




CLOSED CASE SUMMARY

ISSUED DATE: MARCH 27, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0324

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties POL-6 Employees May Use Discretion	Not Sustained - Lawful and Proper (Expedited)

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)

Named Employee #3

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties POL-6 Employees May Use Discretion	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 the named employees responded to a hit-and-run/road rage incident involving the Complainant. The Complainant alleged Named Employee #1 (NE#1) and Named Employee #3 (NE#3) used unreasonable discretion by handcuffing him. The Complainant also alleged Named Employee #2 (NE#2) used unauthorized force while escorting the Complainant to a patrol vehicle.

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 in this case.

The Complainant also alleged Witness Officer #1 (WO#1) was unprofessional by telling him to sit on a curb and suggesting he was intoxicated. OPA returned that allegation to the chain of command for a Supervisor Action.¹

¹ Where a complaint involves a "minor policy violation or performance issue" that would be "best addressed through training, communication, or coaching by the employee's supervisor," OPA may refer the issue for the employee's supervisor to take



SUMMARY OF INVESTIGATION:

Witness Supervisor #1 (WS#1), an SPD supervisor, sent OPA a Blue Team complaint on the Complainant's behalf. WS#1 documented responding to the incident location following several 9-1-1 calls about a "male hanging onto a moving box truck and pounding on the window with a gun." WS#1 described the Complainant as "agitated and [inconsolable]" after he was detained and handcuffed. WS#1 documented his attempts to explain why responding officers handcuffed the Complainant. WS#1 wrote he confirmed the Complainant wanted to file a complaint.

OPA initiated an intake investigation. During its investigation, OPA reviewed the Blue Team complaint, Computer-Aided Dispatch (CAD) call report, incident report, and body-worn video (BWV). OPA called the Complainant on three occasions. The Complainant did not answer OPA's calls or return OPA's request callback.

a. CAD Call Report and Incident Report

OPA reviewed SPD paperwork for this call, notably the CAD call and incident reports. That documentation showed officers responded to a "possible road rage" call with the reporting party noting a "male with a gun was holding on to the outside of a budget rental truck while it was driving [eastbound]."

NE#2 wrote the incident report. In summary, NE#2 wrote officers contacted the Complainant, who drove an involved vehicle. NE#2 documented the Complainant was "extremely agitated" with "scrapes and bruises" on his arms and legs. NE#2 wrote the Complainant was "yelling and not listening to the officer's instruction." NE#2 wrote the Complainant ignored instructions to "leave alone" a pocketknife in his front pocket. NE#2 wrote the Complainant removed the folded knife and waved it in an officer's face. NE#2 also wrote the Complainant "ran back to his car" against officer instructions. NE#2 wrote the Complainant was handcuffed due to the call remark about a "person with a gun," the officer's belief the Complainant was that individual, and the Complainant's "uncontrollable aggressive behavior."

NE#2 wrote the Complainant stated he was "struck by a large box truck" that attempted to flee. NE#2 wrote the Complainant admitted he "jumped onto the driver's side and pounded on the window with the back of his knife, trying to break out the window to get the driver to stop." NE#2 wrote the Complainant stated the box truck driver fled at eighty miles per hour, causing the Complainant to fall and sustain injuries.

NE#2 documented no firearm was found, and the Complainant declined to consent to search his vehicle.

NE#2 wrote the box truck driver's employer later called the police. The employer stated the box truck driver reported he started to pull over after a collision when a male with a gun aggressively approached. The employer indicated their driver said he drove away as the male with a gun "jumped on the driver's side" of the truck before eventually falling off.

specific, relevant action with the employee. See OPA Internal Operations and Training Manual, Section 5.4(B)(ii). The employee's supervisor has fifteen days to complete the action and return it to OPA for review. *Id.*



NE#2 documented contacting the original 9-1-1 caller, who also reported a male on the driver's side of a truck banging the window with a handgun before pointing the gun at the driver until he fell off the truck.

b. Body Worn Video

BWV captured the relevant interactions between the Complainant and the named employees.

WO#1 and NE#1 were the first officers to contact the Complainant. The Complainant was agitated, spoke loudly, and cursed while describing the hit-and-run to NE#1. The Complainant also had visible injuries. While speaking with WO#1, the Complainant appeared to sway and asked to sit down. WO#1 directed the Complainant to sit on the curb. WO#1 asked the Complainant if he had "any weapons" and explained, "someone said they saw you with a gun." The Complainant reached toward his front right pocket, and WO#1 ordered him not to reach. The Complainant pulled a folded pocket knife out of his pocket and showed it to WO#1. The Complainant said he was "trying to bang the window." WO#1 told the Complainant to put the knife away. She also told the Complainant if a police officer asks whether he had weapons, he should not "grab for a weapon." The Complainant walked to his vehicle and said what sounded like, "I'm not a danger to you." The Complainant opened his driver-side door and put the knife inside.

WO#1 told the Complainant to "have a seat" and "chill" while indicating toward the curb. The Complainant walked towards his vehicle and reached to open the rear driver's side door. WO#1 said, "Hey" and "Stop," before holding the vehicle door closed with her hand. The Complainant asked to sit in the back seat of his vehicle. WO#1 said no and again told the Complainant to sit on the curb. The Complainant asked WO#1, "What's wrong with you?" several times with a raised voice. The Complainant asked, "You gonna throw me on the ground?" WO#1 responded, "No," and "I'm gonna have you sit on the curb."

The Complainant asked NE#1 whether he could retrieve his knife from his vehicle because WO#1 was "tripping." NE#1 backed the Complainant up and asked him to sit on the curb. The Complainant refused. NE#3 and another officer approached, and the Complainant stated, "Why you guys surrounding me?" NE#3 said, what sounded like, "Because you're confronting an officer." NE#3 instructed the Complainant to sit down. The Complainant stated NE#1 had his knife. WO#1 explained the Complainant grabbed the knife earlier and "did this (motioning with her hand)." The Complainant loudly denied the accusation.

NE#1 and NE#3 grabbed the Complainant and guided him towards the curb. As NE#1 and NE#3 attempted to guide the Complainant toward sitting on the curb, the Complainant stood up and stated his knee hurt. NE#1 and NE#3 handcuffed the Complainant.

Five minutes later, the Seattle Fire Department (SFD) arrived to attend to the Complainant's injuries. About fifteen minutes later, NE#2 and Witness Officer #2 (WO#2) screened to determine whether the Complainant was intoxicated. WO#2 asked the Complainant whether he would consent to field sobriety tests. The Complainant responded, "Are you fucking serious?" and "You're not gonna give me no damn alcohol test." The Complainant asked WO#2 about the tests. WO#2 started to explain how the test worked (having the subject follow a pen with their eyes.) The Complainant suddenly stepped towards WO#2 while leaning towards WO#2 and looking directly at WO#2. At the same time, the



Complainant stated, “You know what, man? That’s the stupidest thing. Give me the Goddamn blow test, please.” NE#2 stepped forward and grabbed the Complainant’s left shoulder. NE#2 guided the Complainant back and placed a hand on the Complainant’s chest to guide him back. NE#2 told the Complainant, “Do not step up to a police officer like that.” The Complainant argued and talked over NE#2. NE#2 turned the Complainant around and escorted the Complainant about fifteen to twenty-five yards to an SPD vehicle. NE#2 frisked the Complainant. A short time later, WO#1 administered a Portable Breath Test (PDT) to the Complainant.

The Complainant requested and was allowed to speak with a supervisor.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties POL-6 Employees May Use Discretion

The Complainant alleged NE#1 and NE#3 used unreasonable discretion when they handcuffed him.

“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. This policy further states, “[d]iscretion is proportional to the severity of the crime or public safety issue being addressed.” *Id.*

Here, NE#1 and NE#3 did not abuse discretion by handcuffing the Complainant. Officers may handcuff subjects based on reasonable suspicion for the detention and “additional articulable justification.” SPD Policy 6.220-POL-2(2). As an initial matter, the basis for the Complainant’s detention also justified handcuffing him. The original 9-1-1 caller described the subject with the gun as a male in a green Lexus SUV. The Complainant’s vehicle matched that description. The description of the subject as armed and violent made it reasonable to handcuff him during their investigation.

Moreover, WO#1 told the named employees the Complainant had a knife and failed to comply when ordered not to reach for it. NE#1 and NE#3 also observed the Complainant’s agitated state and knew the reported firearm remained unaccounted for. For those reasons, neither NE#1 nor NE#3 used unreasonable discretion by handcuffing the Complainant.

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

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

Named Employee #2 - Allegation #1

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

The Complainant alleged NE#2 “manhandled him.”

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.*

Here, NE#2 used *de minimis* force to separate the Complainant from WO#2 and guide the Complainant to a police vehicle. Even though the Complainant was handcuffed, both uses of force were reasonable, necessary, and proportional. In addition to the information NE#2 already had about the Complainant’s earlier behavior, NE#2 observed the Complainant suddenly and aggressively approach WO#2 while elevating his voice and leaning towards WO#2. NE#2 also watched the Complainant argue with NE#2 after NE#2 moved the Complainant back a few feet.

NE#2’s use of *de minimis* force was reasonable to control the Complainant and was minimally invasive. Moreover, it was necessary to protect WO#2 and the Complainant as the Complainant confronted WO#2. No other reasonably effective alternative existed. Finally, the *de minimis* use of force was proportional to the demonstrated aggression shown by the handcuffed Complainant.

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

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

Named Employee #3 - Allegation #1

5.001 - Standards and Duties POL-6 Employees May Use Discretion.

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

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