



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 16, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0220

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)

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:

The Complainant alleged Named Employee #1 (NE#1) and Named Employee #2 (NE#2) used excessive force when they arrested him, causing bruising on his arms.

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

On June 22, 2023, OIG certified OPA's investigation as thorough, timely, and objective.

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), and incident report. OPA also interviewed the Complainant.



A. OPA Complaint

On May 23, 2023, the Complainant called OPA twice and left two voicemails. In summary, the Complainant said a male officer and a female officer arrested him. The Complainant said the male officer was “very brutal” and “inflicted bodily harm” on him, causing bruising on both his hands. The Complainant said the female officer did not “mishandle” him.

B. Computer-Aided Dispatch (CAD) Call Report, Body-Worn Video (BWV), and Incident Report

On May 20, 2023, CAD call remarks noted, “2 MALES [PHYSICALLY] FIGHTING, NO WEAPONS.”

The named employees’ BWV captured the following events on May 20, 2023. The named employees approached the Complainant, Community Member #1 (CM#1), and Community Member #2 (CM#2) outside. The Complainant, while agitated and shouting, used his arm to press against CM#1’s chest, causing NE#1 to grab the Complainant’s arm and wrist. The named employees warned the Complainant not to touch anyone or he would be handcuffed. The Complainant said he lost his phone. NE#2 separated the Complainant from NE#1, CM#1, and CM#2.¹

CM#1 told NE#1 that the Complainant’s phone was stolen, so CM#1 gave his phone to the Complainant so he could call the police. CM#1 said the Complainant punched his chest when the Complainant would not return his phone. CM#2 told NE#1 that she grabbed CM#1’s phone from the Complainant and handed it to CM#1. CM#2 said the Complainant grabbed her shoulder, causing her to push him away. CM#2 corroborated CM#1’s claim, saying the Complainant was the aggressor.

NE#1 approached NE#2 and the Complainant. NE#1 told the Complainant that he was going to “go in cuffs.”² The Complainant appeared to have moved his arms behind his back. NE#2 grabbed the Complainant’s right arm while NE#1 took out handcuffs, momentarily grabbed the Complainant’s left arm and wrist, and applied handcuffs. The named employees, while holding the Complainant’s arms, escorted the Complainant to a patrol car. NE#1 searched the Complainant. NE#1 asked about blood on the Complainant’s hand. The Complainant said he had high blood pressure and broke his hand. The Complainant also said he was at Swedish Hospital. NE#1 Mirandized the Complainant and put him in the back seat of the patrol car.

NE#2 transported the Complainant to the King County Jail (KCJ). The Complainant asked NE#2 to lower the window because he said he had shortness of breath. NE#2 requested assistance from Seattle Fire Department (SFD) personnel, who evaluated the Complainant and medically cleared him. American Medical Response (AMR) personnel arrived, secured the Complainant on a gurney using soft restraints, and transported the Complainant to Harborview Medical Center with NE#1. An AMR employee screened the Complainant and, at one point, asked the Complainant to squeeze both her hands. The Complainant squeezed and said, “Ow.”

NE#2 wrote an incident report consistent with the events captured on BWV.

¹ NE#2 wrote in her incident report that she smelled alcohol on the Complainant.

² NE#2 wrote in her incident report that there was probable cause to arrest the Complainant for assault in the fourth degree.



C. OPA Interview

OPA interviewed the Complainant. The Complainant said both named employees “mishandled” him by using excessive force. The Complainant said he was “badly bruised” under both his armpits the following day. The Complainant said he was “brutally” handled, even though he did not resist arrest. The Complainant said he did not photograph his bruises.

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.

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 used *de minimis* force³ when he grabbed the Complainant’s arm to prevent him from touching CM#1. The Complainant did not express any pain. The named employees used *de minimis* force when they arrested the Complainant and escorted him to a patrol car. The Complainant did not express any pain while he was handcuffed. The Complainant also did not express any pain while the named employees held onto his arms and escorted him to the patrol car. Throughout their entire interaction with the Complainant, the named employees grabbed the Complainant’s wrists and arms to control his movements, which were not intended to, or reasonably likely to, cause any pain or injury. The Complainant never expressed any pain throughout his entire interaction with the named employees. In fact, the only time the Complainant expressed any pain was when the AMR employee asked him to squeeze her hands in the AMR van. Although the Complainant alleged his hands (OPA complaint) or his armpits (OPA interview) were bruised, the Complainant told NE#1 at the time of his arrest that he had high blood pressure and broke his hand—conditions that either could cause him to bruise more easily or could have caused the bruising itself. However, SFD personnel evaluated the Complainant and medically cleared him without noting any bruising.

Under these circumstances, the named employees used objectively reasonable, necessary, and proportional *de minimis* force. Their use of force was objectively reasonable to control the Complainant’s movements because he was agitated and physically contacted CM#1 upon the named employees’ arrival. Their use of force to take the Complainant into custody was also objectively reasonable after the named employees developed probable cause that he assaulted CM#1. Their use of force was necessary because there was no reasonably effective alternative to using

³ *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 likely to, cause any pain or injury. SPD Policy 8.050.



de minimis force to control the Complainant's movements. Their use of force was proportional because it was minimal to prevent the Complainant from further touching CM#1 and to effect an arrest. Their *de minimis* use of force unlikely caused the Complainant any pain. Indeed, BWV did not capture the Complainant expressing any pain before, during, or after his arrest. Moreover, even if the named employees' actions did cause the bruising as alleged—which is unlikely—this would most likely be a result of the Complainant's resistance to the officers' application of otherwise *de minimis* force. The fact that the Complainant may bruise easily or caused his own bruising by struggling with the officers would not make the officers' use of force excessive.

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 NE#2 used excessive force.

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

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