




## CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 25, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0187

### **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 (Expedited)

#### Named Employee #2

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

#### Named Employee #3

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

Named Employees #1, #2, and #3 (NE#1, NE#2, and NE#3) responded to an incident involving the Complainant threatening a cab driver. The Complainant alleged that the named employees used excessive force during her arrest.

### **ADMINISTRATIVE NOTE:**

During its intake investigation, OPA noted that NE#2 repeatedly swore at the Complainant. OPA returned this allegation to NE#2's chain of command for Supervisor Action.<sup>1</sup>

This case was approved for Expedited Investigation. That means OPA, with the Office of Inspector General's (OIG) agreement, believed it could issue recommended findings based solely on its intake investigation without interviewing the named employees. As such, OPA did not interview the named employees in this case.

On June 8, 2023, OIG certified OPA's investigation as thorough, timely, and objective.

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<sup>1</sup> Supervisor Action generally involves a minor policy violation or performance issue that is best addressed through training, communication, or coaching by the employee's supervisor. See OPA Internal Operations and Training Manual section 5.4(B)(ii).



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**SUMMARY OF INVESTIGATION:**

OPA received a complaint and opened an intake investigation. During its investigation, OPA reviewed the OPA complaint, computer-aided dispatch (CAD) call report, body-worn video (BWV), supplement reports, and use of force reports. OPA elected not to interview the Complainant due to employee safety concerns.

**A. OPA Complaint**

On May 1, 2023, the Complainant called OPA and left a voicemail. The Complainant described an altercation with a cab driver. The Complainant said the cab driver would not take her because she had no money, then “lunged at [her] a couple times.” The Complainant said she threw her can of hairspray at the cab driver. The Complainant said the cab driver took her clothes out of the cab, then drove off. The Complainant said officers arrived and beat her up, tackled her, slammed her head on the ground, and put their knee on her neck.

**B. Computer-Aided Dispatch (CAD) Call Report**

On April 29, 2023, CAD call remarks noted, “[YELLOW] CAB DRIVER HAS PASSENGER REFUSING TO GET OUT, NO [WEAPONS].” CAD priority remarks noted a “makeshift blowtorch.”

**C. Body-Worn-Video (BWV) and Supplement Reports**

Each named employee was equipped with a BWV. Collectively, BWV captured the following events on April 29, 2023. NE#1 and NE#2 approached a yellow cab parked at a four-way intersection. The Complainant, next to the cab, swore at NE#1 and NE#2 while she retrieved her belongings. The Complainant began to walk away, but NE#1 and NE#2 told her that she was not free to leave. NE#1 remained with Community Member #1 (CM#1)—the cab driver—while NE#2 followed the Complainant. CM#1 said the Complainant ignited a can of hairspray in the backseat of his cab, creating a makeshift flamethrower. CM#1 also said the Complainant threatened to kill him.

NE#2 pursued the Complainant from a distance. The Complainant told NE#2 to leave her alone and said, “I will set you on fire. I will set you on fire, bitch.” The Complainant pulled out a can of hairspray and a torch lighter from her backpack. The Complainant walked to an apartment building while yelling and swearing at NE#2.<sup>2</sup> Although not readily visible on BWV, NE#2 wrote in his supplement report that the Complainant “began to spray hairspray and attempt to light the spray on fire in an attempt to utilize the hairspray as a makeshift flame thrower.” NE#2 drew his TASER and said, “[Complainant], if you try to set me on fire, I’m going to fucking TASE you. Do you understand that?” The Complainant told NE#2 to shut up and entered the front door. NE#2 waited for NE#1 and NE#3, then the named employees entered the apartment building.

The named employees located the Complainant behind a door on a stairway. NE#3 forced the door open. The Complainant, wielding the can of hairspray and torch lighter, raised her right arm over her head. NE#3 grabbed the Complainant’s left arm, NE#2 grabbed her right arm, and NE#1 grabbed her shoulder region and told her that she was under arrest. The Complainant resisted and said, “They’re trying to kill me!” NE#1 grabbed the back of the Complainant’s head and attempted to bring her head down, but the Complainant resisted. The named employees

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<sup>2</sup> NE#2 documented in his supplement report that, at this point, NE#1 radioed that there was probable cause to arrest the Complainant for felony harassment.



maneuvered the Complainant into the hallway. An officer said, “Take her down.” NE#2 grabbed the Complainant’s right leg, then the named employees brought the left side of the Complainant’s body to the ground and held her down. The Complainant yelled and resisted. NE#1 pressed his knee on the Complainant’s right shoulder for several seconds as NE#3 handcuffed the Complainant. The Complainant remained on the left side of her body while NE#3 gauged the tightness of the handcuffs. The Complainant said, “I can’t breathe.” The named employees assisted the Complainant up and escorted her out of the apartment building where she was evaluated by the Seattle Fire Department.

The named employees wrote supplement reports consistent with the events captured on BWV.

#### **D. Use of Force Reports**

Each named employee wrote a Type II<sup>3</sup> use of force statement consistent with the evidence summarized above.

Four supervising officers reviewed the investigation, wrote use of force reports, and provided an account consistent with the evidence summarized above. Witness Supervisor #1 (WS#1)—an acting sergeant—wrote that he screened the Complainant’s arrest. WS#1 wrote that he interviewed the Complainant, who alleged that the named employees attacked and tackled her. WS#1 wrote, “I perceived this to be an allegation of excessive force. I reviewed the officers[’] body worn video and found the allegation to be unsubstantiated.” Witness Supervisor #2 (WS#2)—an administrative lieutenant—wrote that he contacted OPA regarding the Complainant’s excessive force allegation. Witness Supervisor #3 (WS#3)—a watch commander—wrote, “In reviewing BWV and reading the officers’ statements, the officers’ actions were consistent with SPD policy and training. Their actions were necessary, objectively reasonable, and proportional in relation to the threat they were presented with. I approve this use of force and its documentation.”

Finally, Witness Supervisor #4 (WS#4)—a precinct captain—wrote that “the overall investigation, reviews and documentation were thorough and complete.” WS#4 wrote that WS#3’s conclusion was “supported by a preponderance of the evidence.” WS#4 wrote, “The Officers used trained tactics, showed good decision making and made attempts to de-escalate with the Subject prior to having to go hands on.” WS#4 concluded:

*I approve of the force used by [the named employees]. [The named employees] had Legal Authority and Lawful Purpose to contact the Subject. The Subject was uncooperative and walked away from the Officers. The Officers developed probable cause to place the Subject under custodial arrest. The Officers followed her into an apartment building and went hands on with the Subject when she continued to walk away from them. The Officers used trained tactics and performed a controlled take down of the Subject. The Subject was taken down onto the ground and safely placed in handcuffs. ...*

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 – Allegation #1**

##### **8.200 – Using Force, 1. Use of Force: When Authorized**

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<sup>3</sup> Type II is force that “causes or is reasonably expected to cause physical injury greater than transitory pain but less than great or substantial bodily harm.” SPD Policy 8.050. An example of Type II force includes, among other things, takedown that causes injury or is reasonably expected to cause injury. SPD Policy 8.400.



The Complainant alleged that NE#1 used excessive force.

SPD Policy 8.200(1) requires that force used by officers be objectively reasonable, necessary, and proportional. 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 allow for the fact 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.* The force must also be proportional to the threat posed to the officer. *Id.*

Here, NE#1 was one of three officers who took down the Complainant to arrest her. NE#1 also pressed his knee on the Complainant’s right shoulder while NE#3 handcuffed the Complainant. NE#1’s use of force was objectively reasonable, necessary, and proportional.

First, NE#1’s use of force was objectively reasonable. The Complainant was a threat to the community because she created a makeshift flamethrower, threatened CM#1, and threatened NE#2. The Complainant was verbally combative the moment NE#1 and NE#2 arrived and noncompliant with the named employees’ commands when they told her that she was not free to leave. The government’s interest in preventing the Complainant’s escape was high because she had the potential to injure other community members with her makeshift device, especially when she entered an apartment building in which she did not live. When the named employees developed probable cause to arrest the Complainant, she resisted. Although NE#1 pressed his knee on the Complainant’s shoulder, his knee was not on her head and neck and was removed quickly. BWV conclusively disproved that the named employees tackled the Complainant or slammed her head on the ground. Rather, the Complainant was lowered to the ground in a slow, controlled manner. Any use of force employed by the named employees—primarily to physically control the Complainant—was in response to the high level of resistance she presented.

Second, NE#1’s use of force was necessary. No reasonably effective alternative to the use of force appeared to exist. The named employees repeatedly attempted to gain the Complainant’s compliance voluntarily by verbalizing lawful commands. However, the Complainant refused to comply with officers’ commands, walked away while threatening NE#2 that she’d light him on fire, and entered an apartment building that she did not live in. The named employees had no choice but to go hands on with the Complainant to take her into custody. When the named employees used a team approach to take down the Complainant, she was combative and resistant. The amount of force the named employees used to physically subdue the Complainant was also reasonable to effect her arrest.

Third, NE#1’s use of force was proportional. When the named employees began executing the arrest, the Complainant raised her right hand in what appeared to be an attempt to strike at them. The Complainant also resisted. By using a team approach, the named employees used enough force to overcome the Complainant’s resistance. The team approach to take the Complainant to the ground minimized the named employees’ need to use a higher level of force. Additionally, closing the distance to take control of the Complainant also prevented her from deploying her makeshift flamethrower at the named employees. Contrary to what the Complainant alleged, the evidence provided showed the named employees did not beat her up, tackle her, slam her head on the ground, or press a knee on her neck. Therefore, the named employees’ use of force was proportional.



Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

**Named Employee #2 – Allegation #1**

***8.200 – Using Force, 1. Use of Force: When Authorized***

The Complainant alleged that NE#2 used excessive force.

Here, NE#2 was one of three officers who took down the Complainant to arrest her. Based on OPA’s review of BWV, NE#2 did not use force that clearly differentiated himself from the other named employees who used force to take down and handcuff the Complainant—aside from NE#1, who pressed his knee on her shoulder. OPA concluded that NE#1’s use of force was objectively reasonable, necessary, and proportional. OPA also concludes that NE#2’s and NE#3’s use of comparable or lesser amounts of force under the same circumstances was also objectively reasonable, necessary, and proportional.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

**Named Employee #3 – Allegation #1**

***8.200 – Using Force, 1. Use of Force: When Authorized***

The Complainant alleged that NE#3 used excessive force.

For the reasons at Named Employee #2 – Allegation #1, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**