

Issued Date: JANUARY 13, 2024

From: Director Gino Betts, Office of Police Accountability



Case Number: 2023OPA-0352

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)

Named Employee #2

1. **Allegation #1:** 8.300 - Use of Force Tools, 8.300-POL-6 Vehicle-Related Tactics, 5. Vehicle-Related Tactics, b. Vehicle Deflection
 - a. **Finding:** Not Sustained - Unfounded
2. **Allegation #2:** 8.200 - Using Force 1. Use of Force: When Authorized
 - a. **Finding:** Not Sustained - Lawful and Proper (Expedited)

Named Employee #3

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

Named Employee #4

1. **Allegation #1:** 8.200 - Using Force 1. Use of Force: When Authorized
 - a. **Finding:** Not Sustained - Lawful and Proper (Expedited)
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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 Named Employees found the Complainant unconscious, sitting in the driver's seat of a parked vehicle. Suspected illegal narcotics and paraphernalia were scattered about the vehicle. Named Employee #4 (NE#4)—a sergeant—ran the vehicle identification number (VIN), identifying it as stolen. NE#4 called for backup and devised a plan to block the Complainant's vehicle with two patrol cruisers. Officers awoke the Complainant, who immediately reversed into NE#4's cruiser. Named Employee #2 (NE#2) used his cruiser to strike and immobilize the Complainant's vehicle. The Complainant was subsequently arrested.

Administrative Note:

All allegations, except NE#2 allegedly violating 8.300-POL-6(5), were approved for Expedited Investigation. That means OPA, with the Office of Inspector General's (OIG) agreement, believed it could issue recommended findings based solely on its intake investigation without interviewing the named employees. Therefore, OPA only interviewed NE#2 about the alleged 8.300-POL-6(5) violation. However, NE#4 was interviewed as a witness.

On November 20, 2023, OIG certified this investigation as thorough and objective. However, OIG declined to certify it as timely since Notices of Complaint were sent beyond the five-day requirement and the Classification Reports were sent beyond the thirty-day requirement. OPA acknowledges the delayed notifications but respectfully disagrees that the entire investigation should be considered untimely—particularly when the named employees were not disadvantaged by the delays and the overall investigation was completed within the mandated 180-day timeline.

Summary of the Investigation:

A computer-aided dispatch (CAD) report showed that at 12:07 PM on July 15, 2023, the following was reported to 9- 1-1:

Remarks – At [a] gas station, [two] males appear high in a white Hyundai Elantra with no license plate. [the] vehicle is running, [with] no weapons. Suspect – Driver, white male, late 30s, dark hair. Passenger, white male, late 30s, longish blonde hair.

The caller indicated that the suspect vehicle was parked at pump #9. NE#4 arrived and radioed that he found the vehicle with the Complainant “sound asleep” in the driver's seat. He also radioed that the VIN indicated that it was stolen. NE#4 reported that the Complainant was the sole occupant, but a subject matching the reported passenger's description watched from about fifty feet away. NE#4—parked behind the Complainant—requested backup, advising that they “take a position in front of [the Complainant's car] to block the vehicle in.”

The incident report suggested that NE#4 arrived first and found the Complainant slumped with intoxicants and paraphernalia, like suspected fentanyl pills, foil, and lighters, scattered about the vehicle. Witness Employee #1 (WE#1), who wrote the incident report, offered:

In my experience with suspects inside of stolen vehicles who are under the influence frequently attempt to flee the scene when contacted. The vehicle was parked at a gas station with a significant amount of foot traffic and other vehicles. This creates a significant risk to other people in the area. Once backing officers arrived in an effort to mitigate the risk to the public from an apparently impaired driver attempting to flee [,] they positioned their vehicles with one behind and one immediately in front.

WE#1 wrote that the Complainant awoke and reversed into NE#4's cruiser. The report indicated that NE#2, positioned in front of the Complainant's car, "moved in and applied pressure to prevent [the Complainant] from forcing his way out." The Complainant's car was immobilized, and he was handcuffed. Community Member #1—the suspected passenger—ran but was apprehended and arrested. The named employees contributed supplemental statements covering their involvement.

Named Employee #3 (NE#3)—NE#2's partner—described his observations:

Soon after pulling in front of the suspect vehicle, I observed [the Complainant] awaken. He looked up. I called out to him and identified myself multiple times as a police officer. I then observed him reaching around the interior of the car with his hands out of my view. I ordered him multiple times to show me his hands. I then observed [the Complainant] move his hands, likely toward the gear shifter, and the vehicle rapidly reversed into [NE#4's] patrol car. I ordered [the Complainant] to stop his car. I heard [NE#4] echoing a similar command.

NE#3 further suggested, "[the Complainant's] actions created a spacing between the patrol cars that could have allowed him an opportunity to escape. This would have been extremely dangerous for the dozens of innocent people on foot and in vehicles in the immediate area." In response, NE#2 "moved his vehicle closer, contacting [the Complainant's] vehicle's bumper." NE#4 provided a consistent report, but rather than NE#2 intentionally colliding with the Complainant's car, NE#4 suggested that NE#2's cruiser "moved forward, effectively preventing the suspect's vehicle from gaining any ramming momentum. The suspect repeatedly accelerated and turned the steering wheel in [an attempt] to push the patrol cars out of the way and escape. His efforts failed."

NE#2 wrote that he believed the Complainant was "under the influence of narcotics" based on NE#4's report of him being "...passed out in the driver's seat..." NE#2 explained:

Based on my training and experience, I know suspects to be under the influence to be erratic and unpredictable. I did not believe it was safe for a single officer to be near the area of a felonious crime suspect who is unpredictable and erratic, especially one operating a heavy piece of machinery.

NE#2 stated he arrived at the incident location, spotted the Complainant's car, and parked "within a foot or two [in front] of the suspect vehicle..." with NE#4's cruiser behind it. He described the location as "somewhat full of vehicles and pedestrians." NE#2 explained:

Based on my training and experience, I know drivers of stolen vehicles will go to extreme lengths to avoid police apprehension, [including] driving recklessly away from police, ramming through police vehicle positions, and disregarding the safety of all people in their vicinity. This behavior is elevated by suspects under the influence.

Additionally, NE#2 offered:

In this case, if the suspect fled recklessly, he would have almost surely struck a pedestrian, a vehicle, or a gas pump at the gas station. If he somehow missed all these, he would have been driving recklessly in a highly populated area and almost surely struck a pedestrian or vehicle. Due to this, contact from a distance was not safe. I agreed with [NE#4's] request to block the vehicle from both sides.

NE#2 described the vehicle tactic he used to subdue the Complainant's car:

The suspect vehicle violently collided with the rear of [NE#4's] patrol vehicle. This reversal created a greater distance between the front of the suspect vehicle and the front of my patrol vehicle. This amount of distance would allow the suspect to drive out of his blocked position, possibly [further] ramming his way out. The situation was now exigent as the suspect was driving recklessly and ramming patrol vehicles. If I did not close the distance between the suspect vehicle and my patrol vehicle immediately, the suspect would be further putting lives in the vicinity in immediate danger.

NE#2 indicated he "maintained positive pressure with my patrol vehicle on the suspect vehicle. This positive pressure trapped the suspect vehicle between my patrol vehicle and [NE#4's] patrol vehicle. In layman's terms, the vehicle was 'pinned' in place."

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 to apprehend him.

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.*

When the Complainant’s car stopped, NE#3 approached the driver’s side door, grabbed the Complainant’s left wrist, and brought him facedown onto the ground.



NE#1 grabbed the Complainant’s right arm as NE#3 put his right knee against the Complainant’s left side and brought his left arm behind his back for handcuffing.



NE#2 folded the Complainant's left leg behind his right knee into a figure-four position.



NE#1 controlled the Complainant's right arm until it, too, was brought behind his back for handcuffing.



Aside from NE#2's vehicle tactic analyzed below, OPA observed no greater than Type I force used to apprehend the Complainant. Type I is force that causes transitory pain or the complaint of transitory pain. SPD Policy 8.050. Moreover, those uses of force were objectively reasonable, necessary, and proportionate under the circumstances and "to achieve a law-enforcement objective."

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

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

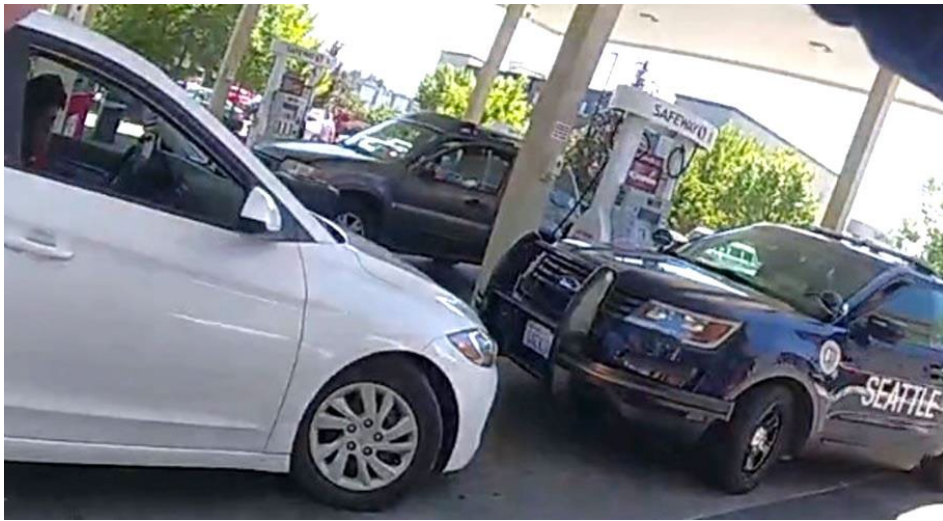
Named Employee #2 - Allegation #1

8.300 - Use of Force Tools, 8.300-POL-6 Vehicle-Related Tactics, 5. Vehicle-Related Tactics, c. Vehicle Deflection

The Complainant alleged that NE#2 used an unauthorized vehicle tactic.

Vehicle-related force tactics are the intentional contact between vehicles and result in a reportable use of force. SPD Policy 8.300-POL-6 (Interim Policy). Vehicle-related force tactics are used to stop, disable, or prevent a suspect vehicle from moving. *Id.* Blocking is when an officer uses a police vehicle to block a stationary vehicle's travel path where there is no contact between the police vehicle and the stationary vehicle. SPD Policy 8.050 (Interim Policy). Vehicle deflection is the intentional slow-moving (approximately ten mph or less) contact between a police vehicle and a slow-moving or stationary suspect vehicle, designed to guide or prevent movement where there is no significant impact (not ramming), and the tactic is reasonably unlikely to cause injury. *Id.* Vehicle pinning (also known as vehicle-pinching) is a trained tactic when an officer uses a police vehicle to keep a stationary vehicle in a specified position and from leaving the scene, where there is constant forward pressure (not ramming) applied by the police vehicle to the stationary vehicle, and there are no gaps between the vehicles. *Id.*

Here, NE#2 modulated vehicle tactics to stop the Complainant's car. Initially, NE#2 used blocking to keep the Complainant's car stationary. NE#2's police cruiser blocked the Complainant's front path while NE#3's blocked the back.



At that point, NE#2 knew, based on NE#3's radio communications, that the Complainant's car was reportedly stolen, and he possessed and was suspected of taking hard illegal narcotics.

Photo of Recovered Suspected Illegal Narcotics



The Complainant awoke and reversed into NE#3's police cruiser hard enough for his trunk to unlatch.



NE#2 slowly moved his cruiser forward to pin the Complainant's car between the police vehicles. NE#2 admitted using "positive pressure" to defeat the Complainant's attempted escape.



In-car and surveillance video showed that NE#2 slowly accelerated. That was further corroborated by the minimal damage to the front of the Complainant's car, which only sustained a slightly cracked bumper.



While videos captured the Complainant revving his car, attempting to accelerate, before NE#2 pinned it, it is unclear whether it was stationary or in motion. If it was moving, it was minimal. Overall, the Complainant was reasonably suspected of ingesting heavy illegal narcotics and demonstrated a willingness to use his car dangerously and violently. Therefore, due to the exigent circumstances the Complainant created, NE#2's elected vehicle tactics were objectively reasonable, necessary, and proportionate to protect nearby pedestrians and drivers.

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

Recommended Finding: **Not Sustained – Unfounded**

Named Employee #2 - Allegation #2

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

The Complainant alleged that NE#2 used unauthorized force to apprehend him.

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

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

Named Employee #3 - Allegation #1

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

The Complainant alleged that NE#3 used unauthorized force to apprehend him.

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

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

Named Employee #4 - Allegation #1

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

The Complainant alleged that NE#4 used unauthorized force to apprehend him.

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

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