




## CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 31, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0291

### **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 - Management Action
# 2	8.400 - Use of Force Reporting and Investigation, 8.400-POL-1 Use of Force Reporting and Investigation, 1. Officers Will Document in a Use-of-Force Report All Uses of Force Except De Minimis Force	Not Sustained - Inconclusive

***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) used excessive force with his patrol vehicle when trying to arrest him for domestic violence (DV) assault, after fleeing the scene on a bicycle. NE#1 positioned his patrol vehicle near the Complainant who was on his bicycle and next to parked cars to redirect or stop the Complainant. NE#1 allegedly bumped into the Complainant with his patrol vehicle and failed to complete a use of force report.

### **ADMINISTRATIVE NOTE:**

On November 7, 2023, the Office of Inspector General (OIG) certified OPA's investigation as thorough, timely, and objective.

### **SUMMARY OF INVESTIGATION:**

The Office of Police Accountability (OPA) opened an investigation on behalf of the Complainant. During its investigation, OPA reviewed the OPA complaint, computer-aided dispatch (CAD) call report, body-worn video (BWV), incident and supplemental reports, Force Investigation Team (FIT) investigation, supplemental documentation and interviews, in-car video (ICV), photos, Seattle Fire Department records, AMR records, Harborview medical records and OPA interviews.



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**A. OPA Complaint**

On July 4, 2023, OPA submitted a complaint on behalf of the Complainant.<sup>1</sup> Seattle Police Officers were dispatched to an apartment building for physical fight or assault. The CAD call notes indicated a possible assault and sounds of physical fighting. A female voice was heard crying and a male voice was yelling.

Witness Officer 1 (WO#1) responded to the scene and contacted Community Member 1 (CM#1), the alleged victim, the reporting party (RP) and Community Member 2 (CM#2) a witness from the apartment who told the RP to call 911. CM#1 explained to WO#1 the Complainant assaulted her. WO#1 observed visible swelling to CM#1's upper lip and bruising on her neck. WO#1 determined the relationship between the parties was CM#1 was an ex-significant other of the Complainant. CM#1 was accompanied by CM#2. CM#2 observed the Complainant leave quickly from the apartment on a bicycle. WO#1 established probable cause for the arrest of the Complainant for DV assault and updated radio dispatch. This information was also conveyed by WO#1 to SPD officers at the command post of the incident.

NE#1 responded to a request for an area check for the Complainant along with Witness Officer 2 (WO#2). Both NE#1 and WO#2 were familiar with the Complainant from prior incidents with CM#1 and his history of eluding the police. NE#1 learned there was probable cause to arrest the Complainant from WO#1 and by radio prior to looking for the Complainant. NE#1 located and identified the Complainant at a bus stop on his bicycle. NE#1 waited for WO#2 to arrive before contacting the Complainant just north of Madison Street. NE#1 turned his lights on and WO#2 stated, "[Complainant's name], stop. Police, stop." NE#1 recalled, before they could finish talking to the Complainant, he fled the area on his bicycle with no regard to oncoming traffic. NE#1 and WO#2 began following the Complainant with their patrol vehicles.

NE#1 gave commands for the Complainant to stop from his public announcement (PA) system and yelled this out of his window as well. NE#1's sirens and lights were activated as well. NE#1 recalled the Complainant was, "riding his bike in a very aggressive manner, evasive manner, but also a no -- a disregard for oncoming traffic". Also, NE#1 recalled the Complainant at some points, was weaving through traffic and was almost hit by a car coming out of their driveway. NE#1 observed the Complainant riding his bicycle towards I-5 against traffic. Also, NE#1 recalled trying to redirect his travel by, "blocking his -- like, getting in front of him and -- and redirecting him to go the other way, which was successful". NE#1 again yelled and ordered the Complainant to stop. WO#2 positioned his vehicle to hopefully get the Complainant to stop. The Complainant continued to disregard the commands to stop and went between two cars on his bicycle.

NE#1 continued to follow the Complainant, as he was, "riding again with no regard to -- to traffic and not clearing any intersections". NE#1 stated, "I thought he's either going to hurt himself or hurt somebody else really bad trying to get out of his way". Witness Officer 3 (WO#3) notified radio he was going to assist NE#1 and WO#2. WO#3 located NE#1 and the Complainant on Fifth Avenue and Terrace Street. NE#1 was concerned the Complainant was going to hurt himself or someone else really bad. NE#1 then positioned his vehicle in front of the Complainant to where he stated, "a reasonable person would slow down, stop, or redirect them[self] to go the other way, which would give myself and other officers enough time to apprehend him and to take him into custody". NE#1 explained he tried to move away from the Complainant and that's when NE#1 indicated the Complainant lost balance and went down. NE#1 stated,

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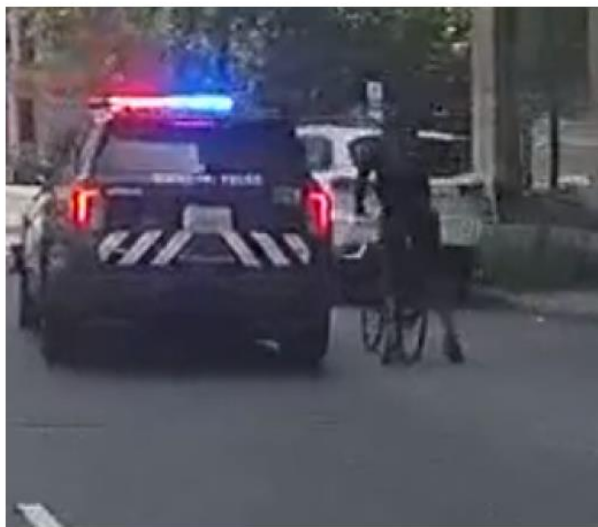
<sup>1</sup> OPA Call Out Summary.



“When I look[ed] over to my passenger window, I saw him going, he went down, uh, falling to the ground. I [got] out of my vehicle.”



**NE#1's Patrol Vehicle Just Ahead of Complainant**



**NE#1's Patrol Vehicle Towards the Complainant**



**The Complainant Tumbles with Bicycle on Roadway**

NE#1 got out of his vehicle immediately to take the Complainant into custody, as well as WO#3 who was approximately five to ten feet behind the Complainant when he saw him fall from his bicycle. NE#1 and WO#3 were both surprised; however, when the Complainant got up from the ground after falling and continued to run from them. The Complainant continued to run until he hit his left leg against a parked car and continued to run. NE#1 and WO#3 then saw the Complainant start to walk with his hands up towards NE#1 and both officers arrested the Complainant and took him into custody. WO#3 went hands on first and NE#1 assisted in arresting the Complainant who resisted. NE#1 broadcasted they were taking the Complainant into custody. NE#1 took photographs of the scene of the bicycle crash and inspected the nearby parked vehicles for damage at approximately 14:59. NE#1 later indicated he considered this inspection inconclusive. WO#2 advised the Complainant of his Miranda Rights upon arrival and requested the Seattle Fire Department (SFD).

Witness Officer 4 (WO#4), an Acting Sergeant spoke with the Complainant who stated, "my ribs hurt so bad," and that he was "drove off the road" and "hit by a Seattle Police Officers vehicle". He indicated, "I was stuck in between a Seattle Police Officer's vehicle and a regular vehicle while I was riding." WO#4 requested a call to the Force Investigation Team (FIT) around 1453 hours.

NE#1 explained he did not hear anything hit his vehicle or see any new scrapes on his vehicle. NE#1 "could not say concretely" whether the Complainant contacted his patrol vehicle. WO#3 saw the Complainant fall from his bicycle and explained he saw NE#1 try to get ahead of the Complainant to prevent him from going straight and hopefully redirect his path of travel. WO#3 saw the Complainant go towards his right-hand side and fall. WO#3 recalled his bicycle was a little bit over him and that it looked like the Complainant was losing balance a bit before the fall.

WO#3 did not see the patrol car strike the Complainant or his bike. Furthermore, WO#3 indicated his focus was on the Complainant and he didn't observe or hear anything other than the sirens. In addition, he thought the hood of his car may have blocked some of his view.



SFD and AMR arrived and medically evaluated the Complainant. The Complainant was transported to Harborview Medical Center (HMC). Per HMC staff, the Complainant had no broken bones, sore ribs and scrapes on his left elbow and hip. The nurse at HMC asked the Complainant how he received his injuries and he stated, "he had hit a parked vehicle with his bicycle".

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

On July 4, 2023, at 1:48 PM, CAD call remarks noted, "RP Hears Female Voice Crying and Male Voice Yelling From This Unit, Unk If Male Half Lives Here, Not A Normal Occurrence Here Per RP. Sounds of Phys Fighting Or ASLT, No WPNS Seen".

## **C. Force Investigation Team (FIT) Interviews and supplemental documentation**

FIT investigated this incident and classified NE#1's use of force as Type III.<sup>2</sup> As part of its investigation, FIT interviewed the Complainant, NE#1, WO#3, and two Witness Supervisors (WS#1) and (WS#2) who reviewed the incident.<sup>3</sup>

### **Interviews:**

#### **1. The Complainant**

FIT interviewed the Complainant on July 5, 2023, at approximately 11:30 AM. at the King County Jail (KCJ). The Complainant explained two navy blue trucks pulled out and someone called his name. He indicated he had a headphone in and started riding his bike. He looked back and heard his name being called and saw the police. The Complainant indicated he didn't pay them any mind because he wasn't expecting to hear his name being called. The Complainant explained he kept riding his bike down the hill and the officers started, "f-, following me and they were saying, pull over. And I'm like, for what? Like I didn't do anything, you know. And the next thing you know a, a truck comes, it rams me into the side of another car, and flip, and I flip over my bike, and um, now, I'm here". The Complainant recalled an officer screaming his name and saying they were the police. The Complainant stated, "he just got scared". The Complainant stated he "biked away, and the next thing you know I just get crammed back into another parked car, fell off my bike". The Complainant described his bike as a "fixed gear bike" and said his bike worked, but there are no breaks on it. The Complainant stated, "the brakes are my legs".

The Complainant explained he saw the [police] car pull up and it just tried to wedge me off the road and bumped me into another car, and I flew over my bike. The Complainant believed, "he definitely hit me." He explained, "it just swerved into me, bumped me". Furthermore, he said "I just hit my bars [handlebars] and just made me fall forward, fly forward. Sorry, I'm super tired". The Complainant estimated he was traveling approximately twenty miles per hour. The Complainant recalled after flipping off his bike he was laying down he believed, "I just, I stopped, as I fell off the bike, I was laying down I believe". He recalled just being out of breath after the fall. In addition, he did not recall anything during the handcuffing part, but being cuffed with his hands behind his back and being placed on a stretcher

<sup>2</sup> Type III is force that causes, or is reasonably expected to cause, great bodily harm, substantial bodily harm, loss of consciousness, or death. SPD Policy 8.050. Type III force includes, among other things, a broken bone, potentially serious head injury, permanent disfigurement or loss of the function of any bodily part or organ, or incidents where the suspect is admitted to the hospital due to the force. SPD Policy 8.400-POL-1.

<sup>3</sup> Witness Officer #5 Captain Review and Witness Officer #6 Lt. Review.



for the ambulance. The Complainant stated the police did not use any force on him and showed the interviewer his injuries on his forearms and left abdomen area. The FIT interviewer took photos of the injuries.

## **2. Named Employee #1 (NE#1)**

FIT interviewed NE#1 on July 4, 2023, at approximately 7:20 PM. NE#1 said he was working Edwards Sector on patrol for the fourth of July event and heard WO#2 requesting an additional unit for assistance with the Complainant who is known to ride a bicycle and flee from police. In addition, NE#1 was familiar with the Complainant from prior incidents between him and CM#1 and had eluded him previously. NE#1 radioed his call signal and went to the command post location. NE#1 learned that WO#2 did not know where the Complainant was, but learned there was probable cause to arrest him for DV assault. NE#1 recalled WO#1 being the primary officer at the scene and seeing CM#1, WO#2 and several other SPD officers. A description was provided for the Complainant and the area he was last seen. NE#1 and WO#2 agreed to conduct the area check. NE#1 located the Complainant westbound on Seneca Street and radioed the Complainant was at Summit and Seneca. Radio dispatch confirmed with NE#1 that the Complainant matched the description. NE#1 waited for his back-up WO#2 and radioed him the Complainant had stopped at a bus stop north of Madison and Boren. WO#2 arrived to the south of the Complainant and NE#1 was positioned at the North of the Complainant when NE#1 turned his lights on. WO#2 said, "[Complainant's name], stop. Police, stop." NE#1 anticipated the Complainant might flee and the Complainant began riding his bike again and looked at both of us as he rode off. NE#1 turned on his siren with his lights still activated. The Complainant rode around for several blocks eluding both of the officers and at some points looked like he was losing control of his bike. NE#1 grabs his PA system and yells, "Police, stop. Police, stop" a couple of times. NE#1 explained the Complainant actively disregarded verbal commands that were given to him to stop over the PA system and with both officers' windows down. NE#1 indicated the siren goes off while using the PA system so it's easier to hear. NE#1 recalled yelling with his window down, "[Complainant's name] stop, police stop" with no success.

The Complainant continued southbound on Eighth Avenue and he passed a parking lot where a car almost struck him. The vehicle honked their horn at him. NE#1 then saw the Complainant going towards the I-5 off-ramp and thought, "...I'm like, he's gonna hurt himself really, really bad and he's probably gonna hurt somebody else". NE#1 pops in front of the Complainant and was able to divert him away from I-5. WO#2 gets out of his vehicle just off the off-ramp and takes his Taser out and gives verbal commands to the Complainant to stop or he will get tased from about 10 to 15 feet away. NE#1 then radioed where the Complainant was at and stated he was concerned in his mind, "... I'm thinking before he either hurts himself really badly or kills himself or hurts someone body else, I would like to at least slow him down and redirect him, again".

NE#1 then tried to get ahead of the Complainant to position his vehicle so, "he can at least change his mind or hopefully gives up." NE#1 then is right beside the Complainant with his vehicle to the right of him and there were parked cars to right of the Complainant he saw, "... the Complainant take a tumble to the ground". NE#1 stated he did not hear anything on his vehicle.

"I don't hear anything on my vehicle, I don't hear any, any, any, any, uh bangs or any, any scrapes, my lights and sirens were on, so that could be the reason that I didn't hear it, uh, I also didn't feel anything on my vehicle, um, but I did see him take a tumble to the ground and (clears throat) that's when I immediately stopped my vehicle I want [to] say probably five feet in front of him and get out of my vehicle".





NE#1 hears Witness Officer 3 (WO#3) say, “stop”, and NE#1 looks up and saw the Complainant now running southbound on Fifth Avenue. NE#1 then saw the Complainant’s left leg collied with the rear passenger-side corner of a parked Kia Soul and then ran in front of him. NE#1 and WO#3 saw the Complainant walk with his hands up towards NE#1 and both officers take the Complainant into custody. WO#3 goes hands on first and NE#1 assists, as the Complainant resists arrest. NE#1 radios dispatch at some point that the Complainant is in custody and “officers en route can slow down”. The officers indicated they used de minimis force to get him on his stomach and placed his hands behind his back. The Complainant recognized NE#1 and called him by his first name and said, “you know I support you guys, you know I back you guys”. NE#1 asked the Complainant, “why’d you run” and he said, “you know why”.

NE#1 requested WO#2 standby while he locked his car and looked for any damage to his vehicle. NE#1 did not see any new smudges where he saw the Complainant fall by his passenger side door. He thought he saw a smudge on a parked vehicle. NE#1 again indicated that he did not see any new damage on his vehicle that stood out to him.

SFD responded and they treated the Complainant for abrasions on his left and right arm and he heard the Complainant had made complaints regarding his rib area. The Complainant did not appear to be cooperating with SFD so NE#1 stated, “we decided that we call an AMR to then transport to the hospital. AMR arrived and looked at the Complainant for complaints of bilateral rib pain and a small abrasion to his left elbow. While at HMC, one of the nurses told NE#1 that, “he lost control and hit a parked vehicle”. NE#1 indicated at the scene Witness Officer 4 (WO#4) an Acting Sergeant ordered NE#1 to do a type two statement at the initial scene. When NE#1 got to the precinct he learned there was a FIT call out and FIT was treating it like a type 3 until they figured out what’s going on with the Complainant’s medical status. NE#1 did not complete a report, as FIT now was handling the matter and reviewing this case as a type 3 for force.

NE#1 explained probable cause was established for DV assault of the Complainant and per Washington Law there is a mandatory arrest within four hours. NE#1 indicated that he had a duty under the law to arrest the Complainant so that he doesn’t hurt “her, himself, or others.” NE#1 felt it was necessary for the pursuit and was unsure what would happen next to the victim. NE#1 stated:

“I, I saw a safe opportunity for me to redirect him and, again, to get him to voluntarily give up. Um, but from my positioning and from his decision making, he did not voluntarily give up. He continued to run off, um, on foot.”

### **3. Witness Officer #3 (WO#3)**

FIT interviewed WO#3 on July 4, 2023, at 8:48 PM. WO#3 recalled finishing up paperwork and heard the call out on this incident. WO#1 was the primary officer on the call and is on his squad so WO#3 messaged dispatch to add him to the call and drove to the scene of the DV incident. At the time of the message, the Complainant was “GOA”<sup>4</sup> so he was taking his time to get there. WO#3 heard NE#1 attach himself to the call and apparently NE#1 was familiar with the Complainant. WO#3 arrived at the scene and heard by radio and MDT, that probable cause for DV assault was established for the Complainant. WO#3 stayed with WO#1 in case the Complainant came back and NE#1 and WO#2 were both familiar with the Complainant and agreed to conduct the area check. WO#3 heard that the Complainant

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<sup>4</sup> Gone on arrival (GOA).



was spotted at the bus stop around Madison Street and went to meet the two other officers there. WO#3 then heard that the Complainant fled by bicycle. NE#1 and WO#2 were calling out street names, so WO#3 was trying to find the best path to intercept them. WO#3 made it to James Street and went westbound down the hill and saw WO#2 on foot and then saw the Complainant come down from the I-5 ramp heading north on Seventh Street. WO#3 and NE#1 proceeded to go southbound on Fifth Avenue. WO#3 called out through dispatch their location. NE#1 was in front of WO#3 and the Complainant was, “just to my front right, and I was right behind them. WO#3 saw NE#1’s car do kind of a “swerve like a, just an open angle (unintelligible) and next thing you know, I saw the Complainant on the floor.” The Complainant immediately got up and started running on foot and WO#3 got in his car. The Complainant went westbound on Terrace Street. NE#1 and WO#3 did a foot pursuit and the Complainant bumped into a parked vehicle<sup>5</sup> and eventually bumped into a building right there. The Complainant turned and faced towards NE#1 with both hands up in the air. WO#3 approached the Complainant from the rear and grabbed both of his hands to try and place him in handcuffs. The Complainant tried to resist a little bit. NE#1 assisted with hands-on with WO#3 and the Complainant stopped resisting and was told to go to the ground and get into the prone position.<sup>6</sup> The Complainant continued to resist actively and they were able to ultimately place handcuffs on him. Other officers arrived on the scene and WO#3 and NE#1 placed him into custody. WO#4, an Acting Sergeant, arrived at the scene shortly afterwards. Following that the SFD came to the scene, as he had an abrasion on his left elbow and later an abrasion by his hip area. AMR was requested to transport him to HMC.

WO#3 further explained that after he originally arrived on the scene at the apartment building with WO#1, WO#2 and NE#1, WO#2 and NE#1 stated they were both familiar with the Complainant and would do the area check. WO#3 agreed to stay with WO#1, as CM#1 indicated the Complainant always returns at night or stays in the area or just bikes around. WO#3 recalled CM#1 stated to WO#1 the Complainant had grabbed aggressively and pushed [her] into the bed. WO#3 believed there was probable cause for assault two based on what he heard and the injuries to CM#1’s neck. WO#3 heard WO#2 call out a location for the Complainant and then asked WO#1 if she needed anything else. WO#3 recalled seeing WO#2 on foot on Seventh and James Street. It appeared WO#2 was doing a foot pursuit.

WO#3 was again asked about the contact between NE#1 and the Complainant at the time right before the Complainant fell to the ground on his bike. WO#3 explained he was going westbound on James Street and the Complainant turned southbound on Fifth Street from James. WO#3 explained there was no foot traffic or car traffic at that time. Also, the day was clear and the pavement was dry. WO#3 said he was right behind the Complainant and he was pedaling hard. NE#1 was to the left of WO#3 and then passed WO#3 and took a “wide-angle approach to the right”, and the next thing I knew the Complainant just fell to the side, to his right-hand side. WO#3 indicated the Complainant was a good four to five feet from the vehicle or so. WO#3 thought he was about a patrol car or half a patrol car length behind the Complainant. WO#3 indicated he could not recall how the Complainant got on the ground, but he landed on the ground near NE#1’s rear bumper. WO#3 recalled saying, his name and then, “Seattle Police, stop” after he continued running after the fall, but he kept running. WO#3 recalled he was taken into custody and said he has PTSD and something like he was sorry and that’s when other officers arrived. Furthermore, he said something like, “I would never beat his girlfriend up and that he only fights men, that he was raised better and that he’s from Philly.”

<sup>5</sup> A Kia Soul (he believed to be silver).

<sup>6</sup> Prone position - Lying face down.





WO#4, an Acting Sergeant, ordered WO#3 to provide a statement. WO#3 gave his statement to WO#4 and took the Complainant's bicycle into evidence. Additionally, WO#4 told WO#3 to go down to FIT in about two hours to be interviewed.

**FIT Type III - Use of Force Supervisor Reviews:**

**4. Witness Supervisors (WS#1) and (WS#2)**

The Witness Supervisor's Type III – Use of Force reviews regarding NE#1 use of force of his vehicle were consistent with the evidence summarized above.<sup>7</sup>

On August 30, 2023, Witness Supervisor #1 (WS#1), completed a Type III - Use of Force Captain Review.<sup>8</sup> WS#1 found the investigation thorough and complete and agreed the previously identified issues were addressed. WS#1 stated, "The Department has no training on how to effectively deal with a fleeing bicyclist." Here, WS#1 indicated NE#1's decision was based on apprehending the Complainant and trying to stop him, as opposed to striking him with his vehicle. Furthermore, she recommended addressing pursuits with bicycles in policy. WS#1 indicated an argument could be made that if a bicyclist is riding on the roadway, they are a vehicle and are obligate to obey traffic laws. In addition, she opined that this type of scenario does not happen frequently; however, the policy should be clear on what the obligations are of the involved responding officers.

On August 24, 2023, Witness Supervisor #2 (WS#2), completed a Type III – Use of Force Lieutenant Review.<sup>9</sup> WS#2 acknowledged receiving a callout regarding a vehicle tactic that may have made contact with a bicyclist. WS#2 acknowledged NE#1 used his vehicle to impede the Complainant's actions and stated, there has been no training on how to apprehend a fleeing subject on a bicycle. WS#2 recommendation is to review NE#1's vehicle tactics with the chain of commands/ officers. She explained, "it would serve as a reminder and possibly provoke productive discussions when an officer needs to weigh the risk of injury to the subject vs. the risk of the subject's escape".

**FIT ICV, Photos and Audio Spectrogram:**

**5. In-Car Video, Photos of NE#1's Patrol Vehicle and Audio Spectrogram of NE#1's ICV for**

A FIT Detective took photos of NE#1's patrol vehicle at the East Precinct at 1623 hours on July 4, 2023. The Detective found a horizontal, longitudinal dark-colored mark, similar to rubber, above the front of the rear passenger-side tire well, with the center of which was approximately 3'1" above the ground.

<sup>7</sup> The Witness Supervisor Use of Force Reviews covered broader issues than NE#1's classification issues. Those issues are not addressed as part of this DCM.

<sup>8</sup> Signed September 1, 2023.

<sup>9</sup> Signed August 30, 2023.



**Photo of NE#1's Patrol Vehicle After Inspection by FIT**

Also, the FIT Detective inspected the bicycle the Complainant was riding. The bicycle did not have breaks. In addition, due to damage, the frame was lowered, compressing the bicycle's front wheel.

Furthermore, a FIT Detective conducted an audio spectrogram of the left and right audio channels from NE#1's in-car video. The results of this test showed a low-frequency thumping sound were audible on NE#1's ICV recording for approximately two seconds beginning at 14:16:19, when WO#3's ICV view of the Complainant was obscured.

## **OPA Interview**

### **1. Named Employee #1 (NE#1)**

OPA interviewed NE#1 on October 3, 2023. NE#1's statements were consistent with his statements in his FIT interview. NE#1 also provided the following statements.

NE#1 explained he thought the Complainant was going to hurt himself really bad and the next few intersections were very busy intersections down on Washington and Jackson. NE#1 saw there were parked vehicles and positioned his vehicle to where a reasonable person would slow down, stop, or redirect them to go the other way. This would give himself and the other officers time to apprehend him and to take him into custody. NE#1 recalled getting in front of him and positioning his vehicle and then looked over and saw the Complainant. NE#1 then "moved away" from him and that's when the Complainant lost his balance and went down. NE#1 was trying to redirect him because his concerns with the business of the roadway and upcoming intersection at Jackson Street. NE#1 stated, "... he had no intention to have him that close".



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## **2. Witness Officer #3 (WO#3)**

OPA interviewed WO#3 on October 2, 2023. WO#3's statements were consistent with his statements in his FIT interview. WO#1 also provided the following statements.

WO#3 explained he was a backing officer for this incident and was aware NE#1 and WO#2 were already conducting the area check for the [Complainant]. WO#3 stayed with [CM#1] and the other officers at the command post in case the [Complainant] came back. WO#3 was aware probable cause had been established for DV assault he had heard by radio and heard CM#1 talking to another officer and viewed her visible injuries. WO#3 heard by radio that NE#1 located the Complainant by the bus stop and went towards that area in his patrol vehicle. WO#3 caught up with NE#1 on Fifth and Terrace and he was behind the Complainant and NE#1 was just ahead of him to the right next to the Complainant. WO#3 saw the Complainant fall off his bike. WO#3 stopped his car immediately thinking this is where things were going to end and saw the Complainant get up and flee westbound on Terrace Street where NE#1 and he arrested the Complainant. The Complainant resisted arrest, but was taken into custody.

WO#3 explained there were about four parked cars on the westbound side of the street facing south. The roadway was paved and there was no foot traffic or moving vehicles when he was behind the Complainant. WO#3 recalled he was behind the Complainant for about one minute to about five to ten feet before he fell. WO#3 saw NE#1 the Complainant get up and run and stated, "Seattle Police. Stop."

### **ANALYSIS AND CONCLUSIONS:**

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

##### ***8.200 - Using Force 1. Use of Force: When Authorized (Effective April 24, 2023)***

The Complainant alleged that NE#1 used excessive force with his patrol vehicle when he positioned his patrol vehicle near the Complainant who was on his bicycle and next to parked cars to redirect or stop the Complainant.

SPD Interim Policy 8.200(1) requires Officers will only use objectively reasonable, necessary, and proportional force to the threat or urgency of the situation to achieve a law enforcement objective while protecting the life and safety of all persons. SPD Interim Policy 8.200(1) (effective April 24, 2023). The reasonableness must consider that officers are often forced to make split-second decisions—in circumstances that are tense, uncertain, dynamic, and rapidly evolving—about the amount of force that is necessary in a particular situation. *Id.* The reasonableness inquiry in an excessive-force case is an objective one—whether the officers' actions are objectively reasonable considering the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Id.* The policy also lists several factors that should be weighed when evaluating reasonableness. *See id.* Force is necessary under the totality of the circumstances where "a reasonably effective alternative to the use of physical force or deadly force does not appear to exist, and the type and amount of physical force or deadly force used is a reasonable and proportional response to [e]ffect the legal purpose intended or to protect against the threat posed to the officer or others." SPD Interim Policy 8.050 (effective April 24, 2023). A proportional use of force must "reflect the totality of circumstances surrounding the situation at hand, including the nature and immediacy of any threats posed to officers and others. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied." *Id.*



Here, NE#1 responded to a request for check to locate the Complainant, who fled the scene of a DV assault. Probable Cause was established and known to him at that time. NE#1 located the Complainant who recognized he was the police and was asking him to stop. NE#1 tried to verbally ask him to stop and used his PA system as well on several occasions. In addition, WO#2 and WO#3 tried as well. The Complainant rode his bike recklessly and placed himself in danger and potentially others. OPA finds that based on the totality of the circumstances in this case NE#1's force was objectively reasonable. NE#1 waited to he was at a spot where there was no traffic and no pedestrians present and moved near parked cars to try and redirect the Complainant again to make sure he didn't hurt himself or others. Based on the evidence provided, OPA finds it is unclear how the Complainant fell to the ground. The Complainant could have fallen on his own in travelling so fast and hit a parked car and his bike partially fell onto the patrol vehicle or NE#1 bumped or partially hit the Complainant. In addition, DV Assault requires a mandatory arrest and NE#1 was trying to follow the law and had concerns that the Complainant could go back to the apartment. Furthermore, there is no SPD Policy that provides guidance to officers in situations with bicycles on roadways and eluding police. Therefore, OPA finds that a Management Action would be appropriate in this matter.

Accordingly, OPA recommends this allegation be Not Sustained – Management Action.

Recommended Finding: **Not Sustained - Management Action**

**Named Employee #1 - Allegation #2**

**8.400 - Use of Force Reporting and Investigation, 8.400-POL-1 Use of Force Reporting and Investigation, 1. Officers Will Document in a Use-of-Force Report All Uses of Force Except De Minimis Force**

The Complainant alleged that NE#1 failed to complete a use of force report.

Here, NE#1 was given conflicting information, that he was to write a report for a Type II incident and then FIT was processing this case as a Type III incident. Therefore, OPA does not find that NE#1 intentionally did not complete a report in this matter. In addition, it was not clear to him that he had caused an injury to the Complainant. Therefore, OPA finds more likely than not, the allegation Not Sustained – Inconclusive.

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

Recommended Finding: **Not Sustained - Inconclusive**