

Issued Date: DECEMBER 27, 2023

From: Director Gino Betts, Office of Police Accountability



Case Number: 2023OPA-0315

Allegations of Misconduct & Director's Findings

Named Employee #1

1. **Allegation #1:** 8.100 - De-Escalation, 8.100 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force
 - a. **Finding:** Not Sustained - Unfounded
2. **Allegation #2:** 8.200 - Using Force 1. Use of Force: When Authorized
 - a. **Finding:** Not Sustained - Lawful and Proper

Named Employee #2

1. **Allegation #1:** 8.100 - De-Escalation, 8.100 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force
 - a. **Finding:** Not Sustained - Unfounded
2. **Allegation #2:** 8.200 - Using Force 1. Use of Force: When Authorized
 - a. **Finding:** Not Sustained - Lawful and Proper

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 Employee #1 (NE#1) and Named Employee #2 (NE#2) saw the Complainant, who they knew had active warrants and was reportedly involved in a shooting. The Complainant alleged the named employees failed to de-escalate by immediately grabbing him without announcing

themselves. The Complainant also alleged the named employees used unauthorized force by smashing his head against the ground, Tasing him, and dislocating his shoulder.

Administrative Note:

On October 6, 2023, the Office of Inspector General (OIG) certified OPA's investigation as thorough and objective but untimely. Specifically, OIG determined notices of receipt of complaint were sent to the named employees beyond the required period. OPA acknowledges that the notices were untimely sent but respectfully disagrees that the investigation was untimely. The delay did not impact the thoroughness or objectivity of OPA's investigation, classification notices were timely issued, and OPA completed its investigation within 180 days as required by ordinance and the governing collective bargaining agreement.

Summary of the Investigation:

OPA received a complaint and opened an investigation, reviewing the OPA complaint, the incident and supplement reports, "Identify This Person" bulletin, body-worn video (BWV), and use of force reports. OPA also interviewed the named employees.

A. OPA Complaint

Witness Supervisor #1 (WS#1)—a sergeant—submitted an OPA complaint on the Complainant's behalf on June 30, 2023. WS#1 wrote that the named employees had probable cause to arrest the Complainant for possessing a stolen vehicle. WS#1 wrote that the Complainant had two misdemeanor warrants and was a person of interest in a recent shooting. WS#1 wrote that the named employees contacted the Complainant, who immediately resisted and attempted to flee. WS#1 wrote that the Complainant was arrested after a brief struggle. WS#1 wrote that the Complainant alleged the named employees smashed his head against the ground and dislocated his shoulder.

B. Incident and Supplement Reports

NE#2 wrote an incident report. NE#2 wrote that he was on patrol with NE#1 on June 27, 2023, at around 7:20 PM. NE#2 wrote that he saw an SPD bulletin concerning a driver who eluded officers. It included an image of the vehicle and driver, who looked like the Complainant. NE#2 wrote that the Complainant had two unverified arrest warrants. The SPD bulletin indicated that the Complainant may have been involved in an RV invasion robbery and a shooting.

NE#2 wrote that he knew the Complainant as a "prolific auto thief" from the following prior incidents: First, NE#2 arrested the Complainant for a stolen vehicle on April 20, 2022. Second, the Complainant stole a vehicle and crashed into a structure while fleeing from the police. Third, the Complainant stole a vehicle, fled from the police, and struck an officer, causing a broken wrist. NE#2 wrote, "I was struck at how many arrests he had in such a short amount of time for the same thing."

NE#2 wrote that he saw the Complainant inside the vehicle parked in a restaurant's parking lot. NE#2 wrote, "Because I knew [the Complainant] would flee, often violently, from officers, I continued driving past the vehicle. I knew that if [the Complainant] fled in a large truck out of the parking lot full of pedestrians, he would likely strike and significantly injure (or worse) an innocent person." NE#2 wrote that he returned to the parking lot later and did not see the Complainant in the vehicle, so he transitioned to an area check on foot. NE#2 described his encounter with the Complainant consistent with the events captured on BWV, described below.

NE#1 wrote a supplement report consistent with NE#2's incident report. NE#1 wrote that he knew the Complainant's "criminal undertakings" because the Complainant was arrested six times in 2022 for possessing a stolen vehicle. NE#1 wrote that the Complainant struggled and resisted when he and NE#2 arrested the Complainant before. NE#1 described the Complainant as "the most prolific auto thief" who would "go to extreme lengths of flight to avoid detention by law enforcement." NE#1 also described the Complainant's actions as "escalating" during police encounters. NE#1 described his encounter with the Complainant consistent with the events captured on BWV, described below.

c. Body-Worn Video (BWV)

The named employees walked toward the Complainant with their BWV activated. Collectively, BWV captured the following events on June 27, 2023.

The Complainant and a community member walked outside next to the restaurant while the named employees approached them. NE#2 asked, "How y'all doing? [Complainant], right?" NE#2 grabbed the Complainant's right arm while NE#1 grabbed his left arm. The Complainant attempted to pull his arms away, prompting NE#1 to say, "Stop!"

The named employees maneuvered the Complainant to the ground on his stomach. The Complainant resisted and repeatedly shouted, "What the fuck?" NE#1 said, "Hey, you're going to get fucking Tased. You're going to get fucking Tased. Release your left arm." The Complainant's left arm appeared to be tucked underneath his chest while NE#1 attempted to pull it out. NE#1 pressed his left arm against the Complainant's back. The Complainant resisted, prompting NE#1 to repeatedly say, "Stop!" NE#1's BWV fell to the ground but captured NE#1 on the Complainant's back. NE#2 asked, "Do you wanna get Tased?" The Complainant replied, "Tase me then." NE#2 deployed a Taser warning. The Complainant said, "Do it." NE#2 deployed his Taser, prompting a scream from the Complainant. NE#2 said, "Hands behind your back or you're guna get it again." The Complainant continued to resist and scream. NE#2 moved his arm away from the Complainant's head and said, "Don't bite me." NE#2's BWV fell to the ground. The named employees appeared to be on the Complainant's back and struggled to handcuff him due to the Complainant's resistance and movements. Backup officers arrived and assisted with the arrest. NE#1 handcuffed the Complainant. Officers transported the Complainant to a holding cell at the North Precinct.

WS#1 activated his BWV and spoke to the Complainant at his holding cell. The Complainant said the named employees, without announcing themselves, grabbed him, threw him to the ground, “smashed” his head into the concrete, and Tased him. The Complainant said his shoulder got dislocated when the named employees threw him to the ground.

D. Use of Force Reports

1. Named Employees

NE#1 wrote a use of force statement, which was consistent with NE#2’s use of force statement.

NE#2 wrote a use of force statement consistent with the evidence summarized above. NE#2 wrote that he determined the Complainant posed a significant threat to officers and the community. NE#2 wrote that, based on a prior arrest, he knew the Complainant was “unusually strong,” a drug user, six feet two inches tall, approximately 210 pounds, and in his twenties. NE#2 wrote, “In my training and experience, I know the use of illicit drugs to include methamphetamines, can make suspects unusually violent, unpredictable, and resistant to pain. [The Complainant’s] large stature coupled with his unpredictability from his drug use and previous violence against police, presented a significant danger to officers and the community.” NE#2 wrote that the Complainant’s proximity to the stolen vehicle was concerning because he could weaponize the vehicle or retrieve a weapon from it.

NE#2 described his de-escalation. NE#2 wrote that he de-escalated upon seeing the Complainant in the stolen vehicle by departing the area to prevent the Complainant from weaponizing the vehicle and to mitigate the need to use a higher level of force against the Complainant. NE#1 wrote that they did not contact the Complainant in the stolen vehicle because the Complainant repeatedly eluded officers, the firearm used in the shooting—as described in the SPD bulletin—was outstanding, and the area was highly populated with foot and vehicle traffic. NE#1 wrote that there was a high probability of injury if they contacted the Complainant in the vehicle. NE#2 wrote that he stood between the Complainant and the stolen vehicle as a barrier to prevent the Complainant from accessing it. NE#2 wrote that they approached the Complainant together and conversationally spoke to him to de-escalate him.

NE#2 described his use of force. NE#2 wrote that the Complainant tensed his arm and attempted to flee. NE#2 wrote that they performed a “modified takedown” by applying downward pressure on the Complainant, lowering him to the ground, and controlling his arms. NE#2 wrote that he placed his knee on the Complainant’s lower back to keep him on the ground, but the Complainant attempted to stand up using “sheer body strength.” NE#2 wrote that the Complainant turtled his left arm, which was concerning because he could have reached for a weapon if one were in his waistband. NE#2 wrote that he deployed a Taser warning to gain voluntary compliance, but the Complainant resisted. NE#2 wrote that he deployed his Taser at the Complainant’s buttocks, which elicited a scream, but the Complainant remained tense, resisted, and attempted to bite NE#2’s thumb. NE#2 wrote that they held the Complainant in place while controlling his arms and

determined, due to his resistance, that they should maintain their hold until backup officers arrived.

NE#2 wrote that the Complainant had minor abrasions on his face and body. NE#2 wrote that Seattle Fire Department (SFD) employees evaluated the Complainant and cleared him for booking. NE#2 wrote that the Complainant was transported to a hospital based on his dislocated shoulder complaint, but the hospital cleared him for booking after it did not find any fracture or dislocation.

2. Chain of Command

WS#1 wrote a Type II use of force report consistent with the evidence summarized above. 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 Interim Policy 8.050 (effective April 24, 2023). Examples of Type II force include, among other things, using a Taser, force causing a laceration, or a takedown that causes injury or is reasonably expected to cause injury. SPD Interim Policy 8.400-POL-1 (effective April 24, 2023). Additionally, WS#1 documented an interview he conducted with a person who witnessed the struggle (Community Member #1 or CM#1). OPA also listened to the audio recording of CM#1's interview. CM#1 said the encounter between the Complainant and the named employees "turned into a wrestling match." CM#1 said the Complainant prevented the named employees from handcuffing him by "swinging them around like dolls." CM#1 said the named employees brought the Complainant to the ground and tried to handcuff him, but he was "very forceful." CM#1 said the Complainant tried to stand up by "turning his body and everything." CM#1 said an officer Tased the Complainant, which "amped him up even more." CM#1 said the Complainant fought "the whole time, from start to finish." CM#1 denied that the named employees forcefully smashed the Complainant's head to the ground.

A watch lieutenant and captain each wrote a use of force report consistent with the evidence summarized above. They deferred use of force findings to OPA.

E. OPA Interviews

OPA interviewed NE#1 on August 15, 2023. NE#1's statements were consistent with NE#2's statements.

OPA interviewed NE#2 on August 8, 2023. NE#2's statements were consistent with the evidence summarized above. NE#2 said he did not give the Complainant a chance to surrender but, instead, walked up to him and immediately grabbed him. NE#2 said the Complainant never surrendered in prior police encounters, citing the Complainant crashing into structures, fleeing on foot, and running over an officer. NE#2 said his use of force was objectively reasonable because the Complainant posed a threat to the community. NE#2 said his use of force was necessary because the Complainant resisted arrest and appeared to reach for a concealed firearm in his waistband. NE#2 said his use of force was proportional because they lowered the Complainant to the ground using a

“controlled takedown,” which did not include throwing him down or body slamming him. NE#2 said he deployed his Taser when they could not control the Complainant’s arms and movements and became concerned that the Complainant attempted to reach for a firearm. NE#2 denied smashing the Complainant’s head into the ground, saying that the Complainant likely hurt himself while “writhing around trying to brace himself up on the ground.” NE#2 also said he did not see NE#1 smash the Complainant’s head into the ground. NE#2 denied dislocating the Complainant’s shoulder.

Analysis and Conclusions:

Named Employee #1 – Allegation #1

8.100 – De-Escalation, 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force (Effective April 24, 2023)

The Complainant alleged NE#1 failed to de-escalate before his arrest.

When safe, feasible, and without compromising law enforcement priorities, officers will use de-escalation tactics in order to reduce the need for force. SPD Interim Policy 8.100-POL-1 (effective April 24, 2023). Officers are encouraged to use team approaches to consider whether any officer has successfully established a rapport with the subject. *Id.* Selecting de-escalation options will be guided by the totality of the circumstances. *Id.* The policy lists several examples of de-escalation, emphasizing communication, time, distance, and shielding to minimize the need for force. *Id.*

Here, the named employees properly de-escalated before arresting the Complainant. Most importantly, when the named employees initially saw the Complainant in the stolen vehicle in the restaurant’s parking lot, they decided to feign ignorance of his presence, believing that the Complainant would most likely weaponize the vehicle, flee, and endanger the public. When the named employees encountered the Complainant on foot, they utilized de-escalation tactics to the extent feasible. The named employees used a team approach by approaching together. Their communication was conversational with the Complainant. Based on the Complainant’s extensive history with the police, it was reasonable for the named employees to expect that any order to surrender would likely prompt the Complainant to flee. When the named employees struggled to handcuff the Complainant on the ground, they issued clear directives, telling him to stop resisting and warning him that he would be Tased. The named employees utilized time by driving away after they spotted the Complainant in the stolen vehicle, hoping that he would step out so they could arrest him on foot. The named employees could not utilize time when they approached the Complainant because the safest opportunity to arrest him was when he was on foot. Additionally, the named employees could not extend any time at this point because the Complainant would likely flee at any moment. During the struggle to handcuff the Complainant, the named employees utilized time by maintaining their hold on him while backup officers arrived to assist with the arrest. Distance and shielding were not feasible de-escalation tactics based on the need to apprehend the

Complainant, the Complainant's physical location, and the Complainant having an extensive history of fleeing from the police.

The named employees strategized an arrest plan that contemplated the Complainant's previous encounters with the police and incorporated de-escalation tactics to the extent they were safe and feasible. In doing so, they maximized public safety and minimized the need to use a higher level of force. Moreover, OPA finds that the officers' actions did not occur as alleged. The named employees approached the Complainant in full uniform, greeted the Complainant by name, grabbed his arms, and, when the Complainant resisted, told him to "stop." The Complainant would not have received meaningful, additional de-escalatory information if the named employees verbally "announced themselves" as Seattle Police, nor under these circumstances was it safe or feasible to engage in a lengthy dialogue with the Complainant prior to securing him in handcuffs.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 – Allegation #2

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

The Complainant alleged NE#1 used excessive force during his arrest by smashing his head into the ground and dislocating his shoulder.

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, during a hands-on struggle to arrest the Complainant, the named employees used a controlled takedown, bringing the Complainant to the ground. NE#2 Tased the Complainant while

NE#1 maintained a hold on the Complainant's back. Under the totality of the circumstances, the named employees' use of force was objectively reasonable, necessary, and proportional.

First, the named employees' use of force was objectively reasonable. They knew that any interaction with the Complainant could be dangerous based on the Complainant's extensive history with the police. The named employees noted that the Complainant had escalated encounters with the police and violently fled by striking objects and an officer, causing a broken wrist. The named employees also expressed concern, based on the SPD bulletin, that the Complainant could be armed. The Complainant so effectively resisted the named employees that he prevented them from handcuffing him and continued resisting despite being Tased. The struggle itself was so forceful that the named employees sustained abrasions on their elbows and knees and caused their BWV to fall from their persons. The named employees were unable to handcuff the Complainant on their own due to his large stature—standing six feet two inches tall and weighing 210 pounds—and his active resistance, so they could only maintain a hold on him until backup officers arrived. The Complainant also posed an immediate threat to the public as a “prolific auto thief” and a person of interest in a recent robbery and shooting. The named employees had a high public safety interest in apprehending the Complainant because of the risk he posed to the public and officers. The named employees' use of force, including NE#2's Taser deployment, was objectively reasonable under these circumstances.

Second, the named employees' use of force was necessary. There was no reasonably effective alternative to the use of force. The Complainant was unwilling to surrender voluntarily. The Complainant actively resisted and attempted to flee, consistent with previous police encounters. NE#2 deployed his Taser, but it appeared ineffective as the Complainant continued to resist. The named employees were required to use force throughout the Complainant's arrest to gain compliance. The amount of force used was also reasonable and proportional to effect the arrest and to protect against the imminent threat posed to the named employees. The named employees expressed concern when the Complainant turtled his arm and reached toward his waistband because he could have been armed, prompting NE#2 to Tase him. The Complainant resisted arrest using his entire body despite two fully grown officers holding him down. Everyone sustained abrasions due to the forceful nature of the struggle. The named employees' use of force was necessary under these circumstances.

Third, the named employees' use of force was proportional. The Complainant refused to comply with the named employees' orders and attempted to flee. The Complainant, for over two minutes, effectively resisted handcuffing despite having two officers attempting to apprehend him. Because the Complainant was noncompliant and potentially armed, NE#2 employed a more direct intervention tactic to end the struggle. The named employees also cited the Complainant's large stature as a significant reason for struggling to control him. The named employees' use of force was proportional under these circumstances, especially considering the level of resistance and threat posed by the Complainant.

Finally, no evidence established that the named employees smashed his head against the ground and dislocated his shoulder. First, OPA reviewed all videos pertinent to this incident and found nothing consistent with a head smashing into the ground. Second, an independent witness who saw the struggle—CM#1—denied that the named employees smashed the Complainant’s head into the ground. Third, SFD employees and a hospital evaluated the Complainant but found no fracture or dislocation.

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

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #2 – Allegation #1

8.100 – De-Escalation, 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force (Effective April 24, 2023)

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 – Allegation #2

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

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

Recommended Finding: **Not Sustained - Lawful and Proper**