



## CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 7, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0244

### Allegations of Misconduct & Director's Findings

#### Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Unfounded
# 2	6.180 - Searches-General. Officers May Only Make Searches After Securing a Search Warrant Unless a Specific Exception Applies	Not Sustained - Unfounded
# 3	6.150 Advising Persons of Miranda and the Right to Counsel 6.150-POL-1 Advising Miranda Rights 1. Sworn Employees Will Advise All Arrestees of Their Full Miranda Rights	Not Sustained - Unfounded
# 4	6.010 Arrests POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime to Effect an Arrest	Not Sustained - Unfounded
# 5	Interim Policy 8.200 - Using Force 8. Officers Will Render Appropriate Medical Aid Within Their Training as Soon as Reasonably Possible	Not Sustained - Unfounded

#### Named Employee #2

Allegation(s):		Director's Findings
# 1	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Unfounded
# 2	6.180 - Searches-General. Officers May Only Make Searches After Securing a Search Warrant Unless a Specific Exception Applies	Not Sustained - Unfounded
# 3	6.150 Advising Persons of Miranda and the Right to Counsel 6.150-POL-1 Advising Miranda Rights 1. Sworn Employees Will Advise All Arrestees of Their Full Miranda Rights	Allegation Removed

***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:

The Complainant alleged that during her closed-door argument with Community Member #1 (CM#1)—the Complainant's boyfriend—the named employees unlawfully kicked in her apartment door, causing CM#1 to jump from a window and break his leg. She also alleged that Named Employee #1 (NE#1) "stomped" on CM#1's broken ankle, and they failed to *Mirandize* CM#1 and consider the Complainant's and CM#1's accounts about their altercation.



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**ADMINISTRATIVE NOTE:**

On October 18, 2023, the Office of Inspector General (OIG) certified OPA's investigation as thorough, timely, and objective.

On June 1, 2023, an SPD sergeant sent OPA an unsubstantiated misconduct screening<sup>1</sup> request regarding NE#1 allegedly stepping on CM#1's broken ankle. On June 15, 2023, after reviewing the incident on body-worn video (BWV), OPA did not require an OPA referral for that allegation.

**SUMMARY OF INVESTIGATION:**

On May 31, 2023, at 10:08 PM, Community Member #2 (CM#2)—a security guard at the Complainant's building—reported a domestic disturbance in the Complainant's apartment. The call taker noted:

*Unit With Known Domestic Violence History Hears a Female and a Male Shouting at Each Other and Loud thuds, [unknown] nature of [the] relationship. No [weapons] heard.*

At 10:11 PM, the named employees were en route. An update reported:

*Sounds Like the Male and Female are Now Physically Fighting, but Still No Visuals [available]. HISTORY OF [Domestic Violence] CALLS IN THIS UNIT BETWEEN! [the Complainant] AND [CM#1].*

At 10:16 PM, an update noted that CM#1 had an unverified felony warrant. Three minutes later, the named employees arrived and knocked on the Complainant's door. A minute later, NE#1 kicked in the door. Fighting was heard in the background. CM#1 jumped out a window, and the officers quickly apprehended him. Within two minutes, the officers requested medical aid for CM#1's "broken leg." CM#1 was transported to a hospital, and his felony warrant was later verified.

NE#1 wrote the related incident report. He indicated that he heard yelling and a woman screaming from a second-floor unit upon arrival. NE#1 spoke with CM#2, who reportedly heard a "physical fight" inside the Complainant's unit and a woman yelling, "Get your hands off of me" and "Don't you touch me." CM#2 also reported hearing glass breaking, objects thrown, and the woman yelling, "You going to throw stuff at me?" and "You knocked my glasses off of me." As the officers approached the Complainant's unit, they heard a loud argument and a woman demanding a man to leave. NE#1 heard the man yell, "Fuck you. Fuck you. Come on bitch." NE#1 wrote that he heard what sounded like the woman being assaulted, so he repeatedly kicked the door, announced "Seattle police," and ordered the occupants to open the door. NE#1 stated that he paused from kicking the door to allow the occupants to open it voluntarily. NE#1 wrote that the argument inside continued, so he resumed kicking the door until it opened. NE#1 stated that the officers entered the breached door and ordered the occupants onto the floor. NE#1 described the apartment as in disarray with items scattered, indicative of a fight. A window was open, and a security guard outside yelled that CM#1 jumped from it. NE#1 relocated to a stairwell and found CM#1 on the floor, holding his left leg and screaming, "Somebody help me. My leg's broken."

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<sup>1</sup> "Allegations of misconduct that are clearly refuted by evidence can be investigated and documented by the chain of command and then screened with OPA via email. The OPA Director or their designee reviews the information and relevant video to determine if the allegation is disproved by the evidence or whether it is necessary for the supervisor to formally submit the allegation of potential misconduct to OPA. OIG conducts quarterly audits of cases screened through the program to ensure the integrity and continued success of the process." Internal Operations and Training Manual 8.1.



NE#1 Assisted CM#1 onto his stomach as the Complainant entered the stairwell.



Unprompted, CM#1 yelled, “Nobody’s fighting with her. Nobody’s fighting,” and “I haven’t touched nobody.” NE#1 handcuffed CM#1. With CM#1 on his back, NE#1 braced himself against an open door and a wall and tried stepping over CM#1. NE#1’s right foot inadvertently appeared to contact CM#1’s injured leg. CM#1 screamed and yelled, “Ow! Ow, my fucking foot! You fucking asshole!” NE#1 repeatedly and calmly explained, “I was just trying to step over you.”

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegation #1**

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

The Complainant alleged that NE#1 used unauthorized force against CM#1 by stomping on his broken ankle.

Officers may only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” SPD Policy 8.200(1). Reasonableness depends “on the totality of the circumstances” known to the officers when force is used, balanced against “the rights of the subject, in light of the circumstances surrounding the event.” SPD Policy 8.050. Reasonableness must consider that officers are often forced to make “split-second decisions” under tense, dynamic circumstances. *Id.* Force is necessary when “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.* Last, the force used must be proportional to the threat posed to the officer. *Id.*

NE#1 and other officers located CM#1 in a tight-spaced stairwell. CM#1 was on the floor holding his left leg before NE#1 handcuffed him. BWV showed that, due to the tight space, NE#1’s foot inadvertently and briefly contacted CM#1’s injured leg. CM#1 screamed, and NE#1 immediately explained the accidental contact. No officer, including NE#1, intentionally applied reportable force against CM#1.

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

Recommended Finding: **Not Sustained - Unfounded**



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**Named Employee #1 - Allegation #2**

**6.180 - Searches-General. Officers May Only Make Searches After Securing a Search Warrant Unless a Specific Exception Applies**

The Complainant alleged that NE#1 unlawfully entered her apartment.

“The need to protect or preserve life, avoid serious injury or protect property in danger of damage may justify an entry that would otherwise be illegal absent an emergency.” SPD Policy 6.180-POL-1. “The emergency doctrine and the community-caretaking exception do not require probable cause but shall be motivated solely by the perceived need to render aid or assistance.” *Id.*

NE#1 had no warrant to enter the Complainant’s apartment. However, there was ample evidence that exigent circumstances existed. Specifically, the evidence established that officers had considerable legitimate concern for the Complainant’s well-being. There was a history of domestic disturbance calls involving the Complainant and CM#1. Moreover, CM#2 described hearing indications of domestic violence in the Complainant’s unit. Further, the officers heard fighting inside the Complainant’s unit before NE#1 forced entry. The circumstances showed reasonable concern for the Complainant’s safety, and there was no time to secure a warrant before entering her unit for caretaking purposes.

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

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #1 - Allegation #3**

**6.150 Advising Persons of Miranda and the Right to Counsel 6.150-POL-1 Advising Miranda Rights 1. Sworn Employees Will Advise All Arrestees of Their Full Miranda Rights**

The Complainant alleged that NE #1 failed to *Mirandize* CM#1.

Sworn employees will issue Miranda warnings to all persons taken into custody, regardless of interview, as soon as practical.

BWV showed that NE#1 Mirandized CM#1 less than twenty minutes after handcuffing him. NE#1 read Miranda warnings from a department-issued yellow card. Given the chaotic scene, NE#1 issued Miranda warnings without unreasonable delay.

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

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

**Named Employee #1 - Allegation #4**

**6.010 Arrests POL 1. Officers Must Have Probable Cause That a Suspect Committed a Crime to Effect an Arrest**

The Complainant alleged that NE#1 lacked probable cause to arrest CM#1.



Officers must have probable cause that a suspect committed a crime when effectuating an arrest. SPD Policy 6.010-POL-1. An arrest unsupported by probable cause violates the law and Department policy. *Id.* Probable cause exists when an officer has sufficient information to support a reasonable belief that an offense was or is being committed. See *State v. Fricks*, 91 Wash.2d 391, 588 P.2d 1328 (1979); *State v. Gluck*, 83 Wash.2d 424, 426–27, 518 P.2d 703 (1974).

Before encountering the Complainant and CM#1, a dispatcher notified the named employees that the couple reportedly had a history of domestic disputes, and CM#1 had an unverified felony warrant. Upon their arrival, CM#2 confirmed prior domestic disturbances in the Complainant's unit and hearing indications of an in-progress physical fight—including a woman screaming, "Get your hands off of me" and "Don't you touch me." Moreover, before breaching the Complainant's door, the officers listened from outside. They heard fighting, a woman demanding a man to leave, and the man yelling, "Fuck you. Fuck you. Come on bitch." Those facts would cause a reasonable officer in NE#1's position to believe that CM#1 was perpetrating domestic violence against the Complainant. Under the circumstances, not only was it reasonable for NE#1 to act, but it was also statutorily required. See RCW 10.99.030 ("The primary duty of peace officers, when responding to a domestic violence situation, is to enforce the laws allegedly violated and to protect the complaining party.") Further, officers knew CM#1—the man associated with that unit's prior domestic disputes—had a felony warrant, which was later verified. CM#1 was apprehended in a common area—the building's stairwell—where the Complainant did not have a private interest.

Accordingly, CM#1's arrest was lawful, and OPA recommends that this allegation be Not Sustained- Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #1 - Allegation #5**

**Interim Policy 8.200 - Using Force 8. Officers Will Render Appropriate Medical Aid Within Their Training as Soon as Reasonably Possible**

The Complainant alleged that NE#1 failed to aid CM#1, who was injured.

The CAD call report shows that NE#1 requested medical aid for CM#1 within minutes of finding CM#1 on a stairwell floor with a leg injury.

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

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #2 - Allegation #1**

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

The Complainant alleged that NE#2 used unauthorized force against CM#1.

For the reasons at Named Employee #1 – Allegation #1, OPA recommends a Not Sustained – Unfounded finding.

Recommended Finding: **Not Sustained - Unfounded**



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**Named Employee #2 - Allegation #2**

**6.180 - Searches-General. Officers May Only Make Searches After Securing a Search Warrant Unless a Specific Exception Applies**

The Complainant alleged that NE#2 unlawfully entered her apartment.

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

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #2 - Allegation #3**

**6.150 Advising Persons of Miranda and the Right to Counsel 6.150-POL-1 Advising Miranda Rights 1. Sworn Employees Will Advise All Arrestees of Their Full *Miranda* Rights**

The Complainant alleged that NE#2 failed to Mirandize CM#1.

OPA removed this allegation since NE#1 was the primary officer, and NE#2 did not interrogate CM#1 after he was in custody.

Recommended Finding: **Allegation Removed**