

Issued Date: FEBRUARY 4, 2024

From: Director Gino Betts, Office of Police Accountability 

Case Number: 2023OPA-0345

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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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) responded to the Complainant throwing rocks at cars. The named employees encountered the Complainant with a rock in his hand. After failed de-escalation attempts, each named employee deployed a 40 mm less lethal launcher at the Complainant, striking his left thigh and right knee. The Complainant alleged that the named employees used unauthorized force to detain him.

Administrative Note:

During its investigation, OPA noted that NE#1 failed to activate his body-worn video (BWV). OPA sent that allegation to NE#1's chain of command for Supervisor Action. Supervisor Action generally involves a minor policy violation or performance issue that is best addressed through

training, communication, or coaching by the named employee's supervisor. See OPA Internal Operations and Training Manual section 5.4(B)(ii).

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 in this case.

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

Summary of the Investigation:

On August 8, 2023, Witness Supervisor #1 (WS#1)—a sergeant—submitted an unsubstantiated misconduct screening (UMS) request to OPA. WS#1 wrote that the named employees encountered the Complainant holding a rock and attempted de-escalation. WS#1 wrote that the Complainant refused to comply with police commands and entered a populated area, prompting each named employee to deploy a 40 mm less lethal launcher at the Complainant. WS#1 wrote that after the Complainant was arrested, he complained of pain caused by the 40 mm projectiles.

OPA opened an investigation, reviewing the computer-aided dispatch (CAD) call report, body-worn video (BWV), police reports, and use of force reports. OPA could not reach the Complainant for an interview.

On August 2, 2023, at 11:17 AM, CAD call remarks noted, "MALE THROWING ROCKS AT [REPORTING PARTY'S VEHICLE] ... NO OTHER [WEAPONS], [REPORTING PARTY] STOPPED ANSWERING, [DISTURBANCE] IN BACKGROUND."

The named employees responded to the incident location. NE#2 and officers activated their BWV, capturing the following:

The Complainant was in the middle of a street. Officers positioned themselves behind their parked patrol cars. Witness Officer #1 (WO#1) radioed that the Complainant had a "big rock" and threatened to hit officers with it. WO#1 asked the Complainant to drop the rock, said officers wanted to help, and warned that officers would deploy less lethal munitions if he threw the rock at them. BWV did not capture the Complainant's responses. Officers instructed nearby community members to stay away.

The Complainant walked away, prompting NE#2 and officers to follow. Witness Officer #2 (WO#2) ordered the Complainant to stop and drop the rock, or he would be Tased and "hit with a 40." The Complainant refused to comply and continued walking away. WO#2 asked the Complainant to talk to them and asked how they could help. The Complainant continued walking and entered a residential neighborhood. Officers again instructed nearby community members to stay away. WO#1 said, "Hey, [NE#2]. We're getting pretty close to a lot of people." NE#2 replied, "Hey, I'm gonna hit him in this corner. You ready?" The Complainant turned around and appeared to raise

his arm. NE#2 deployed his 40 mm less-lethal launcher, then NE#1 deployed his 40 mm less-lethal launcher about three seconds afterward, causing the Complainant to fall. NE#1 was not partnered with NE#2. NE#1 was positioned at an intersection when the Complainant approached. Officers handcuffed the Complainant as he screamed, "My leg's broken, man!" WS#1 arrived and screened the arrest. Seattle Fire Department (SFD) employees evaluated the Complainant.

NE#1 and witness officers wrote police reports consistent with the events captured on BWV.

NE#1 wrote a Type II use of force statement. Type II force is that which 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, deploying a 40 mm less lethal launcher at a person, causing less than Type III injury. SPD Interim Policy 8.400-POL-1 (effective April 24, 2023). NE#1 wrote that he was trained to use the 40 mm less lethal launcher and responded to many calls requesting it. NE#1 wrote that he responded to several calls involving rocks being used as weapons, causing serious injuries to victims. NE#1 wrote that the Complainant posed a danger to the public because he damaged multiple cars with a rock and ignored police commands. NE#1 documented that community members walking their pets in the residential area prompted officers to instruct them to stay away. NE#1 wrote that the Complainant posed a "significant risk" to nearby community members and would have breached police containment had he continued walking away. NE#1 wrote that the Complainant raised his arm while holding a rock. So, "Out of concern for officers and the public, [he] deployed the 40mm launcher." NE#1 wrote that he struck the Complainant's right knee, causing him to fall. NE#1 wrote that SFD employees medically cleared the Complainant.

NE#2 wrote a Type II use of force statement. NE#2 wrote that the Complainant damaged several car windows and assaulted a community member with a large rock. NE#2 described the Complainant's rock as a "little bigger than a softball." NE#2 wrote that there were several rocks nearby. NE#2 wrote that the Complainant ignored police commands. NE#2 wrote that he feared the Complainant would use the rock to assault nearby community members or officers. NE#2 wrote that the Complainant posed an "immediate and ongoing danger to property and the public." NE#2 wrote, "Because of these immediate risks to myself and officers, I deployed my 40mm at [the Complainant] to protect the public, to protect officers, and to effect the arrest of [the Complainant], for which there was probable cause." NE#2 wrote that he struck the Complainant's left thigh. NE#2 wrote that SFD employees medically cleared the Complainant.

WS#1, an administrative lieutenant, a watch lieutenant, and a captain wrote a Type II use of force report consistent with the abovementioned evidence. The watch lieutenant and captain found the named employees' uses of force objectively reasonable, necessary, and proportional.

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 the named employees used excessive force during his arrest.

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). Reasonableness must consider that officers are often forced to make split-second decisions about the amount of force necessary in a particular situation in tense, uncertain, dynamic, and rapidly evolving circumstances. *Id.* Reasonableness is determined by 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, the named employees deployed their 40 mm less lethal launcher at the Complainant, causing him to fall. Their use of force was objectively reasonable, necessary, and proportional for the following reasons.

First, the named employees' use of force was objectively reasonable. They responded to reports of the Complainant smashing community members' cars with a rock. Upon police arrival, the Complainant held a softball-sized rock in his hand that he could use as a weapon. They attempted de-escalation for about nine minutes and warned him multiple times that he would be Tased or struck by a 40 mm less lethal launcher. However, the Complainant refused to comply with officers' commands, held onto the rock, and attempted to evade the officers. The situation became more concerning after the Complainant entered a residential neighborhood because several community members were nearby, requiring officers to instruct them to stay away repeatedly. Due to the Complainant's noncompliance and the danger he posed to the officers and community members, the named employees' use of force to immobilize him was objectively reasonable.

Second, the named employees' use of force was necessary. A reasonably effective alternative to the use of force did not exist based on the Complainant's noncompliance and the threat he posed to the public. Thus, they were justified in applying force to require compliance. Additionally, the type and amount of force used was a reasonable and proportional response to effect the legal purpose intended. The named employees deployed less lethal equipment to immobilize the Complainant, leading to his arrest. Third, the named employees' use of force was proportional

under the circumstances because they relied on their training, experience, and assessment of the situation before deploying their 40 mm less lethal launcher.

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)**