

**Issued Date:** JANUARY 25, 2024

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



**Case Number:** 2023OPA-0355

## **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

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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

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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

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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:**

The Complainant alleged that Named Employee #1 (NE#1) and Named Employee #3 (NE#3) used excessive force when they slammed his head to the ground during his arrest, causing a traumatic brain injury (TBI). The Complainant also alleged that Named Employee #2 (NE#2) used excessive force when she put her knee on his head during his arrest.

**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 internal five-day period. OPA acknowledges the deadline 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 investigated a complaint, reviewing the computer-aided dispatch (CAD) call report, police reports, body-worn video (BWV), and use of force reports. OPA also interviewed the named employees. OPA could not reach the Complainant for an interview.

**A. OPA Complaint**

On August 7, 2023, a lieutenant submitted a Blue Team complaint to OPA on the Complainant's behalf. The lieutenant wrote that officers took the Complainant to the ground during his arrest, causing an abrasion to his head. The lieutenant wrote that the Complainant alleged he suffered a TBI when officers slammed his head to the ground.

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

On August 5, 2023, at 6:57 PM, CAD call remarks noted, "[CHECK] FOR [SUSPECT] IN THE LOBBY, [REPORTING PARTY] WAS TOLD TO [CALL BACK] WHEN [SUSPECT] CAME OUT. NO [WEAPONS] SEEN."

**C. Police Reports and Body-Worn Video (BWV)**

The named employees and Witness Officer #1 (WO#1)—NE#1's field training officer—each wrote a police report consistent with the events captured on BWV, summarized below. Additionally, NE#1 wrote an incident report documenting his interaction with the Complainant the day before. NE#1 wrote that he had a signed warrant to seize the Complainant's dog due to animal cruelty. NE#1 wrote that he was unable to execute the warrant on August 4, 2023, because the Complainant prevented officers from entering his apartment. NE#1 wrote that an apartment employee was asked to call 9-1-1 if she saw the Complainant outside his apartment.

On August 5, 2023, the apartment employee called 9-1-1 to report seeing the Complainant. The named employees and WO#1 responded to the apartment and activated their BWV, which captured the following events. The named employees and WO#1 met the apartment employee at the front entrance. The apartment employee said the Complainant went around the back and described his clothing.

NE#3 located the Complainant and his leashed dog on a sidewalk near an intersection. NE#1, NE#2, and WO#1 quickly followed. NE#3 approached and told the Complainant that he was being detained. NE#1 approached the Complainant from behind and wrapped his arms around the Complainant's arms. WO#1 removed the leash from the Complainant's left hand, then the Complainant pulled his arm away and lunged. NE#1 and NE#3 held the Complainant as he was bent over and maneuvered him to the ground on his stomach. NE#1 held the Complainant's right arm, NE#3 held the Complainant's left arm, and NE#2 put her right knee on the back of the Complainant's head. NE#2's right hand was pressed against the Complainant's upper back. NE#3 handcuffed the Complainant, and NE#2 Mirandized him.

The Complainant repeatedly alleged that the named employees slammed his head to the ground and that he had a prior TBI. Seattle Fire Department (SFD) employees arrived and evaluated the Complainant. After evaluating the Complainant, an SFD employee said, "Well, everything looks pretty good today." Witness Supervisor #1 (WS#1)—an acting sergeant—arrived, screened the arrest, and spoke with the Complainant. WS#1 examined the Complainant, noted a fresh scrape near his right temple, and photographed him.

## **D. Use of Force Reports**

### **1. Named Employees**

NE#1 wrote a Type II use of force statement. NE#1 wrote that he physically detained the Complainant, who was noncompliant and attempted to flee. 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). NE#1 wrote that he wrapped his arms around the Complainant's arms and brought them to his chest while WO#1 retrieved the dog. NE#1 wrote that the Complainant freed his left arm and attempted to flee, so NE#1 grabbed the Complainant's left waist to prevent his escape. NE#1 wrote feeling pressure dragging him down while grabbing the Complainant, so he placed his right knee on the ground to ensure the Complainant would not get injured. NE#1 wrote that the weight of his body put the Complainant off balance, causing the Complainant to fall. NE#1 wrote that NE#3 guided the Complainant to the ground using a team takedown. NE#1 wrote seeing a small abrasion on the Complainant's right temple.

NE#2 wrote a Type II use of force statement. NE#2 wrote that the Complainant was escalated and attempted to flee from NE#3. NE#2 wrote that NE#1 and NE#3 controlled the Complainant's arms, then performed a controlled takedown. NE#2 wrote that the Complainant, while on the ground, struggled, shifted his weight, and pushed against NE#3. NE#2 wrote that she controlled the Complainant using the least amount of force by "gently" placing her right knee on his left temple. NE#2 elaborated, "I balanced most of my weight on my right hand that was on [the Complainant's] upper back. I also put most of my weight on my left leg, my left foot was planted firmly on the ground to provide balance." NE#2 wrote that this tactic prevented the Complainant

from biting or spitting at officers, flipping over, hitting his head on the ground, or getting back on his feet.

NE#3 wrote a Type II use of force statement. NE#3 wrote that the Complainant showed signs of fleeing, attempted to pull away from officers, and was noncompliant when told he was not free to leave. NE#3 wrote that he attempted to control the Complainant's left arm while NE#1 held the Complainant from behind, but the Complainant jerked away. NE#3 wrote that he used the Complainant's momentum to guide him to the ground, and the Complainant, while on the ground, attempted to grab NE#3's hand. NE#3 wrote that he and NE#1 controlled the Complainant's arms, then NE#3 handcuffed the Complainant.

## **2. Chain of Command**

WS#1 wrote a Type II use of force report. WS#1 wrote that he interviewed the Complainant, who said officers slammed his head to the ground and that he had prior TBIs. WS#1 wrote seeing abrasions on the right side of the Complainant's face. WS#1 wrote that he photographed the abrasions and screened the incident with the Force Investigation Team's captain, who directed him to send the Complainant to Harborview Medical Center (HMC) for an evaluation, including a CT scan. WS#1 wrote that HMC employees cleared the Complainant, saying he did not have a concussion.

An administrative lieutenant, a watch lieutenant, and a captain each wrote a Type II use of force report consistent with the evidence summarized above. The watch lieutenant and captain approved the named employees' use of force.

## **E. OPA Interviews**

OPA interviewed NE#1 on October 25, 2023. NE#1's statements were consistent with the evidence summarized above. NE#1 said either his body weight or NE#3's takedown brought the Complainant to the ground. NE#1 said he tried to hold the Complainant up, but NE#1's right knee contacted the ground before the Complainant did. NE#1 said he injured his knee during the Complainant's arrest. NE#1 said de-escalation was not feasible because the Complainant was about to flee. NE#1 believed his use of force was reasonable, saying that he tried to prevent the Complainant from striking the ground.

OPA interviewed NE#3 on November 6, 2023. NE#3's statements were consistent with the evidence summarized above. NE#3 said he saw the Complainant strangling his dog by swinging its leash, giving NE#3 probable cause to arrest the Complainant for animal cruelty. NE#3 said he grabbed the Complainant to prevent him from fleeing, but he tried to break free. NE#3 said he used a "modified team takedown," based on NE#1's position behind the Complainant, by using the Complainant's momentum and guiding him to the ground. NE#3 said he saw NE#1 holding the Complainant but did not see what NE#1 did during the takedown. NE#3 said he was surprised by NE#1's "bear hug" from behind, prompting NE#3 to modify his approach in arresting the Complainant. NE#3 said he had to take down the Complainant after NE#1 went to the ground.

because NE#1 was in a tactically disadvantageous position. NE#3 denied slamming the Complainant to the ground and believed his use of force was necessary to overcome the Complainant's resistance. NE#3 said the Complainant, during transport to the West Precinct, did not complain of any pain.

OPA interviewed NE#2 on November 17, 2023. NE#2 described her head control tactic consistent with the evidence summarized above. NE#2 said her knee was on the Complainant's head for about 10 seconds. NE#2 said she knew her knee was on his head, not his neck. NE#2 said the Complainant did not complain of asphyxiation or lose consciousness.

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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 and NE#3 used excessive force when they slammed his head to the ground 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). 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 and NE#3 grabbed the Complainant and maneuvered him to the ground. NE#1's and NE#3's use of force was objectively reasonable, necessary, and proportional for the following reasons.

First, NE#1's and NE#3's use of force was objectively reasonable. The Complainant obstructed officers from executing a warrant the prior day. The Complainant fled by the time officers arrived

at his apartment the next day. The Complainant was seen forcefully tugging at his leash while NE#3 approached and NE#3 stated he saw the Complainant appearing to strangle his dog, giving NE#3 independent probable cause to arrest the Complainant for animal cruelty. Upon contact with NE#3, the Complainant intended to flee at a busy intersection. After NE#1 grabbed the Complainant's arms from behind and NE#3 held the Complainant, the Complainant pulled away and attempted to flee. NE#1 and NE#3 performed a controlled takedown that did not occur in the way that the Complainant described. NE#1 fell to the ground first with his right knee, slowing down the Complainant's momentum and absorbing much of the ground impact. NE#1 and NE#3 denied slamming the Complainant's head to the ground, corroborated by BWV. Instead, NE#1 and NE#3 guided the Complainant to the ground after an arrest while standing was no longer feasible. The Complainant fell to his knees first, then was taken fully to the ground. Even while the Complainant was on the ground, he resisted by attempting to grab NE#3's hand. NE#1's and NE#3's control hold and takedown were objectively reasonable based on the danger their location presented as well as the Complainant's resistance and intent to flee. The Complainant's allegation that officers "slammed" his head to the ground is not supported by the evidence.

Second, NE#1's and NE#3's use of force was necessary. A reasonably effective alternative to the use of force did not exist. NE#3 told the Complainant that he was not free to leave, yet the Complainant immediately pulled away and backed away from NE#3. NE#1 and NE#3 were justified in using force to prevent the Complainant's escape, especially considering the danger of a foot chase on busy streets. Additionally, the type and amount of force used was a reasonable and proportional response to effect the legal purpose intended. NE#1 and NE#3 used a controlled takedown to arrest the Complainant. Their use of force was a proportional response based on the Complainant's resistance.

Third, NE#1's and NE#3's use of force was proportional. NE#1 and NE#3 used force to overcome the Complainant's resistance. NE#1 and NE#3 used control holds, a team takedown, and arrest tactics to handcuff the Complainant. After the Complainant was handcuffed, the named employees modulated their use of force and sought medical aid for him. What was most likely *de minimis* force escalated to Type II force only because of the abrasion on the Complainant's face. Although the Complainant alleged that officers "slammed" his head to the ground, causing a TBI, the objective evidence, including an HMC evaluation, was inconsistent with this allegation. NE#1's and NE#3's use of force was proportional under the circumstances.

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

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

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## **Named Employee #2 – Allegation #1**

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

The Complainant alleged that NE#2 used excessive force when NE#2 put her knee on his head during his arrest.

Here, NE#2 used a head control tactic by placing her knee on the Complainant's head for about 10 seconds. NE#2's use of force was objectively reasonable, necessary, and proportional for many of the same reasons articulated in Named Employee #1 – Allegation #1. OPA also notes the following with respect to NE#2's use of force. First, NE#2's use of force was objectively reasonable because the Complainant, while on the ground, continued resisting and attempted to grab NE#3. Although NE#2's knee placement could have caused the abrasion on the Complainant's face, NE#2's use of force was intended to further control the Complainant's movement after NE#1 and NE#3 held down his arms. Second, NE#2's use of force was necessary to prevent the Complainant from biting or spitting at officers, flipping over, hitting his head on the ground, or getting back on his feet. NE#2 said she was experienced in arrests and described many incidents where officers and suspects got injured after failing to control the suspects' heads. Third, NE#2's use of force was proportional because, according to NE#2, she used the least amount of force by "gently" placing her right knee on the Complainant's left temple, balancing her weight on her right hand that was on his upper back, and balancing her weight on her left leg that was planted on the ground. BWV corroborated NE#2's explanation.

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

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

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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.

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