

Issued Date: JUNE 30, 2024

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

Case Number: 2024OPA-0020

Allegations of Misconduct & Director's Findings

Named Employee #1

- 1. Allegation #1:** 13.031-POL-2 When Sworn Employees May Pursue and Supervisor Responsibilities 1. Sworn Employees May Not Pursue Unless the Following Requirements Have Been Met: (eff. May 19, 2023)
Finding: Not Sustained - Unfounded
- 2. Allegation #2:** 13.031-POL-3 Ending or Terminating Pursuits 4. Sworn Employees will Disengage When Pursuit is Terminated (eff. May 19, 2023)
Finding: Not Sustained - Unfounded

Named Employee #2

- 1. Allegation #1:** 13.031-POL-2 When Sworn Employees May Pursue and Supervisor Responsibilities 1. Sworn Employees May Not Pursue Unless the Following Requirements Have Been Met: (eff. May 19, 2023)
Finding: Not Sustained - Unfounded
- 2. Allegation #2:** 13.031-POL-3 Ending or Terminating Pursuits 4. Sworn Employees will Disengage When Pursuit is Terminated (eff. May 19, 2023)
Finding: Not Sustained - Unfounded

Named Employee #3

- 1. Allegation #1:** 13.031-8.300-POL-10 Use of Force- 40 mm Less Lethal Launcher 9. Officers Will Not Target a Subject's Head, Neck, or Genitals (eff. April 24, 2023)
Finding: Not Sustained - Inconclusive

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:

On July 14, 2023, SPD officers, including the named employees, arrested Community Member #1 (CM#1) for burglary, assault, harassment, theft of a motor vehicle, and eluding. The Complainant, an SPD supervisor, alleged that Named Employee #1 (NE#1) and Named Employee #2 (NE#2) engaged in an out-of-policy pursuit and failed to disengage despite their supervisor's order. The Complainant also alleged that Named Employee #3 (NE#3) improperly targeted CM#1's head or chest during a 40-millimeter less-lethal launcher (40mm LL) deployment.

Administrative Note:

On June 21, 2024, the Office of Inspector General certified this investigation as thorough, timely, and objective.

During the investigation, it was observed that, during the pursuit, Witness Supervisor #1 (WS#1) issued instructions that may have confused the officers and contributed to dangerous driving. OPA returned this allegation to WS#1's chain of command to process as a supervisor action. A supervisor action generally involves a minor policy violation or performance issue that the employee's supervisor addresses through training, communication, or coaching. See OPA Internal Operations and Training Manual section 5.4(B)(ii).

During this investigation, the named employees' union representative raised concerns about the 180-day investigation timeline. This incident occurred on July 14, 2023, but OPA did not receive the complaint until January 7, 2024—nearly six months later. Under the SPOG collective bargaining agreement (CBA), the 180 “start date” begins on the earliest of several contingencies, including: “For incidents submitted to the Chain of Command in Blue Team (or its successor), fourteen (14) days after the date on which the initial supervisor submits the incident for review to the Chain of Command.” SPOG CBA article 3.6(B) [emphasis added]. The named employees notified their chain of command about the incident in Blue Team. An acting sergeant submitted the incident to an administrative lieutenant on July 30, 2023. Under the SPOG CBA, the 180-start date was triggered as early as August 13, 2023. Accordingly, the 180-day timeline— according to the SPOG CBA—expired as early as February 9, 2024— a month after OPA was notified. Accordingly, no discipline can result. See *id.* (“No discipline may result from the investigation if the investigation of the complaint is not completed within one-hundred eighty (180) days after the 180-day start date”).

Nevertheless, despite the delayed referral, OPA concluded its investigation within 180 days of receiving the complaint.

Summary of Investigation:

OPA reviewed the computer-aided dispatch (CAD) call report, the incident report and

supplements, use of force documents, body-worn video (BWV), in-car video (ICV), and photographs. OPA also interviewed the named employees.

CAD Call Report and Incident Report

The CAD call and incident reports indicated that several officers responded to a burglary call involving an auto theft. The suspect—later identified as CM#1—fled in a stolen black Dodge Challenger with a Texas personalized license plate. The stolen vehicle had a GPS tracking system. Officers communicated with the vehicle’s owner to track the vehicle’s location.

Officers found the vehicle, with CM#1 inside, in a parking lot. Officers unsuccessfully tried blocking the stolen vehicle. However, CM#1 rammed a nearby vehicle and drove towards the officers, yelling, “I’m gonna fucking kill you.”

CM#1 escaped, but the officers continued to track the stolen vehicle with GPS updates from the vehicle’s owner. They again found the vehicle with CM#1 inside. CM#1 crashed into another vehicle, exited the stolen vehicle, and was arrested after a struggle with officers.

NE#3’s Use of Force Report

After CM#1 crashed the stolen vehicle, but before he exited and was arrested, CM#1 yelled from the driver’s side window and ignored orders to exit the vehicle. NE#3 deployed a 40mm LL at CM#1 twice. NE#3 documented his 40mm LL deployments in a Type II use of force report. Concerning his decision-making, NE#3 wrote:

The suspect did not comply with my orders and attempted to get the vehicle free. Understanding the suspect posed a serious threat to public safety and knowing there was probable cause to arrest the suspect for multiple felony crimes, I [decided] to shoot the suspect with a 40mm round. ***I targeted the suspect’s upper arm [since] it [was] the largest muscle I could reasonably hit through the open window from my angle. The 40mm round hit the intended target area.*** The suspect had an obvious reaction to the 40mm round and partly came out his window yelling back at me. I repositioned myself [...] behind a parked car, on the driver’s side of the suspect vehicle, with a better angle to see [inside] the suspect vehicle while having better cover. Additionally, my movement gave the suspect time to consider exiting the vehicle to avoid any additional need for force. Another officer took over verbal commands while I moved. The suspect continued to ignore [the] officer’s commands. As I arrived at a more favorable position, the suspect began reaching into the vehicle’s center console area. Believing the suspect was possibly going for a weapon and seeing the tires of the suspect vehicle still trying to spin randomly, I believed the suspect posed an immediate threat to officers and the public. ***I deployed [another] 40mm round targeting the largest muscle area I could target of the suspect, his left arm/left side. The 40mm round impacted the suspect’s left arm.*** The suspect immediately stopped reaching into the center console area and began trying to get away from the open driver’s window. The suspect appeared to be trying to go in the rear seat area [,] but instead [,] he moved across the passenger seat, out the passenger side door, toward a contact team of officers. The suspect attempted to flee to the north but was met by many officers [who] took him to the ground. The suspect resisted arrest but was eventually taken into custody on the passenger

side of the suspect vehicle. I found the driver of the vehicle the suspect had hit and ensured the driver was uninjured.

(emphasis added).

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

OPA reviewed the named employees' BWV and NE#1 and NE#2's ICV, depicting the following:

While en route to the incident location, NE#1 drove with emergency equipment activated. NE#1 arrived and unsuccessfully searched the area for the stolen vehicle.

NE#1 located the stolen vehicle on a secluded tree-lined dirt road and broadcast its location. CM#1 then accelerated the stolen vehicle toward NE#1, who reported that CM#1 was "attempting to ram me now." CM#1 veered before hitting NE#1's vehicle.



CM#1, in the black vehicle, veered from NE#1's vehicle.

CM#1 drove into oncoming traffic on Interstate 5 (I-5).



CM#1, indicated by the red arrow, enters oncoming traffic on I-5.



NE#1 and another SPD vehicle driving along the offramp.

With emergency equipment deactivated, NE#1 continued searching for CM#1. WS#1 radioed, "Let's get some North units to assist. Don't engage the vehicle. Follow it for now."

Later, NE#1 and other officers located CM#1 inside the stolen vehicle. NE#1 and other officers exited their vehicles to contact CM#1, but CM#1 drove off. On foot, NE#1 and other officers chased CM#1 but lost sight of the stolen vehicle. NE#1 reentered his vehicle and resumed searching for CM#1.



NE#1 (green arrow) running after CM#1 (red arrow). The blue arrows indicate other officers.

WS#1 radioed for officers "tracking the vehicle" to "back off." As NE#1 continued to search for CM#1, WS#1 radioed, "Continue to parallel the vehicle, keep distance, out of sight, [and] wait for resources."

As NE#1 turned left onto a street, he observed the stolen vehicle radioed its location.



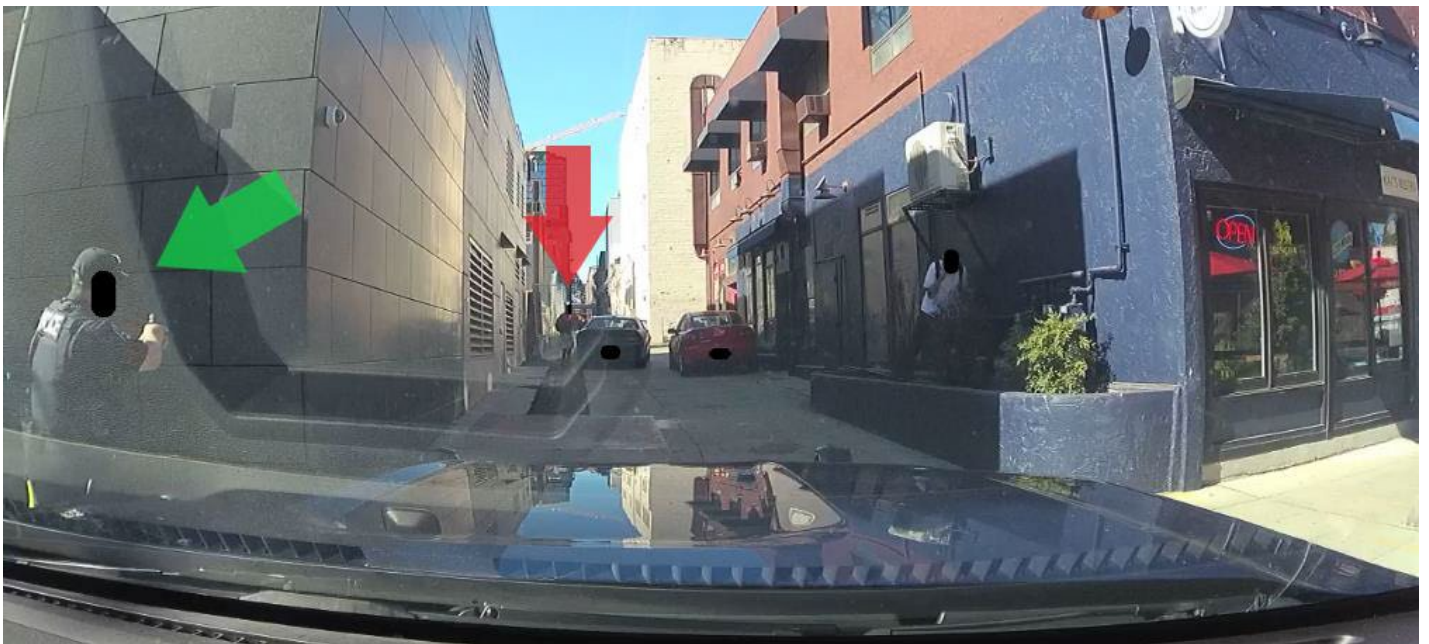
NE#1 observes CM#1 (red arrow).

CM#1 pulled his vehicle into an alley. NE#1 followed without lights or sirens activated. NE#1 stopped his vehicle behind the stolen vehicle, also stopped.



NE#1 stopped behind CM#1 (red arrow).

CM#1 exited the stolen vehicle, yelled at NE#1, and appeared to reach through the stolen vehicle's driver-side window. NE#1 exited his vehicle, pointed his firearm toward CM#1, and ordered CM#1 to step away from the vehicle.



NE#1 (green arrow) pointing firearm towards CM#1 (red arrow).

CM#1 reentered the stolen vehicle and sped through an alley. NE#1 followed without his lights or sirens activated. CM#1 cleared the alleyway, drove past officers, and disappeared.

NE#1 and NE#2 located the stolen vehicle, parked partially on a sidewalk.



NE#2 (purple arrow) approaching CM#1 (red arrow).

As NE#2 approached, CM#1 accelerated forward and collided with NE#2's patrol vehicle.



NE#2's vehicle and CM#1's vehicle colliding.

NE#2 yelled for CM#1 to stop, but CM#1 turned and collided with a white car in the oncoming traffic lane. NE#2 drove forward and pinned CM#1's vehicle.



NE#2's vehicle (purple arrow) pinning CM#1's stolen vehicle (red arrow) against a white car (gold arrow).

Officers approached CM#1's vehicle, ordering CM#1 to exit. CM#1 yelled at officers through an open driver-side window. CM#1 also pulled forward, driving against the white car. The driver of the white car exited and ran. NE#2 pulled his vehicle forward, more tightly pinning CM#1's stolen vehicle against the white car.

NE#3 was en route when a "40" was requested over the radio. A "40" refers to an officer equipped with a 40mm LL. NE#3 arrived after the stolen vehicle was pinned. NE#3 exited his

vehicle with a 40mm LL. Twice, NE#3 ordered CM#1—who was simultaneously yelling out his driver-side window—to “get out of the car now!” NE#3 yelled, “40 out!” and deployed the 40mm LL at CM#1.



NE#3’s initial 40mm deployment at CM#1 (red arrow).

CM#1 leaned from the driver-side window and yelled at the officers. NE#3 repositioned himself, more squarely viewing the driver-side window. As NE#3 was repositioning, another officer yelled, “He’s reaching. He’s reaching!” NE#3 deployed the 40mm LL at CM#1 a second time.



NE#3’s BWV view during the second 40mm LL deployment.

ICV recorded the rear of the stolen vehicle during the second 40mm LL deployment. Just before NE#3's second 40mm LL deployment, CM#1 appeared to lean towards the passenger seat floorboard.



CM#1's head and upper body are circled in red.

CM#1 then exited the vehicle, struggled with officers, and was taken into custody.

Twenty minutes later, WS#1 screened NE#3's 40mm LL deployments. NE#3 stated, "[The targeted] area was different than expected. [It] actually ended up being chest on one of the shots and, I think, arm on the other one."

About five minutes later, NE#3 discussed his 40mm LL deployment with WS#2:

NE#3: So, do we have to screen FIT if I shot towards the chest?

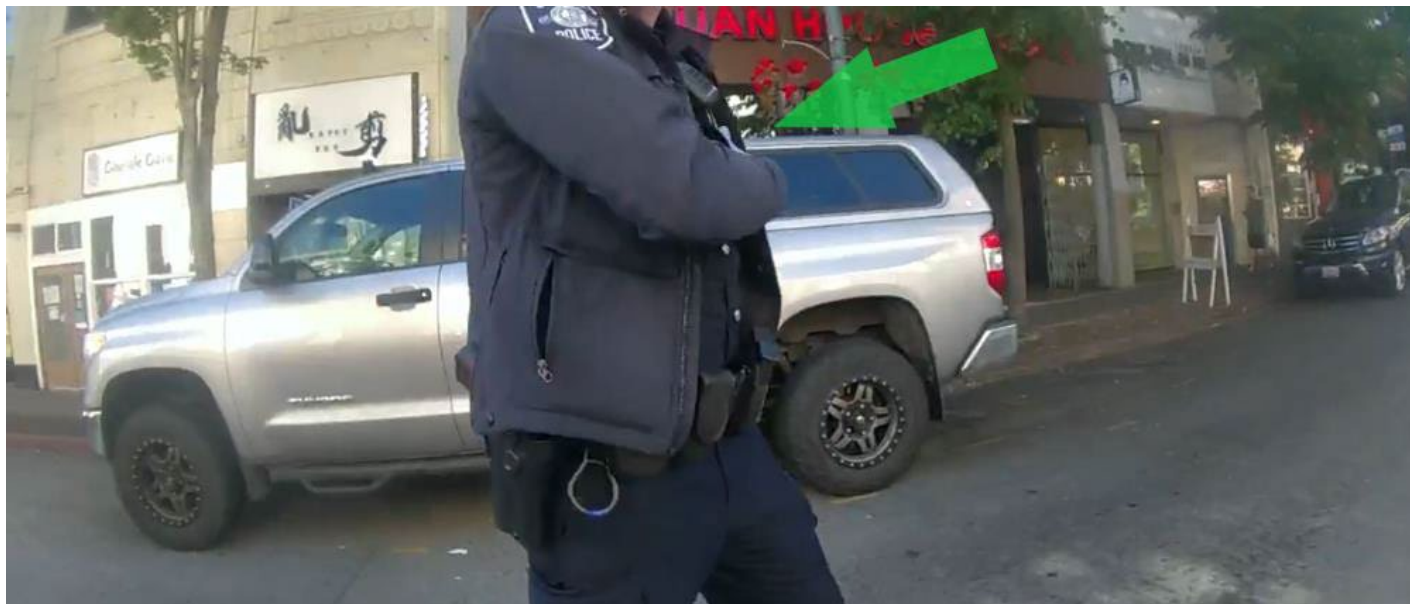
WS#2: Uhm, did you intentionally shoot towards the chest?

NE#3: That was my only option at that point.

WS#2: Where did it strike him?

NE#3: The patch. [*NE#3 indicated towards left shoulder patch*]

SPD officers use the term "the patch" to refer to the shoulder area where the SPD shoulder patch is displayed on their uniforms.



WS#2's BWV captured NE#3, who indicated with his right hand where the 40 mm struck CM#1.

About two minutes later, NE#3 discussed the 40mm LL deployment with WS#3. NE#3 stated: "He was... leaning [out of] the car, yelling, throwing stuff... My first 40 deployment was [...] to the arm, I think... Then, I got the second 40 deployment to his chest area, his side."

OPA Interviews

NE#1's OPA interview was consistent with the evidence summarized above. NE#1 recalled seeing the stolen vehicle at various points in different areas. NE#1 said that after losing the stolen vehicle, he learned it was possibly within the North Precinct's area, so he went there. NE#1 recalled WS#1's order to parallel the stolen vehicle but keep distance. NE#1 said that he later observed the stolen vehicle entering an alley, so he got behind it. NE#1 said CM#1 exited the vehicle, so NE#1 exited his vehicle and gave CM#1 commands. NE#1 stated CM#1 reentered his vehicle and fled down the alley. NE#1 said he followed down the alley because there were limited options to exit. NE#1 recalled the stolen vehicle nearly hitting officers at the end of the alley before turning a corner.

NE#2 said he responded to the incident location quickly after hearing that CM#1 was "ramming" officers. NE#2 said he arrived, exited his vehicle, heard a loud "clanking" noise, and saw CM#1 speeding off, nearly striking NE#2. NE#2 stated:

I looked back, and I [saw] the suspect vehicle. It drove past me, going in reverse. Once it went through the intersection, I'm not sure if it went left or right because I reentered back in my vehicle. I did a nine-point turn, [a] U-turn towards the intersection. Scanned left and right. When I looked left, [I] saw the suspect vehicle on the curb, down the street. [It] reversed...towards a store, and that's when I started closing the distance between myself and the suspect vehicle.

NE#2 said he braked as he approached the stolen vehicle before he "deflected" and pinned it against another car.

NE#3 described shooting his 40mm LL twice. NE#3 said that the first shot targeted CM#1's arm because it was hanging out of the window, making it the only available target area. NE#3 said CM#1 pulled his arm inside the car after the first shot. NE#3 said he repositioned to better view CM#1 before deploying the second 40mm LL deployment. NE#3 said his second shot targeted CM#1's "arm, kind of trap area, like the back torso area, like the large muscles there." When asked about him telling WS#2 that shooting towards CM#1's chest was his "only option," NE#3 explained that he meant "torso area, so that was kind of the, the top portion of a person." NE#3 said he may have used poor wording but was referring to the torso area. NE#3 said the policy prohibiting targeting the "chest" was to "protect the heart area."

Analysis and Conclusions:

Named Employee #1 - Allegation #1

13.031-POL-2 When Sworn Employees May Pursue and Supervisor Responsibilities 1. Sworn Employees May Not Pursue Unless the Following Requirements Have Been Met: (eff. May 19, 2023)

The Complainant alleged that NE#1 and NE#2 engaged in an unauthorized pursuit.

A pursuit is "an attempt by a uniformed peace officer in a vehicle equipped with emergency lights and a siren to stop a moving vehicle where the operator of the moving vehicle appears to be aware that the officer is signaling the operator to stop the vehicle, and the operator of the moving vehicle appears to be willfully resisting or ignoring the officer's attempt to stop the vehicle by increasing vehicle speed, making evasive maneuvers, or operating the vehicle in a reckless manner that endangers the safety of the community or the officer (RCW 10.116.060)." SPD Interim Policy 13.031-POL-1 (effective May 19, 2023).

Officers may not pursue unless: (1) the pursuing sworn employee has completed an emergency vehicle operator's course (EVOC), has completed an updated EVOC within the previous two years, and has been certified in at least one pursuit ending option; (2) there is probable cause to believe that a person in the vehicle has committed or is committing a violent offense or sex offense (RCW 9.94A.030); (3) the person poses a significant imminent threat of death or serious physical injury to others such that, under the circumstances, the public safety risks of failing to apprehend or identify the person are greater than the inherent risk of pursuit driving; (4) the pursuing sworn employee has received authorization to continue the pursuit from a supervisor; and (5) a supervisor is actively monitoring and supervising the pursuit. SPD Interim Policy 13.031-POL-2(1) (effective May 19, 2023). A vehicle pursuit may not be initiated if these requirements are not met, and the pursuit must be terminated unless circumstances change. *Id.* Sworn employees are prohibited from pursuing for the sole crimes of eluding, escape, or DUI. *Id.* Sworn employees will terminate a pursuit when the risk to any person outweighs the need to stop the eluding vehicle. *Id.*

Here, NE#1 did not technically "pursue" CM#1. Moreover, WS#1's unclear instruction to "parallel" the stolen car but "keep distance" likely confused officers.

First, after locating CM#1 on a dirt road, rather than following CM#1, entering oncoming traffic on I-5, NE#1 deactivated his emergency equipment and resumed normal driving. Second, after locating the stolen car in the parking lot, it disappeared before NE#1 could pursue it.

Although a closer call, when NE#1 followed the stolen car through an alley, NE#1 had limited options for exiting the alley. While he could have reversed onto the busy street behind him, it was a less-than-ideal option and inconsistent with WS#1's order to "parallel" the stolen car. NE#1 and NE#2 followed the stolen car around a corner and saw that it had stopped. NE#1 approached without lights or sirens activated. Even if following CM#1 around the corner constituted a pursuit, NE#1 and NE#2 had just seen CM#1 nearly hit multiple officers and drive backward down the street. See SPD Interim Policy 13.031-POL-3(5) (sworn employees may reinstate a previously terminated pursuit where there is an articulable basis to believe a new violent crime has been committed).

NE#1 and NE#2 told OPA that WS#1's order to "continue to parallel the vehicle, keep distance, out of sight, wait for resources" was confusing. Here, NE#1 drove normally during his various encounters with CM#1. Once NE#1—and other officers—encountered CM#1, he acted to prevent CM#1 from injuring others. As articulated below at Named Employee #1, Allegation #2, when a supervisor denies permission to pursue, they must provide clear instructions.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 - Allegation #2

13.031-POL-3 Ending or Terminating Pursuits 4. Sworn Employees will Disengage When Pursuit is Terminated (eff. May 19, 2023)

The Complainant alleged that NE#1 and NE#2 failed to disengage from a pursuit despite WS#1's order.

Employees must disengage when a pursuit is terminated. SPD Policy 13.031-POL-3(4) (eff. May 19, 2023). When a pursuit is terminated by the primary sworn employee or a supervisor, pursuing officers must continue recording with ICV and BWV while returning to a normal driving pattern, obeying all traffic laws, and deactivating all emergency equipment. *Id.*

As discussed above, WS#1's order to "continue to parallel the vehicle, keep distance, out of sight, wait for resources" was vague and contradictory. It gave the responding officers the impossible task of attempting to "parallel" the stolen car while keeping their "distance" and remaining "out of sight."

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 - Allegation #1

13.031-POL-2 When Sworn Employees May Pursue and Supervisor Responsibilities 1.

**Sworn Employees May Not Pursue Unless the Following Requirements Have Been Met:
(eff. May 19, 2023)**

For the reasons articulated above at Named Employee #1, Allegation #1, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 - Allegation #2

13.031-POL-3 Ending or Terminating Pursuits 4. Sworn Employees will Disengage When Pursuit is Terminated (eff. May 19, 2023)

For the reasons articulated above at Named Employee #1, Allegation #2, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #3 - Allegation #1

8.300-POL-10 Use of Force- 40 mm Less Lethal Launcher 9. Officers Will Not Target a Subject's Head, Neck, or Genitals (eff. April 24, 2023)

The Complainant alleged that NE#3 targeted prohibited areas with a 40mm LL.

On the date of this incident, officers were forbidden from using the 40mm LL to “target a subject’s head, neck, chest, or groin” unless deadly force was authorized. SPD Interim Policy 8.300-POL-11(14). OPA listed the correct title and section for this allegation in its classification report but used an outdated specific subsection. The operative policy on the date of the incident was SPD Interim Policy 8.300-POL-11(14). Both prohibited officers from targeting a subject’s head, neck, or groin. Effective April 24, 2023, the interim policy also prohibited officers from targeting the chest.

As an initial matter, despite CM#1’s claim that a 40mm struck his eye, no evidence corroborated this allegation. Specifically, CM#1’s physical injuries, BWV and ICV showed he was not hit in the face. CM#1 reported an arm injury. No facial injury was reported or observed.

However, whether NE#3 targeted CM#1’s “chest” is unclear. First, NE#3 documented targeting CM#1’s “left arm/left side.” Second, BWV and ICV indicated that CM#1’s chest was not exposed when NE#3 deployed the 40mm LL shots. Nevertheless, NE#3 told screening sergeants that he targeted CM#1’s chest because it was the only available target. Notably, while describing the targeted area to WS#2, NE#1 stated it was CM#1’s chest while motioning towards his upper left shoulder. NE#3 described his words as inartful. Ultimately, NE#3’s repeated insistence that he aimed for CM#1’s chest, despite his physical demonstration and CM#1’s chest not being in frame, makes his intent unclear.

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

Recommended Finding: **Not Sustained - Inconclusive**