



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 4, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0327

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.100 – De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force	Not Sustained - Unfounded
# 2	5.001 – Standards and Duties, POL-10. Employees Will Strive to be Professional	Not Sustained - Training Referral

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.100 – De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force	Not Sustained - Unfounded
# 2	5.001 – Standards and Duties, POL-10. Employees Will Strive to be Professional	Not Sustained - Training Referral

Named Employee #3

Allegation(s):		Director's Findings
# 1	8.400 - Using of Force Reporting and Investigation 4. The Sergeant Will Review the Incident and Do One of the Following [...]	Not Sustained - Training Referral

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) were unprofessional and failed to use de-escalation tactics with Community Member #1 (CM#1). It was also alleged that Named Employee #3 (NE#3) inadequately reviewed the incident.

SUMMARY OF INVESTIGATION:

On October 4, 2022, the Seattle Police Department's Force Review Board (FRB) reviewed NE#1 and NE#2's uses of force and flagged concerns. First, FRB noted NE#1 failed to report a neck hold applied against CM#1 and told CM#1, "We are going to start beating on you unless you stop struggling." Second, after striking CM#1 with a baton, FRB noted



that NE#2 said, “You want some more of this?” FRB concluded NE#1 and NE#2’s comments required further investigation.

OPA opened an intake investigation. During the intake, OPA reviewed computer-aided dispatch (CAD) data, incident and supplemental reports, use of force documents, body-worn video (BWV), and FRB findings. OPA also interviewed the named employees and a witness employee—Witness Employee #1 (WE#1.)

CAD

On May 19, 2022, at 10:37 PM, several officers, including the named employees, were dispatched for a warrant execution. At 10:39 PM, medical aid was requested. At 10:43 PM, an update suggested the scene was controlled, but medics had yet to arrive. At 10:46 PM, another update indicated the subject—later identified as CM#1—was nonresponsive and had shallow breathing. At 11:13 PM, an update noted the subject was transported.

Incident Report

NE#1 wrote the related report. In summary, he wrote SPD’s narcotics unit reported reasonable suspicion to detain CM#1 for a drug crime. NE#1 saw CM#1 in a parking lot. NE#1 approached CM#1 in a patrol car with emergency lights activated. CM#1 backed away from the patrol car. NE#1 ordered CM#1 to stop, but CM#1 ran, tripped, and fell. NE#1 struggled to detain CM#1. During that struggle, a bag of suspected cocaine¹ fell from CM#1’s pocket. CM#1 was arrested and treated by the Seattle Fire Department (SFD). NE#3 screened the arrest.

Use of Force Documents

NE#1, NE#2, and WE#1 completed Type II use of force statements. Witness Employee #2, a detective, completed a witness statement. NE#3, Witness Employee #3 (WE#3)—an admin lieutenant, Witness Employee #4 (WE#4)—a lieutenant, and Witness Employee #5 (WE#5)—a captain, documented use of force reviews.

NE#1 wrote CM#1 ignored commands to stop and warnings of imminent force. NE#1 wrote he attempted a “crossface” tactic to control CM#1, but it was misapplied and ineffective.

NE#2 described CM#1 as an active resister. NE#2 wrote he struck CM#1’s lower leg four times with an expandable metal baton. NE#2 said CM#1 appeared cooperative after the strikes, so NE#2 ceased using force and handcuffed CM#1.

NE#3 noted NE#1 attempted a poorly executed crossface that inadvertently contacted CM#1’s neck. NE#3 concluded NE#1’s ineffective crossface application was not an intentional carotid or neck restraint. NE#3 also noted when he screened the incident with the Force Investigation Team (FIT), he indicated there was no contact with CM#1’s neck, no loss of consciousness, eventual repositioning into recovery, and stable vitals.

WE#3 noted that NE#1 repeatedly issued commands to stop and a warning of a baton strike. WE#3 also flagged NE#1 and NE#2’s profanity and NE#1’s comment, “We are going to start beating on you if you don’t stop struggling.” WE#3 noted the profanity was addressed through mentoring and training. WE#3 also said NE#2’s baton strikes were uncaptured on BWV, as NE#1’s BWV was dislodged during the struggle with CM#1.

WE#4 concurred with NE#3’s description of NE#1’s “brief incidental contact” with CM#1’s neck.

¹ It later field tested positive for cocaine.



WE#5 wrote WE#4 and NE#3 addressed and resolved NE#1's contact with CM#1's neck. WE#5 also opined NE#1's profanity did not violate policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.100 – De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force

NE#1 and NE#2 allegedly failed to use de-escalation tactics to reduce the need for force against CM#1.

"When safe, feasible, and without compromising law enforcement priorities, officers will use de-escalation tactics to reduce the need for force." SPD Policy 8.100-POL-1. The policy emphasizes communication, time, distance, and shielding to minimize the need for force. Officers are also encouraged to use team approaches to consider whether any officer has successfully established a rapport with the subject. *Id.* The selection of de-escalation options is to be guided by the "totality of the circumstances." *Id.*

Here, CM#1 was the subject of an ongoing drug trafficking investigation. NE#1 and NE#2 knew there was at least probable cause for detainment. NE#1 located CM#1 and repeatedly ordered him to stop. Instead, CM#1 fled, tripped, and fell.

CM#1 Fleeing and Tripping When NE#1 Approached



NE#1 went hands-on to apprehend CM#1. Several factors made further de-escalation unfeasible without compromising their law enforcement priority of detaining CM#1. Specifically, NE#1 and NE#2 described CM#1 as an actively resistant large² man carrying a bag. They said, based on their experience, they feared CM#1 carried drugs, a gun, or both in the bag, given the nature of the criminal investigation. That fear was heightened when CM#1 dropped the bag, and it made what WE#1 described as a "distinct metallic sound" like a gun. That observation was later confirmed by NE#2, who recovered drugs and a gun from the bag. Given CM#1's noncompliance and the safety concerns presented, further, de-escalation was unsafe, unfeasible, and inconsistent with their law enforcement priority.

² The incident report listed CM#1 as 5'7" and 200 pounds.



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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 - Allegation #2

5.001 – Standards and Duties, POL-10. Employees Will Strive to be Professional

It was alleged NE#1 and NE#2 directed unprofessional comments at CM#1.

Employees must “strive to be professional.” SPD Policy 5.001-POL-10. Further, “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers....” *Id.*

Here, NE#1 told CM#1 to “Get on the fucking ground” and “We are going to start beating on you unless you stop struggling.” NE#2, after striking CM#1 four times with a baton, asked, “You want some more of this?” While their chain of command and FRB concluded their force applications were within policy, their commentary fell short of department standards. Mainly where they openly fought and repeatedly struck a civilian on a public street, including baton strikes. The combination of force applications and threatening comments would likely cause reasonable onlookers to at least question the officers and the department’s professionalism and trustworthiness.

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **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**

Named Employee #2 - Allegation #1

8.100 – De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 - Allegation #2

5.001 – Standards and Duties, POL-10. Employees Will Strive to be Professional

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

- **Training Referral:** NE#2’s chain of command should discuss OPA’s findings with NE#1, review SPD Policy 5.001-POL-10 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**

Named Employee #3 - Allegation #1

8.400 - Using of Force Reporting and Investigation 4. The Sergeant Will Review the Incident and Do One of the Following [...]

It was alleged NE#3 failed to report NE#1's contact with CM#1's neck to FIT and an excessive force allegation to OPA.

A reviewing sergeant must appropriately classify the investigation and screen any neck contact causing or reasonably likely to cause injury or loss of consciousness with FIT. SPD Policy 8.400-POL-4.

Here, NE#3's use of force review indicated he knew about NE#1's failed crossface resulting in contact with CM#1's neck. However, NE#3 dismissed it as unintentional and incidental. Further, when NE#3 screened it with FIT, he indicated no contact with CM#1's neck. BWV showed, and NE#1 told OPA his misapplied crossface caused his arm to wrap around CM#1's neck³ area for about two seconds⁴. NE#1 immediately repositioned to a control hold on CM#1's arm.



While classifying NE#1's contact with CM#1's neck as unintentional and incidental were reasonable descriptions, a complete denial that it happened was not. A more accurate description would have been no neck contact reasonably likely to cause injury or loss of consciousness⁵.

Moreover, an onlooker told NE#3 the officers used excessive force against CM#1. Rather than referring it to OPA, NE#3 told her how to contact OPA and gave her a business card. FRB concluded, and OPA concurred that more was required.

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

³ NE#1 told OPA he accidentally contacted CM#1's lips and jaw, not his neck.

⁴ The below photos are from 00:53 to 00:54 seconds on WE#1's BWV.

⁵ NE#3 told OPA the contact was "a glancing blow to the side of the suspect's neck."



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- **Training Referral:** NE#3's chain of command should discuss OPA's findings with NE#3, review SPD Policy 8.400-POL-4 with NE#3, 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**