



## CLOSED CASE SUMMARY

ISSUED DATE: APRIL 22, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0333

### **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 - Lawful and Proper

#### Named Employee #2

Allegation(s):		Director's Findings
# 1	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Training Referral
# 2	5.001-POL 10. Employees Will Strive to be Professional	Not Sustained - Training Referral

#### Named Employee #3

Allegation(s):		Director's Findings
# 1	5.001-POL 10. Employees Will Strive to be Professional	Not Sustained - Unfounded
# 2	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Lawful and Proper

#### Named Employee #4

Allegation(s):		Director's Findings
# 1	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Lawful and Proper

***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 that the named employees unprofessionally aggravated a tense situation. The Complainant also alleged that Named Employee #2 (NE#2) used unauthorized force against Community Member #1.

### **ADMINISTRATIVE NOTE:**

The Office of Inspector General certified this investigation as thorough, timely, and objective. An allegation that Witness Employee #1 (WE#1) violated the department's professionalism policy (SPD Policy 5.001-POL-10: Employees Will Strive to be Professional) was forwarded to his chain of command for supervisor action.



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**SUMMARY OF INVESTIGATION:**

On October 8, 2022, around 5:17 PM, several officers, including the named employees, responded to a domestic violence call.<sup>1</sup> A 9-1-1 caller reported Community Member #2 (CM#2) made threats with a 12" knife. NE#1 arrived and spoke with CM#2. NE#4—the primary officer—told NE#1 that CM#2 was "[CM#2]," indicating he was the arrestee. When CM#2 was told he was under arrest, he fled and tripped.



About a dozen onlookers gathered as CM#2 was arrested outside the incident location. As officers struggled to control CM#2, who stiffened his arms and buried his hands under his body, NE#3 controlled CM#2's right arm while NE#4 placed her left knee between CM#2's shoulder blades across his back and NE#1 put a knee on the left of CM#2's lower back.



An onlooker yelled, "Stop! Get the fuck off him!" Get your fucking knee off him now! Get your knee off him now! Get your knee off his neck!" CM#2's wife approached and appeared to touch NE#3, who yelled, "Back up! Don't touch me! Get her away from me!" Referencing NE#3, CM#2's wife yelled, "I will fucking kill this officer."

NE#2 arrived and asked NE#3, "Did she<sup>2</sup> threaten to kill you?" NE#3 replied, "Yeah." CM#2 yelled, "That's my wife. She was trying to defend me, but she did this to me." Community Member #3 (CM#3)—an onlooker—appeared to film the response on a cell phone. CM#2 was handcuffed and lying on the ground on his right side. Community Member #4 (CM#4) asked an officer, "How about you sit [CM#2] up? Let him breathe...." NE#3 interjected, "How about you let me do my job!"

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<sup>1</sup> The call was later categorized as an assault with no domestic violence component.

<sup>2</sup> NE#2 appeared to reference CM#2's spouse.



CM#3 replied, "Oh wow, look at you, very, very agitated. Wow!" Officers repositioned CM#2 to sit on the ground. An onlooker yelled, "Thank you for letting him sit up. Thank you!" CM#1 approached, where officers had CM#2 detained. NE#1 outstretched his left arm to stop her.



NE#2 quickly approached CM#1, grabbed her left arm, and shoved her from the sidewalk into the street.





An onlooker yelled, “Hey! Don’t fucking touch her! She’s an old lady.” CM#1 shouted, “Hey! I am a pastor. I am a pastor!” NE#2 continued to push CM#1 from the scene, saying, “I’m asking you to back up, ma’am. Please.” CM#1 replied, “I know, but don’t touch me. Don’t hurt me,” as NE#2 grabbed her left arm and moved her backward.



While pushing CM#1, NE#2 said, “I know, but just back up. Let go of me. You’re being recorded. Just walk over there.” NE#2 released CM#1, and CM#1 explained she was a pastor “making sure” CM#2 was okay. NE#2 returned, where officers detained CM#2. NE#2 approached CM#4, who stood near several onlookers, and said, “I’m asking you to back up, please.” CM#4 replied, “I’m not going anywhere.” Several onlookers appeared frustrated with NE#2. Someone yelled, “You’re a coward. The way you mishandled that little lady right there.” NE#2 replied, “I didn’t do anything wrong with her.” An onlooker asked NE#2 his name, but NE#2 did not respond. Another, apparently having read NE#2’s nametag, said, “[NE#2], [NE#2.] You’re out of line. You’re out of line, man. Would you do your sister like that? Would you do your mom like that? Would you do your grandma like that?” NE#2 replied, “I asked her to back up.” The same onlooker said, “I’m asking you! Would you do your mom like that? Nah, hell no, you wouldn’t.” Community Member #5 (CM#5) told NE#3 that CM#1 was the initial victim who called 9-1-1 for help.<sup>3</sup>

Witness Employee #2 (WE#2)—a sergeant—arrived to screen the incident. NE#2 told WE#2, “There was no complaint of pain...I merely just asked her to move away. She put her hand on me, and I pushed her back.”

### **ANALYSIS AND CONCLUSIONS:**

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

##### ***8.200 - Using Force (1) Use of Force: When Authorized***

The Complainant alleged NE#1, NE#3, and NE#4 used excessive force against CM#2.

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.” 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

<sup>3</sup> OPA’s computer-aided dispatch review did not confirm or disprove that assertion.





appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” *Id.* Last, the force used must be proportional to the threat posed to the officer. *Id.*

Here, BWV showed the named employees responded to a reported domestic violence call involving a 12” knife. CM#2’s wife told officers he suffered from mental health issues, was abusive, and tried to hang himself. When CM#2 was told he was under arrest, he fled and tripped. That was when officers initially made physical contact with CM#2. CM#2, a large<sup>4</sup> man, stiffened his arms and buried his hands under his body to prevent handcuffing. NE#1, NE#3, and NE#4 used objectively reasonable, necessary, and proportional control holds to lawfully detain CM#2, constituting *de minimis* nonreportable force. Moreover, NE#1’s knee across CM#2’s lower back and NE#4’s knee between his shoulder blades were trained tactics to stabilize the actively resistant arrestee. Despite the onlooker’s protestation, BWV confirmed no officer put a knee against CM#2’s neck.

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

Recommended Finding: **Not Sustained - Lawful and Proper**

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

##### ***8.200 - Using Force (1) Use of Force: When Authorized***

The Complainant alleged NE#2 used excessive force against CM#1.

Here, NE#2 arrived at the scene as NE#1, NE#3, and NE#4 detained CM#2 on the ground. As CM#1, a small older woman, approached CM#2, NE#1, a large man, outstretched his arm to stop her. While not forceful, NE#1’s action was objectively reasonable, necessary, proportional, and acceptable to guard their arrestee. Nevertheless, NE#2 charged CM#1 and shoved her several feet, unnecessarily escalating an already tense scene. Although NE#2 told WE#2—his sergeant—that CM#1 pushed him first, BWV showed CM#1’s arms were down when he made initial contact.



Even though CM#1 suffered no apparent injury, NE#2’s actions were objectively unreasonable, unnecessary, and disproportionate, particularly when NE#1 had already handled the situation. Nevertheless, since NE#2 was a relatively new officer with no history of similar behavior, OPA recommends the allegation be Not Sustained – Training Referral.<sup>6</sup>

<sup>4</sup> The incident report listed him as 250 pounds.

<sup>5</sup> The red arrow points to NE#2’s right hand contacting CM#1 before turning and shoving her.

<sup>6</sup> NE#2 became a sworn officer on May 24, 2019. This incident occurred on October 8, 2022.



- Required Training: NE#2's chain of command should discuss OPA's findings with him, review SPD Policy 8.200(1), and provide appropriate retraining and counseling. Retraining and counseling should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

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

***5.001 - Standards and Duties 10. Employees Will Strive to be Professional***

It was alleged NE#2's response was unprofessional.

The Department expects all employees to treat all people with dignity. SPD Policy 5.001-POL. Further, employees must "treat everyone with respect and courtesy, guarding against employing an officious or overbearing attitude and refraining from language, demeanor, and actions that may cause the individual feeling belittled, ridiculed, or intimidated." *Id.* Last, "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers. Employees will avoid unnecessary escalation of events even if those events do not end in reportable uses of force." SPD Policy 5.001-POL-10.

Here, NE#2 displayed an officious and overbearing attitude against CM#1. His actions further riled agitated onlookers, increasing the likelihood of a clash between community members and officers. NE#2 unnecessarily endangered the community and his colleagues. He also further stained public trust in the department. For those reasons, and those at Named Employee #2- Allegation #1, OPA recommends the allegation be Not Sustained – Training Referral.

- Required Training: NE#2's chain of command should discuss OPA's findings with him, review SPD Policy 5.001-POL-10, and provide appropriate retraining and counseling. Retraining and counseling should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

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

***5.001 - Standards and Duties 10. Employees Will Strive to be Professional***

The Complainant alleged NE#3 was unprofessional.

Here, there was insufficient evidence NE#3 said or did anything constituting unprofessionalism. The only notable exchange was NE#3's response to CM#4's request for CM#2 to be sat up: "How about you let me do my job!" That comment was made after several officers struggled to control the actively resistant arrestee. When CM#2 was prone and handcuffed, he indicated he could not breathe. It was NE#3 who ordered officers to reposition CM#2 into the recovery position.

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

Recommended Finding: **Not Sustained - Unfounded**



**Named Employee #3 - Allegation #2**

***8.200 - Using Force (1) Use of Force: When Authorized***

The Complainant alleged NE#3 used excessive force against CM#2.

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

Recommended Finding: **Not Sustained - Lawful and Proper**

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

***8.200 - Using Force (1) Use of Force: When Authorized***

It was alleged NE#4 used excessive force against CM#2.

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

Recommended Finding: **Not Sustained - Lawful and Proper**