



## ***CLOSED CASE SUMMARY***

ISSUED DATE: APRIL 2, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0328

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

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	8.200 – Using Force 2. Use of Force: When Prohibited	Not Sustained - Unfounded (Expedited)
# 2	8.400 - Use of Force Reporting and Investigation POL-1 Use of Force Reporting and Investigation 3. Officers, Including Witness Officers, Will Verbally Notify a Supervisor [...]	Not Sustained - Training Referral (Expedited)

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	8.200 – Using Force 2. Use of Force: When Prohibited	Not Sustained - Unfounded (Expedited)
# 2	8.400 - Use of Force Reporting and Investigation POL-1 Use of Force Reporting and Investigation 3. Officers, Including Witness Officers, Will Verbally Notify a Supervisor [...]	Not Sustained - Training Referral (Expedited)

#### **Named Employee #3**

Allegation(s):		Director's Findings
# 1	8.400 Use of Force Reporting and Investigations POL-3 Use of Force - Type I Investigations 2. Officers Will Document All Uses of Reportable Force.	Not Sustained - Inconclusive

***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:**

The allegations against the named employees stemmed from OPA's observation of an October 4, 2022, Force Review Board (FRB) evaluation of the case. While FRB did not refer the allegations to OPA, OPA determined further investigation was necessary. All allegations, except the allegation against Named Employee #3 (NE#3), were designated for Expedited Investigation. That means OPA, with the Office of Inspector General's (OIG) review and agreement, believed it could reach, and issue recommended findings based solely on its intake investigation without interviewing the involved employee. As such, OPA did not interview the involved employee in this case. OIG also certified this investigation as thorough, timely, and objective.

The Complainant also alleged Witness Employee#1 (WE#1), a lieutenant, violated the department's command review of force (SPD Policy 8.500-POL-2(14) "For Type I and Type II Investigations, the Precinct or Section Captain Will Forward



Completed Use-of-Force Reports to the Force Review Captain Within 30 Calendar Days of the Use-of-Force Incident”) policy. That allegation was processed for supervisor action.

**EXECUTIVE SUMMARY:**

It was alleged the named employees used excessive force during Community Member #1’s (CM#1) arrest. Specifically, Named Employee #1 (NE#1) and Named Employee #2 (NE#2) allegedly applied unauthorized force on CM#1’s neck and NE#3 on CM#1’s leg. It was also alleged NE#3 failed to complete required use of force documents.

**SUMMARY OF INVESTIGATION:**

On February 4, 2022, the named employees responded to a 9-1-1 call reporting a subject—CM#1—assaulted two people. The named employees found CM#1 apparently pepper-sprayed and intoxicated. The named employees attempted to detain CM#1 for an involuntary behavioral health evaluation (See SPD Policy 16.110 - Crisis Intervention.) CM#1 reportedly kicked NE#1 and resisted the named employees, causing NE#2 to Tase him. OPA opened an investigation. During its investigation, OPA reviewed computer-aided dispatch data, an incident report, use of force documents, SFD records, FRB findings, training records, command review documents, and body-worn video. OPA also interviewed NE#3. OPA contacted the Complainant’s attorney to arrange an interview, but OPA has not received a response. Computer-Aided Dispatch (CAD) data showed on February 4, 2022, at 9:30 AM, a 9-1-1 caller reported the alleged assault. The CAD remark noted:

*[A] MALE HIT ANOTHER MALE WITH AN OBJECT AND IS NOW ROLLING AROUND ON THE GROUND. [UNKNOWN] WHERE THE VICTIM IS NOW.*

NE#2 and NE#3 were listed as the reporting officers.

NE#3 wrote a related incident report. That report detailed the 9-1-1 caller’s account: a suspect hit a man in a wheelchair with an 18-inch object. The suspect was described as a thin White man, 20-30 years old, wearing a knit cap, dark jacket, and dark jeans. It further indicated the suspect was rolling on the ground. Upon arrival, NE#1 spoke with an eyewitness—Community Member #2 (CM#2)—who corroborated the 9-1-1 caller’s report. CM#2 also reported the victims left before the named employees arrived. CM#1, who was sitting, got up and aggressively approached NE#1. NE#1 “body-checked” CM#1. CM#1’s aggressive behavior toward the named employees reportedly escalated, so they decided to handcuff him while awaiting an AMR. Officers grabbed CM#1’s arm, and CM#1 pulled away and twice kicked NE#1. Officers handcuffed CM#1, and NE#2 requested SFD “for a possible case of excited delirium.” SFD arrived and administered ketamine to deescalate CM#1, which worked.

The named employees also completed use-of-force statements. In summary, NE#1’s statement noted when officers arrived, CM#1 sat on the sidewalk yelling at himself. He wrote witnesses said CM#1 assaulted two others, including repeatedly punching a man in a wheelchair. NE#1 wrote officers intended to have an AMR transport CM#1 to a hospital for an Involuntary Treatment Act (ITA) evaluation. NE#1 wrote CM#1 aggressively charged him, so NE#1 used his right palm to push CM#1’s chest. NE#1 said he intended to create space. He wrote CM#1 reapproached, so officers “went hands-on” to handcuff CM#1. During the struggle, NE#1 said CM#1 kicked NE#1’s right knee and inner thigh. NE#1 wrote CM#1 resisted as officers tried to take him to the ground, which led to Taser applications.



In summary, NE#2's statement noted upon arrival, he saw CM#1 matching the 9-1-1 caller's description of the suspect. NE#2 wrote CM#1 yelled, "Oh fucking bitch! I want to shoot you, you bitch! Oh, I want to shoot you so bad....." NE#2 also noted CM#1's swollen eyes, red face and neck, and streaming mucus, indicating he was recently pepper-sprayed. NE#2 wrote CM#1 formed his hands as a gun pointed towards NE#1 while threatening to shoot NE#1. NE#2 said CM#1 growled and aggressively approached NE#1. He said NE#1 pushed CM#1, and NE#2 tried controlling CM#1's right arm. NE#2 said CM#1 raised both hands and said, "Sorry, but you were going to take me in any way." NE#3 grabbed CM#1's left arm. NE#2 said CM#1 aggressively pulled away and crouched down as NE#2 retrieved handcuffs. NE#2 wrote NE#1 tried to control CM#1's head as CM#1 looked toward NE#1 and said, "I'll bite you." NE#2 said CM#1 sat up and twice kicked NE#1's right leg. NE#2 said he drew his Taser and issued two warnings. NE#2 wrote CM#1, said, "I will kill you," before NE#2's first Taser deployment. NE#2 said the first Taser deployment was ineffective. NE#2 wrote two seconds later, he deployed his Taser a second time, striking CM#1's right quadriceps. NE#2 said CM#1 "immediately began trying to pull the probes out," so NE#2 performed a drive stun Taser application against CM#1's left hamstring. NE#2 wrote CM#1 relented and stated, "Please stop Tasing me. It hurts so bad. It hurts so bad." NE#3's statement was generally consistent with NE#1's and NE#2's statements.

Witness Employee #2 (WE#2), a sergeant, reported to the incident location to review the uses of force. WE#2 said he saw CM#1 on the ground with a spit sock covering his head, loudly, screaming "ouch" and "it hurt so bad." WE#2 said he inspected CM#1 handcuffs and found they were appropriately applied. WE#2 also noted SFD removed Taser probes from CM#1. WE#2 said CM#1 was covered in scrapes, scars, and scabs and demonstrated behavior consistent with excited delirium.

Witness Employee #3 (WE#3), an admin lieutenant, reviewed the uses of force. WE#3 found the force applications permissible but flagged NE#1, briefly putting a knee on a handcuffed CM#1's back. WE#3 recommended training for that action.

Witness Employee #4 (WE#4), a watch admin lieutenant, also reviewed the uses of force. WE#4 noted NE#1 made "inadvertent contact with the back of [CM#1's] neck," and NE#2 briefly held the back of CM#1's neck "to gain control of an aggressive and physically resistive suspect using head control and trying to move him further toward the ground for better control and handcuffing." WE#4 reportedly asked NE#1 and NE#2 about contacting the back of CM#1's neck. Both denied remembering it and stated they would have reported it to a sergeant had they realized it. WE#4 said he reminded both about their force reporting obligations and did not recommend performance appraisal system entries. Overall, WE#4 concluded the named employees' uses of force were within policy.

Witness Employee #5 (WE#5), a captain, concurred with WE#3 and WE#4. WE#5 concluded:

*The [uses] of force [were] not only reasonable but proportional, given the level of active resistance by the subject. Various officers attempted to use verbal techniques to de-escalate the situation to get [CM#1] to comply but had to physically grab him and take him to the ground, where he continued to struggle with officers. It wasn't until he was tased were they able to control and handcuff him.*

SFD patient care records described CM#1's behavioral/emotional state as "combative or violent." SFD noted seeing 6-8 officers restraining CM#1, who spat and yelled. SFD also documented "several lesions and marks all over head, trunk, and arms. Skin is sweaty/pink."



Training records showed the named employees participated in annual crisis intervention team training in 2021 and 2020 at the Washington State Criminal Justice Training Commission.

BWV was generally consistent with the named employees' use of force statements.

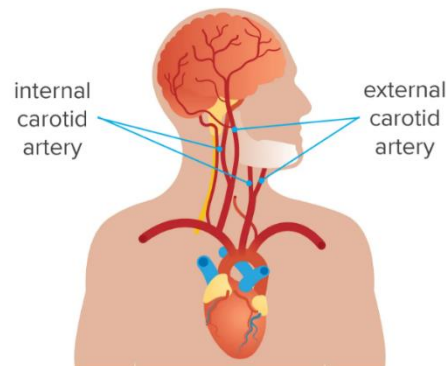
**ANALYSIS AND CONCLUSIONS:**

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

***8.200 - Using Force 2. Use of Force: When Prohibited***

NE#1 and NE#2 allegedly used prohibited force by grabbing the back of CM#1's neck.

Officers are prohibited from using neck and carotid restraints in all circumstances. SPD Policy 8.200-POL-2. Officers are further prohibited from intentionally placing a knee on a prone subject's neck while taking them into custody. *Id.* SPD Policy 8.200-POL-2 appears to intend to prohibit police action likely to inhibit breathing and arterial function.



Here, NE#1 and NE#2 undeniably briefly contacted the back of CM#1's neck. However, their actions were consistent with department training, even if they appeared to infract a strict reading of SPD Policy 8.200-POL-2, which prohibits neck restraints. A department training entitled 'Prisoner Control and Turtled Suspect' reflects how officers are taught to control aggressive handcuffed subjects. The training manual instructs officers to apply a hand to the back of the subject's neck and use the other hand to underhook the subject's arm.

<sup>1</sup> Fletcher, J. (2020, March 10). What is the function of the carotid arteries? Retrieved from <https://www.medicalnewstoday.com/articles/carotid-artery#anatomy>.



Training Stills



By all accounts, CM#1 was aggressive. SFD records described him as combative and violent, requiring 6-8 officers to subdue him. The named employees described CM#1 as shaping his hands like a gun while threatening NE#1. They also described CM#1 aggressively charging NE#1, causing NE#1 to push CM#1's chest to create distance. BWV substantiated those accounts.

CM#1 Aiming at and Threatening NE#1







CM#1 Approaching NE#1



After struggling to handcuff CM#1, officers eventually brought him to the ground. CM#1 attempted to stand, and NE#1 and NE#2 grabbed the back of his neck and head to prevent it.



NE#1 held the back of CM#1's neck for about six seconds, then released. CM#1 appeared to kick NE#1 and threaten to bite him before NE#1, and NE#2 held the back of CM#1's head and neck for about four seconds. CM#1 fought to free himself and appeared to kick NE#1 again. NE#2 issued two Taser warnings before Tasing CM#1.

OPA did not observe NE#1 or NE#2 apply control holds outside their training.

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

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

<sup>2</sup> The red arrow points to NE#1's hand and the blue arrow to NE#2's hand.



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

***8.400 - Use of Force Reporting and Investigation POL-1 Use of Force Reporting and Investigation 3. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Following Any Use of Reportable Force, As Soon As Feasible***

NE#1 and NE#2 allegedly failed to notify a supervisor about their applications of reportable force.

Officers who use reportable force while on duty will call for an on-duty SPD sergeant. SPD Policy 8.400-POL-1(3). Known inadvertent contact with a subject's neck during the application of a head control tactic or other control technique which results in momentary contact with the neck of a subject without the risk or intention of restricting the flow of blood or oxygen is not a neck or carotid restraint but must be screened with a supervisor. *Id.*

Here, as discussed above, NE#1 and NE#2 contacted the back of CM#1's neck "without the risk or intention of restricting the flow of blood or oxygen....." Although both officers told WE#4 they did not remember contacting the back of CM#1's neck, they were not absolved of their duty to report. Both were required to screen those actions with a supervisor.

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

- **Training Referral:** Had NE#1 remained with the department, OPA would have recommended his chain of command discuss OPA's findings with NE#1, review SPD Policy 8.400-POL-1(3) with NE#1, and provide any retraining and counseling it deemed appropriate. Retraining and counseling would have been documented and maintained in Blue Team.

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

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

***8.200 - Using Force 2. Use of Force: When Prohibited<sup>3</sup>***

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

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

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

***8.400 - Use of Force Reporting and Investigation POL-1 Use of Force Reporting and Investigation 3. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Following Any Use of Reportable Force, As Soon As Feasible***

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

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<sup>3</sup> This allegation solely covered NE#2's contact with the back of CM#1's neck, not his Taser applications, which his entire chain of command and FRB found within policy.



- **Training Referral:** NE#2's chain of command should discuss OPA's findings with NE#2, review SPD Policy 8.400-POL-1(3) 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)**

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

***8.400 Use of Force Reporting and Investigations POL-3 Use of Force - Type I Investigations 2. Officers Will Document All Uses of Reportable Force.***

NE#3 allegedly failed to document a reportable application of force against CM#1.

Type I is force that causes transitory pain or the complaint of transitory pain. SPD Policy 8.050. Employees who apply Type I force must complete a Type I statement, including a brief narrative describing what occurred. SPD Policy 8.400-POL-3(2).

Here, after officers finally got CM#1 face down on the ground, but he still flailed his legs, NE#3 applied a figure-four control tactic to CM#1's legs. CM#1 kicked his legs free, NE#3 held his left leg, and another officer held his right leg. CM#1 yelled, "Don't break my ankle again. Don't break my ankle." NE#3 did not appear near CM#1's ankle. NE#3 told OPA while repeatedly CM#1 yelled "Ow" throughout the struggle, it was unclear what the complaints referenced. NE#3's chain of command concluded the figure-four application was an appropriate and trained control tactic necessary to prevent CM#1 from further assaulting officers. WE#4 further stated the tactic is widely used throughout the department and is unlikely and unintended to cause pain.

Conversely, FRB concluded NE#3 should have completed a Type 1 statement for documentation purposes. Overall, arguably out of an abundance of caution, NE#3 should have submitted a Type 1 statement, but there is insufficient evidence to conclude the circumstances required it. Mainly where NE#3 applied a control tactic unintended to cause pain, and CM#1's apparent complaint of pain ("Don't break my ankle again. Don't break my ankle.") was made when NE#3 was not handling his ankles.

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

Recommended Finding: **Not Sustained - Inconclusive**