



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 18, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0337

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)

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Unfounded (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 the named employees responded to a fight involving the Complainant and two others. The Complainant and Community Member #1 (CM#1)—the Complainant's friend—alleged Community Member #2 (CM#2) used a knife to take the Complainant's phone during an altercation. It was further alleged that the Complainant was arrested for swinging his fist at Named Employee #2 (NE#2). Finally, it was alleged that Named Employee #1 (NE#1) and NE#2 used excessive force to arrest the Complainant.

ADMINISTRATIVE NOTE:

This case was designated an 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 employees. As such, OPA did not interview the involved employees in this case. OIG also certified this investigation as thorough, timely, and objective.

During its review, OPA noted NE#2's profanity directed at the Complainant. That issue was forwarded to NE#1's chain of command for supervisor action.

SUMMARY OF INVESTIGATION:

OPA reviewed the OPA complaint, incident report, and body-worn video. OPA also unsuccessfully attempted to contact the Complainant for an interview.



A. OPA Complaint

On October 13, 2022, Witness Supervisor #1 (WS#1)—an administrative lieutenant—sent an OPA complaint via Blue Team. WS#1 wrote that the named employees' body-worn video captured the Complainant stating, "The police fucked me up" after he was handcuffed with NE#1 and NE#2 restraining him on the ground.

B. Incident Report

NE#2 wrote the related incident report. NE#2 noted his response to a fight in a Safeway grocery store parking lot. He saw the Complainant and CM#1 walking towards him as a third subject crossed the street. NE#2 wrote other officers attempted to contact the fleeing subject, while NE#2 contacted the Complainant and CM#1.

The Complainant's face bled. NE#2 asked what happened, but the Complainant refused to speak with him and walked away. NE#2 wrote he attempted to interview CM#1, but CM#1 only told NE#2 the Complainant wanted his phone back. NE#1 wrote the Complainant returned to speak with NE#2, but the Complainant appeared agitated and would not answer investigative questions. Seattle Fire Department (SFD) was requested for medical aid. When SFD arrived, the Complainant yelled at them. NE#2 described the Complainant's behavior as aggressive.

NE#2 wrote the Complainant approached him, yelled, and pointed at his face. NE#2 wrote he pushed the Complainant's arm to create space. NE#2 wrote he attempted to speak with CM#1 when the Complainant shouted, "He doesn't have to listen to you!" and swung his right arm at NE#2. NE#2 wrote he tried to speak with the Complainant, but the Complainant responded, "Shut up!" and swung his closed right hand at NE#2.

NE#2 handcuffed CM#1 and, later, when restraining CM#1, CM#1 spat in NE#2's face. NE#2 went to Harborview Medical Center for bloodborne pathogen exposure.

C. Body-Worn Video (BWV)

OPA reviewed NE#1 and NE#2's BWV, consistent with NE#2's incident report.

BWV showed that after the Complainant pointed his finger close to NE#2's face, he swung his hands at NE#2 twice. NE#2 replied, "You swing your hands at me one more time, you're going in [handcuffs]." CM#1 replied, "What are you going to do? ... Put me in handcuffs. What are you going to do?" NE#1 pushed the Complainant toward a parked car and ordered him to sit.

The Complainant jumped up and down while swinging his fists. NE#1 and NE#2 grabbed his arms and handcuffed him. While sitting on the ground, the Complainant moved the handcuffs under his legs to the front of his body. NE#1 and NE#2 rolled the Complainant onto his left side to prevent him from slipping his handcuffs. The Complainant shouted, "I will be dead before speaking around you guys!" He then complained that his hand was bleeding. BWV showed the Complainant's hand bled before the handcuffing.



BWV showed NE#1 took a crouching or kneeling position while holding the Complainant on his left side. NE#2 placed his knee on the Complainant's right leg and held the Complainant's knee. While NE#1 and NE#2 restrained the Complainant, he spat at NE#1 three times. The Complainant complained his leg hurt and said, "Police fucked me up." He also spat at NE#2 several times. NE#2 repositioned himself and placed his open palm on the Complainant's face. NE#2 put his right knee on the Complainant's face to prevent him from turning his face toward the officers. NE#2's knee was on the Complainant's face for about five seconds. NE#2's positioning did not appear to put downward pressure on the Complainant's face.

BWV showed NE#1, and NE#2 had bloody spit on their faces and equipment.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged NE#1 used excessive force during his arrest.

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. There are several factors to evaluate 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.*

BWV captured the Complainant's arrest. NE#1 and NE#2 handcuffed the Complainant due to his erratic and aggressive behavior, including swinging his arm and fist at NE#2 twice and jumping up and down with his hands clenched into fists. NE#1 used *de minimis* force to restrain the Complainant after the Complainant slipped his handcuffed arms to the front of his body. NE#1 held the Complainant's arms and back to the ground. Moreover, the Complainant spat blood at NE#1.

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

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

Named Employee #2 - Allegation #1

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

The Complainant alleged NE#2 used excessive force during his arrest.

In addition to the reasons at Named Employee #1 - Allegation #1, NE#2 used *de minimis* force to control the Complainant's legs when he attempted to "slip" his handcuffs. After the Complainant spat at NE#1 several times, he spat blood on NE#2. NE#2 used an open palm and, for five seconds, his knee to stop the Complainant from spitting on



the officers. NE#2's use of force was reasonable to prevent the Complainant from spitting blood on NE#1 and NE#2. NE#2's knee only appeared to limit the Complainant's range of motion.

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

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