



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 3, 2024

FROM: DEPUTY DIRECTOR BONNIE GLENN ON BEHALF OF DIRECTOR GINO BETTS JR.,
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0462

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 (Effective April 24, 2023)	Not Sustained - Lawful and Proper

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)	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) responded to an assault call and found the Complainant in crisis. The named employees decided to detain the Complainant under the Involuntary Treatment Act (ITA). The Complainant alleged the named employees applied unauthorized force by punching his face and kneeling his back.

ADMINISTRATIVE NOTE:

On March 14, 2024, the Office of Inspector General certified OPA's investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

A. OPA Complaint

On October 10, 2023, Witness Supervisor #1 (WS#1)—an administrative lieutenant—filed an OPA complaint on the Complainant's behalf. WS#1 wrote that the Complainant ran into traffic, appeared to assault a woman, and ignored police commands. WS#1 wrote that the named employees decided to detain the Complainant because he posed a danger to himself and others. WS#1 wrote that the Complainant assaulted the named employees, forcing them to defend themselves.

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 named employees.

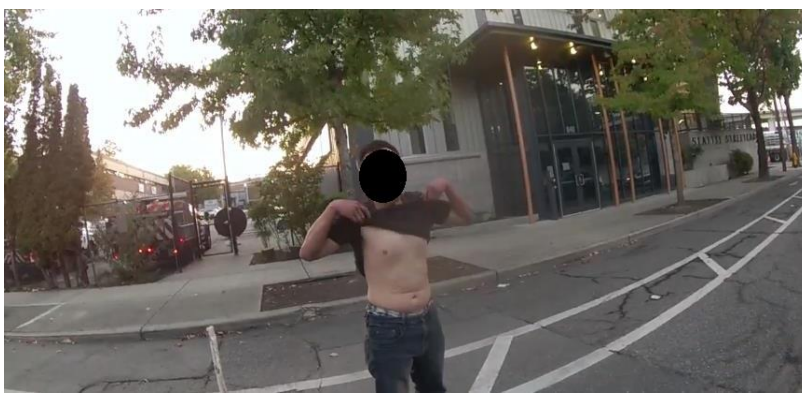
B. Computer-Aided Dispatch (CAD) Call Report and Body-Worn Video (BWV)



On September 16, 2023, at 6:41 AM, CAD call remarks noted, “UNDER FREEWAY, MALE YELLING FOR ASSISTANCE, TRYING TO OPEN [REPORTING PARTY’S] VEH[ICLE] DOOR WHILE [REPORTING PARTY] WAS DRIVING THROUGH, HOLDING HIS STOMACH WITH HIS HANDS.”

The named employees responded to the incident location and activated their BWV, capturing the following:

The Complainant appeared to be in crisis in the middle of a street. He said, “They shoot me.” NE#2 asked him to lift his shirt, and he complied. No gunshot wound or blood was visible.



The Complainant lifting his shirt.

NE#2 told him to get off the street and sit down. The Complainant walked away from the named employees as they approached him. The Complainant walked in and out of traffic while speaking incoherently and avoiding the named employees. The named employees repeatedly instructed him to stay off the street and to “come here.” The Complainant again entered a street. The named employees sprinted toward the Complainant, prompting him to flee. The Complainant tripped and fell, and the named employees approached the Complainant.

While on his back, the Complainant kicked NE#2. NE#2 grabbed the Complainant’s leg. NE#1 pressed his hand against the Complainant’s face, then held the Complainant down by pressing his chest area. The Complainant grabbed NE#1’s vest with his right hand and held handcuffs with his left hand.¹

¹ NE#1’s use of force statement indicated the Complainant removed handcuffs from NE#1’s police vest.



Complainant grabbing NE#1's vest (blue arrow) while holding handcuffs (red arrow).

NE#1 said, "Let go of me!" NE#2 fell and used his arms to break his fall. The named employees went on top of the Complainant. NE#2 said what sounded like, "Fucking punch."² NE#2 punched the Complainant's face twice and said, "Stop fucking kicking me."



NE#2 punching the Complainant. The Complainant holding handcuffs (red arrow).

NE#2 held the Complainant's legs. NE#1 said, "Let go of me now!" The named employees held the Complainant on his side while he tried pulling away. NE#2 punched the Complainant's face three times. NE#2 said, "Let go of my fucking radio."



NE#2 punching the Complainant. NE#2's fist is indicated by the blue arrow.

² NE#2 clarified in his use of force statement that he warned the Complainant against further kicks, or he would punch the Complainant.



The Complainant holding handcuffs (red arrow).

The named employees held the Complainant on his side while he spoke incoherently. Backup officers arrived, rolled him on his stomach, and handcuffed him. NE#2 said, "Fucking spit on me, dude."

The named employees screened the incident with a sergeant. NE#2 said they saw the Complainant grabbing a woman and trying to take her belongings, but the Complainant disengaged after they arrived. NE#2 said he punched the Complainant three or four times. NE#1 said he kneed the Complainant's back and punched his face.³



NE#1 forming a fist shortly before NE#1's BWV deactivated.

C. Incident Report and Use of Force Reports

NE#2's incident report was consistent with the events captured on BWV. NE#2 wrote that the Complainant presented paranoid behavior, was under the influence, or had a psychiatric episode. NE#2 wrote that communicating with him was ineffective as he entered a busy road, so they decided to detain the Complainant under the ITA. NE#2 wrote that the Complainant kicked his genitals, upper left thigh, and stomach.

NE#1's Type II⁴ use of force statement was consistent with the abovementioned evidence. NE#1 wrote that he used his body weight to control and hold down the Complainant after he fell. NE#1 described the Complainant as "very strong" and rigid. NE#1 described having limited mobility because the Complainant grabbed his vest and right arm, then removed handcuffs from his vest and swung them around in a way that could have struck the named employees. NE#1 wrote, "I struck [the Complainant] on the right side of his face with my left fist since he was still thrashing and

³ BWV did not capture all of NE#1's actions as his BWV deactivated for a portion of the struggle. NE#1's BWV ended shortly after NE#1 formed a fist. NE#1's BWV reactivated seconds later.

⁴ 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 May 19, 2023). Type II force includes a punch or kick with less than Type III injury. SPD Interim Policy 8.400-POL-1 (effective May 19, 2023).



assaulting us.” NE#1 wrote that the Complainant refused to release his grip despite repeated commands. NE#1 wrote seeing the Complainant kick NE#2 and grab NE#2’s radio. NE#1 wrote that they held the Complainant on his side while awaiting backup officers, but he tried getting on his back, possibly to assault them again. NE#1 wrote, “I delivered one knee strike with my right knee to his right lower back area,” which he described as effective.

NE#2’s Type II use of force statement was consistent with the abovementioned evidence. NE#2 wrote that the Complainant kicked his pelvis and stomach area, so he controlled the Complainant’s legs and warned against repeated kicks. NE#2 wrote, “The subject kicked me again and I delivered two closed fist strikes to the subject’s face while continuing to advise him to stop kicking me.” NE#2 wrote that the Complainant grabbed NE#1 and NE#1’s handcuffs while actively resisting. NE#2 wrote that he heard NE#1 express pain, so he “delivered 3 more closed fist strikes to the subject’s face,” causing a “breakdown in structure.” NE#2 wrote that he grabbed the Complainant’s hands and held him down while awaiting backup officers. NE#2 wrote that the Complainant tried pulling away despite two officers holding him down.

A watch lieutenant and captain reviewed the use of force incident and concluded that the named employees’ use of force was objectively reasonable, necessary, and proportional.

D. OPA Interviews

On February 7, 2024, OPA interviewed NE#1, whose statements were consistent with the abovementioned evidence. NE#1 concluded his use of force was objectively reasonable, necessary, and proportional because the Complainant was noncompliant, assaulted them, held NE#1’s vest, and swung handcuffs around to potentially injure them. NE#1 also said he and NE#2 modulated their use of force based on the Complainant’s actions.

On February 7, 2024, OPA interviewed NE#2, whose statements were consistent with the abovementioned evidence. NE#2 concluded his use of force was objectively reasonable, necessary, and proportional. NE#2 said he perceived the Complainant as a threat when he armed himself with NE#1’s handcuffs. NE#2 said the Complainant actively resisted, repeatedly kicked him, tried standing up, and tried freeing himself from their control holds.

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 applied unauthorized force by punching his face and kneeling his back.

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). Reasonability must consider that officers are often forced to make split-second decisions about the force necessary in a particular situation in tense, uncertain, dynamic, and rapidly evolving circumstances. *Id.* The question is whether the officers’ actions were objectively reasonable considering the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Id.* Several factors should be weighed when evaluating reasonableness. *See id.* Force is necessary under the totality of the circumstances when there is no reasonably effective alternative to using physical or deadly force, and the type and amount of physical or deadly force



used is a reasonable and proportional response to effect the legal purpose intended or to protect against the threat posed to the officer or others. SPD Interim Policy 8.050 (effective May 19, 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. *Id.* Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied.” *Id.*

The named employees’ use of force was objectively reasonable, necessary, and proportional for the following reasons.

First, the named employees’ use of force was objectively reasonable as further de-escalation was no longer feasible to remove the Complainant from the street. The Complainant ignored multiple commands and appeared to be in crisis. They applied force to detain the Complainant after he fell. However, the Complainant refused to be taken into custody by kicking NE#2, grabbing NE#1, and grabbing NE#1’s handcuffs, which he could have used as a weapon against the named employees. The parties also struggled on a street, heightening the danger of being struck by a car. The Complainant ignored multiple commands to let go and stop kicking, forcing the named employees to employ a greater force to overcome the Complainant’s resistance and assaultive conduct. Even after NE#2 struck the Complainant’s face five times, the Complainant continued resisting and tried pulling away from them. In fact, the Complainant was so resistant and noncompliant that the named employees were unable to handcuff him. They elected to hold him down on the street while awaiting assistance from backup officers.

Second, the named employees’ use of force was necessary since there was no reasonably effective alternative to force. Verbal commands were ineffective. The Complainant posed a threat to the named employees while he held NE#1’s handcuffs and kicked NE#2. They were required to use force to protect against further injury. According to NE#1, even while they held the Complainant on his side, he tried to get on his back, possibly to assault them again. NE#1’s knee strike to the Complainant’s lower back was necessary to prevent the Complainant from continuing to assault the named employees.

Third, the named employees’ use of force was proportional given the Complainant’s resistance and assaultive conduct. Their punches and knee strike overcame his resistance and the threat he posed. Their use of force also appeared to break his structure by considerably slowing him down. They modulated their use of force following NE#2’s last three punches by holding him down until backup officers arrived.

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

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

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.

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