evaluated by the Seattle Fire Department (SFD). SFD arrived and evaluated the subject, who sat in the back of the patrol vehicle. SFD personnel told WS#1 the subject had no apparent injuries.

After SFD's evaluation, WS#1 asked the subject to place his legs back inside the vehicle. The subject refused, stating he would only allow "medical people" to move his legs. From the back passenger side door, NE#4 pulled the subject inside the vehicle while NE#3 lifted the subject's legs. The subject shouted, "ow!"

*C. NE#1's General Offense Incident Report*

NE#1 wrote a General Offense (GO)/ incident report. He wrote that officers interviewed CM#1, whose injuries were consistent with her account.

*D. Use of Force Documents*

Each of the Named Employees, WS#1, and WS#1's supervisor (Witness Supervisor #2 or WS#2) completed use of force documents for the incident.

NE#1, NE#2, and NE#3 documented the subject's complaint of pain during the custodial search. Each wrote they did not understand why he cried out in pain.

NE#2 further noted he pushed the subject into the patrol vehicle when, "[the subject] turned toward me and placed his face within inches of mine. For fear of possibly being struck or spit on I used my arms to put him in the patrol car."

NE#4 documented his interaction with the subject was limited to assisting with handcuffing and lifting the subject's legs into the patrol vehicle. NE#4 reported the subject did not complain of pain in either instance.

WS#1 wrote he interviewed the Named Employees and the subject on scene. WS#1 determined, although the subject exclaimed "ow!" several times, he did not elaborate about what caused his discomfort. WS#1 requested an SFD evaluation for the subject. WS#1 determined *de minimis* force was used by the Named Employees, but due to the subject's complaints of pain, he ordered the Named Employees to treat it as a Type 1 use of force:

*The force used by officers is de-minimums (only classified as Type I because complaint of pain), and included trained control hold tactics, to apprehend the suspect and place him in handcuffs and the backseat of a patrol car... I approve this Use of Force incident, as it was necessary, objectively reasonable, proportional and within Department policy and used to apprehend a domestic violence assault suspect.*

**ANALYSIS AND CONCLUSIONS:**

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

**8.000 - Use of Force Core Principles 8.000 - POL 4. An Officer Will Use Only Force That Is Objectively Reasonable, Necessary, and Proportional to the Threat or Resistance of a Subject.**



The subject alleged NE#1 used unnecessary force, during his arrest, causing him pain and exacerbating a pre-existing leg injury.

“An Officer Will Use Only Force That Is Objectively Reasonable, Necessary, and Proportional to the Threat or Resistance of a Subject.” SPD Policy 8.000-POL-4. “The reasonableness of a particular use of force is based on the totality of circumstances known by the officer at the time of the use of force and weighs the actions of the officer against the rights of the subject, in light of the circumstances surrounding the event.” SPD Policy 8.050. The policy instructs, “[t]he calculus of reasonableness must allow for the fact that police officers are often forced to make split-second decisions—in circumstances that are tense, uncertain, dynamic and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Id.* Necessary means “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.* Proportional means “the level of force applied must reflect the totality of circumstances surrounding the situation at hand.” *Id.*

Here, BWV showed NE#1 used *de minimis* force to handcuff the subject and hold him in place during the search. While the subject complained of pain, he refused to elaborate about the source of that pain. Furthermore, SFD evaluated the subject and determined the subject’s complaints stemmed from a year-old injury and did not require emergency treatment. WE#1 reviewed NE#1’s use of force and concluded it was, “objectively reasonable, necessary, and proportional” under the circumstances. OPA concurs.

Accordingly, OPA recommends this allegation be Not Sustained - Lawful and Proper (Expedited)

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

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

***8.000 - Use of Force Core Principles 8.000 - POL 4. An Officer Will Use Only Force That Is Objectively Reasonable, Necessary, and Proportional to the Threat or Resistance of a Subject.***

The subject alleged NE#2 used unnecessary force, during his arrest, causing him pain and exacerbating a pre-existing leg injury.

Here, BWV showed NE#2 used *de minimis* force to help hold the subject during the search. NE#2 also pushed the subject against a gate and into the back of a patrol vehicle. Those applications of *de minimis* force were reasonable, necessary, and proportional to overcome the subject’s resistance and defend against the subject’s threatening behavior (putting his face within inches of NE#2’s face). While the subject complained of pain, he refused to elaborate about the source of that pain. Furthermore, SFD evaluated the subject and determined the subject’s complaints stemmed from a year-old injury and did not require emergency treatment. WE#1 reviewed NE#2’s use of force and concluded it was, “objectively reasonable, necessary, and proportional” under the circumstances. OPA concurs.

Accordingly, OPA recommends this allegation be Not Sustained - Lawful and Proper (Expedited)

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



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

***8.000 - Use of Force Core Principles 8.000 - POL 4. An Officer Will Use Only Force That Is Objectively Reasonable, Necessary, and Proportional to the Threat or Resistance of a Subject.***

The subject alleged NE#3 used unnecessary force, during his arrest, causing him pain and exacerbating a pre-existing leg injury.

Here, BWV showed NE#3 used *de minimis* force to assist with handcuffing and holding the subject during the search. While the subject complained of pain, he refused to elaborate about the source of that pain. Furthermore, SFD evaluated the subject and determined the subject's complaints stemmed from a year-old injury and did not require emergency treatment. WE#1 reviewed NE#3's use of force and concluded it was, "objectively reasonable, necessary, and proportional" under the circumstances. OPA concurs.

Accordingly, OPA recommends this allegation be Not Sustained - Lawful and Proper (Expedited)

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

**Named Employee #4 - Allegation #1**

***8.000 - Use of Force Core Principles 8.000 - POL 4. An Officer Will Use Only Force That Is Objectively Reasonable, Necessary, and Proportional to the Threat or Resistance of a Subject.***

The subject alleged NE#4 used unnecessary force, during his arrest, causing him pain and exacerbating a pre-existing leg injury.

Here, BWV showed NE#4 used *de minimis* force to assist with searching the subject. While the subject complained of pain, he refused to elaborate about the source of that pain. Furthermore, SFD evaluated the subject and determined the subject's complaints stemmed from a year-old injury and did not require emergency treatment. WE#1 reviewed NE#4's use of force and concluded it was, "objectively reasonable, necessary, and proportional" under the circumstances. OPA concurs.

Accordingly, OPA recommends this allegation be Not Sustained - Lawful and Proper (Expedited)

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