




CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 11, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0048

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 - Training Referral
# 2	5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded (Expedited)
# 3	6.010 Arrests POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime to Effect an Arrest	Not Sustained - Unfounded (Expedited)

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded (Expedited)
# 2	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Unfounded (Expedited)

Named Employee #3

Allegation(s):		Director's Findings
# 1	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Unfounded
# 2	5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded (Expedited)
# 3	5.001 - Standards and Duties POL-10. Employees Will Strive to be Professional	Not Sustained - Training Referral

Named Employee #4

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded (Expedited)
# 2	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 used excessive force against the Complainant when they responded to a domestic violence incident. It was also alleged that Named Employee #3 (NE#3) was unprofessional by directing profanity at the Complainant.

ADMINISTRATIVE NOTE:

OPA, with the Office of Inspector General's (OIG) agreement, conducted Expedited Investigations for unlawful arrest and bias allegations against Named Employee #1 (NE#1), excessive force and bias allegations against Named Employee #2 (NE#2) and Named Employee (NE#4), and a bias allegation against NE#3. That means OPA believed it could reach and issue recommended findings based solely on its intake investigation without interviewing the involved employee about those allegations. Under the related collective bargaining agreement, an Expedited Investigation may not result in a sustained finding. The remaining allegations against NE#1 and NE#3 underwent full investigations. OIG also certified OPA's investigation as thorough, timely, and objective.

STATEMENT OF FACTS:

The named employees responded to a 9-1-1 call reporting two men fighting at the incident location. The caller also said that one of the men hit a woman who screamed for help. The caller described the offender and an involved silver vehicle.

NE#1 wrote the related incident report. He wrote that upon arrival, he saw a suspect—the Complainant—matching the description forcefully push Community Member #1 (CM#1)—later identified as his daughter.

Body-worn video (BWV) captured the named employees' actions. In summary, it showed NE#1 radio broadcast the observed push.

NE#1's In-Car Video (ICV) View



NE#1 activated his emergency lights and exited his cruiser. The Complainant approached NE#1, ignoring commands to turn and walk away. NE#1 grabbed the Complainant's arm and directed him to sit on a police cruiser.



The Complainant refused and told NE#1, "Shut the fuck up. I'm the one protecting [the woman inside his car]." The Complainant yelled, "This is my motherfucking country. I'm Native American! Fuck with me!" NE#1 shouted, "Do you want to be arrested right now?" The Complainant quickly removed his coat and said, "Yes. Go ahead. For what?"



NE#1 replied, "For assault. I just saw you shove her." The Complainant reached into his right pant pocket to remove a phone. NE#1 grabbed his right hand, took the phone, and pulled the Complainant's right arm behind his back while ordering him to "Keep [his] hands out of [his] pockets."

NE#1 Controlling the Complainant's Arm



NE#4 interviewed Community Member #2 (CM#2)—an onlooker—who denied knowing the Complainant. CM#2 described the Complainant as violent and dangerous and explained that she intervened to help a woman with a bloody face inside his car. Community Member #3 (CM#3)—another onlooker—said that before officers arrived, Community Member #4 (CM#4)—the woman inside the Complainant’s car—told them the Complainant hit her face with a cell phone. NE#4 asked whether the Complainant also struck CM#2. CM#2 replied yes. NE#4 approached NE#1 and told him to “...put [the Complainant] in cuffs.”

CM#1 closely approached to record as NE#1 struggled with the Complainant.¹ NE#4 repeatedly ordered her to walk away.

NE#3 arrived as NE#1 controlled the Complainant’s right arm, and NE#4 controlled the left. NE#3 took the Complainant’s right arm from NE#4, and he and NE#1 tried to put the Complainant—pulling away and stiffening his legs to defeat their attempt to control him—against a cruiser.

¹ CM#1 was handcuffed and released on the scene, but NE#1 later sought an obstruction charge for her.

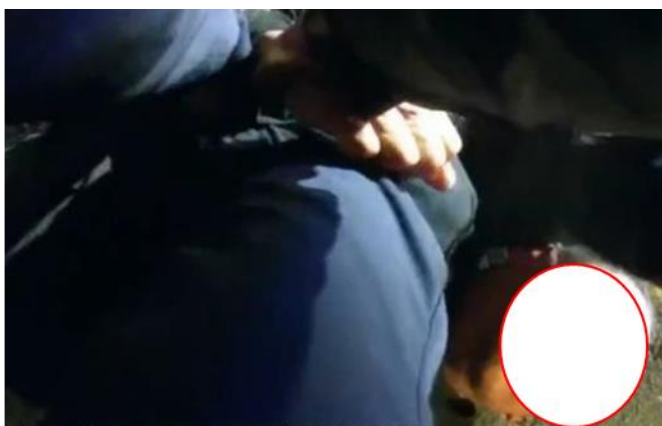


NE#1 swung his right foot against the back of the Complainant's right leg, performing a foot sweep before he and NE#3 brought the Complainant to his back on the ground. For about two seconds, NE#1 placed his knee across the Complainant's upper chest/throat area to hold him against the ground.

ICV View



NE#1's BWV View



Pulling on the Complainant's right arm, NE#3 screamed, "Get on your stomach, or you're going to get fucking hurt!" NE#1 and NE#3 rolled the Complainant onto his stomach, but he buried his hands under his body. For about 30 seconds, NE#3 pulled the Complainant's right arm, and NE#1 pulled the left. After that, NE#1 applied four knee strikes to the Complainant's left side. CM#4 approached as NE#1 put his left knee near the back base of the

² The Complainant.



Complainant's neck³. For another four seconds, NE#1 returned his knee to the back base of the Complainant's neck before repositioning to use his hands to hold him down. NE#3 yelled, "Give me your fucking arm." The Complainant turned onto his back, causing NE#3 to fall. NE#1 put his knee near the Complainant's throat for roughly two seconds.



The Complainant turned onto his stomach, causing NE#1 to lose position. NE#3 moved to the Complainant's left side with NE#1 on the right. Both officers held the Complainant to the ground until backup arrived. NE#3 told the Complainant, "You're going to get fucking hurt," as he pulled from the officers trying to handcuff him. A few seconds later, the Complainant was handcuffed.

NE#4 spoke with CM#4, who had an injured forehead.

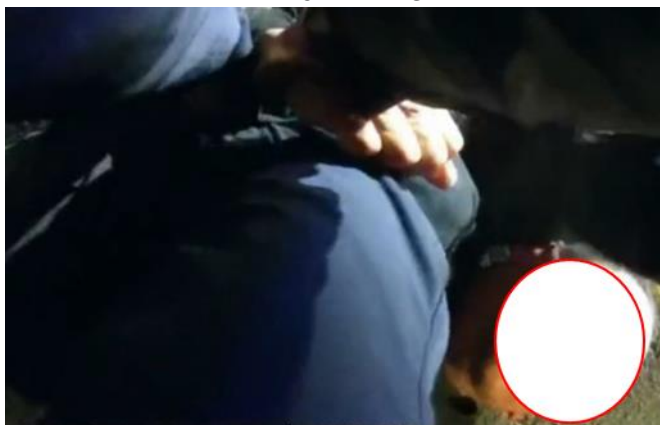


³ NE#1's knee was at the back base of the Complainant's neck for about four seconds.



OPA interviewed NE#1. He said he was dispatched to a fight at the incident location. Upon arrival, he saw the Complainant shove CM#1. NE#1 said de-escalation tactics included verbal commands and the presence of multiple officers, but they were unsuccessful. NE#1 said he and NE#3 tried putting the Complainant against the cruiser's hood for handcuffing, but the Complainant actively resisted. He said he told NE#3 they would take the Complainant to the ground. NE#1 put his right leg behind the Complainant's right leg to cause him to "fall back over it" as they brought him down. On the ground, the Complainant resisted by pulling his hands towards his chest and rolling to prevent handcuffing. NE#1 claimed all but one instance of his knee contacting the Complainant's neck area was accidental. He acknowledged that the control hold pictured below was intentional but noted that BWV showed his knee was against the Complainant's upper chest rather than his neck.

NE#1's BWV View



NE#1 said the four knee strikes to the Complainant's left side "...were delivered solely for the objective of breaking down the resistance of the suspect and take him into custody...." He also said his force applications were objectively reasonable, necessary, and proportional to overcome the Complainant's strength and active resistance.

OPA interviewed NE#3. He said he went to the incident location after hearing it broadcast over the radio. There, he helped NE#1 control the resisting Complainant. They tried to put the Complainant on the cruiser's hood to limit his movement. NE#1 said to bring him "to the floor." They performed a controlled takedown, positioning the Complainant on his back. NE#3 thought his controlled holds applied to the Complainant were within policy given the nature of the offense (Assault against CM#1 and DV Assault against CM#4), and the Complainant ignoring commands and actively resisting, leaving no reasonable alternative. NE#3 also said his profanity use throughout the incident was not intended to insult the Complainant:

I guess what I'm trying to say is I go to calls every day for service. And I don't swear at people because I'm also not fighting with them in the middle of the street to get them into custody. And even when I am getting somebody into custody, and they're not, I'm not swearing at them. I just believe that this incident right here was, um, force was used, and [the Complainant] was also acting belligerent and not hearing anything that I was saying. And sometimes if what I'm saying, because like I got there and I said, 'Hey, relax, you're under arrest.' That didn't work. And if he's not listening to that, I swore at him to see if he would understand what I was saying then.



NE#3 also acknowledged that NE#4 pulled him away once the Complainant was handcuffed because he was emotionally charged.

After several attempted contacts, the Complainant responded, saying his attorney would contact OPA. However, OPA has not heard from the Complainant's attorney and had no further contact with the Complainant.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged that NE#1 used unauthorized force.

An officer's 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." *Id.* 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. Reasonableness must consider that officers are often forced to make "split-second decisions" in tense, dynamic circumstances. *Id.* The policy also 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 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, NE#1's knee contacted the Complainant's neck four times: twice near his throat, risking breathing obstruction, and twice near the back of his neck. The department prohibits neck restraints, specifically "any action that involves kneeling on a subject's neck," under all circumstances. *See* SPD Policy 8.200(2). Further, officers are "prohibited from intentionally placing a knee on a prone subject's neck while taking them into custody." *Id.* BWV confirmed NE#1's knee was on the Complainant's upper chest for one of the instances. While NE#1 told OPA the other applications were unintentional, that is hardly believable where his knee twice contacted the front of the Complainant's neck for up to four seconds. He also appeared to shift his body weight into the knee each time, and BWV captured the Complainant yelling, "He's choking me," during a knee application. The department's prohibition against NE#1's use of force is unequivocal: "Any technique...to control...a subject by applying pressure against...the frontal area of the neck with the purpose or intent or effect of controlling a subject's movement..." is prohibited. SPD Policy 8.050.

Although their captain's use of force review suggested NE#1 and NE#3's force applications were objectively reasonable given the Complainant's "mental state...confrontational, aggressive attitude," necessary considering the Complainant's "argumentative and hostile" disposition and proportionate to "the resistance offered by [the Complainant] and his combative nature," its sole reference to NE#1's knee contacting the Complainant's neck was "I reviewed the video closely, and it does appear [NE#1's] knee is against the head/neck area of [the Complainant,]"



although momentarily.” OPA recommends retraining to ensure NE#1 understands the department’s prohibition against neck restraints.

Conversely, OPA and the chain of command found NE#1’s knee strikes objectively reasonable, necessary, and proportional to overcome the Complainant’s resistance.

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

- **Required Training:** NE#1’s chain of command should discuss OPA’s findings with NE#1, review SPD Policy 8.200-POL-1 with NE#1, and provide training and counseling deemed appropriate. Retraining and counseling should be documented and maintained in Blue Team.

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

Named Employee #1 – Allegation #2

5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing.

The Complainant alleged that officers’ use of force against him was racially motivated.

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” SPD Policy 5.140-POL. This includes different treatments based on the race of the subject. *See id.*

Here, OPA found no indication that force applications against the Complainant were racially motivated. Also, since the Complainant did not participate in an OPA interview, OPA could not discern his basis for the allegation. BWV showed the Complainant was the only involved party who referenced race: “This is my motherfucking country. I’m Native American! Fuck with me!”

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

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

Named Employee #1 – Allegation #3

6.010 Arrests POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime to Effect an Arrest.

The Complainant alleged he was unlawfully arrested.

Here, NE#1 saw him push CM#1. *See* RCW 9A.36.041(1) and *State v. Stevens*, 127 Wash. App. 269, 276, 110 P.3d 1179, 1183 (2005) [An “[a]ssault is, among other things, an unlawful touching,” citing *State v. Thomas*, 98 Wash. App. 422, 989 P.2d 612 (1999).] That alone established probable cause for at least a misdemeanor Fourth-Degree Assault. Moreover, CM#2 told officers she heard CM#4 screaming for help and saw her “in [the Complainant’s car]...bleeding from her forehead, she is in danger.” CM#3 corroborated CM#2’s account. NE#4 located CM#4 inside the car with a wound on her forehead. That established probable cause for a second assault. CM#2 reported that the Complainant hit her too but declined to press charges. Further, given the Complainant’s active resistance, there



was probable cause for resisting arrest. See RCW 9A.76.040(1) [“A person is guilty of resisting arrest if he or she intentionally prevents or attempts to prevent a peace officer from lawfully arresting him or her.”]

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

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

Named Employee #2 - Allegation #1

5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing.

The Complainant alleged that the officers’ use of force against him was racially motivated.

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

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

Named Employee #2 - Allegation #2

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

The Complainant alleged that NE#2 used unauthorized force.

Here, after the Complainant was handcuffed, officers tried to search him. The Complainant pushed and pulled away, leading to NE#2 holding the Complainant’s left shoulder while lifting his left arm. The Complainant complained of pain, but NE#2’s control hold was unlikely to cause more than transitory pain. It also effectively immobilized the Complainant until the search was completed.

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

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

Named Employee #3 - Allegation #1

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

The Complainant alleged that NE#3 used unauthorized force.

Overall, NE#3 used no greater than Type I force against the actively resistant Complainant.⁴ His greatest force applications were attempts to pry the Complainant’s arm from under his body and holding the side of the Complainant’s head against the ground for handcuffing. There was no evidence that his actions were objectively unreasonable, unnecessary, or disproportionate to the resistance presented.

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

⁴ Type I is force that causes transitory pain or the complaint of transitory pain.



Recommended Finding: **Not Sustained – Unfounded**

Named Employee #3 - Allegation #2

5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing.

The Complainant alleged that the officers' use of force against him was racially motivated.

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

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

Named Employee #3 - Allegation #3

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

The Complainant alleged that NE#3 was unprofessional by using profanity throughout the encounter.

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers," whether on or off duty. SPD Policy 5.001-POL-10. Additionally, the policy instructs Department employees to "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." *Id.* Furthermore, the policy states: "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language derogatory, contemptuous, or disrespectful toward any person." *Id.*

Here, NE#3 repeatedly and loudly screamed "fuck" during the incident, including:

Here, NE#3 repeatedly and loudly screamed "fuck" during the incident, including:

- Get on your stomach, or you're going to get fucking hurt!
- Give me your fucking arm!
- (Unintelligible)...fucking arm!
- You're going to get fucking hurt.
- You are being fucking recorded
- Fuck.

While NE#3 told OPA he used profanity as a de-escalation tactic, it was ineffective, yet he persisted in screaming profanity while in uniform on a public street. At a minimum, NE#1's language potentially escalated the situation and could reasonably be considered derogatory, contemptuous, and disrespectful to the Complainant. It also likely undermined onlookers' trust in NE#3 and the department.

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



- **Required Training:** NE#3's chain of command should discuss OPA's findings with NE#, review SPD Policy 5.001-POL-10 with NE#, and provide training and counseling deemed appropriate. Retraining and counseling should be documented and maintained in Blue Team.

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

Named Employee #4 - Allegation #1

5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing.

The Complainant alleged that the officers' use of force against him was racially motivated.

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

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

Named Employee #4 - Allegation #2

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

The Complainant alleged that NE#4 used unauthorized force.

Here, as the Complainant—on his stomach—pulled away from handcuffing, NE#4 held his right shoulder to the ground. She released him after he was handcuffed. Similarly, when the Complainant resisted a search, NE#4 held his right shoulder to limit its movement. The Complainant complained of pain, but NE#4 used no more than *de minimis* force. Nevertheless, she released the Complainant.

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