
Issued Date: JUNE 15, 2024

From: Director Gino Betts, Jr. 
Office of Police Accountability

Case Number: 2023OPA-0544

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)

Finding: Not Sustained - Unfounded

Named Employee #2

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

Finding: Not Sustained - Unfounded

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections may be written in the first person.

Executive Summary:

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) responded to a burglary call at a Safeway store. The Complainant fled after the named employees arrived on the scene. The Complainant alleged the named employees used excessive force during his arrest.

Administrative Note:

During its intake investigation, OPA could not locate documentation regarding the deactivation of NE#2's body-worn video (BWV) in either the incident report or the computer-aided dispatch (CAD) record. However, NE#2 documented the deactivated BWV in his type II use of force report. OPA sent NE#2's potential SPD Policy 16.090-POL-1(6) (Sworn Employees Will Document the Existence of Video or Reason for Lack of Video) violation to his 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 employee's supervisor. See OPA Internal Operations and Training Manual section 5.4(B)(ii).

On June 5, 2024, the Office of Inspector General certified OPA's investigation as timely and

objective. However, OIG declined to certify it as thorough because OPA did not classify a professionalism allegation.

Summary of Investigation:

A. OPA Complaint

On December 18, 2023, Witness Supervisor #1 (WS#1)—an administrative lieutenant—submitted an OPA complaint, writing that the named employees responded to a burglary call at a Safeway store and used force to arrest the Complainant. WS#1 wrote that NE#2 leg swept and bearhugged the Complainant while NE#1 attempted control holds on the Complainant. WS#1 wrote that the Complainant reached for NE#1’s firearm, prompting NE#1 to punch the Complainant several times. WS#1 wrote that the Complainant alleged, “The cops beat me up.”

OPA investigated the complaint, reviewing the CAD call report, in-car video (ICV), BWV, police reports, use of force reports, witness interview statements, SPD defensive tactics, and photographs. OPA also interviewed the named employees. The Complainant’s attorney declined OPA’s offer to interview the Complainant.

B. Computer-Aided Dispatch (CAD) Call Report

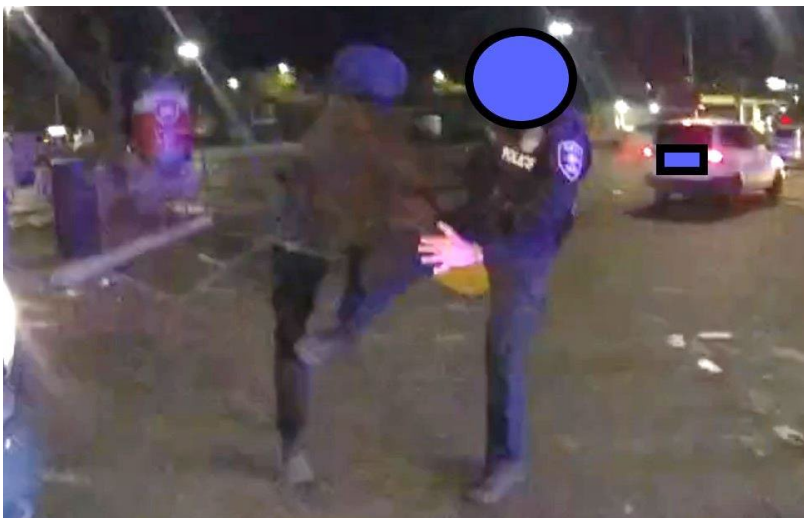
On November 17, 2023, at 11:05 PM, CAD call remarks noted, “CALL FROM MANAGER SAYING SOMEONE BREAKING IN.”

C. In-Car Video (ICV) and Body-Worn Video (BWV)

ICV and BWV captured the following:

NE#1 drove his SPD vehicle with emergency lights activated, with NE#2 seated in the passenger seat. NE#2 spoke with the Safeway store manager (Community Member #1 or CM#1). NE#2 said, “We’re coming.” CM#1 appeared to say someone attempted to enter the store. CM#1 shouted, “Back up! You’re not coming in!” The line disconnected. NE#2 radioed that someone attempted to break into the store. CM#1 called NE#2 again and said someone entered the store. NE#1 parked near the front entrance, and the named employees exited the patrol car.

The Complainant exited the front entrance and ran straight. NE#2 (right) leg swept the Complainant (left):



The Complainant tripped and rolled onto his back. The named employees descended upon the Complainant. NE#2 announced, "You're under arrest," and radioed, "Fighting with one." NE#1 punched the Complainant four times. The named employees engaged in a struggle with the Complainant. The struggle was incompletely captured due to the named employees' BWV being physically close to the Complainant. Additionally, NE#2's BWV briefly deactivated during the struggle. The named employees articulated their force application in their police reports, use of force reports, and OPA interviews.

A backing officer arrived, finding NE#1 (green arrow) body wrapping the Complainant's chest and NE#2 (red arrow) body wrapping the Complainant's legs:



Officers told the Complainant to stop fighting and then attempted to roll the Complainant onto his stomach. The Complainant appeared to resist while remaining on his side. An officer shouted, "Stop fighting, God damn it! Stop fucking fighting! [Complainant], stop!" NE#1 handcuffed the Complainant, who said he had trouble breathing. BWV showed a hooded sweatshirt twisted over the Complainant's face. After the hood was removed, the Complainant did not complain about breathing difficulties. Officers sat the Complainant up, then NE#1 Mirandized him.

The Complainant told responding fire department employees that the officers beat him up. The Complainant also told a responding sergeant that he was trying to get ice from the store for an injury above his left eye.

D. Police Reports

NE#1's police report documented that the Complainant fled and resisted arrest. NE#1 wrote that he attempted to position the Complainant's arm behind his back when the Complainant kned NE#1's face, causing an abrasion. NE#1 wrote that he released the Complainant's arm and felt the Complainant "tugging" on NE#1's holstered firearm. NE#1 wrote that the named employees struggled with the Complainant until backup officers arrived to handcuff him.

NE#2's police report described the Complainant as a "prolific criminal offender," and officers had probable cause to arrest him for multiple felonies and misdemeanors. NE#2 wrote that the Complainant immediately fled from the store and "forcefully resisted" arrest by fighting the named employees. NE#2 described the arrest as "extremely difficult" because the Complainant

assaulted the named employees, causing injuries. NE#2's documented injuries included multiple abrasions, bone contusions, and pain and strain to his hands, knees, ankles, and neck.

E. Use of Force Reports

NE#1's type II The use of force report documented that he and NE#2 had previously responded to the store after CM#1 had reported that the Complainant had shoplifted there. 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 an abrasion or 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 after the Complainant fell, NE#1 pressed his body against the Complainant while holding the Complainant's right arm. NE#1 wrote that the Complainant kned NE#1's chin. NE#1 wrote that the Complainant grabbed NE#1's holstered firearm, so NE#1 punched the Complainant's face four times, which NE#1 described as effective. NE#1 wrote that he "seatbelt" held the Complainant by wrapping his arms diagonally around the Complainant's chest, restraining the Complainant's movements. NE#1 believed the Complainant was under the influence because he had "super-human strength," being able to push himself off the ground despite having two officers weighing a combined 405 pounds on top of him. NE#1 denied that his hold prevented the Complainant from breathing or restricted blood flow to the brain. NE#1 wrote that he and the Complainant laid on their left side, with NE#2 holding the Complainant's legs, until backup officers arrived to facilitate handcuffing. NE#1's documented injuries included an abrasion on his chin, injuries to his left hand and elbow, and abrasion to both knees.

NE#2's type II use of force report documented that NE#2 leg swept the Complainant, propelling the Complainant towards the ground. NE#2 wrote that he bearhugged the Complainant's lower hips and legs as the Complainant kicked, causing injuries to NE#2's ankles, knees, and hands. NE#2 wrote that his bearhug prevented the Complainant's escape, neutralized the Complainant's ability to assault the named employees, and kept the Complainant within the named employees' immediate control. NE#2 described the Complainant as strong, "violently out of control," combative, and noncompliant. NE#2 believed arresting the Complainant was one of the most physically challenging suspect interactions NE#2 encountered. NE#2 wrote that the Complainant's strength and determination to fight and break free necessitated a backup officer's assistance to handcuff the Complainant. NE#2 noted that the Complainant, a convicted felon, was listed on SPD's high utilizer offender list and, according to CM#1, stole from the Safeway store at least 40 times in the past week. NE#2 also noted that he previously arrested the Complainant for second-degree burglary and had probable cause to arrest him for two prior burglaries and shoplifting. NE#2 wrote that NE#1, two Safeway employees, and himself were hospitalized due to injuries.

A watch lieutenant and captain reviewed the use of force investigation and approved the named employees' use of force.

F. Community Member #2 (CM#2) Interview

On November 7, 2023, a witness officer interviewed Community Member #2 (CM#2), a Safeway store employee. CM#2 said the Complainant forced entry despite being told the store was closed.

CM#2 described what he saw after the Complainant exited the store. CM#2 said the Complainant fought the named employees. CM#2 stated:

[The Complainant] was on the ground, and the two guys – the two cops tell them like, “Hey, stop fighting.” ‘Cause he was punching these cops, too. He was punching the cops, too. He was on the ground, but he was elbowing the other guy. I think this guy or the other guy. Then, the other guy grabbed his feet and started kicking the other guy. So, then these two cops – he was like, “Ah, stop fighting.”

CM#2 confirmed seeing the Complainant punching and kicking the named employees.

G. SPD Defensive Tactics

On April 23, 2024, OPA spoke with an SPD defensive tactics instructor (Witness Officer #1 or WO#1). WO#1 said there was no specific training or guidance on stopping fleeing suspects. WO#1 said an officer utilizing a leg sweep to trip a fleeing suspect must justify that force. WO#1 said an officer could tackle a fleeing suspect, which poses a higher risk of injury to the suspect and the officer, or push the suspect’s back or side.

On April 23, 2024, OPA followed up with an email to WO#1. On April 26, 2024, WO#1 wrote that SPD had yet to find a controlled way to stop a fleeing suspect. WO#1 wrote, “I would consider the expected level of injury from a foot sweep on the low end of options since the suspect still can brace their fall unlike a [T]aser application. Also, a foot sweep does not accelerat[e] the suspect[’]s upper body like a push could cause. A foot sweep would be a good option to stop a fleeing suspect.”

H. OPA Interviews

On February 27, 2024, OPA interviewed NE#1, whose statements were consistent with the abovementioned evidence. NE#1 said his four punches were objectively reasonable to prevent the Complainant from arming himself with NE#1’s firearm. NE#1 said he modulated his force by using control holds upon recognizing that the Complainant refrained from reaching for NE#1’s firearm.

On February 27, 2024, OPA interviewed NE#2, whose statements were consistent with the abovementioned evidence. NE#2 said he leg-swept the Complainant to prevent him from fleeing. NE#2 believed his leg sweep was effective and objectively reasonable. NE#2 said he maintained control holds on the Complainant.

On May 13, 2024, OPA interviewed CM#1. CM#1 said the Complainant forcibly entered the Safeway store. CM#1 said that after the named employees arrived, the Complainant dropped the items and fled. CM#1 said the named employees beat the Complainant on the ground, believing that the Complainant did not fight or resist. CM#1 said NE#2 repeatedly smashed the Complainant’s head against the ground, causing injury to the Complainant’s eye. CM#1 said the named employees punched the Complainant. CM#1 denied seeing the Complainant reach for an officer’s gear. CM#1 said she heard the Complainant shout that the named employees were hurting him, and he could not breathe. CM#1 said backup officers piled on the Complainant to handcuff him. CM#1 claimed that the named employees would have been able to handcuff the Complainant before backup officers arrived had the named employees not been beating him up.

On May 13, 2024, OPA interviewed a Safeway store employee (Community Member #3 or CM#3). CM#3 believed the named employees used excessive force against the Complainant by repeatedly striking him and kneeling his back. CM#3 said an officer placed his knee on the Complainant's neck, preventing the Complainant from breathing. CM#3 characterized the named employees as aggressive and extremely violent. CM#3 claimed to hear the Complainant's body being slammed against the ground and blood "rushing out of him." CM#3 denied seeing the Complainant fight back or reach for an officer's gear. CM#3 said the Complainant's hands were behind his back during the struggle. CM#3 claimed to hear the named employees brag about beating up the Complainant.

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 applied unauthorized force during the Complainant's 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). 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, 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. *Id.*

NE#1's force application was objectively reasonable, necessary, and proportional. First, NE#1's force application was objectively reasonable, given the Complainant's combativeness and resistance. The Complainant knee struck NE#1's chin after NE#1 attempted to hold down the Complainant. Additionally, NE#1's four punches were objectively reasonable after the Complainant attempted to grab NE#1's holstered firearm. The possibility of disarming an officer presented an immediate danger to everyone at the scene. The government's interest in apprehending the Complainant was high because he posed a serious threat to the public after he forcibly entered a store, assaulted store employees, and allegedly committed other crimes for which officers had probable cause. Second, NE#1's force application was necessary since there was no reasonably effective alternative to force. Upon seeing the named employees, the Complainant immediately fled, rendering verbal commands and de-escalation infeasible. NE#1's

punches were also necessary to prevent the Complainant from arming himself with NE#1's firearm. Third, NE#1's force application was proportional, given the threat the Complainant posed due to his noncompliance and assaults. NE#1 articulated, and BWV did not dispute, that he modulated his force after punching the Complainant by seatbelt holding him, restricting the Complainant's movements. Overall, a preponderance of the evidence indicates that NE#1's force application was objectively reasonable, necessary, and proportional under the circumstances.

Witnesses perceived the altercation differently. On one side, two witnesses said the named employees beat the Complainant. CM#1 claimed NE#2 repeatedly smashed the Complainant's head against the ground. CM#3 claimed to hear the Complainant's body being slammed against the ground and blood "rushing out of him." CM#3 also claimed an officer placed his knee on the Complainant's neck. On the other side, one witness said the Complainant fought the named employees. CM#2 claimed the Complainant punched, elbowed, and kicked the named employees. While it is likely that CM#1 and CM#3 saw NE#1 repeatedly punch the Complainant—an occurrence not in dispute—the video evidence was inconsistent with their other claims. The evidence, including video, physical injuries, and officer statements, was more consistent with CM#2's recollection of events.

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

Recommended Finding: **Not Sustained - Unfounded**

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 applied unauthorized force during the Complainant's arrest.

For the reasons at Named Employee #1 – Allegation #1, NE#2's force application was objectively reasonable, necessary, and proportional. Aside from the leg sweep, NE#2 applied *de minimis* force against the Complainant by restraining the Complainant's legs as captured on BWV. *De minimis* force is "physical interaction meant to separate, guide, and/or control without the use of control techniques that are intended to or are reasonably likely to cause any pain or injury." SPD Interim Policy 8.050 (effective May 19, 2023). It includes using "control holds or joint manipulation techniques in a manner that does not cause any pain." *Id.*

NE#2's leg sweep prevented a foot pursuit, likely involving increased risk to the Complainant and the named employees. As WO#1 articulated, a tackle would likely cause more injuries to the Complainant than a leg sweep. WO#1 also concluded that a "foot sweep would be a good option to stop a fleeing suspect" because a suspect could brace for his fall. NE#2's leg sweep gave the named employees a tactically advantageous position by being on their feet while utilizing control holds. Overall, a preponderance of the evidence indicates that NE#2's leg sweep was objectively reasonable, necessary, and proportional under the circumstances.

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

Recommended Finding: **Not Sustained - Unfounded**