

Issued Date: JANUARY 28, 2024

From: Director Gino Betts, Office of Police Accountability



Case Number: 2023OPA-0324

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)
2. **Allegation #2:** 5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing
 - a. **Finding:** Not Sustained - Unfounded (Expedited)

Named Employee #2

1. **Allegation #1:** 8.200 - Using Force 1. Use of Force: When Authorized
 - a. **Finding:** Not Sustained - Lawful and Proper
2. **Allegation #2:** 5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing
 - a. **Finding:** 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:

The Complainant alleged that Named Employee #1 (NE#1) and Named Employee #2 (NE#2) used unauthorized force and engaged in bias-based policing while detaining him.

Administrative Note:

Allegations against NE#1 underwent an Expedited Investigation. That means OPA, with the Office of Inspector General's (OIG) agreement, believed it could reach and issue recommended findings based on its intake investigation without interviewing NE#1. Accordingly, OPA did not interview NE#1.

On August 30, 2023, OIG certified OPA's investigation as thorough, timely, and objective.

During its intake investigation, OPA noted that NE#1 potentially violated the department's professionalism and body-worn video policies. OPA forwarded those concerns to NE#1's chain of command for Supervisor Action.

The alleged incident occurred on March 27, 2022. An acting sergeant sent it to his chain of command for review on April 1, 2022. Under article 3.6(B)(iii) of the Seattle Police Officers' Guild's collective bargaining agreement (SPOG CBA), the 180-day start date began fourteen days later, on April 15, 2022. A precinct captain emailed OPA a screening concerning this incident on October 7, 2022, but the 180 days elapsed on October 12, 2022. Under 3.6(B) of the SPOG CBA, no discipline may result from this investigation as it was completed beyond 180 days.

Summary of the Investigation:

The Complainant submitted a Claim for Damages to the City of Seattle, alleging NE#1 "threw a leg sweep" and tripped him while he was handcuffed. The Complainant alleged he could not breathe as officers "piled on top [of him]," kneed the back of his neck, and delivered "blows and kicks" while he was handcuffed. OPA opened an investigation. Body-worn video (BWV) from the incident showed that the Complainant also alleged that officers engaged in bias-based policing.

During the investigation, OPA reviewed the complaint (Claim for Damages), computer-aided dispatch (CAD) call report, incident report, use of force documentation and reviews, email correspondence, body-worn video, in-car video (ICV), and department training records. OPA also interviewed NE#2. However, OPA received no reply to efforts to contact the Complainant through his criminal defense attorney.

1. Computer-Aided Dispatch & Incident Report

The CAD call report indicated that NE#1 observed "two crashed vehicles." NE#1's incident report stated he saw a pickup truck "pulled up onto the sidewalk" while "partially in the street." NE#1 described the truck as "dirty and damaged," the rear was "resting against a stop sign." NE#1 documented observing two men near the truck, one siphoning gas and the other the Complainant. NE#1 stated he believed the truck was likely stolen, related to driving under the influence collision, or the two men were stealing. NE#1 stated he announced himself as a police officer.

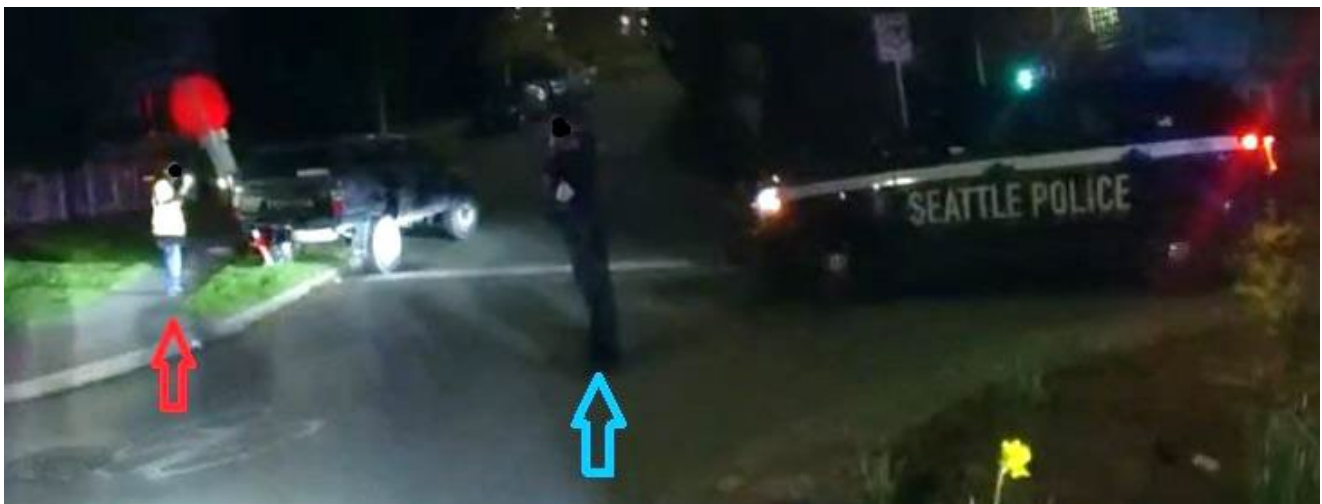
NE#1 stated he ordered the men to show their hands. The man siphoning gas ignored the order and fled. NE#1 wrote that the Complainant remained and demanded to know what was happening. NE#1 wrote that he ordered the Complainant onto the ground, but the Complainant

refused and argued. NE#1 indicated that other officers arrived and tried handcuffing the Complainant. NE#1 wrote that the Complainant resisted and tried to punch NE#1. NE#1 documented that the Complainant was placed in a prone position, handcuffed, and arrested for attempted assault. NE#1 documented that the Complainant had “several small abrasions,” observed by the Seattle Fire Department (SFD). NE#1 wrote that SFD medically cleared the Complainant for police transport.

2. Body-Worn Video & In-Car Video

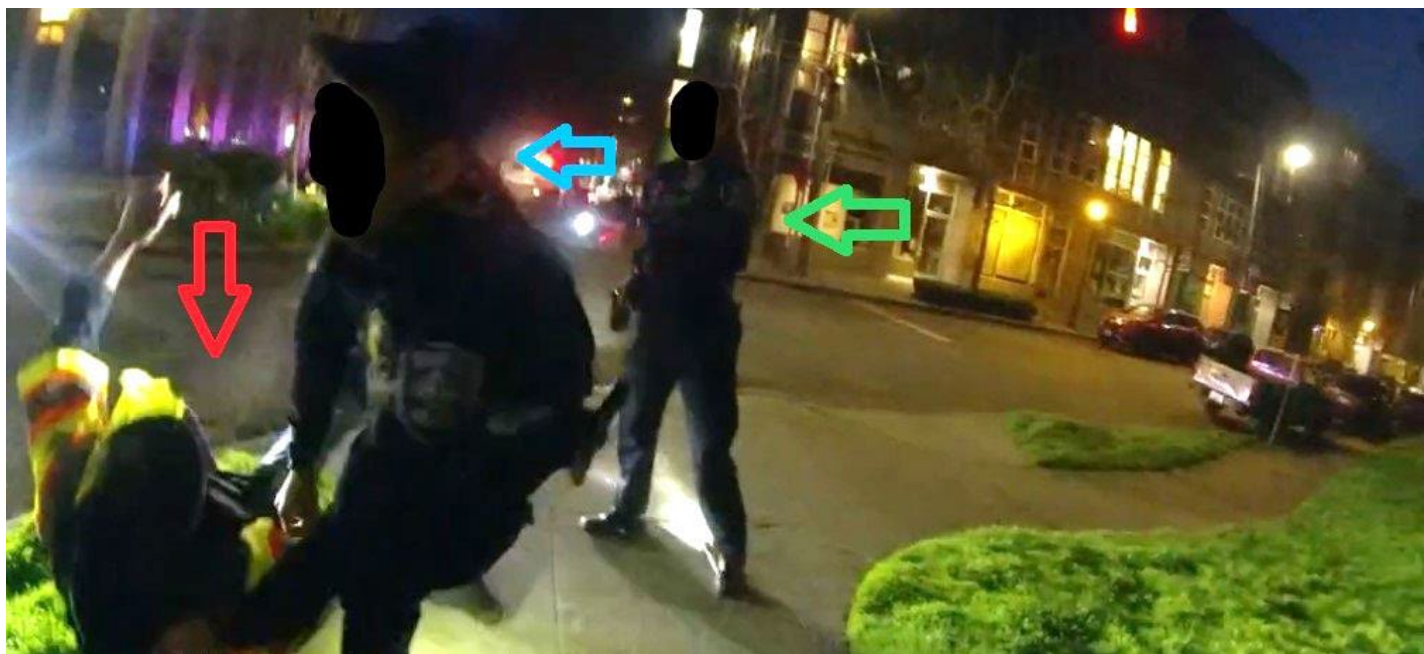
BWV and ICV captured the named employees’ uses of force, showing:

NE#1 stopped the Complainant. Witness Officer #1 (WO#1) and Witness Officer #2 (WO#2) approached as NE#1 repeatedly ordered the Complainant onto his knees. The Complainant, who appeared to hold a flashlight, refused. NE#1, WO#1, and WO#2 drew their firearms. NE#1’s BWV did not capture his use of force since he delayed activating it. However, other officers’ uses of force were captured on BWV and ICV. NE#1’s failure to activate his BWV was processed as a Supervisor Action.



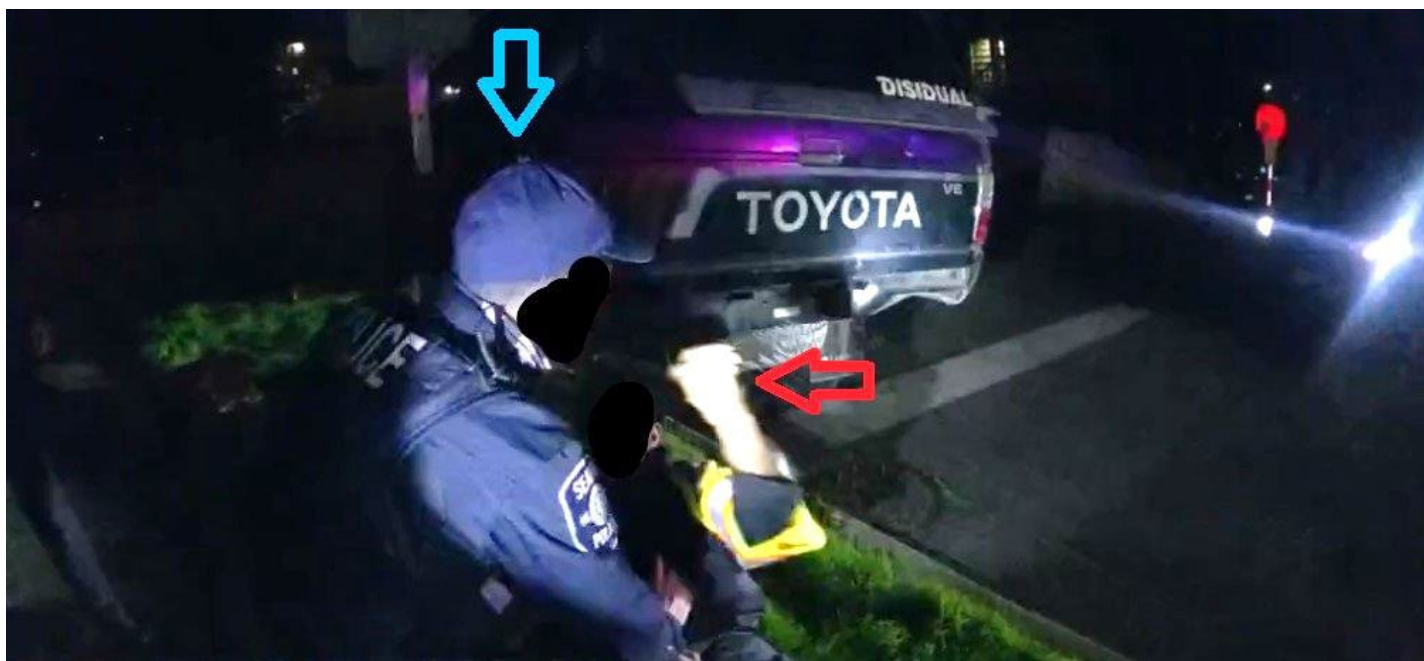
NE#1 (blue arrow) contacting the Complainant (red arrow).

NE#1 told WO#1 and WO#2, “Let’s move up.” As WO#2 told the Complainant, “If you reach for anything...,” NE#1 interrupted, “I will put a bullet in you.” The Complainant said, “I’m not reaching for nothing.... just *Terry* stop me.” NE#1 continued ordering the Complainant onto the ground, but the Complainant remained standing. NE#1 then grabbed the Complainant’s right arm and pushed down on the Complainant’s neck. The Complainant did not get on the ground. NE#1 tripped the Complainant, who landed in the grass on his buttocks.



NE#1 (blue arrow) takes the Complainant (red arrow) to the ground. The green arrow indicates WO#1.

As NE#1 struggled with the Complainant on the ground, the Complainant swung his left fist at NE#1 and said what sounded like, "Bitch." The Complainant's punch appeared to miss NE#1.



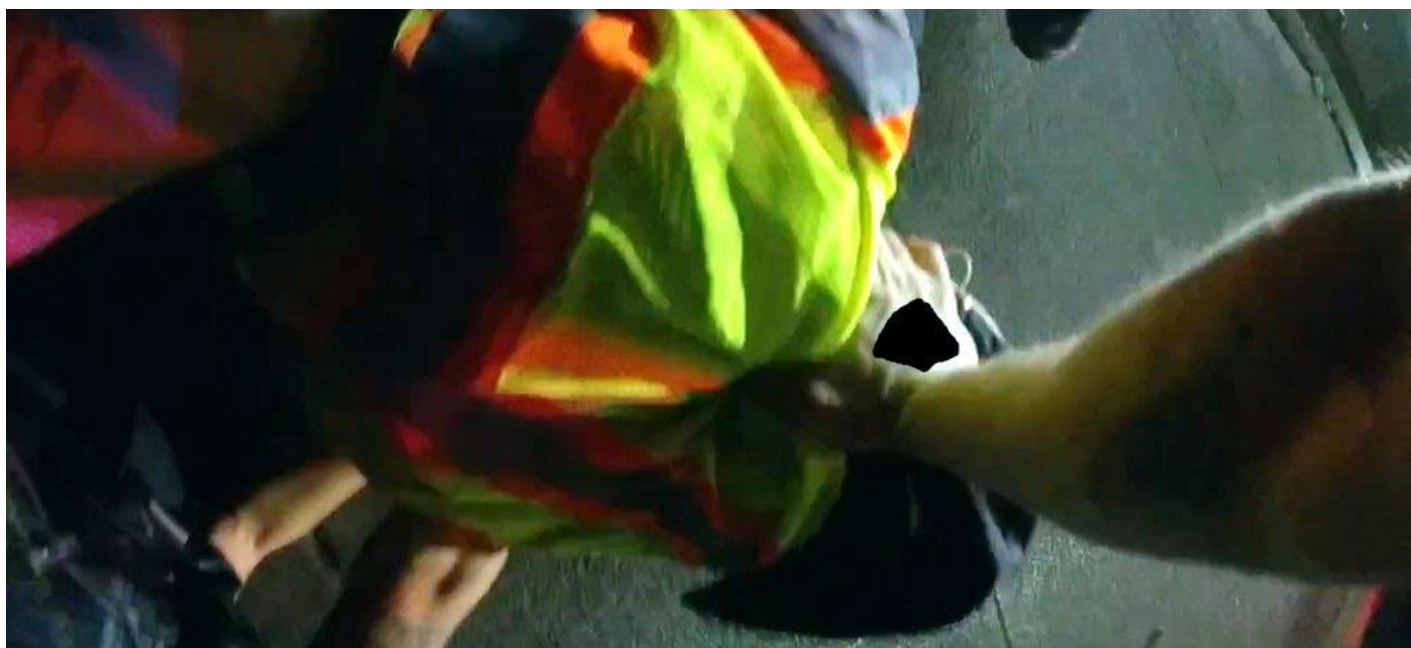
The Complainant's fist (red arrow) swings at NE#1 (blue arrow).

NE#1 said, "Alright, now we have PC for assault." The Complainant responded, "You ain't got no PC. I didn't even hit you." The Complaint continued, "This is some fucked up shit, man. Blow my

head off.” The Complainant continued, “This is so fucking wrong.” During this time, the Complainant sat up and pulled away from the officers.

Other officers, including NE#2, arrived. NE#1, NE#2, and other officers tried to control the Complainant. BWV recorded NE#2 using his weight to push the Complainant onto the ground. At one point, BWV showed NE#2 kneeling near or on the back or side of the Complainant’s neck as the Complainant yelled. About three seconds later, BWV showed that NE#2 repositioned to standing.

Officers repeatedly ordered the Complainant to stop fighting, but the Complainant refused to let the officers control his hands and continued to lift his upper body from the ground. NE#2 held the back of the Complainant’s head or neck.

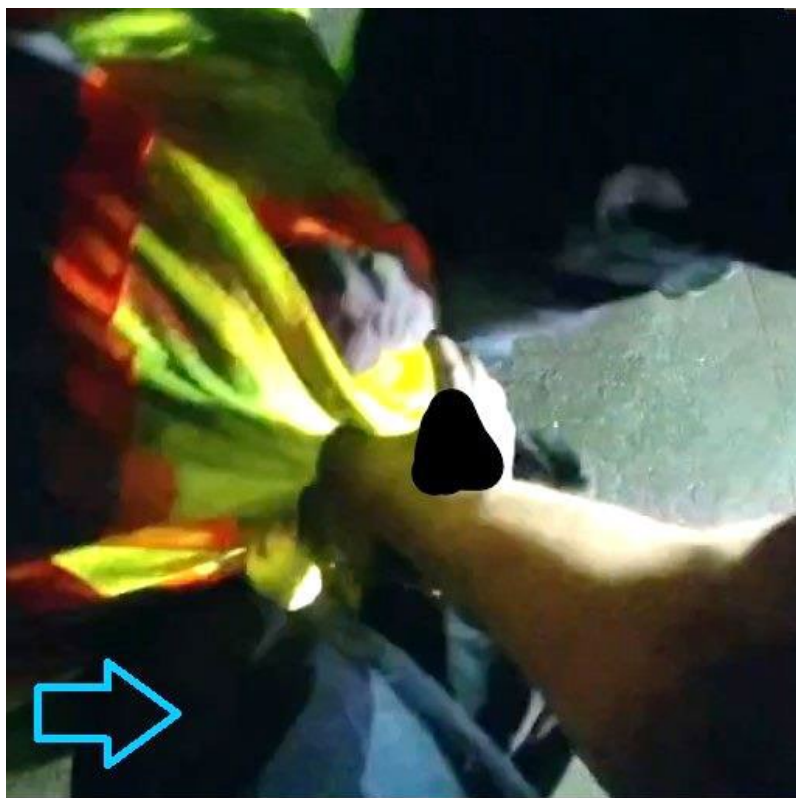


NE#2 pushing down on the back of the Complainant’s neck area.

NE#2 delivered three knee strikes to the Complainant’s upper back or shoulder area.



NE#2's first knee strike (blue arrow) to Complainant.



NE#2's second knee strike.



NE#2's third knee strike.

The Complainant repeatedly screamed, "Help me, somebody," "Please, record this shit. Please, I didn't even do nothing," and "Why the brutality, man?"

About nine seconds after NE#2's third knee strike, the officers handcuffed the Complainant and rolled him into the recovery position. The Complainant said, "Man, I wish I was white, man. Y'all would [have] told me what I was going through for. What I'm being charged with." The Complainant also said, "Y'all attacked me and dropped kicked me, suplexed me down on the ground for no reason."

3. Use of Force Documentation and Review

NE#1 and NE#2 completed Type II Use of Force statements. Their chain of command reviewed both officers' uses of force.

NE#1 wrote that he took the Complainant to the ground because the Complainant resisted attempts to get him on the ground, and there was another "possibly armed" suspect in the area. NE#1 also wrote that the Complainant could also have been armed. NE#1 described tripping the Complainant onto his buttocks and the Complainant's attempted punch.

NE#2 described the Complainant as "actively trying to roll to his back" and that officers were "struggling to control his arms." NE#2 said he did not initially see one of the Complainant's hands

as the Complainant appeared to reach towards his waistband while trying to turn towards the officers. NE#2 described placing his knee against the Complainant's upper back to force him down. NE#2 indicated that the tactic was effective, but as the Complainant resisted, his knee "slipped toward the nape of [the Complainant's] neck and head." NE#2 wrote that he disengaged that position for the Complainant's safety. NE#2 wrote that the Complainant "immediately began to turn toward officers again and push up off the ground." Noting the Complainant's uncontrolled hands and noncompliance, NE#2 wrote that he again tried pushing the Complainant into a prone position. NE#2 speculated that the Complainant "braced himself" to prevent NE#2 from successfully pushing him to the ground:

[The Complainant] was still trying to turn toward officers and get up off the ground, and I was still unable to see his unsecured hands. Fearing that he may be successful in turning and/or gaining his feet and escaping or assaulting officers, or that the suspect may attempt to disarm an officer, or that the suspect may be armed, I delivered three knee strikes from my right knee to his upper back, one at a time and in succession. The third knee strike was successful in forcing the suspect to break down his posture and allowed officers to gain control of his hands.

An acting sergeant first reviewed the uses of force. The acting sergeant documented speaking with the Complainant and observing minor abrasions on his lip, forehead, and elbow. The acting sergeant wrote that the Complainant acknowledged the injuries were from the takedown and ground struggle. The acting sergeant wrote that the Complainant did not complain of pain or injury associated with the knee strikes, though the acting sergeant wrote that BWV captured the Complainant yelling "Ouch" after each knee strike. The acting sergeant documented that the Complainant admitted trying to "turn up real fast" after he was brought to the ground. The acting sergeant documented that SFD members medically cleared the Complainant for transport to King County Jail and categorized the Complainant's injuries as superficial. Finally, the acting sergeant documented training and counseling, (1) NE#1 about his late BWV/ICV activations and inappropriate language, and (2) NE#1, WO#1, and WO#2 on tactical options and communication.

An administrative lieutenant's review noted that NE#1 used a trained "leg trip" technique after the Complainant's "immediate resistance" and NE#1's efforts over "an extended period of time" to allow the Complainant to comply. The administrative lieutenant noted that NE#2 placed his knee on the Complainant to "overcome Suspect's continued push back and attempts to get off the ground." The administrative lieutenant noted that NE#2 removed his knee after it slipped toward the Complainant's neck area. The administrative lieutenant noted that NE#2 used knee strikes when the Complainant's hands were "not yet under control" and the Complainant "continued to turtle, despite repeated orders to stop resisting." The administrative lieutenant described NE#2's knee strikes as effective, noting the Complainant stopped resisting and was handcuffed.

A watch lieutenant's review found the uses of force objectively reasonable, necessary, and proportionate.

A precinct captain also reviewed the uses of force but deferred findings to OPA. The precinct captain indicated that he referred the matter to OPA due to the Complainant's statements: (1) "Why the brutality, man? I didn't do nothing wrong?" (2) "I wish I was white. Y'all would have told me what I would be going through for, and what I was being charged with." and (3) "Y'all attacked me, drop kicked me and suplexed me to the ground for no reason." The precinct captain noted unprofessional language and NE#1's delayed BWV activation.

The Seattle Police Department's Force Review Board (FRB) also reviewed this incident, finding the uses of force within policy.

4. Training Records

OPA reviewed SPD's training records concerning delivering knee strikes to "turtled" subjects or those resisting arrest on the ground.

That training instructs officers to "[Recognize and respond] to aggression on the ground." It notes that some subjects who are "forcibly taken to the ground continue to resist and escalate their resistance by trying to turn to face the officer or get up from the ground," and when that happens, "failure to defend yourself in this situation can lead to serious injury or death for you or your partner." It elaborates:

A suspect who makes attempts to get to their feet or to face the officer is being aggressive and has escalated beyond resisting arrest. Therefore, you should generally use the intermediate force option to defend yourself. These intermediate force options include striking tactics. Striking tactics include [using] hands, elbows, feet [,] or knees to strike the subject [to] defend against aggressive behavior.

5. OPA Interview – Named Employee #2

OPA interviewed NE#2 on December 22, 2023. NE#2 said that, on the date of the incident, he worked patrol with a student officer. NE#2 said he typically carried a baton as a less-lethal option and believed he had it on the day in question.

NE#2 said he responded to a citywide broadcast that officers were fighting with a subject. NE#2 recalled arriving at the scene and seeing at least two officers on the ground struggling to handcuff the Complainant. NE#2 described officers ordering the Complainant onto his stomach and his hands behind his back, but the Complainant did not comply.

NE#2 stated he put his knee against the Complainant's back to force him "flat" on the ground to move him into a "prone cuffing position." NE#2 said the Complainant resisted being pushed to the ground. NE#2 suggested that his knee "incidentally" contacted the Complainant's neck, "I initially put my knee on his upper back, and it slipped down toward

his head. And then when that happened, I immediately got up I didn't want my knee on his neck, that was incidental, so I got up."

NE#2 said he was concerned the Complainant might be armed or assaultive, so he decided to deliver knee strikes at the Complainant's back. NE#2 said he decided on knee strikes because other officers blocked other options—like using a baton, which would have required time to retrieve and room to swing. NE#2 also said knee strikes are effective and unlikely to cause injury.

NE#2 denied treating the Complainant differently due to his race or another discernible characteristic.

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.

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.*

During the dark early morning hours, NE#1 observed a dirty and damaged truck stopped partially on a road median in the street. It appeared to have struck a stop sign. NE#1 observed two men—including the Complainant—near the truck. The other subject was apparently siphoning gas from the truck's gas tank. NE#1, alone, identified himself as a police officer and ordered them to show their hands. The Complainant stood in place while the other man fled. NE#1 claimed reasonable suspicion that the truck was stolen, involved in a DUI collision, or that the men were stealing gasoline. NE#1, WO#1, and WO#2—in full uniform and with their firearms drawn—repeatedly ordered the Complainant to get down on the ground. The Complainant refused. NE#1, WO#1, and WO#2 approached the Complainant. NE#1 again told the Complainant to get on the ground, taking hold of one of the Complainant's arms and grabbing the back of the Complainant's neck. The Complainant did not comply and appeared to resist NE#1's efforts to guide him to the ground. At this juncture, it was objectively reasonable, based on the suspicion of crime, level of resistance, conduct of the Complainant, and environmental factors, for NE#1 to use a higher force to compel

the Complainant to get on the ground. NE#1 used a trained leg trip, causing the Complainant to fall onto the grass. This was both necessary and proportional. Force was necessary to compel the Complainant to the ground because the Complainant refused repeated verbal instructions to do so himself. The trained leg trip was also reasonable to achieve this lawful purpose and proportional under the circumstances.

Immediately after that, the Complainant attempted to punch NE#1. NE#1's response, control holds, and other de minimis forces were also objectively reasonable, necessary, and proportional. Moreover, OPA found no evidence of NE#1 using force against the Complainant after the Complainant was handcuffed.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

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

Named Employee #1 - Allegation #2

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

The Complainant alleged that NE#1 engaged in bias-based policing due to his race.

The Complainant alleged the force used on him was for “no reason” and that the officers would have given him more information if he were white.

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 treatments based on the race of the subject. See *id.* Officers may not (i) make decisions or take actions influenced by bias or (ii) express prejudice or derogatory comments concerning someone's personal characteristics. See SPD Policy 5.140-POL-2.

OPA found no evidence of bias-based policing. As explained at Named Employee #1 - Allegation #1 and Named Employee #2 - Allegation #1, the force used against the Complainant was objectively reasonable, necessary, and proportional. Moreover, the Complainant's refusal to comply with lawful instructions precluded further dialogue.

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

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #2 - Allegation #1

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

The Complainant alleged that NE#2 used excessive force against him.

When NE#2 arrived, the Complainant was resisting three uniformed officers trying to handcuff him. NE#2 documented observing the Complainant “on his side and actively trying to roll to his back” as officers struggled to control his hands. NE#2 also documented seeing the Complainant “pushing against the ground so he could turn toward the officers.” As trained by SPD, NE#2 reasonably believed the Complainant was “[attempting] to get to [his] feet or to face the officer,” justifying “intermediate force options to defend.”

NE#2’s using his knee to push the Complainant’s upper back against the ground was *de minimis*. When NE#2 observed his knee slipping towards the back of the Complainant’s neck, he repositioned himself. See SPD Policy 8.400-POL-1(3)(a) (“Known inadvertent contact with a subject’s neck during the application of a head control tactic, or other control technique which results in momentary contact with the neck of a subject without the risk or intention of restricting the flow of blood or oxygen is not a neck or carotid restraint but must be screened with a supervisor.”).

NE#2 also used three knee strikes on the Complainant’s upper back or shoulder area. It was objectively reasonable. At that point, the Complainant resisted efforts to control and handcuff him. The Complainant pushed against the ground and tried turning towards officers, behaviors that SPD training describes as “aggressive” and “escalated beyond resisting arrest.” The longer the physical struggle continued, the more likely the Complainant or officers would be hurt. Moreover, several officers made unsuccessful attempts to use less forceful options.

Further, force was necessary, as there was no practical alternative. The Complainant refused repeated orders from officers to comply and was physically resistant when NE#2 arrived. NE#2’s knee strikes were also reasonable to effectuate NE#2’s lawful purpose of controlling the Complainant and proportional to the Complainant’s resistance level.

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

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

Named Employee #2 - Allegation #2

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

The Complainant alleged that NE#2 engaged in bias-based policing due to his race. The Complainant alleged the force used on him was for “no reason” and that the officers would have given him more information if he were white.

OPA found no evidence that NE#2 engaged in bias-based policing. As covered at Named Employee #2 - Allegation #1, NE#2's force was lawful and proper and resulted from the Complainant's resistant behavior rather than his race.

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

Recommended Finding: **Not Sustained - Unfounded**