

Issued Date: APRIL 16, 2024

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

Case Number: 2024OPA-0112

Allegations of Misconduct & Director's Findings

Named Employee #1

- 1. Allegation #1:** 8.100 – De-Escalation, 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force (Eff. April 24, 2023)
Finding: Not Sustained - Timeliness
- 2. Allegation #2:** 8.300 – Use of Force Tools, 8.300-POL-1 Less Lethal Considerations, 7. Use of Less-Lethal Weapons in the Following Circumstances is Only Permitted in Situations Where There is an Imminent Risk of Death or Great Bodily Harm to Any Person: (Eff. April 24, 2023)
Finding: Not Sustained - Training Referral
- 3. Allegation #3:** 8.300 – Use of Force Tools, 8.300-POL-5 Oleoresin Capsicum (OC) Spray, 3. Officers Will Use OC Spray, Including in Crowd Management Events, Only When Such Force is Objectively Reasonable, Necessary, and Proportional (Eff. April 24, 2023)
Finding: Not Sustained - Timeliness

Named Employee #2

- 1. Allegation #1:** 8.100 – De-Escalation, 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force (Eff. April 24, 2023)
Finding: Not Sustained - Timeliness

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 call involving Community Member #1 (CM#1) and Community Member #2 (CM#2) being unconscious in a reportedly stolen vehicle. NE#1, NE#2, and two backing officers blocked the vehicle with two patrol vehicles and ordered the occupants to exit. CM#1—the driver— awoke and rammed the patrol vehicles. NE#1 deployed OC spray at CM#1, who drove off and fled on foot before being arrested. The Complainant—the Force Review Board (FRB)—alleged the named employees’ plan lacked foresight. The Complainant also alleged that NE#1’s OC spray deployment was unauthorized.

Administrative Note:

On March 5, 2024, the Complainant submitted an OPA complaint via Blue Team. OPA initially considered that date the reported date for calculating the 180-day deadline. See Ordinance 125315, section 3.29.130(B) (the 180-day clock “begins on the date OPA initiates or received a complaint”). Accordingly, OPA believed it had until September 1, 2024, to complete its investigation and issue findings. However, OPA’s later review of the Blue Team routings showed that the initial supervisor submitted the incident to the chain of command on July 26, 2023, making the 180-day date February 5, 2024. See the Seattle Police Officers’ Guild Collective Bargaining Agreement (SPOG CBA), section 3.6(B)(iii): The 180-day clock starts “fourteen (14) days after the date on which the initial supervisor submits the incident for review to the Chain of Command.” Since the 180-day timeline expired 30 days before OPA received the complaint, under the SPOG CBA, no discipline could result. See SPOG CBA, Article 3.6(B).

Summary of Investigation:

A. OPA Complaint

On March 5, 2024, the Complainant submitted an OPA complaint via Blue Team, writing that NE#1’s OC spray deployment on a subject may have violated SPD policy. Specifically, the Complainant questioned whether the OC spray deployment was proportionate with the risks the officers confronted. The Complainant also described NE#1’s attempt to impair the fleeing driver’s sight as “lacking in foresight.”

OPA investigated the complaint, reviewing the computer-aided dispatch (CAD) call report, body-worn video (BWV), police reports, and use of force reports. OPA also interviewed the named employees. The attorneys for CM#1 and CM#2 declined OPA’s interview requests.

B. Computer-Aided Dispatch (CAD) Call Report

On July 25, 2023, at 11:27 AM, CAD call remarks noted, “ON 22ND FACING [SOUTHBOUND] ON SIDE OF ROAD, CH[EC]K ON RUNNING VEH[ICLE], 2 SUBJ[ECT]S LOOK LIKE THEY ARE SLEEPING OR PASSED OUT ON DRUGS. [REPORTING PARTY’S] MAIN CONCERN WAS [THE] RUNNING VEH[ICLE] OUTSIDE [THEIR] HOME... NO [WEAPONS] SEEN.”

C. Body-Worn Video (BWV)

BWV captured the following:

NE#2 drove a patrol vehicle with NE#1 in the front passenger seat. The named employees discussed awaiting backing officers, blocking the suspect vehicle, hailing its occupants, and conducting a high-risk vehicle stop (HRVS). NE#1 said the suspect vehicle was reported stolen. NE#1's police report documented that the suspect vehicle's license plate matched an unverified stolen vehicle. It was later verified as stolen. NE#2 suggested that if backing officers confirm the occupants were "passed out," then they should "walk up to the windows . . . [because] we could control it . . . There's no reason to wake them up and give them the opportunity to drive it." NE#2 continued, "I say we approach on foot and just get them out. There's no reason to give them distance." NE#1 agreed. NE#1 was designated the OC sprayer, and NE#2 was assigned the 40 MM less lethal (LL) launcher operator. NE#2 said the suspect vehicle's windows were down and told NE#1, "If they start trying to ram [the patrol car], "just start flooding [the suspect car] with fucking... pepper spray."

NE#2 parked his patrol vehicle behind the suspect vehicle, with CM#1 in the driver's seat and CM#2 in the front passenger seat. NE#1 exited the patrol vehicle, holding OC spray. Witness Officer #1 (WO#1) and Witness Officer #2 (WO#2) exited their patrol vehicle, which was parked in front of the suspect vehicle. WO#2's police report suggested that stolen vehicle drivers often flee at high speed when police arrive, so blocking the suspect vehicle was necessary to protect the public. WO#2 also wrote that CM#1 and CM#2 appeared passed out.



NE#2 aimed a 40mm LL launcher at CM#1 and said, "Keep your hands where I could see [them] right now." WO#1 approached the suspect vehicle, opened the driver-side door, and told CM#1, "Seattle police. Step out." Simultaneously, WO#2 opened the passenger side door and ordered CM#2, "Out of the car." CM#1 raised his hands. NE#1 commanded, "Do not move. Get out of the car." CM#1 quickly placed his left hand on the wheel and his right hand on the gearshift. NE#1 grabbed CM#1's arm, but CM#1 pulled away. The suspect vehicle accelerated forward and struck the witness officers' patrol vehicle. NE#2 aimed the 40mm LL launcher at CM#1. CM#1 reversed into the named employees' patrol vehicle. NE#2 yelled at NE#1, "Spray the gas in there!"

Spray it!" NE#1 stepped toward the suspect vehicle and deployed OC spray at CM#1 for about two seconds:



CM#1 drove onto the sidewalk, hitting foliage and a no-parking sign. He reentered the road, turned left at a four-way intersection, and stopped. Officers chased the suspect vehicle on foot. NE#1 shouted, "Get on the fucking ground!" CM#2 exited the vehicle and briefly ran before tripping and falling. NE#1 caught up and held CM#2 against the ground. WO#1 assisted NE#1 with handcuffing CM#2.

After CM#2 exited the suspect vehicle, CM#1 drove off with NE#2 chasing on foot. CM#1 sideswiped two parked cars, exited the suspect vehicle, and ran. NE#2 aimed the 40mm LL launcher at CM#1 and fired, hitting CM#1's buttocks. An officer's report stated that a bruise on CM#1's buttocks consistent with being hit with a 40 MM was photographed:



NE#2 aiming the 40mm LL launcher at CM#1 before firing. The deployment was not captured due to the camera angle.

NE#2 grabbed CM#1 and took him to the ground. NE#2 assisted WO#2 with handcuffing CM#1.

D. Police Reports, Use of Force Reports, and FRB Findings

Police Reports

The police reports of the named and witness employees were consistent with BWV observations.

NE#1's report explained why he deployed OC spray, writing, "There were multiple officers directly near the front of the vehicle and in danger of being [run] over. I deployed OC spray directed at [CM#1] to gain compliance and subdue him to get him to stop and exit the vehicle." He wrote that drugs, drug paraphernalia, and a loaded firearm were later found inside the suspect vehicle and that CM#1 wore a ballistic body army vest under his sweatshirt, had a felony warrant, and was a convicted felon. NE#1 also wrote that CM#1 and CM#2 later told a detective that they planned to commit robberies.

NE#2 explained why he fired the 40mm LL launcher, writing, "I observed [CM#1] reaching into his waistband as he exited, and I shot him with a 40mm less lethal round in the left buttocks."

Use of Force Statement: Named Employee #1 (NE#1)

NE#1's type II use of force statement documented his training and experience with investigating impaired drivers. Type II force 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). It includes OC and 40mm LL deployments causing less than type III injuries and takedowns that cause or are reasonably expected to cause injury. SPD Interim Policy 8.400-POL-1 (effective May 19, 2023). NE#1 believed the suspect vehicle's occupants were likely impaired and would likely flee from the police. NE#1 wrote that the patrol vehicles were parked close enough to confine the suspect vehicle's flight paths, which NE#1 described as "imperative" to prevent the likely impaired driver from endangering the public. NE#1 wrote that the plan was to block the suspect vehicle, look for weapons, and immediately remove the occupants from the car. NE#1 wrote that he stepped away when the suspect vehicle accelerated forward to avoid getting run over. NE#1 believed CM#1's only viable escape route was to drive left—in the officers' direction—because NE#1 did not expect CM#1 to drive onto the sidewalk. NE#1 wrote:

I believed [CM#1] to be impaired and under the influence and knew that if he were to drive his vehicle in any fashion, he was putting himself, his passenger, pedestrians, and present officers [at] imminent risk of death and/or great bodily harm. I deployed my OC spray th[r]ough the open window directed at [CM#1] to gain his compliance and get him to stop dangerous[ly] operating the vehicle. Any further de-escalation was not feasible as he posed an immediate threat to everyone involved, including himself.

NE#1 wrote that issuing a warning before he deployed the OC spray was unfeasible. NE#1 noted CM#1's noncompliance, disregard for everyone's safety, and determination to escape.

Use of Force Statement: Named Employee #2 (NE#2)

NE#2's use of force statement documented the following reasons for deploying the 40mm LL launcher at CM#1: CM#1's behavior showed a "complete disregard" for everyone's safety, suspects in these incidents often have weapons, CM#1 reached into his waistband where a weapon could have been concealed, and CM#1 posed an imminent danger to nearby pedestrians. NE#2 documented the following de-escalation tactics: requesting backing officers, formulating a plan to achieve voluntary compliance or reduce the likelihood of using force, positioning patrol vehicles to prevent escape, and giving verbal commands.

Use of Force Reports: Chain of Command

A watch lieutenant and captain approved the named employees' de-escalation tactics and use of force.

Force Review Board (FRB) Findings

FRB's findings were consistent with those outlined in its OPA complaint. It concluded that NE#1's OC spray deployment violated SPD policy.

E. OPA Interviews

Named Employee #1 (NE#1)

On April 30, 2024, OPA interviewed NE#1. NE#1's statements were consistent with the abovementioned evidence. NE#1 said the plan was to approach the suspect vehicle on foot, gain control and compliance, and take custody of the occupants before they could flee. NE#1 said officers assumed the occupants were armed and dangerous. NE#1 said verbal commands were ineffective once CM#1 began ramming the patrol vehicles, making approaching the suspect vehicle unsafe. NE#1 said he deployed OC spray to gain compliance, intending to incapacitate CM#1's ability to drive. NE#1 believed the OC spray deployment was permitted under SPD policy, noting that CM#1 was an imminent threat to himself, the officers, and the public by driving while impaired. NE#1 said he was trained to treat occupied stolen vehicle contacts as high-risk vehicle stops.

Named Employee #2 (NE#2)

On April 25, 2024, OPA interviewed NE#2. NE#2's statements were consistent with the abovementioned evidence. NE#2 said the initial plan was to perform a high-risk vehicle stop. However, they decided to approach on foot, ensure the occupants were unarmed, and issue verbal commands. NE#2 believed this plan was the safest and reflected de-escalation to gain voluntary compliance. NE#2 said NE#1's OC spray deployment was intended to prevent CM#1's escape. NE#2 said he was trained to treat occupied stolen vehicle contacts as high-risk vehicle stops.

Analysis and Conclusions:

Named Employee #1 – Allegation #1

8.100 – De-Escalation, 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force (Effective April 24, 2023)

The Complainant alleged that the named employees' plan lacked foresight.

When safe, feasible, and without compromising law enforcement priorities, officers will use de-escalation tactics to reduce the need for force. SPD Interim Policy 8.100-POL-1 (effective April 24, 2023). Officers are encouraged to use team approaches to consider whether any officer has successfully established a rapport with the subject. *Id.* The totality of the circumstances should guide de-escalation options. *Id.* SPD policy emphasizes communication, time, distance, and shielding to minimize the need for force. *Id.*

OPA concurs with the FRB that the named employees' plan lacked foresight. Specifically, it violated SPD's de-escalation policy. Despite their well-meaning intentions, the named employees' tactics—as planned and executed—defied their training. Instead of conducting a high-risk vehicle stop, the named employees abandoned distance and shielding. Their actions created significant dangers and made communication unfeasible.

OPA would have recommended a Sustained finding but for the untimeliness of the complaint. Accordingly, OPA recommends this allegation be Not Sustained – Timeliness.

Recommended Finding: **Not Sustained - Timeliness**

Named Employee #1 – Allegation #2

8.300 – Use of Force Tools, 8.300-POL-1 Less Lethal Considerations, 7. Use of Less-Lethal Weapons in the Following Circumstances is Only Permitted in Situations Where There is an Imminent Risk of Death or Great Bodily Harm to Any Person: (Effective April 24, 2023)

The Complainant alleged that NE#1's OC spray deployment did not satisfy SPD's less-lethal considerations.

Less-lethal weapons are used to interrupt a subject's threatening behavior so that officers may take physical control of the subject with less risk of injury to the subject or officer than posed by greater force applications. SPD Interim Policy 8.300-POL-1 (effective April 24, 2023). The use of less-lethal weapons in the following circumstances is only permitted in situations where there is an imminent risk of death or great bodily harm to any person: (1) when the subject is in an elevated position where a fall is likely to cause substantial bodily harm or death; (2) when the subject is in a location where the subject could drown; or (3) when the subject is operating a motor vehicle or motorcycle and the engine is running or is on a bicycle or scooter in-motion. SPD Interim Policy 8.300-POL-1(7) (effective April 24, 2023).

Once CM#1 disobeyed commands and fled, he presented an imminent risk of death or great bodily harm to those present. Nevertheless, NE#1's OC spray deployment was not a reasonable way of mitigating those risks. CM#1 demonstrated a strong determination to escape by forcefully

striking two patrol vehicles, driving onto a sidewalk, and hitting foliage and a no-parking sign. Under those circumstances, impairing his vision and disorienting him only heightened the danger he posed. OC spray is “an inflammatory agent that causes an intense burning sensation of the skin, eyes, and mucous membranes where exposure may result in the closing, tearing, and swelling of the eyes, as well as choking, gagging, or gasping for breath.” SPD Policy 8.050.

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

- **Training Referral:** NE#1’s chain of command should discuss OPA’s findings with NE#1, review SPD Interim Policy 8.300-POL-1(7) with NE#1, and provide retraining and counseling that it deems appropriate. Retraining and counseling should reinforce the importance of the department’s occupied stolen vehicle training principles. Retraining and counseling should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

Named Employee #1 – Allegation #3

8.300 – Use of Force Tools, 8.300-POL-5 Oleoresin Capsicum (OC) Spray, 3. Officers Will Use OC Spray, Including in Crowd Management Events, Only When Such Force is Objectively Reasonable, Necessary, and Proportional (Effective April 24, 2023)

The Complainant alleged that NE#1’s OC spray deployment was unauthorized.

Officers will use OC spray, including in crowd management events, only when such force is objectively reasonable, necessary, and proportional. SPD Interim Policy 8.300-POL-5(3) (effective April 24, 2023). The reasonableness of a particular use of force is based on the totality of circumstances known by the officer when using force. It weighs the officer’s actions against the subject’s rights. SPD Interim Policy 8.050 (effective May 19, 2023). It must be judged from a reasonable officer’s perspective on the scene rather than the 20/20 vision of hindsight. *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. *Id.* 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.*

Under the circumstances, NE#1’s OC spray use was unreasonable and unnecessary. Even assuming no reasonably effective alternative existed, the OC spray deployment was, as noted above, unlikely to “affect the legal purpose intended or to protect against the threat posed to the officer and others.” In short, given that CM#1 was ramming the SPD vehicles and driving on a sidewalk, impairing CM#1’s vision would not overcome the threat he posed.

OPA would have recommended this allegation be Sustained but for the untimeliness of the complaint. Accordingly, OPA recommends this allegation be Not Sustained – Timeliness.

Recommended Finding: **Not Sustained - Timeliness**

Named Employee #2 – Allegation #1

8.100 – De-Escalation, 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force (Effective April 24, 2023)

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

Recommended Finding: **Not Sustained - Timeliness**