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**Issued Date:** JUNE 30, 2024

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

**Case Number:** 2024OPA-0007

## **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 (Expedited)

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### **Named Employee #2**

1. **Allegation #1:** 7.060 – Releasing Evidence, 7.060-POL-2. Sworn Employees Release Evidence No Longer Needed for Law Enforcement Purposes  
**Finding:** Not Sustained - Lawful and Proper (Expedited)
2. **Allegation #2:** 15.180 – Primary Investigations, 15.180-POL-1. Officers Shall Conduct a Thorough and Complete Search for Evidence  
**Finding:** Not Sustained - Lawful and Proper (Expedited)
3. **Allegation #3:** 5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing  
**Finding:** Not Sustained - Unfounded (Expedited)

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### **Named Employee #3**

1. **Allegation #1:** 8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)  
**Finding:** Not Sustained - Unfounded (Expedited)

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### **Named Employee #4**

1. **Allegation #1:** 8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)  
**Finding:** Not Sustained - Unfounded (Expedited)

**2. Allegation #2:** 7.060 – Releasing Evidence, 7.060-POL-2. Sworn Employees Release Evidence No Longer Needed for Law Enforcement Purposes

**Finding:** Not Sustained - Lawful and Proper (Expedited)

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## **Named Employee #5**

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

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

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**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 #2 (NE#2) investigated an assault at a restaurant. Named Employees #1, #3, #4, and #5 (NE#1, NE#3, NE#4, and NE#5) arrested the Complainant at a Safeway store. The Complainant alleged that his arrest was based on mistaken identity and that he was targeted because of his race, press status, and political views. The Complainant also alleged that the named employees used unauthorized force during his arrest and failed to return his seized property.

### **Administrative Note:**

The Complainant alleged that NE#3 and NE#4 laughed at him or the situation. OPA sent NE#3's and NE#4's potential violation of SPD Policy 5.001-POL-10 (Employees Will Strive to be Professional) to their chain of command for Supervisor Action. Supervisor Actions generally involve a minor policy violation or performance issue the employee's supervisor addresses through training, communication, or coaching. 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 March 22, 2024, OIG certified OPA's investigation as thorough, timely, and objective.

### **Summary of Investigation:**

#### **A. OPA Complaint**

On January 2, 2024, the Complainant left OPA a voicemail, saying NE#2 unlawfully arrested him. On January 4, 2024, OPA called the Complainant, who said NE#2 arrested him based on mistaken identity. The Complainant could not recall the details of his interaction with the officers, saying he only remembered waking up in a hospital. The Complainant believed the arresting

officers caused a cut to his head. The Complainant also indicated that he did not receive his property after he was released from the King County Jail (KCJ). The Complainant believed he was targeted based on race, press status, and political views.

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, body-worn video (BWV), police reports, photographs, and custodial property summary report. OPA also interviewed the Complainant.

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

On December 8, 2023, at 2:58 PM, CAD call remarks noted, “[CHECK] FOR MALE ATTEMPTING TO HIT STAFF AND THROWING THINGS AND RUINING ITEMS, SUSP[ECT] NOW GETTING IN [REPORTING PARTY’S] FACE AND YELLING, NO [WEAPONS] SEEN.”

## **C. Body-Worn Video (BWV)**

BWV captured the following:

NE#2 responded to a restaurant and spoke with Community Member #1 (CM#1), a restaurant employee. CM#1 said he told the Complainant to leave the restaurant’s trash area, but the Complainant refused and entered the restaurant, where he was again asked to leave. CM#1 said the Complainant attempted to kick his groin, which CM#1 blocked with his hands. CM#1 said the Complainant knocked over trays, dishes, and glass items as he exited the restaurant. Another restaurant employee gave NE#2 a work badge that the Complainant left there. During a field show-up after the Complainant’s arrest, CM#1 identified the Complainant as the offender.

NE#1 and NE#5 responded to a Safeway. NE#4’s supplement report documented that a witness reported seeing the Complainant head towards a Safeway. A security employee told the officers that the Complainant was inside and “bleeding from the head.” NE#2’s incident report documented that the Complainant, after leaving the restaurant, broke the glass windows and glass door of two separate businesses. A photograph depicted a broken window with blood on it. NE#3, NE#4, and Witness Officer #1 (WO#1) arrived. The security employee identified the Complainant to the officers as he exited the bathroom. The Complainant tried walking past the named employees, but NE#4 and NE#5 grabbed his arms. The Complainant freed his left arm from NE#4’s grip. NE#5 told the Complainant to stop, and the Complainant repeatedly asked, “What [are] you touching me for?” The Complainant attempted to free himself from NE#4’s and NE#5’s grip. The named employees guided the Complainant to the ground onto his stomach. NE#1 (red arrow) pressed his knee against the Complainant’s left shoulder, NE#5 (blue arrow) pressed his knee against the Complainant’s lower back and positioned the Complainant’s right arm behind his back, and NE#3 and WO#1 (green arrow) crisscrossed the Complainant’s legs, raised his legs toward his buttocks, and held his feet:



NE#3 released his grip and stood while WO#1 held the Complainant's feet in a crisscross position.

The Complainant repeatedly asked, "What'd I do wrong?" An officer told the Complainant to stop resisting and that he was under arrest. NE#4 handcuffed the Complainant. The Complainant shouted, "They're killing me!" The Complainant yelled, "Y'all been beating me, man," and shouted, "Help me!" The named employees stood the Complainant, whose face was bloody, and escorted him out of Safeway.

The Complainant asked why he was arrested, and an officer replied he was under investigation for assault. The Complainant denied the assault. NE#4 and NE#5 searched the Complainant in front of a patrol car and placed his property on its hood. NE#3, using his hand, guided the Complainant's head towards the hood, causing the Complainant to bend forward. NE#3 (purple arrow) raised the Complainant's arms as NE#5 (blue arrow) searched him:



During the *Miranda* advisement, the Complainant asked, “Who’s behind me? Who the fuck is choking me? They [are] choking me!” The image above captured the moment when the Complainant alleged that he was being choked. No officer was near the Complainant’s neck. The Complainant pleaded for onlookers to help him. He was placed in the backseat of a patrol car and transported to KCJ.

#### **D. Incident Report and Custodial Property Summary Report**

NE#2’s incident report, consistent with BWV observations, noted that the Complainant was arrested for fourth-degree assault, property damage, and trespass. A custodial property summary report showed that the Complainant’s work badge and pocket knife were taken as evidence. The remaining property was kept for safekeeping and released to the Complainant on December 12, 2023.

#### **E. OPA Interview**

On January 22, 2024, OPA interviewed the Complainant, who said he could not recall the incident but remembered waking up in a hospital with two officers present. The Complainant insisted that officers hit or Tased him during his arrest. The Complainant believed the officers mistook his identity and later dismissed his criminal charges. The Complainant denied being near the restaurant or assaulting anyone. The Complainant alleged that officers failed to investigate the perpetrator who attacked him, evidenced by the cut on his head. The Complainant wanted the rest of his property returned to him.

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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, NE#3, NE#4, and NE#5 used unauthorized 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). 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 to apply. *Id.*

NE#1, NE#3, NE#4, and NE#5 used *de minimis* force during the Complainant's arrest. *De minimis* force is a physical interaction meant to separate, guide, and/or control without using control techniques that are intended to, or are reasonably likely to, cause pain or injury, including using control holds or joint manipulation techniques in a manner that does not cause pain. SPD Interim Policy 8.050 (effective May 19, 2023). NE#4 and NE#5 initially grabbed the Complainant's arms, but the Complainant attempted to free himself and flee. The named employees collectively coordinated a soft takedown by guiding the Complainant to the ground on his stomach. As depicted in the image above, the named employees applied pressure on the Complainant's back and secured his feet as NE#4 handcuffed him. The Complainant never expressed any pain throughout his arrest. Although blood dripped on the Complainant's face after the named employees stood him up, a Safeway security employee alerted the named employees upon their arrival that the Complainant bled from his head, suggesting that the injury was pre-existing and not caused by his arrest. Overall, the named employees' *de minimis* use of force to apprehend the Complainant was objectively reasonable, necessary, and proportional. The named employees had probable cause for the Complainant's arrest, the Complainant became combative and noncompliant, and the named employees coordinated a team takedown that, based on BWV observations, unlikely caused the injury. BWV disproved the Complainant's allegation that the named employees hit or Tased him during his arrest.

Additionally, the Complainant alleged that an officer choked him during a search incident to arrest. As depicted in the image above, no officer was near the Complainant's neck region when he made that allegation. BWV disproved the Complainant's allegation that an officer choked him.

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

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

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

#### ***7.060 – Releasing Evidence, 7.060-POL-2. Sworn Employees Release Evidence No Longer Needed for Law Enforcement Purposes***

The Complainant alleged that NE#2 and NE#4 failed to return his property.

Sworn employees will release evidence no longer needed for law enforcement purposes. SPD Policy 7.060-POL-2. Sworn employees will release property to the evidence supervisor for disposal when the owner is unknown or

cannot legally possess the property. *Id.*

The custodial property summary report noted that the Complainant's work badge and pocket knife were in police custody as evidence, meaning they could not be released to the Complainant because they were still needed "for law enforcement purposes." The remaining property was released to the Complainant on December 12, 2023. The Complainant's property was withheld or released as required by policy.

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

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

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**Named Employee #2 – Allegation #1**

***7.060 – Releasing Evidence, 7.060-POL-2. Sworn Employees Release Evidence No Longer Needed for Law Enforcement Purposes***

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The custodial property summary report noted that the Complainant’s work badge and pocket knife were in police custody as evidence, meaning they could not be released to the Complainant because they were still needed “for law enforcement purposes.” The remaining property was released to the Complainant on December 12, 2023. The Complainant’s property was withheld or released as required by policy.

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

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

**Named Employee #2 – Allegation #2**

***15.180 – Primary Investigations, 15.180-POL-1. Officers Shall Conduct a Thorough and Complete Search for Evidence***

The Complainant alleged that NE#2 arrested him based on mistaken identity.

In primary investigations, officers must conduct a thorough and complete search for evidence. SPD Policy 15.180-POL- 1. Sworn personnel must know how to collect the most common physical evidence that might be encountered in a primary investigation. *Id.* Only evidence impractical to collect or submit to the Evidence Unit shall be retained by the owner. *Id.* Officers shall photograph all evidence retained by the owner. *Id.*

NE#2’s investigation included interviewing the assault victim (CM#1) and another restaurant employee, obtaining the Complainant’s work badge depicting the Complainant’s picture and name, CM#1’s identification of the Complainant at a show-up, and other witness accounts describing the Complainant breaking glass windows. Based on this investigation, OPA finds NE#2 conducted a thorough and complete search for evidence. No evidence suggested NE#2 arrested the wrong individual.

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

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

**Named Employee #2 – Allegation #3**

**5.140 – Bias-Free Policing, 5.140-POL-2. Officers Will Not Engage in Bias-Based Policing**

The Complainant alleged that NE#2 targeted him because of his race, press status, and political views

Biased policing means “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well as other discernible personal characteristics of an individual.” SPD Policy 5.140-POL. It includes different treatment based on race or political ideology. See *id.* Employees are forbidden from making decisions or taking actions influenced by bias, prejudice, or discriminatory intent. See SPD Policy 5.140-POL-2.

As articulated in Named Employee #2 – Allegation #2, NE#2’s investigation was based on witness interviews and physical evidence. NE#2 established probable cause for fourth-degree assault, property damage, and trespass based on that evidence. NE#2’s investigation was not motivated by the Complainant’s race, political ideology, or press status.

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

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

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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 – Unfounded (Expedited).

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

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**Named Employee #4 – 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 – Unfounded (Expedited).

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

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**Named Employee #4 – Allegation #2**

**7.060 – Releasing Evidence, 7.060-POL-2. Sworn Employees Release Evidence No Longer Needed for Law Enforcement Purposes**

For the reasons at Named Employee #2 – Allegation #1, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

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**Named Employee #5 – 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 – Unfounded (Expedited).

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