



CLOSED CASE SUMMARY

ISSUED DATE: MAY 13, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0386

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 in Order to Reduce the Need for Force	Not Sustained - Lawful and Proper
# 2	5.001-POL 2. Employees Must Adhere to Laws, City Policy and Department Policy	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 Named Employee #1 (NE#1) failed to de-escalate when required. It was also alleged that NE#1 sexually assaulted Community Member #1 (CM#1)—an arrestee.

ADMINISTRATIVE NOTE:

The allegation that NE#1 sexually assaulted CM#1 was designated for Expedited Investigation. That means OPA, with the Office of Inspector General's agreement, believed it could reach, and issue recommended findings based solely on its intake investigation without interviewing the involved employee about that allegation.

SUMMARY OF INVESTIGATION:

On November 11, 2022, an SPD supervisor (Witness Supervisor #1 or WS#1) submitted an Unsubstantiated Misconduct Screening (UMS) request to OPA. See OPA Internal Operations and Training Manual, section 8.1 (Unsubstantiated Misconduct Screening). The UMS concerned NE#1's application of force and CM#1's allegation that NE#1 sexually assaulted her during an arrest. OPA requested a referral because the entirety of NE#1's interaction with CM#1 was not recorded because his body-worn video (BWV) equipment temporarily dislodged.

WS#1 sent an OPA complaint through Blue Team. In the complaint, WS#1 noted the Complainant complained about pain in her hand and alleged she was attacked and sexually assaulted by officers. WS#1 also alleged NE#1 failed to de-escalate by going hands-on with CM#1 without awaiting additional units.

OPA opened an investigation. During its investigation, OPA reviewed the UMS and Blue Team submissions. OPA also reviewed the computer-aided dispatch (CAD) data, incident report, Use of Force documentation, NE#1's training



records, BWV, private security video, and 9-1-1 audio. OPA also interviewed Community Member #2 (CM#2)—a witness—and NE#1. OPA did not interview CM#1 as she was incarcerated. Additionally, the only allegation for which CM#1 could offer probative information was the alleged sexual assault, which was expedited based on BWV and CM#2's account.

a. Computer-Aided Dispatch Call Report

OPA reviewed the CAD call report for this incident. On November 7, 2022, at 5:46 pm, CM#2 called 9-1-1 to report an assault at a restaurant. The CAD call remarks stated the suspect threw a wet floor at a customer. NE#1 logged to the call at 5:53 pm. At 5:58 pm, the call updated that the suspect hit two restaurant employees. A minute later, NE#1 arrived as the call updates indicated the suspect punched restaurant employees with a chain wrapped around her hand.

At 6:00 pm, NE#1 stated he was contacting the suspect. A minute later, NE#1 requested backup "Step it up." At 6:04 pm, radioed that he was "under control" with "one in custody."

NE#1 also updated CAD, noting his BWV fell in a puddle and was not functioning. NE#1 also updated that there was probable cause for assaulting a police officer. Other CAD remarks showed an ambulance was requested and that CM#1 had warrants for assault from two counties.

CM#1 was transported to King County Jail by ambulance.

b. Incident Report

NE#1 wrote the related incident report.

NE#1 wrote that he responded in full uniform as dispatch reported that the suspect was assaulting community members. NE#1 wrote that he contacted CM#1 and identified himself as a police officer. NE#1 documented that CM#1 walked away, so he advised CM#1 she would be handcuffed. NE#1 wrote that he attempted to physically control CM#1, who slapped NE#1's hand and left the restaurant.

NE#1 wrote that he physically struggled with CM#1 on the ground outside the restaurant. NE#1 documented that, during this struggle, CM#1 kicked his shin. NE#1 also wrote that CM#1 tried to bite him.

NE#1 wrote that other units arrived, CM#1 was taken into custody, and was booked into jail for assault.



c. Use of Force Documentation

WS#1 conducted a Type I Use of Force Investigation¹ for force used by a backing officer. WS#1 noted the backing officer contacted CM#1 in a public area and had probable cause to arrest CM#1 for assault. CM#1 reported the backing officer squeezed her hand during handcuffing causing pain. WS#1 examined CM#1's hand and did not observe injury, nor did moving her hand appear to cause any pain.

d. NE#1's Training Records

OPA reviewed NE#1's training records and observed NE#1 completed de-escalation training in October 2017 and December 2018.

e. Body Worn Video

OPA reviewed BWV for this incident. NE#1's BWV captured his initial interactions with CM#1 but fell off during their physical struggle and rerecorded only audio thereafter.

NE#1's BWV recorded his arrival at the restaurant. Before entering the restaurant, NE#1 broadcasted, "I'm about to enter the store. Looking at the updates, can we get a third unit." As NE#1 approached the restaurant, CM#2 opened the door and identified CM#1 as the person "attacking my employees." CM#1 was standing at the restaurant counter, in a passageway between the customer area and the employee area. NE#1 approached CM#1, identified himself as a police officer, and asked to speak with CM#1 away from where the employees were working. CM#1 refused, saying, "No, I'm not. I'm not talking to anybody."

CM#1 had a cell phone in her hands, wore a backpack, and appeared to have an object in her jacket, causing it to bulge. NE#1 said, "The store's saying that you've been hitting people." CM#1 denied this. NE#1 again asked to speak with CM#1 away from the employee area. CM#1 refused and said, "Every time I come here I get disrespected. This is like the fifth time. . . . I came in here because I work and there was water at the door. I had two strokes." NE#1 asked CM#1 to put her backpack down, which she refused to do. CM#1 stated, "The little baby almost fell, at the door, a bunch of water there. Every time I come here."

NE#1 then put his hands out towards CM#1, stating, "Okay, here's the deal. Right now, right now, I need to put handcuffs on you." CM#1 backed away, saying, "Don't put your hands on me." NE#1 continued to step towards CM#1 and try to grab her. CM#1 repeatedly yelled, "Don't put your hands on me," and pulled away from NE#1. CM#1 struck her hand towards NE#1's hands, hitting NE#1's left hand. CM#1 then turned away from NE#1 and ran out of the restaurant while saying, "Don't put your fucking hands on me mother fucker."

¹ Type I Use of Force is the lowest level of "reportable" force. It is defined by policy as "force that causes transitory pain or the complaint of transitory pain." SPD Policy 8.050.



NE#1 followed CM#1 out of the restaurant. NE#1 caught up with CM#1 in the restaurant parking lot and appeared to wrap his arms around her in a “bear hug” motion.” It then appeared NE#1’s BWV fell off NE#1. NE#1’s BWV stopped depicting video at this point but continued to record audio. During this time, NE#1 ordered CM#1 onto the ground and on her stomach. CM#1 refused, stating, “No, I didn’t do nothing,” “I’m pregnant,” “Get off of me,” “I’m pregnant, I been raped by police, I didn’t do nothing,” “can’t breathe, I didn’t do nothing, I’m a woman,” and “I didn’t do nothing as a woman, I didn’t hit nobody.” During this time, NE#1 was recorded stating “stop” multiple times, “Stop, don’t bite me, do not bite me,” and “You kicked me.” CM#1 denied kicking NE#1 and stated, “Don’t break my arm.”

About two-and-a-half minutes after NE#1’s BWV fell off, the voice of another officer (Witness Employee #1 or WE#1) was heard on NE#1’s BWV. WE#1’s BWV depicted WE#1’s arrival on the scene. At the time WE#1 arrived, CM#1 was lying on her side on the ground outside of the restaurant; NE#1 was kneeling behind CM#1 with both of his hands on CM#1’s side. As WE#1 approached, he ordered CM#1 repeatedly to lie on her stomach before taking hold of her arm and bringing CM#1’s arm behind her back. NE#1 and WE#1 then placed CM#1 in handcuffs. During this time, CM#1 stated, “Don’t break my arm” and “I can’t breathe, please.” About thirty seconds after the handcuffs were applied and CM#1 stated she could not breathe, NE#1 requested the Fire Department respond to the scene.

After being placed in handcuffs, CM#1 alleged that WE#1 was a “rapist,” stated she did not want to talk to the Fire Department because she “got raped (unintelligible) at the hospital,” and accused two other officers on the scene of being “rapists.” After a sergeant arrived to screen the call, CM#1 stated to the screening sergeant:

He (WE#1) hit me. And he’s from Russia. They (unintelligible) me up. I’ve been raped already. You’re a rapist. You guys are rap-oes. And you know better. I wasn’t even... That man hit me first. (unintelligible). I ran for my life.

CM#1 was later secured in an ambulance gurney for transportation to King County Jail. CM#1 continued to accuse different officers of being rapists, stated people at a hospital raped her, and stated she was “humped on” by police officers in Federal Way.

f. Private Restaurant Security Video

OPA also reviewed a private security video from the restaurant that depicted NE#1’s interaction with CM#1 inside the restaurant. The private security video was recorded from a different angle but had no additional evidentiary value beyond NE#1’s BWV.

g. 9-1-1 Audio

OPA reviewed the audio recording of CM#2’s 9-1-1 call. It was consistent with the CAD call report.



h. OPA Interview – Community Member #2

OPA interviewed CM#2. CM#2 was the restaurant employee who called 9-1-1.

CM#2 stated he saw CM#1 standing in water near the restaurant's garbage cans. CM#2 said he approached CM#1 to offer help and place a "wet floor" sign on the ground. CM#2 described CM#1 as responding aggressively and kicking the wet floor sign. CM#2 said he put the wet floor sign back and told CM#1 that she needed to leave if she could not behave. CM#2 recalled CM#1 refused to leave, claimed to own the restaurant, kicked the wet floor sign again, and cursed at other customers.

CM#2 stated he called 9-1-1. CM#2 stated that CM#1 started yelling at an employee, saying things like "I'm going to kill you." CM#2 said CM#1 then walked through the counter into an employee area to yell at other employees.

CM#2 stated he called 9-1-1 again. CM#2 stated, thereafter, NE#1 arrived and CM#2 told NE#1 that CM#1 "needs to go." CM#2 stated NE#1 tried to get CM#1 to come with him multiple times, but CM#1 refused. CM#2 recalled CM#1 hitting NE#1 on either the hand or the shoulder, at which point NE#1 told CM#1 she was under arrest. CM#2 said CM#1 pulled away and ran outside, and that NE#1 followed CM#1.

CM#2 stated other officers arrived to help NE#1. CM#2 stated he witnessed everything that occurred outside. CM#2 stated CM#1 was resisting the officers. CM#2 stated he thought the officers did their job correctly. CM#2 denied seeing NE#1 do anything of a sexual nature to CM#1.

i. OPA interview – Named Employee #1

OPA interviewed NE#1, who said he has been a police officer with SPD for about five years.

NE#1 recalled responding to this incident. NE#1 stated he learned prior to arriving that CM#1 had allegedly thrown a sign at a customer as well as punched and kicked employees. NE#1 stated, based on this information, he believed bystanders were in imminent danger. NE#1 said he entered the restaurant without backing officers because he knew his backup was on the way, saw the updates that CM#1 was actively assaulting other people in the restaurant, and wanted to ensure the safety of those inside.

NE#1 recalled contacting CM#1. NE#1 described CM#1 as "highly agitated" and "not very compliant." NE#1 also stated his belief that CM#1 was possibly armed based on her multiple layers of clothing, large backpack, and 9-1-1 updates that she used a chain around her fist to assault someone. Due to this, NE#1 stated he thought the safest thing to do was place CM#1 in handcuffs.

NE#1 recalled speaking to CM#1 in a calm voice, identifying himself, and trying to reason with her. NE#1 stated CM#1 did not seem compliant with any of his requests. NE#1 stated he approached CM#1 because she was still close to the restaurant employees—her putative victims—and he wanted to be able to intervene if she started to assault anyone.



NE#1 stated there were areas of cover in the restaurant, but he wanted to be close enough to CM#1 to grab her if she began assaulting anyone else.

NE#1 explained his decision to go hands-on with CM#1 as based on his safety and the safety of restaurant employees. NE#1 noted that in addition to her prior reported assaultive behavior, CM#1's demeanor was escalated and non-compliant. NE#1 said after CM#1 fled from the restaurant, he was able to catch her, grab her arm, and do a controlled takedown. NE#1 stated as he attempted to take CM#1 into custody, CM#1 kicked him in the shin. NE#1 stated he held CM#1 down while he waited for his backing officer. NE#1 stated once the backing officer arrived, they were able to place CM#1 into handcuffs.

NE#1 stated he believed he complied with the Department's de-escalation policy. NE#1 stated he used verbal de-escalation, but CM#1 remained uncooperative. NE#1 stated he had to give up time, distance, and shielding because "I believe that, uh, if I did not place myself physically where I was, it would compromise law enforcement priority. Specifically, protecting the public."

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 in Order to Reduce the Need for Force

It was alleged that NE#1 failed to use de-escalation as required by policy.

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

NE#1 arguably sacrificed time, distance, and shielding at two points during this incident. First, NE#1 chose to enter the restaurant without any backing officers present. Although this decision compromised time, distance, and shielding, NE#1 explained he made the choice due to the information he received from dispatch that CM#1 had thrown a sign, punched two employees, and was using a chain to punch people. Additionally, NE#1 explained that he knew backing officers were on their way and, on BWV, CM#2 is observed telling NE#1 that CM#1 was attacking his employees. After entering the restaurant, NE#1's BWV depicted CM#1 standing in proximity to restaurant employees at the counter in a passageway between the customer and employee area of the restaurant. Given the totality of these circumstances known to NE#1, it would not have been reasonable for him to delay contacting CM#1 in order to wait for backup, which NE#1 knew was on its way.

Second, NE#1 chose to go hands-on with CM#1 as she refused to be placed in handcuffs. At this juncture, NE#1 had already abandoned distance and shielding in order to put himself in a position to respond quickly if CM#1 continued assaulting employees who were close by. While it is clear from BWV that NE#1's statements and physical attempt to



put CM#1 into handcuffs escalated CM#1, NE#1 explained that his decision to put CM#1 in handcuffs was motivated by her previous assaultive behavior, escalated and non-compliant demeanor, and the possibility she was armed (due to her bulky clothing, backpack, and reported use of a chain to hit people). Although it's possible NE#1 could have continued communicating with CM#1 until backing officers arrived, NE#1's assessment that it was necessary to put CM#1 in handcuffs was reasonable. Moreover, OPA would be speculating if it concluded that continuing to wait for backup in this situation would have reduced the need for force in any event.

NE#1 did attempt limited de-escalation by attempting to converse with CM#1, but ultimately OPA concludes further de-escalation was neither safe nor feasible due to CM#1's escalated, non-compliant demeanor and the immediate public safety risk she posed to restaurant customers and employees.

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

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

Named Employee #1 - Allegation #2

5.001-POL 2. Employees Must Adhere to Laws, City Policy and Department Policy

The Complainant alleged NE#1 sexually assaulted her when taking her into custody.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy.

This allegation is unfounded. Although NE#1's BWV did not video record the entirety of NE#1's interaction with CM#1, audio was recorded throughout the entire incident. Neither video nor audio from NE#1's BWV corroborates the claim that NE#1 sexually assaulted CM#1. Moreover, CM#1 was accusing almost every individual she interacted with during this incident of being a "rapist." Finally, CM#2 stated he observed the entire interaction between NE#1 and CM#1, and CM#2 stated he did not observe any inappropriate behavior on the part of NE#1.

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

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