



## CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 3, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0196

### **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:**

Community Member #1 (CM#1) alleged that she was “thrown” and “pounded” into the ground during her arrest by Named Employee #1 (NE#1) and Named Employee #2 (NE#2).

### **ADMINISTRATIVE NOTE:**

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 involved employees. As such, OPA did not interview the involved employees in this case.

On June 9, 2023, the Seattle Office of Inspector General (OIG) certified OPA's investigation as thorough, timely, and objective.

### **SUMMARY OF INVESTIGATION:**

A precinct captain submitted an OPA complaint via Blue Team after reviewing the Named Employees' involvement in CM#1's arrest. The complaint said officers were dispatched to investigate multiple incidents involving CM#1, who had probable cause for arrest. The complaint said CM#1 fled on foot, but the Named Employees located and arrested CM#1. The complaint said CM#1 sustained a minor head injury during the arrest due to CM#1's actions and the immediate environment. The complaint said CM#1 alleged that the Named Employees threw and pounded her into the ground during her arrest.

OPA commenced an intake investigation. During its investigation, OPA reviewed the OPA complaint, computer-aided dispatch (CAD) call report, incident report, use of force statements, body-worn videos (BWVs), and in-car video (ICV).



On February 3, 2023, at 2:00 PM, CAD call remarks stated, “JUST NOW, [COMMUNITY MEMBER #2 (CM#2)] PUNCHED IN CHEST BY [CM#1] THAT WAS REFUSING TO LEAVE, IS NOW OUTSIDE THE STORE. NO [INJURY], NO [WEAPONS] SEEN.” It was coded as an assault call. At 2:05 PM, CAD call remarks stated CM#1 stole several bottles of alcohol and already drank a few. CAD call remarks also described CM#1’s subsequent actions outside, including running, sitting on a bench, and walking. CM#2—an employee of Business #1—would later describe to NE#1 that CM#1 entered Business #1, caused a disturbance, cursed at employees, refused to leave, punched CM#2 in the chest, threw merchandise on the floor, took six mini bottles of alcohol, placed about three dollars on the counter, and left Business #1.

NE#1 wrote an incident report that documented the following details. According to NE#1, an hour or two before this call, there were two other calls involving CM#1. CM#1 was well known to officers, often causing disturbances and stealing alcohol. NE#1 arrived near Business #1, recognized CM#1, and rolled down her window to talk to CM#1. CM#1 said she did not do anything, paid Business #1, and did not steal anything. CM#1 then ran away on foot. NE#1 pursued CM#1, relocated CM#1, and ordered CM#1 to stop. CM#1 attempted to run away, but NE#1 pursued CM#1.

OPA reviewed BWVs and found them consistent with NE#1’s incident report. BWVs captured the following events. As NE#1 approached CM#1, OPA observed no lacerations on CM#1’s face. CM#1 attempted to flee. NE#1 grabbed CM#1 and used control holds while CM#1 resisted. NE#2 subsequently arrived to assist NE#1. As NE#2 approached CM#1, CM#1—while being held from behind by NE#1—drank a mini bottle of alcohol. NE#2 told NE#1 to “put [CM#1] against the wall.” When NE#1 and NE#2 attempted to use a nearby fence to handcuff CM#1, CM#1 went limp, causing NE#1 and NE#2 to hold CM#1 up. NE#1 and NE#2 then guided CM#1 to the ground. NE#1 and NE#2 pushed down on CM#1’s shoulder and lifted CM#1’s arm. During this maneuver, CM#1’s head contacted a cement footing of a fence. NE#1 placed her right knee on CM#1’s upper back and handcuffed CM#1 while CM#1 moved her head against the cement footing and said, “What did I do? Let me go!” CM#1 continued to resist. OPA believes CM#1 suffered a small laceration to her forehead based on CM#1’s contact against the cement footing. CM#1 made no complaint of pain.



BWV also captured the following events. After CM#1’s arrest, NE#1 and NE#2 stood CM#1 up. NE#2 observed a laceration with blood just above CM#1’s right eyebrow, so NE#2 called for assistance from the Seattle Fire Department (SFD). Before SFD’s arrival, NE#2 wrapped CM#1’s head in a bandage. SFD arrived, but CM#1 refused medical treatment. Witness Supervisor #1 (WS#1)—a sergeant—also arrived and spoke with CM#1. When WS#1 asked about the laceration, CM#1 said, “She cut my head.” When WS#1 asked who cut her head, CM#1 said, “I don’t know.” CM#1 later said the “law officer” cut her head when “she threw me down” and “pounded me to the ground.”



OPA reviewed NE#1's ICV and the use of force statements of other Seattle Police Department (SPD) employees who reviewed the incident. OPA found them to be consistent with the events described above.

**ANALYSIS AND CONCLUSIONS:**

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

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

CM#1 alleged that the Named Employees used excessive force during her arrest.

SPD Policy 8.200(1) requires that force used by officers be 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." Whether force is reasonable depends "on the totality of 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" during 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.* Lastly, the force used must be proportional to the threat posed to the officer. *Id.*

Here, OPA finds this allegation unsubstantiated. BWV showed NE#1 and NE#2 use a team approach to move CM#1 to a fence to handcuff her. When CM#1 went limp, NE#1 and NE#2 were forced to guide CM#1 to the ground to complete handcuffing. During this maneuver, CM#1's head contacted a cement footing, which likely caused her injury. The presence of the cement footing turned a likely *de minimis* use of force incident into a Type II use of force.<sup>1</sup> OPA did not observe NE#1 or NE#2 use any force beyond *de minimis* force intended and necessary to maintain control of CM#1. OPA also saw that CM#1 was noncompliant and resisted the Named Employees, who had probable cause to arrest CM#1 for assault and shoplifting. Additionally, the difficulty of handcuffing CM#1 was exacerbated due to her likely intoxication. OPA finds the arrest tactic did not arise to excessive force.

Accordingly, OPA recommends that 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***

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

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

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<sup>1</sup> Type II force 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. *De minimis* force is physical interaction meant to separate, guide, and/or control without the use of control techniques that are intended to, or are reasonably like to, cause any pain or injury. *Id.*