



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 18, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
 OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0420

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Will Strive to be Professional	Not Sustained - Training Referral
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing.	Not Sustained - Unfounded

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Will Strive to be Professional	Not Sustained - Training Referral
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing.	Not Sustained - Unfounded

Named Employee #3

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Will Strive to be Professional	Not Sustained - Training Referral

Named Employee #4

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper (Expedited)

Named Employee #5

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper (Expedited)

Named Employee #6

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper (Expedited)

Named Employee #7

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper (Expedited)



Named Employee #8

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Will Strive to be Professional	Not Sustained - Training Referral
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing.	Not Sustained - Unfounded

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

EXECUTIVE SUMMARY:

Two Complainants – one identified and one anonymous – alleged that Named Employee #1 (NE#1), Named Employee #2 (NE#2), Named Employee #3 (NE#3), and Named Employee #8 (NE#8) were unprofessional during the arrest of Community Member #1 (CM#1). The Complainants also alleged that NE#1, NE#2, and NE#8 engaged in bias-based policing based on CM#1's race. Finally, the Complainants alleged that Named Employee #4 (NE#4), Named Employee #5 (NE#5), Named Employee #6 (NE#6), and Named Employee #7 (NE#7) used excessive force during CM#1's arrest.

ADMINISTRATIVE NOTE:

The allegations of excessive force (SPD Policy 8.200 - Using Force 1. Use of Force: When Authorized) against NE#4, NE#5, NE#6, and NE#7 were certified for Expedited Investigation. This means that OPA, with the Office of Inspector General's review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the involved employees. As such, OPA did not interview these employees.

SUMMARY OF INVESTIGATION:

On September 9, 2021, an anonymous Complainant contacted OPA to report that, on the previous day, they witnessed 28 police officers arrest "a man on Broadway [who] was sleeping in his car." The anonymous Complainant alleged that this was a "tremendous waste of resources" that an unidentified detective on scene said was necessary because of the crowd that had gathered. The anonymous Complainant stated that the crowd "gathered not to endanger the officers, but to protect the man being arrested" as, according to the anonymous Complainant, "[o]fficers were kneeling on his back on and off for 7 minutes." The anonymous Complainant concluded that "[s]ending more officers when this happened only escalates the situation and is a drain on public resources."

About 75 minutes later, an identified Complainant emailed the OIG to report similar allegations. The identified Complainant elaborated that she saw "an extreme number of police officers come out for the arrest of one black man" and that bystanders were "watching to make sure this man was safe and not murdered like so many others have been." The identified Complainant alleged that the behavior of three officers was "extremely bizarre and concerning" in that, while CM#1 was "being arrested and screaming for his mom" these three officers "were smirking and laughing with each other." The identified Complainant stated, "[t]he issue is racist cops. Three white people getting a laugh when there is a grown black man scared for his life and civilians scared for his life as well should be a big red flag." The identified Complainant also attached three still photographs of the officers who she alleged were smirking and laughing while CM#1 was being arrested.



OPA commenced this investigation. During its investigation, OPA reviewed the complaints, Computer Aided Dispatch (CAD) reports, the Incident/Offense Report (Incident Report), and Body Worn Video (BWV) from the incident. OPA also interviewed the identified Complainant and NE#4, NE#5, NE#6, and NE#7.

a. Computer Aided Dispatch (CAD)

The CAD for this incident showed that NE#7 observed a vehicle blocking traffic on Broadway at about 8:04 P.M. on September 8, 2021. NE#6 arrived at the scene and, two minutes later, broadcast that the situation was under control. However, about a minute after that, dispatch requested that other units “step it up,” meaning that they should respond to the scene in an expedited manner. At about 8:08 P.M., NE#6 broadcast that he was “contacting” CM#1 and that the situation was “under control.” At about 8:11 P.M., NE#7 performed a routine search of CM#1’s name.

At about 8:26 P.M., NE#5 broadcast that officers were “fighting” with someone and requested that Seattle Fire Department (SFD) respond for a male that could not breathe. At about 8:27 P.M., NE#5 requested an expedited response. At about 8:28 P.M., a supervisor, Witness Employee #1 (WE#1), arrived on scene and took command of the scene. WE#1 requested that units that had not yet arrived expedite their response to provide crowd control. A tow truck was requested at about 8:30 P.M.

At about 8:31 P.M., WE#1 requested that additional units from a different precinct respond to assist with crowd control. At about 8:32 P.M., the crowd on the West side of Broadway was described as “hostile” and estimated as approximately 100 people. At about 8:34 P.M., an expedited response from an AMR ambulance was requested and, at 8:35 P.M., WE#1 reported pushing the crowd southbound, requested that outside precinct officers gather at East Olive Way to assist, and announcements were made over a public address system for the crowd to disperse.

At about 8:38 P.M., WE#1 reported that SFD would be transporting CM#1 instead of an AMR ambulance, due to the hostility of the crowd. At about 8:49 P.M., the number of officers required at the scene required that the City change to a response of only priority one calls. At about 8:53 P.M., CM#1 was placed onto a stretcher and, about three minutes later, CM#1’s vehicle was removed from the scene. During this time, the crowd was described as having not changed.

At about 9:00 P.M., additional officer resources that had been requested were cancelled and, at about 9:03 P.M. patrol resources were relieved from their positions by Community Response Group (CRG) units. At about 9:05 P.M., NE#4 reported that he was inside of the ambulance with CM#1 and en route to the hospital. At about 9:11 P.M., the crowd was reported as marching Southbound on Broadway. At about 9:20 P.M., a group of about 15 to 20 arrived at the East Precinct building, which was subsequently locked down. The East Precinct building lockdown ended about half-an-hour later and the group was reported to have dispersed into Cal Anderson Park at approximately 9:52 P.M.

b. Incident/Offense Report (Incident Report)

NE#7, the primary officer for the call, wrote the Incident Report.

NE#7 reported that he was working as uniformed patrol when he observed a vehicle stopped in the middle of Broadway facing South. NE#7 stated that the vehicle was blocking traffic and causing a significant traffic jam. NE#7 wrote that he activated his emergency lights, requested an additional unit, and approached the vehicle. NE#7 wrote that he observed that the vehicle’s engine was running, and its lights were on. NE#7 looked inside the vehicle and observed CM#1 “passed out in the driver seat.”



NE#7 reported that, as he stepped towards the vehicle, he observed that the driver window was partially open. NE#7 began calling out to CM#1 to wake him up but received no response. NE#7 also stated that he shined his flashlight on CM#1's face multiple times. NE#7 wrote that "after a few minutes, and multiple attempts, [CM#1] came to and appeared startled. . . . [CM#1] began to shuffle in the car and removed his foot from the brake pedal. The vehicle began to roll forward."

NE#7 reported that he ordered CM#1 to stop the car, but that CM#1 appeared "confused" and "kept reaching back and forth from the ignition to the gear lever trying to figure out how to turn the car off." NE#7 wrote that CM#1's "movements and responses were slow and depressed. . . . [CM#1's] pupils were constricted, and his eyelids were droopy. His speech was slurred and his mouth dry. . . . [CM#1] was sweating even though he was wearing a tank top." NE#7 stated that CM#1 exited his vehicle in a "slow and lazy manner" and had to "place[] his left hand on the side of his vehicle to stabilize himself." NE#7 reported that NE#4 ran CM#1's name and discovered that CM#1's license was "Suspended/Revoked in the 3rd Degree."

NE#7 then detailed CM#1's explanations for his conduct, noting that he was "extremely repetitive," that "facts changed continually," and CM#1 "had difficulty remembering where he had been and what he had done prior to passing out." CM#1 refused to perform voluntary Standardized Field Sobriety Tests and "spat into the [Portable Breath Test] and blew too quickly forcing it to not provide a proper reading."

NE#7 determined that he had probable cause to arrest CM#1 for driving under the influence of alcohol or other drugs and placed CM#1 under arrest. NE#7 reported that CM#1's mood then changes and he "attempted to run away from me and backing officers as we were placing handcuffs on him." NE#7 stated that CM#1 was taken to the ground with "de-minimis force" and was handcuffed in the prone position. NE#7 reported that, during this time, CM#1 continued to resist arrest and obstruct officers. NE#7 also wrote that CM#1 began "yelling loudly and harshly asking for his mother" and "yelled that he would die before he would let us take him to jail." NE#7 reported that CM#1 was placed on a gurney and continued to "display erratic and violent behavior." NE#7 reported that CM#1 was transported to the hospital for a court-ordered blood draw, then booked into King County Jail.

c. Body Worn Video (BWV)

OPA reviewed BWV from the Named Employees.

NE#7's BWV captured his entire interaction with CM#1, from the moment NE#7 contacted CM#1 until CM#1 was secured on an SFD stretcher to be transported to the hospital. The events depicted in NE#7's BWV were faithfully reported on the Incident Report written by NE#7. However, NE#7's and other officers' BWV highlighted three key aspects of the Named Employees' interaction with CM#1.

First, NE#7 had ample probable cause to arrest CM#1 for driving under the influence. NE#7's BWV depicted CM#1 sitting, apparently unresponsive, in the driver seat of a vehicle stopped in the middle of a traffic lane. NE#7's BWV depicted the considerable amount of effort it took NE#7 to rouse CM#1. NE#7 made no fewer than eight attempted to rouse CM#1 by loudly announcing his presence, knocking forcefully on the car, and shining a bright flashlight directly in CM#1's face. NE#7's efforts did not immediately appear to have any effect on CM#1. Once awakened, CM#1's car began rolling forward and, after it stopped, it appeared to take CM#1 a considerable amount of time to figure out how to put the vehicle in park, turn it off, and exit the vehicle. CM#1 also appeared intoxicated. Among other things, CM#1 appeared to have droopy eyelids, an unsteadiness on his feet, and responded to questions and instructions slowly.



CM#1 also offered confusing, contradictory answers regarding his actions prior to falling asleep in his vehicle. Beyond all of that, NE#4 ran CM#1's name and discovered that CM#1's license was suspended and/or revoked.

Second, NE#7's BWV showed the forcefulness with which CM#1 pulled away from officers as he attempted to flee his arrest as well as the intensity and persistence with which CM#1 resisted the officers' efforts to place him in handcuffs. Also, in NE#6's BWV, the *de minimis* nature of the force used by the officers to bring CM#1 to the ground and place CM#1 in handcuffs is clear. After CM#1 attempted to flee, NE#7 and NE#4 were able to grab CM#1's hands and upper body and, with CM#7 positioned behind CM#1, pull CM#1 slowly to the ground. CM#1 landed on his buttocks first, before he was laid onto his back, and then rolled prone to apply handcuffs. NE#4, NE#5, NE#6, and NE#7 all assisted in physically restraining CM#1, and their BWVs were all activated and depicted these events.

Third, NE#7's BWV showed the amount of care the officers used in restraining CM#1, placing him into the recovery position after shortly after securing CM#1 in handcuffs, and requesting medical care for CM#1 immediately after he repeatedly screamed that he could not breathe in response to inquiries from bystanders. After CM#1 stated that he could not breathe, NE#5 immediately requested that SFD respond. SFD was on scene and attending to CM#1 in under seven (7) minutes. During this time, CM#1 repeatedly yelled that he could not breathe. Although NE#7 briefly applied his knee to CM#1's shoulder and upper back while CM#1 was actively resisting being placed in handcuffs, NE#7 removed his knee after about 5 seconds. Similarly, NE#5 applied his knee to CM#1's shoulder and upper body, but most of NE#5's weight appeared to remain on his foot as opposed to his knee. If NE#5 applied any weight at all with his knee on CM#1's upper back, NE#5 released that weight in under ten (10) seconds. At the time CM#1 started repeatedly screaming that he could not breathe, approximately twenty-five (25) seconds had elapsed since NE#5 and NE#7 removed their knees from CM#1's upper back. No officer appeared to be applying any pressure to CM#1's upper body or neck during this time and nothing was visibly obstructing CM#1's breathing.

BWV also captured the facts underlying the identified Complainants' professionalism and bias-based policing allegations. These will be addressed in the separately in the Analysis and Conclusion section below.

d. OPA Interview of Identified Complainant

OPA interviewed the identified Complainant by phone. She stated that she observed a man being arrested and that there were two police vehicles on scene. The identified Complainant stated that the situation was "mellow," that CM#1 was "being a little defiant" with the officers, but everything seemed OK. The identified Complainant stated that she went into a restaurant to get some food with a friend and lost sight on the incident.

The identified Complainant stated that, when she left the restaurant, she observed a large police presence, including officers armed with pepper spray. She said that several people were filming because the interaction seemed excessive. The identified Complainant described being confused as to why so many officers were present. She stated that she heard the dispersal order and that the officers were dealing with the situation well, despite being heckled by members of the crowd.

The identified Complainant stated that she saw three officers laughing with each other and being inappropriate. Specifically, she stated that the three officers she identified in her photographs (who OPA identified as NE#1, NE#2, and NE#3) were finding joy and laughing, despite CM#1 yelling for his mother. She stated that she asked the officers why they were laughing, and they did not respond to her. The identified Complainant stated that one of the officers stared at her, which she interpreted to be threatening even though she, herself, did not find it threatening. The



identified Complainant stated that she did not hear the officers make any comments and that the allegations were based on the fact that the officers were laughing. She interpreted this behavior as a lack of empathy.

e. OPA Interviews of Named Employees

The only allegations against NE#4, NE#5, NE#6, and NE#7 were the allegations of excessive force. As explained in the Administrative Note above, these allegations were certified for expedited investigation. Accordingly, these officers were not interviewed.

OPA interviewed NE#1, NE#2, NE#3, and NE#8. The relevant substance of their interviews is incorporated within the Analysis and Conclusion section below

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 10. Employees Will Strive to be Professional

It was alleged that NE#1 was unprofessional.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

The identified Complainant identified NE#1 as one of the officers that was smirking and laughing with other officers. The identified Complainant stated that she did not hear any of the words that the officers said to one another that made them smirk and laugh. NE#1’s BWV depicted him putting up caution tape to create a line between the crowd and the officers. During this time, NE#1 encouraged several other officers not to respond to the bystanders and to just let them talk. BWV also recorded members of the crowd—who apparently recognized some of the officers—started to yell that NE#8 had ugly legs. However, it appeared that the members of the crowd misidentified NE#8 and were yelling these comments at NE#2 by mistake. When NE#2 pointed out this error, BWV showed NE#3 and an unidentified officer turn to NE#2 and smile. NE#2 then made a comment that he was insulted that the crowd could not remember his name, to which NE#1 responded, “Come on guys, we went through so much together.” NE#2 replied, “We went through it all together.”

In his OPA interview, NE#1 explained that his commentary was not a reference to the situation with CM#1 but was instead in reference to the fact that members of the crowd had tried to target NE#8 with an insult but had instead misidentified the relevant people and so were instead yelling insults at NE#2. NE#1 explained that he found this humorous, given the context of perceived familiarity but mistaken identity.



OPA appreciates that it is not possible—or even desirable—for SPD officers to divorce their personalities or senses of humor from their work. OPA also recognizes that humor can be an invaluable stress reliever and, when used appropriately, de-escalation tool. But context matters.

Here, a black community member was under arrest and had been screaming that he could not breathe while also yelling out for his mother. OPA cannot overstate the many important differences between this situation and the May 25, 2020 murder of George Floyd in Minneapolis. But these limited similarities would have been apparent and alarming to anyone within earshot. And it evidently alarmed those present here. A crowd gathered, possibly as large as one hundred (100) people. So many officers responded to provide crowd control at this scene that the City had to change to a response of only priority one calls.

Even if inadvertent or unrelated to CM#1's arrest, this was the context in which NE#1 made several comments playing along with a joke. NE#1's comments and the underlying joke itself were innocuous enough that OPA cannot say NE#1 willfully violated policy such that it amounted to misconduct. However, the context in which these officers were joking around—even in response to insults from the crowd—makes OPA question whether this possibly violated policy.

Especially concerning for OPA is that NE#1 had a sustained professionalism allegation for engaging in unprofessional back-and-forth with bystanders gathered at a police line (2020OPA-0696). That finding was issued on May 7, 2021, three months before the behavior at issue here. Although the comments at issue in that case were more serious than those here, NE#1 was on-notice that he should manage his demeanor at police lines more closely.

Accordingly, OPA recommends that 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 Policy 5.001-POL-10 and the prefatory language of 5.001-POL with NE#1 and provide any further retraining and counseling that it deems appropriate. NE#1's chain of command should emphasize to NE#1 that he is now on notice that future unprofessional behavior that could erode public trust in the Department, including inappropriate demeanor at a police line, would be in violation of SPD Policy 5.001-POL-10. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

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

Named Employee #1 - Allegation #2

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing.

The identified Complainant alleged that NE#1 engaged in bias-based policing by "getting a laugh when there is a grown black man scared for his life."

SPD policy prohibits biased policing, which it defines as "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual." (SPD Policy 5.140-POL.) This includes different treatment based on the race of the subject. (*See id.*)

The evidence does not support the identified Complainant's allegation that the NE#1, NE#2, or NE#3 engaged in bias-based policing. While the Named Employees' demeanor at the scene may have been inappropriate, the evidence



suggests that they were joking about the crowd's interaction with the officers, not CM#1's arrest. Moreover, there is no suggestion in the evidence that the Named Employee's comments or demeanor were "motivated by any characteristic of protected classes . . . [or] other discernable personal characteristics" of any individuals.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 - Allegation #1

5.001 - Standards and Duties 10. Employees Will Strive to be Professional

The identified Complainant identified NE#2 as one of the officers that was smirking and laughing with other officers. NE#2's comments were detailed above at Named Employee #1, Allegation #1. Specifically, NE#2 was the individual that the crowd confused with NE#8 when stating that NE#8 looks bad in shorts. Notably, NE#2 yelled to NE#8 that the crowd was talking to him but meant to be talking about NE#8. NE#2 also stated that he was a little insulted that the crowd could not remember his name. NE#1 responded, "[c]ome on guys we went through so much together." NE#2 replied "[w]e went through is all together." NE#2 also started singing "[w]hat the world needs now, is love sweet love" while standing in the middle of the street. Later, while walking back to his car, NE#2 stated to other officers something to the effect of "[i]s that a victory? I think that's a victory."

At his OPA interview, NE#2 stated that he was familiar with many members of the crowd as they had been present at the demonstrations that he worked during the preceding year and a half. NE#2 also stated that he sang as a way to relieve tension and anxiety and that his singing was not directed at anyone. Finally, NE#2 stated that his comments regarding a "victory" referred to the fact that he believes it is a "win" anytime he does not have to write a report or use force.

As discussed above at Named Employee #1, Allegation #1, even if inadvertent or unrelated to CM#1's arrest, the context in which NE#2 was making these comments was questionable. NE#2's comments and singing were innocuous enough that OPA cannot say NE#2 willfully violated policy such that it amounted to misconduct. However, the context in which these officers were joking around—even in response to insults from the crowd—makes OPA question whether policy was possibly violated.

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

- **Training Referral:** NE#2's chain of command should discuss OPA's findings with NE#2, review SPD Policy 5.001-POL-10 and the prefatory language of 5.001-POL with NE#1 and provide any further retraining and counseling that it deems appropriate. NE#2's chain of command should emphasize to NE#2 that he is now on notice that future unprofessional behavior that could erode public trust in the Department, including inappropriate demeanor at a police line, would be in violation of SPD Policy 5.001-POL-10. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

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



Named Employee #2 - Allegation #2

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #3 - Allegation #1

5.001 - Standards and Duties 10. Employees Will Strive to be Professional

The identified Complainant identified NE#2 as one of the officers that was smirking and laughing with other officers.

OPA review of BWV showed that, in response to one of NE#2's joking comments, NE#3 and another officer turned toward NE#2 and smiled. NE#3 also later stated to NE#8 "why are you smiling and laughing?" NE#8 responded, "I have too much fun."

In her OPA interview, NE#3 stated that she remembered members of the crowd making fun of NE#8's legs. NE#3 admitted that she found the crowd's comments funny and she "definitely started laughing then. And I mean, that's really all you can do. Just laugh with them." However, NE#3 admitted that she noticed that the crowd became more escalated because officers were talking and laughing with each other.

As discussed above at Named Employee #1, Allegation #1, even if inadvertent or unrelated to CM#1's arrest, the context in which NE#3 made a comment about "smiling and laughing" was questionable. NE#3's statement and laughing in response to crowd comments were innocuous enough that OPA cannot say NE#3 willfully violated policy such that it amounted to misconduct. However, the context in which this was done makes OPA question whether policy was possibly violated.

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

- **Training Referral:** NE#3's chain of command should discuss OPA's findings with NE#3, review SPD Policy 5.001-POL-10 and the prefatory language of 5.001-POL with NE#1 and provide any further retraining and counseling that it deems appropriate. NE#3's chain of command should emphasize to NE#3 that she is now on notice that future unprofessional behavior that could erode public trust in the Department, including inappropriate demeanor at a police line, would be in violation of SPD Policy 5.001-POL-10. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

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

Named Employee #4 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

The Complainant alleged that NE#4 used excessive force on CM#1.



SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary, and proportional. Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” (SPD Policy 8.050.) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

BWV from NE#4 and other officers depicted NE#4’s use of force. After CM#1 attempted to flee from NE#6 and NE#7, NE#4 appeared to grab CM#1 by the arm and helped pull CM#1 to the ground. NE#4 also appeared to fall to the ground. NE#4 then assisted with restraining CM#1 by holding on to one of CM#1’s arms. NE#4 then assisted with rolling CM#1 onto his stomach. As bystanders then approached, NE#4 got up from the ground and stepped away in order to conduct crowd control. After CM#1 shouted that he could not breathe, NE#4 directed officers on the ground to roll CM#1 into the recovery position. Later, after CM#1 kicked a stretcher that he was on, NE#4 helped restrain CM#1’s leg until leg restraints could be applied.

NE#4’s use of force was reasonable, necessary, and proportional. NE#4 used *de minimis* force to restrain a fleeing, resisting arrestee. NE#4’s use of force was necessary to effect his lawful purpose, specifically apprehending an arrestee who attempted to flee from other uniformed officers. Finally, the amount of force used was *de minimis* and proportional to threat posed to the officers that were present. OPA also notes the affirmative care NE#4 took to ensure that CM#1 was rolled into the recovery position after CM#1 alleged that he could not breathe.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #5 – Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

The Complainant alleged that NE#5 used excessive force on CM#1.

BWV from NE#5 and other officers depicted NE#5’s use of force on CM#1. NE#5 performed the Portable Breath Test (PBT) on CM#1. After performing the PBT on CM#1, NE#5 walked back to his vehicle to put the PBT away. As NE#5 was putting the PBT away, he observed CM#1 attempting to escape. NE#5 ran towards CM#1 and arrived after CM#1 was on the ground. NE#5 stated to CM#1 that he was going to get tased. No taser was visible and CM#1 appeared to begin complying with officers’ commands. NE#5 then held CM#1’s right arm as NE#4 stepped away to conduct crowd control. NE#5 then placed his knee on CM#1’s upper back and held CM#1’s left arm and moved CM#1’s arm into handcuffing position. When CM#1 complained that his wrist was twisted, NE#5 suggested that the officers use two sets of handcuffs strung together, so as to make it easier to handcuff CM#1. NE#5 then placed CM#1’s right hand in handcuffs and double locked the handcuffs to prevent them from tightening. When CM#1 complained that he could not breathe, NE#5 immediately requested that SFD respond to evaluate CM#1. When NE#6 and NE#7 rolled CM#1 into the recovery position, NE#5 then stepped away to provide crowd control for the remainder of the call. NE#5 then drove CM#1’s vehicle from the scene to the East Precinct for towing.



NE#5's use of force was reasonable, necessary, and proportional. NE#5 used *de minimis* force to restrain a fleeing, resisting arrestee. NE#5's use of force was necessary to effect his lawful purpose, specifically apprehending an arrestee who attempted to flee from other uniformed officers. Finally, the amount of force used was *de minimis* and proportional to threat posed to the officers that were present. OPA also notes the affirmative care NE#5 took to ensure that SFD was called to evaluate CM#1 immediately after CM#1 alleged that he could not breathe.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #6 – Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

The Complainant alleged that NE#6 used excessive force.

BWV from NE#6 and other officers depicted NE#6's use of force against CM#1. After NE#7 determined that CM#1 was under arrest, NE#6 grabbed one of CM#1's arms. Before NE#7 could place CM#1 in handcuffs, CM#1 pulled away from NE#6 and NE#7's grip and ran towards the center of the street. Both NE#6 and NE#7 followed CM#1 closely and maintained their grip on CM#1. NE#4 then also took hold of CM#1's arm and, as described above, NE#4 and NE#7 were able to pull CM#1 slowly to the ground. NE#6 then restrained CM#1 by holding CM#1's legs in the ground as CM#1 was placed in handcuffs. After CM#1 complained that he was unable to breathe, NE#6 assisted NE#7 with rolling CM#1 into the recovery position.

NE#6's use of force was reasonable, necessary, and proportional. NE#6 used *de minimis* force to restrain a fleeing, resisting arrestee. NE#6's use of force was necessary to effect his lawful purpose, specifically apprehending an arrestee who attempted to flee from him. Finally, the amount of force used was *de minimis* and proportional to threat posed to the officers that were present. OPA also notes the affirmative care NE#6 displayed by helping NE#7 roll CM#1 into the recovery position after CM#1 complained he was unable to breathe.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #7 – Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

The Complainant alleged that NE#7 used excessive force.

BWV from NE#7 and other officers depicted NE#7's use of force against CM#1. After CM#1 attempted to flee, NE#7 maintained his grip on CM#1. As officers surrounded CM#1, CM#1 appeared to either sit or get pulled down backwards by NE#7, such that his buttocks contacted the grounds first. CM#1 continued to hold his hands crossed and held tightly to his chest, while officers continued to hold CM#1's arms. After CM#1 was laid down, officers rolled CM#1 onto his stomach. NE#7 then began to place NE#7 in handcuffs by grabbing CM#1's left wrist. The Complainant complained that officers were twisting his left wrist, after which NE#5 and NE#7 used two sets of handcuffs strung together to secure CM#1 more comfortably. After CM#1 complained that he was unable to breathe, NE#6 and NE#7 rolled CM#1



into the recovery position. Later, after SFD arrived, CM#1 claimed that the officers were trying to cut his arm off. NE#7 responded by checking CM#1's handcuffs, readjusting them, and removing CM#1's wristwatch to provide additional space for the handcuff. NE#7 completed a type 1 use of force report for CM#1's report of handcuffing pain.

NE#7's use of force was reasonable, necessary, and proportional. NE#7 used *de minimis* force to restrain a fleeing, resisting arrestee. NE#7's use of force was necessary to effect his lawful purpose, specifically apprehending an arrestee who attempted to flee from him. Finally, the amount of force used was *de minimis* and proportional to threat posed to the officers that were present. OPA also notes the affirmative care NE#7 displayed by rolling CM#1 into the recovery position after CM#1 complained he was unable to breathe.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #8 - Allegation #1

5.001 - Standards and Duties 10. Employees Will Strive to be Professional

It was alleged that NE#8 was unprofessional.

NE#8 was dispatched to the scene to provide crowd management and scene control after large crowd gathered in response to CM#1's arrest. BWV depicted that, as NE#8 approached the scene, a bystander yelled "F*** you." NE#8 responded, "long time, no see" and continued walking. Afterwards, NE#8 approached NE#2, NE#3, and other officers and told them "[w]e are gonna leave, we're just gonna leave, and then we'll collapse it." An unidentified officer then asked NE#8, "why are you smiling?" and NE#3 also asked NE#8, "why are you smiling and laughing?" NE#8 responded, "I have too much fun." The unidentified officer then replied, "I will tell you why. Because I am happy." When a bystander yelled out "you look stupid in those shorts [NE#8], you have ugly a** legs [NE#8]!" NE#8 responded, "they are so mean." Later, as the officers were leaving the scene, the crowd started to yell and scream profanities at the police, to which NE#8 enthusiastically said "[i]t's good to be back."

NE#8 stated in his OPA interview that he made these comments because the negativity and harassment that officers have faced from crowds has had a detrimental effect on the morale of SPD officers. NE#8 stated that he enjoys his job and tried to share this with other officers because he thinks it is important to show positivity. NE#8 noted that his comments were made specifically to the other officers around him. NE#8 told OPA that crowd members were familiar with him on sight because he had been dealing with them for the past year and a half.

OPA appreciates that NE#8's intent was to model positivity to his subordinates. NE#8's BWV showed that many officers genuinely appeared encouraged by interacting with NE#8 despite facing repeated insults from some in the crowd. But NE#8's laudable goal of modeling positivity must come second to demonstrating an appropriately professional demeanor to the public. As discussed above at Named Employee #1, Allegation #1, even if inadvertent or unrelated to CM#1's arrest, the context in which NE#8 made comments such as "having too much fun" was questionable. NE#8's statements were innocuous enough that OPA cannot say NE#8 willfully violated policy such that it amounted to misconduct. However, the context in which this was done makes OPA question whether policy was possibly violated.

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



-
- **Training Referral:** NE#3's chain of command should discuss OPA's findings with NE#8, review SPD Policy 5.001-POL-10 and the prefatory language of 5.001-POL with NE#1 and provide any further retraining and counseling that it deems appropriate. NE#8's chain of command should emphasize to NE#8 that he is now on notice that future unprofessional behavior that could erode public trust in the Department, including inappropriate demeanor at a police line, would be in violation of SPD Policy 5.001-POL-10. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

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

Named Employee #8 - Allegation #2

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing.

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

Recommended Finding: **Not Sustained - Unfounded**