

**Issued Date:** JANUARY 30, 2024

**From:** Director Gino Betts, Office of Police Accountability



**Case Number:** 2023OPA-0340

## **Allegations of Misconduct & Director's Findings**

### **Named Employee #1**

1. **Allegation #1:** 8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)
  - a. **Finding:** Not Sustained - Lawful and Proper (Expedited)

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### **Named Employee #2**

1. **Allegation #1:** 8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)
  - a. **Finding:** Not Sustained - Lawful and Proper (Expedited)

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### **Named Employee #3**

1. **Allegation #1:** 8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)
  - a. **Finding:** Not Sustained - Lawful and Proper (Expedited)

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### **Named Employee #4**

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

Named Employees #1 through #4 (NE#1 through NE#4) responded to a domestic disturbance call and—led by NE#4— entered an apartment containing the Complainant, who NE#1, NE#2, and NE#3 handcuffed during their investigation. The Complainant alleged that NE#1, NE#2, and NE#3 used unauthorized force and NE#4 failed to de-escalate by drawing his gun and unlawfully entering the apartment.

**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 September 12, 2023, OIG certified OPA's investigation as thorough, timely, and objective.

**Summary of the Investigation:**

On August 4, 2023, Witness Supervisor #1 (WS#1)—a sergeant—submitted an OPA complaint on the Complainant's behalf, writing that the named employees entered an apartment due to a disturbance and handcuffed the combative Complainant. WS#1 wrote that officers struggled with resistant the Complainant. WS#1 wrote that, during the struggle, the Complainant's "right arm struck a damaged light switch plate that had a broken jagged edge," causing a laceration. WS#1 wrote that NE#1, NE#2, and NE#3 performed a team takedown and handcuffed the Complainant. WS#1 wrote that the Complainant alleged officers used unauthorized force.

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, body-worn video (BWV), incident report, and use of force reports. OPA also interviewed the Complainant.

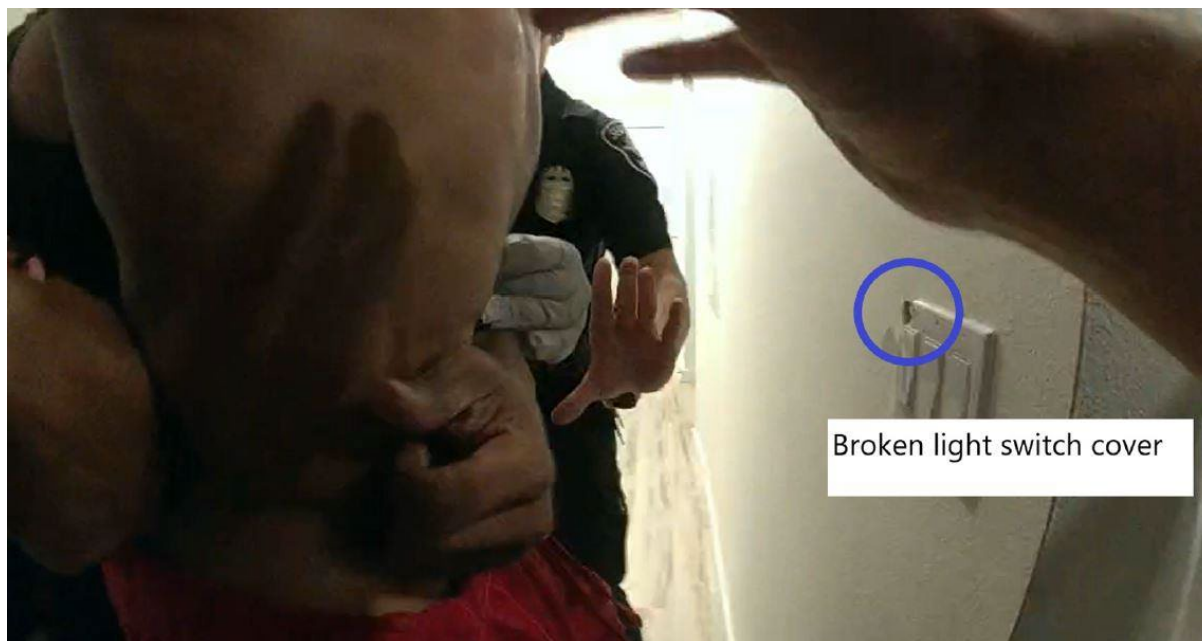
On August 4, 2023, at 3:20 AM, a CAD call remark noted, "FEMALE SAYING SHE DIDN'T FEEL SAFE, MALE HEARD SCREAMING IN THE BACKGROUND, [DISCONNECTED] BEFORE COULD ESTABLISH ADDRESS."

The named employees responded to the incident location and activated their BWV, which showed:

The named employees exited their patrol cars. An argument from a nearby apartment was captured. NE#4 and Witness Officer #1 (WO#1) located the apartment. Screaming and glass breaking was heard. NE#4—with his gun positioned at low-ready—and WO#1 entered and found the Complainant and five community members in the living room. NE#1, NE#2, and NE#3 quickly

followed. NE#4 and WO#1 separated the community members from the Complainant. WO#1 instructed the Complainant to walk away, but he remained.

NE#1, NE#2, and NE#3 engaged the Complainant. The Complainant raised his hands and said, "Crazy, bro." NE#1 repeatedly told him to relax and guided his arms down, but the Complainant reraised his arms. The Complainant appeared agitated and refused to comply with officers' commands. NE#1 grabbed the Complainant's right arm and NE#2 and NE#3 grabbed his left arm. The Complainant appeared to pull his arm away and asked, "What you all doing, bro?" NE#1 said, "Stop." NE#1, NE#2, and NE#3 maneuvered the Complainant forward. The Complainant's right forearm contacted the jagged edge of a broken light switch cover, depicted below.



The Complainant yelled, “Ow, bro!” NE#1 said, “Relax.” NE#2 and NE#3 maintained control of the Complainant’s left arm. The Complainant said, “Hey, nothing happened, bro. I can’t believe your stupid ass, bro.” NE#2 and NE#3 brought the Complainant to the ground and onto his stomach. NE#3 handcuffed the shouting Complainant. NE#2 *Mirandized* the Complainant.

Community Member #1 (CM#1)—the Complainant’s girlfriend—told NE#4 that she and the Complainant argued but denied a physical altercation. Other community members corroborated CM#1’s claim, denying a physical altercation. NE#4 told the Complainant that he was detained, not arrested, because he was escalated. The Complainant said his right hand was “fucked up” but refused a Seattle Fire Department evaluation. NE#3 removed the Complainant’s handcuffs. Later, WS#1 arrived and interviewed and photographed the Complainant.

NE#2 wrote an incident report consistent with the events captured on BWV. Additionally, NE#1, NE#2, NE#3 wrote Type II use of force statements 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). Type II force includes, among other things, an abrasion or a takedown that causes injury or is reasonably expected to cause injury. SPD Interim Policy 8.400-POL-1 (effective April 24, 2023). They wrote that they tried escorting the Complainant from the community members for scene security, but he refused, escalated, flexed his muscles, and resisted. WS#1, an administrative lieutenant, a watch lieutenant, and a captain reviewed the force investigation and wrote use of force reports consistent with the evidence summarized above. The watch lieutenant and captain approved NE#1’s, NE#2’s, and NE#3’s use of force.

On August 11, 2023, OPA interviewed the Complainant. The Complainant said the named employees unprofessionally responded to the apartment and violated his rights. The Complainant said the named employees were on his face, causing significant pain. The Complainant said the named employees used excessive force to detain him and accused NE#4 of unlawful entry.

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## **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, NE#2, and NE#3 used excessive force during his detainment.

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 identifies 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, NE#2, and NE#3 grabbed the Complainant and maneuvered him to the ground. Their use of force was objectively reasonable, necessary, and proportional for the following reasons.

First, NE#1’s, NE#2’s, and NE#3’s use of force was objectively reasonable. They needed to separate the Complainant from the community members to ensure scene security, especially after they heard an argument upon arriving.

However, the Complainant refused to comply with officers’ commands, flexed, and resisted, prompting them to apply force. Although the Complainant may have sustained a cut on his arm during the struggle, their use of force was objectively reasonable due to their need to control the scene, prevent the disturbance from escalating, and investigate possible criminal activity. Second, NE#1’s, NE#2’s, and NE#3’s use of force was necessary. A reasonably effective alternative to the use of force did not exist based on the Complainant’s agitation and noncompliance. Thus, they were justified in applying force to separate the Complainant from the community members. Additionally, the type and amount of force used was a reasonable and proportional response to effect the legal purpose intended. NE#2 and NE#3 used a controlled takedown to handcuff the Complainant. Their use of force was a proportional response based on the Complainant’s resistance. Third, NE#1’s, NE#2’s, and NE#3’s use of force was proportional under the circumstances. They applied force to overcome the Complainant’s resistance. They used control holds, a team takedown, and arrest tactics to handcuff the Complainant. After the Complainant was handcuffed, they modulated their use of force. What was most likely *de minimis* force escalated to Type II force only because of the abrasion on the Complainant’s arm.

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 (Effective April 24, 2023)**

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)**

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## **Named Employee #3 – Allegation #1**

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

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)**

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## **Named Employee #4 – Allegation #1**

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

The Complainant alleged that NE#4 failed to de-escalate by drawing his gun and entering the apartment.

When safe, feasible, and without compromising law enforcement priorities, officers will use de-escalation tactics 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.* De-escalation options should be guided by the totality of the circumstances. *Id.* SPD policy emphasizes communication, time, distance, and shielding to minimize the need for force. *Id.*

Here, NE#4 drew his gun, entered the apartment, and quickly approached the Complainant and community members. NE#4 held his gun at the low-ready position, aiming it towards the ground. De-escalation was unreasonable under these circumstances. When NE#4 exited his patrol car, BWV captured the sounds of an argument. When NE#4 approached the Complainant's apartment, BWV captured loud screams and glass breaking—sounds indicative of an in-progress assault. At this point, it was reasonable to assume that someone was being assaulted. Utilizing any de-escalation option—communication, time, distance, or shielding—would be unreasonable because of the emergency and the need to protect someone from injury. Thus, NE#4's entry based on

exigency was appropriate. Even after NE#4 entered the apartment, his actions reflected de-escalation. NE#4 communicated clear instructions to the community members and created distance between them. BWV did not capture NE#4 pointing his gun at anyone. There is insufficient evidence that NE#4 violated SPD's de-escalation policy.

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

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