



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 3, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0326

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)
# 2	8.200 - Using Force 8.200 Using Force 6. Recognizing the Urgency of Providing Medical Aid and the Importance of Preserving Human Life, Following a Use of Force [...]	Not Sustained - Training Referral (Expedited)

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Unfounded (Expedited)
# 2	8.200 - Using Force 8.200 Using Force 6. Recognizing the Urgency of Providing Medical Aid and the Importance of Preserving Human Life, Following a Use of Force [...]	Not Sustained - Training Referral (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:

It was alleged that Named Employee #1 (NE#1) and Named Employee #2 (NE#2) used excessive force when they "body slammed" Community Member #1 (CM#1). It was also alleged the named employees failed to request medical aid when CM#1 stated he could not breathe.

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 named employees. As such, OPA did not interview the named employees.

During its intake investigation, OPA noted NE#2 responded unprofessionally when CM#1 directed disparaging remarks at NE#2. OPA returned NE#2's SPD Policy 5.001-POL-10 violation to his chain of command for Supervisor Action.

SUMMARY OF INVESTIGATION:

The Complainant—a lieutenant—forwarded the complaint to OPA. The Complainant stated the named employees responded to a store for a shoplifting-related call. The Complainant wrote store security identified CM#1 by name.



The Complainant wrote the named employees established probable cause to arrest CM#1 for trespassing.¹ The Complainant wrote the named employees contacted CM#1, and he fled on foot. The Complainant indicated the named employees pursued CM#1, and NE#2 applied a “body wrap” technique, causing CM#1 to land on his right elbow. CM#1 was rolled into a prone position, where he struggled with the named employees. The Complainant wrote CM#1 repeatedly, saying he could not breathe. The Complainant wrote CM#1 was eventually handcuffed and placed in the recovery position. CM#1 stated the named employees “slammed his body and head against the concrete.” The Complainant wrote the Seattle Fire Department (SFD) was requested to evaluate CM#1. The Complainant documented SFD noted a minor abrasion to CM#1’s forehead but no head trauma consistent with the force CM#1 alleged. The Complainant wrote CM#1 was transported to a hospital after he claimed to swallow heroin before his arrest.

OPA opened an intake investigation. During the intake, OPA reviewed the OPA complaint, Computer-Aided Dispatch (CAD) call report, incident report, supplemental reports, use of force documents, SFD records, 9-1-1 audio & radio traffic, body-worn video (BWV), and private security video. OPA contacted CM#1’s attorney, who indicated she advised CM#1 not to speak with OPA while the related criminal case pended. CM#1’s attorney agreed to give CM#1 OPA’s information. OPA has not had further contact with CM#1 or his attorney.

OPA’s evidence review showed the following, in summary:

On August 9, 2022, at 4:15 PM, the named employees were dispatched to a Home Depot store concerning a male who was previously trespassed from the location. The male—later identified as CM#1—reportedly climbed shelves to access higher-value items. The named employees spoke with Home Depot’s loss prevention agent, who reported CM#1 was in the store, was previously banned, and had just broken cages to access merchandise. Loss prevention stated CM#1 staged the merchandise around the store, which was consistent with his past theft method. The named employees determined there was probable cause to arrest CM#1 for burglary under RCW 9A.52.030. The named employees also learned CM#1 had active warrants, which were later verified.

The named employees observed CM#1 exit the store from the lumber section. The named employees identified themselves and contacted CM#1, who asked why he was ordered to stop. As NE#1 answered, CM#1 pulled away and fled on foot. The named employees chased CM#1, with NE#2 leading the pursuit.

NE#2 caught up to CM#1, who stopped running and faced NE#2. As NE#2 grabbed CM#1’s left arm, CM#1 raised his right hand and made a fist while facing NE#2. As NE#1 approached, NE#1 pointed his TASER at CM#1 and warned he would be tased if he “touched” NE#2. CM#1 broke from NE#2’s grasp and ran. NE#2 caught up with CM#1, wrapped his arms around CM#1’s waist and swung CM#1 to the ground.

OPA’s frame-by-frame review of the takedown showed CM#1’s right elbow hit the ground, but his shoulders and head did not. CM#1 rolled onto his stomach and braced himself with his hands as officers pinned him to the ground: NE#1 held CM#1’s left hip and pressed his upper torso across CM#1’s upper back. NE#2 positioned his knee across the middle of CM#1’s back. At that time, CM#1 spoke with the named employees, asked questions, and repeatedly stated he could not breathe.

NE#1 stated, “just hold him until we get other officers here.” NE#1 appeared to hold CM#1’s right wrist under CM#1’s chest. About a minute later, other officers arrived, and about thirty seconds later, CM#1 was handcuffed and rolled

¹ CM#1 was previously banned from the store.



into the recovery position. About three minutes after CM#1 was taken down, NE#1 called for SFD. About thirty seconds later, officers sat CM#1 up.

SFD arrived about seven minutes after they were called and attended to CM#1's small forehead and elbow abrasions.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

CM#1 alleged the named employees used excessive force to arrest him.

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." *Id.* 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, applications of force must be proportional to the threat posed to the officer. *Id.*

CM#1 alleged the named employees "body slammed" him and "slammed" his head and knees against concrete. However, BWV and store security did not support those allegations. Video footage further suggested officers applied reasonable, necessary, and proportional force.

The named employees established probable cause to arrest CM#1, who actively resisted and fled on foot. When NE#2 caught up to CM#1, CM#1 made a fist and cocked his arm before pulling away and raising his fist at NE#2. BWV and store surveillance video showed NE#2 applying a "body wrap/bear hug" technique to takedown CM#1. His head did not hit the ground. On the ground, CM#1 continued to resist. When SFD evaluated CM#1, the listed "chief complaint" was a forehead scratch and a minor right elbow abrasion.

While NE#2 used Type II force to apprehend and secure CM#1, it was objectively reasonable. There was probable cause to arrest CM#1 for a felony. CM#1 presented significant resistance, repeatedly pulling away and twice threatening NE#2 with his fist. CM#1 showed a substantial risk of escape, and there was strong government interest in apprehending him for burglary and outstanding warrants.

The named employees' force was also necessary as no reasonably effective alternative was available to execute their lawful purpose: apprehending CM#1. CM#1 ignored several commands and defeated the officers' control-hold efforts. Finally, the use of force was proportional to the active resistance CM#1 presented.

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

Recommended Finding: **Not Sustained - Unfounded (Expedited)**



Named Employee #1 - Allegation #2

8.200 - Using Force 8.200 Using Force 6. Recognizing the Urgency of Providing Medical Aid and the Importance of Preserving Human Life, Following a Use of Force [...]

It was alleged the named employees failed to request medical aid when CM#1 stated he could not breathe.

SPD Policy 8.200(6) requires an officer to provide certain medical aid “as soon as reasonably possible” following the use of force. SPD Policy 8.200(6). After using force, officers must (1) evaluate the subject for injuries, (2) request medical aid, if needed or requested, (3) and render appropriate medical aid “within their training.” *Id.* The policy also requires officers to place prone subjects into the recovery position or upright position as soon as safe and feasible. *See id.* Finally, in a use-of-force encounter, officers must summon medical aid and report to SFD if a subject states that they cannot breathe. *See id.*

CM#1 repeatedly complained he could not breathe, but NE#1 did not request SFD until backup officers arrived about two minutes later. When NE#1 requested SFD, NE#1 did not advise them about CM#1’s breathing complaints. However, NE#1 did notify the screening sergeant about the complaints. NE#1 told the screening sergeant they could not report the complaints over the air while he and NE#2 held CM#1 on the ground.

The policy requires officers to request medical aid “when safe and feasible.” Although policy also states officers “will” summon medical aid “upon hearing a subject state that they cannot breathe,” this directive must also account for the safety and feasibility of doing. Here, the two named employees were alone, restraining CM#1, who successfully escaped them multiple times. After CM#1 stated he could not breathe, NE#1 decided to “just hold him until they [got] other officers there.” As CM#1 continued to state he could not breathe, sirens were heard approaching, and—after CM#1 was handcuffed and in the recovery position—NE#1 summoned SFD. On these facts, OPA cannot say it was unreasonable to briefly await backup and CM#1 to be secured before requesting SFD.

Although CM#1 was in the recovery position and not visibly distressed, NE#1 was obligated to advise SFD CM#1 alleged he could not breathe. However, when NE#1 requested SFD, he did not report CM#1 claiming an inability to breathe. Under the circumstances, the omission constituted a possible but unwilful policy violation not amounting to misconduct. Accordingly, OPA recommends this allegation be Not Sustained – Training Referral (Expedited).

- **Training Referral:** NE#1’s chain of command should discuss OPA’s findings with NE#1, review SPD Policy 8.200-POL-6 with NE#1, and provide any retraining and counseling it deems appropriate. Retraining and counseling should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral (Expedited)**

Named Employee #2 - Allegation #1

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

For the reasons at Named Employee #1 - Allegation #1, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**



Named Employee #2 - Allegation #2

8.200 - Using Force 8.200 Using Force 6. Recognizing the Urgency of Providing Medical Aid and the Importance of Preserving Human Life, Following a Use of Force [...]

For the reasons at Named Employee #1 - Allegation #2, OPA recommends this allegation be Not Sustained – Training Referral (Expedited).

- **Training Referral:** NE#2's chain of command should discuss OPA's findings with NE#1, review SPD Policy 8.200-POL-6 with NE#2, and provide any retraining and counseling it deems appropriate. Retraining and counseling should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral (Expedited)**