

Issued Date: MARCH 25, 2023

From: Director Gino Betts, Office of Police Accountability



Case Number: 2022OPA-0415

Allegations of Misconduct & Director's Findings

Named Employee #1

1. **Allegation #1:** 8.200 - Using Force (1) Use of Force: When Authorized
 - a. **Finding:** Not Sustained - Lawful and Proper (Expedited)

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:

Named Employee #1 (NE#1) located a stolen vehicle and placed a Suspect (Community Member #1 or CM#1) under arrest for possession of a stolen vehicle. The Complainant (Community Member #2 or CM#2) further alleged that she observed an inappropriate use of force between NE#1 and CM#1 during the arrest. Specifically, CM#2 alleged that she observed NE#1 place both hands on CM#1's collar bone and push CM#1 against a patrol vehicle.

Administrative Note:

On January 5, 2023, the Office of Inspector General (OIG) certified OPA's investigation as thorough, timely, and objective.

This case was designated as an 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 the involved employees in this case.

During this investigation, allegations were identified concerning NE#1's failure to utilize de-escalation tactics during his arrest of CM#1. OPA returned these allegations to the NE#1's chain of command to process as a supervisor action.

Summary of the Investigation:

OPA reviewed the OPA Complaint, Computer Aided Dispatch (CAD) Call Report, Body-Worn Video (BWV), In-Car Video (ICV), and General Offense (GO) Incident Reports. OPA attempted to interview CM#1, who was not responsive to the Investigator's attempts to contact her.

A. Initial Complaint

CM#2 contacted OPA on November 28, 2022. CM#2 stated that she was concerned about an Officer being, "handsy" with a female subject. CM#2 observed the Officer with both hands pushing the female near her collar bone against a patrol car. CM#2 stated that it appeared the Officer was not acting appropriately.

B. Computer-Aided Dispatch (CAD) Data

OPA reviewed relevant CAD data from the incident. CAD data showed that on November 28, 2022, at 13:15, NE#1 updated dispatch that he located a stolen vehicle. At 13:15, NE#1 ran the vehicle through NCIC. The National Crime Information Center (NCIC) is criminal records database allowing criminal justice agencies to enter or search for information about stolen property, missing or wanted persons, and domestic violence protection orders; to get criminal histories. The NCIC result showed that the vehicle was reported stolen out of Portland, OR.

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

OPA reviewed NE#1's BWV and ICV which showed the following:

NE#1's ICV captured the vehicle in question driving towards NE#1 in the oncoming lane. NE#1 turned around and positioned his patrol vehicle behind the vehicle which had parked at a nearby residence. CM#1 then exited the vehicle from the driver's seat and approached NE#1. NE#1 exited his vehicle and questioned CM#1 about the vehicle. CM#1 stated that she had purchased the vehicle the day prior from her friend, she further stated that she was helping her friend although it was not clear with what. During NE#1's field interview of CM#1, his ICV captured radio dispatch advising that the vehicle returned as stolen.

NE#1 informed CM#1 that the car was reported stolen and that she was under arrest. NE#1 reached out to grab CM#1's wrists. CM#1 pulled away as NE#1 attempted to maintain a hold of CM#1's arms. CM#1 ducked and stepped away from NE#1 several times, eventually twisting into a position between NE#1 and his patrol vehicle. Throughout the struggle, CM#1 repeatedly stated she was not driving the car. NE#1 grasped CM#1 by both wrists and ordered her to place her hands behind her back. CM#1 continued to resist by using a swimming motion to free her arms from NE#1's grip. NE#1 transitioned between grabbing CM#1's arms and shoulders to control her.

During the struggle, CM#1 attempted to walk to NE#1's left, then came within proximity to NE#1 as NE#1 impeded CM#1's movement with his body. NE#1 grabbed CM#1 by her shoulders and pushed CM#1's upper body backwards while CM#1's feet remained planted, pinning CM#1's upper body briefly between NE#1 and NE#1's patrol vehicle. NE#1 then stepped away from the vehicle, continuing to hold CM#1's shoulders.

CM#1 repeatedly stated that he was not driving and should not be arrested, then began to cry. NE#1 ceased trying to control CM#1, then stepped away from CM#1. NE#1 requested an additional officer to the call, Witness Officer #1 (WE#1). After WE#1 arrived, NE#1 and WE#1 handcuffed CM#1 without further incident.

D. General Offense Incident Report

OPA reviewed NE#1's incident report narrative which was consistent with what OPA observed from the Officers' BWV. NE#1 included in his report that during a search of the vehicle incident to arrest, the rear driver's side window was broken and covered with tape. NE#1 further noted that the ignition was damaged and covered with a yellow scarf.

Analysis and Conclusions:

Named Employee #1 - Allegation #1

8.200 - Using Force (1) Use of Force: When Authorized

It was alleged by CM#2 that NE#1 used an inappropriate level of force against 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 showed that NE#1 used *de minimis force* to control and arrest CM#1 based on probable cause of possession of a stolen motor vehicle. SPD Policy 8.050 defines *de minimis force* as "physical interaction meant to separate, guide, and/or control without the use of control techniques that are intended to or are reasonably likely to cause any pain or injury." The policy further

instructs that such force includes, “using hands or equipment to stop, push back, separate, or escort a person without causing any pain, or in a manner that would reasonably cause any pain.”

Although CM#1 was briefly pinned against NE#1’s vehicle during the physical struggle to take her into custody, BWV showed that NE#1 immediately stepped away from the vehicle and ultimately ceased trying to physically control CM#1. Instead of escalating his use of force to pain compliance techniques likely to cause transitory pain, NE#1 opted to wait for a backing Officer to arrest CM#1 safely without further incident.

Accordingly, OPA recommends that this allegation be Not Sustained - Lawful and Proper (Expedited)

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