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**Issued Date:** AUGUST 2, 2024

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



**Case Number:** 2024OPA-0097

## **Allegations of Misconduct & Director's Findings**

### **Named Employee #1**

- 1. Allegation #1:** 8.200-POL-1. Use of Force: When Authorized (Effective April 24, 2023)  
**Finding:** Not Sustained - Lawful and Proper (Expedited)

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### **Named Employee #2**

- 1. Allegation #1:** 8.200-POL-1. Use of Force: When Authorized (Effective April 24, 2023)  
**Finding:** Not Sustained - Lawful and Proper (Expedited)
- 2. Allegation #2:** 5.002 – Responsibilities of Employees Concerning Alleged Policy Violations, 5.002-POL-6. Employees Will Report Alleged Violations  
**Finding:** Not Sustained - Training Referral (Expedited)

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### **Named Employee #3**

- 1. Allegation #1:** 8.200-POL-1. Use of Force: When Authorized (Effective April 24, 2023)  
**Finding:** Not Sustained - Lawful and Proper (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:**

Community Member #1 (CM#1) was arrested for a domestic violence (DV) assault. CM#1 alleged that Named Employee #1 (NE#1), Named Employee #2 (NE#2), and Named Employee #3 (NE#3) used unauthorized force by slamming his head against the ground. CM#1 also alleged that NE#2 used unauthorized force by applying his knee against CM#1's neck. Additionally, it

was alleged that NE#2 failed to report CM#1's allegation concerning unauthorized force being applied against his neck.

### **Administrative Note:**

During its intake investigation, OPA identified that Witness Officer #1 (WO#1) did not activate his body-worn video (BWV) during a portion of the incident but documented it in a dispatch entry and advised about it over the radio. OPA sent WO#1's potential SPD Policy 16.090-POL-2(2) (When Sworn Employees Record Activity) 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). OPA also identified that WO#1 and NE#3 failed to report CM#1's allegations concerning inappropriate touching. OPA sent WO#1's and NE#3's potential SPD Policy 5.002-POL-6 (Employees Will Report Alleged Violations) violations to their chain of command for Supervisor Action.

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 April 3, 2024, OIG certified OPA's investigation as thorough, timely, and objective.

### **Summary of Investigation**

On February 18, 2024, the Complainant—a sergeant—submitted an OPA complaint, writing that officers responded to a DV assault call, arrested CM#1, and transported CM#1 to the North Precinct, where he lunged out of a patrol vehicle and headbutted NE#2. The Complainant wrote that officers took down CM#1, who alleged that officers used unauthorized force, and that NE#2 applied his knee against CM#1's neck.

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, incident report, body-worn video (BWV), in-car video, use of force statements, and videos and photographs provided by CM#1. OPA also interviewed CM#1.

On January 21, 2024, at 1:52 AM, CAD call remarks noted, “[REPORTING PARTY’S] [EX-GIRLFRIEND] JUST HIT HIM IN THE CROTCH AND IS REFUSING TO LEAVE.”

NE#3's incident report documented that he responded to the incident location, interviewed CM#1's ex-girlfriend, observed her physical injuries, and arrested CM#1 for DV assault. NE#3 wrote that CM#1 was transported to the North Precinct. NE#3 documented the named employees' uses of force consistent with BWV observations, described below.

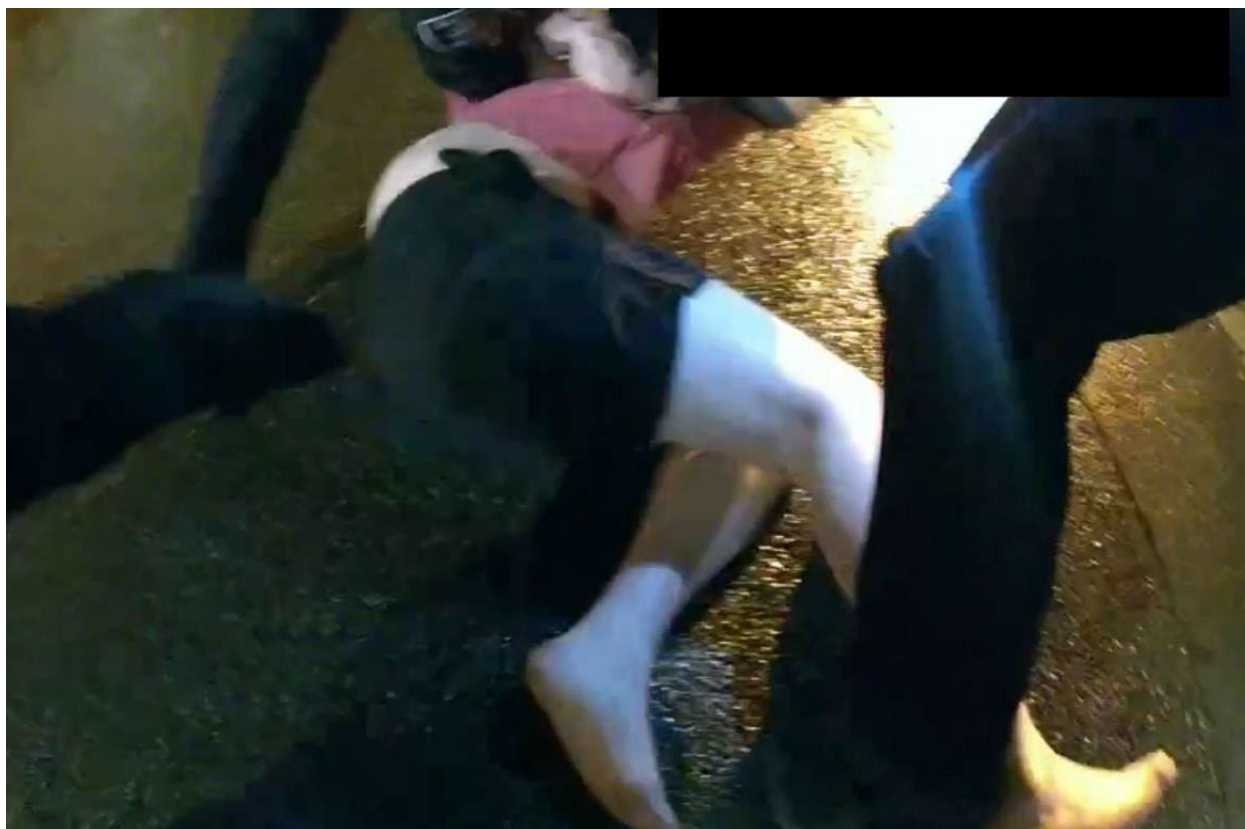
BWV captured the following:

At the North Precinct, NE#3 opened the patrol vehicle's rear door, but CM#1 refused to exit. NE#2 engaged CM#1, who demanded to speak with a supervisor. NE#2 unbuckled CM#1's

seatbelt. CM#1 immediately turned towards NE#2, lowered his head, and lunged at NE#2, propelling NE#2 backward:



NE#1 and NE#2 grabbed CM#1 and guided him to the ground and onto his left side:



The named employees rolled CM#1 on his stomach and restrained his movements:



NE#2 applied his knee against CM#1's back. CM#1 said, "Get your fucking knee off my neck. I can't breathe." The named employees stood CM#1 and escorted him inside the North Precinct.

The named employees' type II use of force statements were consistent with BWV observations. 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 takedown that causes injury or is reasonably expected to cause injury. SPD Interim Policy 8.400-POL-1 (effective May 19, 2023). The named employees documented that they performed a controlled team takedown on CM#1.

On March 5, 2024, OPA interviewed CM#1. CM#1 said he intended to follow the officers' commands as he exited the patrol vehicle, but the officers used unauthorized force by slamming his head against the ground. CM#1 said his photographs and videos showed physical injuries on his face and hands.

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### **Analysis and Conclusions:**

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

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

The Complainant alleged that the named employees used unauthorized force during their takedown.

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.*

The named employees used authorized force under the circumstances. First, the named employees' uses of force were objectively reasonable. CM#1, despite being handcuffed, lunged at NE#2 immediately after his seatbelt was unbuckled. NE#1 and NE#2 reacted quickly by executing a controlled team takedown. Second, the named employees' force aimed to restrict CM#1's movements to prevent further assaults. Third, the named employees' force was proportional. They relied on their training by executing a controlled team takedown and modulating their force after effectively subduing CM#1, who became compliant while on the ground. Overall, OPA finds by a preponderance of the evidence that the named employees' use of force was objectively reasonable, necessary, and proportional under the circumstances. CM#1's characterization that the officers slammed his head against the ground was inconsistent with BWV footage.

Additionally, BWV showed NE#2 applying his knee against CM#1's back, not his neck. CM#1's allegation ("Get your fucking knee off my neck") is unfounded.

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**

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

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

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

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

#### ***5.002 – Responsibilities of Employees Concerning Alleged Policy Violations, 5.002-POL-6. Employees Will Report Alleged Violations***

It was alleged that NE#2 failed to report an alleged policy violation to a supervisor.

Employees will report alleged violations. SPD Policy 5.002-POL-6. Employees will report any alleged minor policy violation to a supervisor. *Id.* Employees will report any alleged serious violations to a supervisor or OPA. *Id.* Employees who witness or learn of a violation of public trust or an allegation of a violation of public trust will take action to prevent aggravation of the incident or loss of evidence that could prove or disprove the allegation. *Id.* Any employee who observes another employee engage in dangerous or criminal conduct or abuse will take reasonable action to intervene. *Id.*

Once CM#1 was on the ground, CM#1 said, “Get your fucking knee off my neck. I can’t breathe.” NE#2 should have reported CM#1’s allegation to a supervisor, even though it was unfounded. OPA would have recommended a training referral for this violation, but NE#2 is no longer employed with the Department.

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

Recommended Finding: **Not Sustained - Training Referral (Expedited)**

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**Named Employee #3 – Allegation #1**

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

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

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