



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 4, 2024

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0391

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 - Unfounded (Expedited)

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.200 - Using Force (1) Use of Force: When Authorized	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:

The Complainant alleged the named employees used excessive force by pepper spraying a woman they detained under Washington's Involuntary Treatment Act.¹

ADMINISTRATIVE NOTE:

On October 10, 2023, the Office of Inspector General (OIG) certified OPA's investigation as thorough, timely, and objective.

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General's review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the involved employees. As such, OPA did not interview the involved employees in this case.

SUMMARY OF INVESTIGATION:

The Complainant called OPA to report that she saw a woman in crisis (Community Member #1 or CM#1) being detained by two SPD officers—Named Employee #1 (NE#1) and Named Employee #2 (NE#2). The Complainant reported CM#1 was naked and had reportedly been pepper sprayed. The Complainant alleged it was unnecessary to pepper spray CM#1 and that she did not see anyone provide treatment to CM#1 for her exposure to pepper spray.

¹ The Involuntary Treatment Act created a process for the civil investigation, evaluation, detention, and commitment of individuals experiencing a mental disorder or substance use disorder with symptoms severe enough to require involuntary treatment. See RCW 71.05 (for involuntary treatment of adults) and RCW 71.34 (for involuntary treatment of minors aged 13 through 17).



OPA opened an intake investigation. During its intake, OPA reviewed the complaint, computer-aided dispatch (CAD) call report, incident report, and body-worn video (BWV). OPA also interviewed the Complainant.

The entirety of the named employees' interaction with CM#1 was captured on BWV, which was consistent with the incident report written by NE#2. Additional objective evidence was recorded by the CAD call report.

The named employees and a civilian mental health professional (MHP#1) responded to a 9-1-1 report that a female had been pepper sprayed and required medics. The 9-1-1 caller reported the female was inside a store breaking items. The 9-1-1 call taker noted they could hear the female screaming in the background of the call.

The named employees and MHP#1 arrived at the call location—a convenience store—and found CM#1 splashing water on her face from a sink. CM#1 was completely naked and screaming. The floor surrounding CM#1 was wet and littered with what appeared to be CM#1's clothing and a variety of other items.



CM#1 in store at sink.

The officers spoke to CM#1 and warned her that splashing water on pepper spray would make her pain worse. After CM#1 began violently tugging on the sink faucet, the named employees grabbed CM#1's arms and placed her in handcuffs. During this time, CM#1 thrashed, pulled away, and shouted.

NE#2 informed CM#1 that the Seattle Fire Department was already on their way. The officers asked CM#1 who pepper sprayed her, and CM#1 responded by shouting, "Next door!" NE#2 asked CM#1 where she wanted to go. CM#1 responded that she wanted to go to the hospital. CM#1 turned and yelled at NE#2, stating something to the effect



that she would either “beat” or “bite” NE#2. NE#2 responded, “if you bite me, you’re going to regret it. I can tell you that right now.”

CM#1 asked for a towel. MHP#1 retrieved paper towels, and CM#1 shouted, “cold water, motherfucker!” The named employees asked CM#1 if she wanted towels. CM#1 turned toward NE#2 and spat at him. The named employees used *de minimis* force to bend CM#1 forward at the waist, pushing her head down.² NE#2 told CM#1 not to spit on him and that she could stand upright after she calmed down. MHP#1 wiped CM#1’s face with a paper towel.



*MHP#1 wiping CM#1’s face with a paper towel, indicated by green arrow.
CM#1’s face obscured by black triangle.*

SFD arrived, and the named employees walked CM#1 outside to the ambulance. SFD produced a blanket, and the named employees attempted to wrap the blanket around CM#1’s naked body, but CM#1 repeatedly screamed, “get this off of me!” A SFD member also approached with a towel to wipe CM#1’s face, but CM#1 continued thrashing and demanded a wet towel, which the SFD members stated would make the effects of the pepper spray worse. The SFD member also stated that there is not much else they could do to treat exposure to pepper spray. Throughout this time, CM#1 continued to jump, scream, curse at, pull away from, and resist the named employees. CM#1 also accused the named employees of grabbing or being on her neck multiple times. CM#1 again spat at NE#2 and, again, NE#2 used *de minimis* force to push CM#1’s head down, telling her, “That is not appropriate, do you understand?” CM#1 then allowed an SFD member to wipe her face with a towel.

² SPD Interim Policy 8.050 defines *de minimis* force as a physical interaction meant to separate, guide, and/or control without the use of techniques intended to, or reasonably likely to cause, any pain or injury. The named employees used a trained technique here called a “tabletop” to control CM#1’s movement.



*SFD member wiping CM#1's face with towel.
The side of CM#1's face obscured by black oval.*

CM#1 told the named employees that the person who pepper sprayed her was next door at a cannabis store. NE#1 interviewed an employee at the cannabis store, who stated he pepper sprayed CM#1 after she spat and swung at him. NE#2 interviewed an employee of the convenience store, who stated CM#1 entered after being pepper sprayed and caused property damage to a display case.

Ultimately, CM#1 was detained under the Involuntary Treatment Act, secured to an ambulance gurney, and transported to the hospital. NE#2 screened the detention with a sergeant.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 - Using Force (1) Use of Force: When Authorized

The Complainant alleged NE#1 and NE#2 used excessive force by pepper spraying CM#1.

SPD Interim Policy 8.200-POL-1 requires that force used by officers be “objectively reasonable, necessary, and proportional to the threat or urgency of the situation, to achieve a law enforcement objective while protecting the life and safety of all persons.” Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, considering the circumstances surrounding the event.” SPD Interim Policy 8.050. Reasonableness must be judged from perspective of a reasonable officer at the scene, *id.*, and allow for the fact that officers are often forced to make “split-second decisions” in tense, dynamic circumstances. SPD Interim Policy 8.200-POL-1. The policy also lists several factors that should be weighed when evaluating reasonableness. *See id.* Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the type and amount” of force used was reasonable and proportional to effect the lawful purpose intended or to protect against the threat. *Id.* Lastly, the force used must be proportional, reflecting the totality of the circumstances, including the nature and immediacy of any threats. *Id.*

Based on review of the evidence provided, by a preponderance of the evidence, this allegation is unfounded. BWV established neither named employee used pepper spray on CM#1. Instead, all the evidence conclusively showed CM#1



was already pepper sprayed before the named employees contacted her. Moreover, the named employees, MHP#1, and SFD all took reasonable steps to try to alleviate CM#1's discomfort. All the other force used by the named employees was *de minimis* force that was objectively reasonable, necessary, and proportional to prevent and restrain CM#1's destructive and resistive behavior.

Because OPA determined the alleged misconduct did not occur, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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

Named Employee #2 - Allegation #1

8.200 - Using Force (1) Use of Force: When Authorized

For the same reasons set forth above at Named Employee #1, Allegation #1, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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