



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 21, 2024

FROM: DEPUTY DIRECTOR BONNIE GLENN ON BEHALF OF DIRECTOR GINO BETTS JR.,
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0486

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.100 - De-Escalation, 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics...	Not Sustained - Unfounded

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.100 - De-Escalation, 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics...	Not Sustained - Unfounded

Named Employee #3

Allegation(s):		Director's Findings
# 1	8.100 - De-Escalation, 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics...	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:

It was alleged that Named Employee #1 (NE#1), Named Employee #2 (NE#2), and Named Employee #3 (NE#3) failed to use de-escalation tactics while detaining the Complainant, even though it was safe and feasible to do so.

ADMINISTRATIVE NOTE:

On March 25, 2024, the Office of Inspector General (OIG) certified OPA's investigation as thorough and objective. OIG declined to certify the investigation as timely due to the delay in service of the 5-day notice to named employees of the alleged allegation, as required in the Collective Bargaining Agreement (CBA).

OPA met all other timeliness requirements to include service of the classification notice and the 180-day timeline as set for in the Ordinance and CBA.



SUMMARY OF INVESTIGATION:

An SPD supervisor (Supervisor #1) sent OPA an Unsubstantiated Misconduct Screening (UMS)¹ concerning the Complainant's allegation that the named employees broke his wrist. Supervisor #1 referred the incident at OPA's direction.

OPA opened an intake. At the conclusion of the intake, OPA determined the use of force allegation was unfounded but classified allegations against each named employee for de-escalation. During its investigation, OPA reviewed the complaint documents, computer-aided dispatch (CAD) call report, behavioral crisis report, use of force documentation, and body-worn video (BWV). OPA interviewed the named employees. OPA attempted to contact the Complainant by phone and email without success.

A. Unsubstantiated Misconduct Screening

Supervisor #1 documented the following in his UMS.

Supervisor #1 responded to the scene to screen a Type I use of force.² The named employees reported that the Complainant said "ow" as they were placing him onto a gurney. The named employees also reported the Complainant said the officers broke his wrist and that the county sheriffs broke his wrist.

Supervisor #1 interviewed the Complainant. Supervisor #1 assessed the Complainant as "in crisis" and "possibly on drugs." Supervisor #1 asked the Complainant why he said "ow." The Complainant said "they" broke his wrist. When Supervisor #1 asked the Complainant how his wrist was broken, the Complainant provided three diverging explanations: (1) his wrist was broken on an earlier date; (2) county jail staff broke his wrist; and (3) SPD officer broke his wrist. In contrast, the Complainant also told Supervisor #1, "you guys didn't do it."

Ambulance personnel stated the Complainant's wrist did not appear broken, noted the Complainant used his wrist to boost himself onto the gurney, and stated the Complainant had good range of motion in his wrists. Ambulance staff also reported that the Complainant stated his wrist was broken two years ago and it sometimes hurts.

Ambulance staff transported the Complainant to the hospital under Washington States Involuntary Treatment Act (ITA). There, the Complainant refused to sign an authorization to disclose his medical information. Supervisor #1 screened the Complainant's allegations with SPD's Force Investigation Team (FIT). FIT directed Supervisor #1 to file a UMS.

B. Computer-Aided Dispatch Call Report and Behavioral Crisis Report

The CAD call report showed multiple officers, including the named employees, responded to a 9-1-1 call for a "male yelling and yelling [sic] light poles with shovel, no [threats] or [assault], appears to be in crisis, no other [weapons]

¹ See OPA Internal Operations and Training Manual, 8.1 – Unsubstantiated Misconduct Screening. The UMS process allows SPD supervisors to screen allegations of misconduct with OPA by email. OPA reviews the UMS to determine whether the allegations are clearly refuted by evidence or if a formal OPA referral is necessary. OIG conducts quarterly audits of the process. *See id.*

² Type I force is force that "causes transitory pain or the complaint of transitory pain." *See* SPD Interim Policy 8.050 – Use of Force Definitions Interim Policy. Type I force is the lowest level of reportable force. *See generally* SPD Interim Policy 8.400 – Use of Force Reporting and Investigation Interim Policy.



seen.” The 9-1-1 caller reported that the suspect had shoved passerby and was swinging a one-foot metal poll around and hitting the ground.

Witness Office #1 (WO#1) completed a behavioral crisis report. WO#1 documented arriving on scene after the Complainant was detained under the ITA. WO#1 spoke with park employees who described seeing the Complainant lunge at random people throughout the day. The park employees stated the Complainant found a shovel and swung it at park property and at least one person. The Complainant caused one person to fall into a fence by lunging at him. The Complainant was armed with a “metal cement spike” when officers first contacted him.

C. Body-Worn Video and Use of Force Documentation

BWV depicted the named employees’ interactions with the Complainant.

The named employees arrived at the park and observed the Complainant standing shirtless near his possessions. The Complainant appeared to be speaking with Park Employee #1.



Complainant (green arrow) speaking with Park Employee #1 (orange arrow).

NE#1 spoke with Park Employee #1, who said the Complainant tried to assault a passerby, had been swinging a pole, and had threatened and yelled at other community members. Park Employee #1 identified the Complainant’s metal pole to NE#1. NE#1 picked the metal pole up from the bench as the Complainant continued saying indiscernible things.



NE#1 picking up metal pole (red arrow). Complainant indicated by green arrow.

NE#2 spoke with the two other park employees who called 9-1-1. They said the Complainant was hitting things, shoved two people, and was hitting the ground near people. NE#2 responded the officers would “see if we can get him up to the hospital.”

NE#1 and NE#2 spoke about the situation. NE#2 suggested “ITA?” NE#1 agreed. The Complainant sat down on the bench and NE#1 asked the Complainant, “what’s your name, boss?” The Complainant gave an undecipherable response.



NE#1, at right, asking the Complainant for his name.

NE#2 spoke with the Complainant, asking what was upsetting him that day. The Complainant got up from the bench, approached NE#2, denied anything was upsetting him, and informed NE#2 that he was “three-quarters deaf.” NE#2 continued speaking to the Complainant in a calm tone, asking the Complainant about “banging on stuff.” The Complainant first said, “nothing’s got me upset,” but then added “rapists,” and said he was banging on things as he was, “informing that rapists want their dicks cut off.” NE#2 continued speaking with the Complainant, who continued speaking about “rapists.”



Still from NE#2's BWV as NE#2 spoke with the Complainant.

The Complainant then gave NE#2 a thumbs up and offered him to fist bump NE#2. NE#2 gave the Complainant a fist bump.



Complainant giving NE#2 a thumbs up.



Complainant and NE#2 fist bumping.

NE#2 asked the Complainant for his name, which the Complainant provided. When NE#2 asked the Complainant for his date of birth, the Complainant told NE#2 it was “none of your fucking business,” and approached NE#2 while making eye contact and holding his chin up at NE#2. The Complainant asked NE#2 why he needed his date of birth. NE#2 told the Complainant, in a calm voice, “you need to back up, right now.” The Complainant asked NE#2 if he wanted more space. NE#2 responded, “sure,” and the Complainant backed up further. NE#1 asked the Complainant for his date of birth, and the Complainant responded that it was none of NE#1’s business.

The Complainant asked for NE#1’s badge number, which NE#1 provided. The Complainant asked for NE#2’s badge number but, before NE#2 could respond, he told NE#2 he no longer wanted his badge number. NE#2 offered to provide it if the Complainant wanted it. The Complainant asked if he was under arrest. NE#1 responded he could be arrested for harassment. The Complainant responded by yelling, “who?” multiple times and telling the officers to, “take it to trial.” The Complainant also appeared to offer NE#1 his hands for handcuffing.



Complainant offering NE#1 his hands.

NE#2 requested an ambulance to transport the Complainant for an ITA. NE#2 then went to his vehicle to call his sergeant to screen the ITA. NE#2 noted that he felt he and NE#1 would be “good” with the units that were coming, and that the Complainant was only acting “standoffish” and “posturing.” NE#1 stood by with the Complainant.

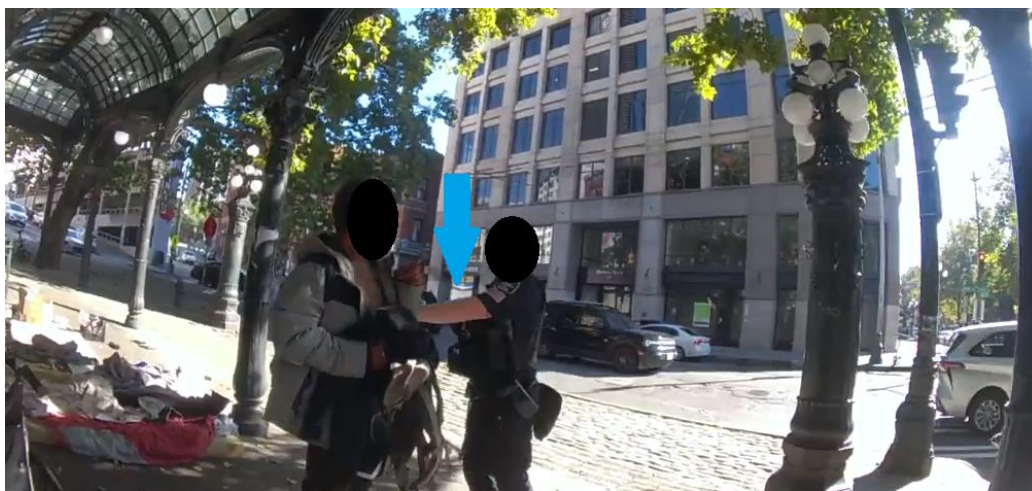


NE#2 informed NE#1 the ITA was approved. NE#3 arrived on scene and approached NE#1. NE#1 asked NE#3, “gonna be a problem?” NE#3 grunted in response. The three named employees then stood around the Complainant at about eight to ten feet while waiting for the ambulance.



Complainant sitting on bench, at left, as officers stood by, at right.

The Complainant continued to speak and gesture, at one point pulling what appeared to be a laminated card from his backpack and telling the officers they “knew what this badge means.” The Complainant stood and began packing his items while continuing to speak and yell. A community member passed by, and the Complainant walked towards her. NE#3 held up his arm to block the Complainant.



NE#3 blocking the Complainant. NE#3 is extending his left arm (blue arrow).

NE#2 addressed the Complainant by his first name and told him to “have a seat, please,” while indicating the bench. The Complainant continued packing up his items. The Complainant made a statement to the effect that he was going to “grab my car, I’m leaving.” The Complainant then tried to walk by NE#2. NE#1 told him, “No, you’re not leaving.” All three named employees then used their hands to hold the Complainant. NE#1 held the Complainant’s left arm. NE#2 held the Complainant’s right bicep area. NE#3 also held the Complainant’s right arm. NE#2 told the Complainant, in a calm voice, to “stop, loosen up your arms, bud.” NE#3 told the Complainant to, “calm down.” NE#3 informed the Complainant he was not free to leave. The named employees then used their hands to take the Complainant to the

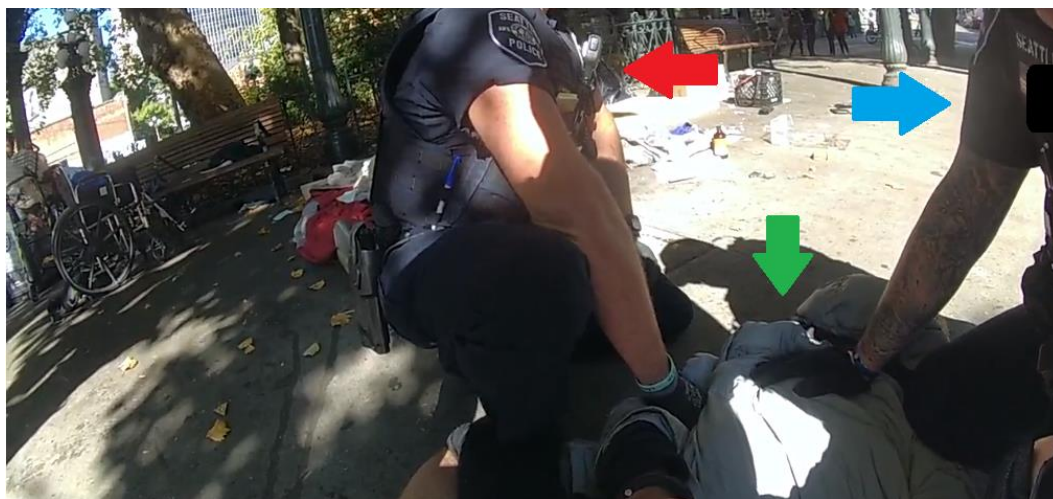


ground in a controlled manner. NE#1 transitioned his hands, moving his left hand from the Complainant's left elbow to the Complainant's left wrist, then NE#1 used his right hand on the Complainant's left shoulder to bend him down and push him to the ground while maintaining control of the Complainant's left wrist. While NE#1 appeared to push the Complainant to the ground, NE#2 held the Complainant's coat while NE#3 held the Complainant's wrist.



Named employees using hands to take Complainant to ground.

The named employees held the Complainant on his stomach and placed him in handcuffs. The Complainant asked if he was under arrest. NE#2 responded that he was "going up to the hospital, bud." The named employees held the Complainant on the ground, with NE#3 using his knee to hold the Complainant's right shoulder to the ground.



*Image from NE#2's BWV of officers restraining Complainant (green arrow).
NE#1 at left (red arrow). NE#3 at right (blue arrow).*

NE#2 used his knee to hold the Complainant's right calf to the ground. At one point, the Complainant made a statement, "you're crushing my knee, I have bad kneecaps." The Complainant appeared to lift his right leg slightly off the ground.



NE#2 attempting to use his knee (purple arrow) to hold the Complainant's leg on ground.

NE#1 knelt by the Complainant's left side, using his hands to hold the Complainant's left arm and left leg.



NE#1 (red arrow) kneeling next to the Complainant, in handcuffs.

While waiting for ambulance personnel, the Complainant yelled, "I've got a broken wrist, three places." The ambulance arrived and ambulance personnel prepared the gurney. The named employees assisted the Complainant to his feet. The Complainant continued screaming, asking why he was under arrest. An officer explained he was not under arrest but was going to the hospital. As the named employees and ambulance personnel assisted the Complainant with getting on the gurney, the Complainant stated repeatedly that he did not consent. While being placed on the gurney, the Complainant said "ow" and "good job, you just crippled me guys, my left hand." When ambulance staff asked the Complainant to lean forward, the Complainant started screaming "ow!" while thrashing on the gurney. Ambulance personnel told the Complainant he needed to sit forward for the officers to remove his



handcuffs. The Complainant complained that they made him sit on his “broken wrist.” The named employees and ambulance personnel were able to hold the Complainant forward in a sitting position to remove his handcuffs.



Officers and ambulance personnel leaning the Complainant forward.

Officers unhandcuffed the Complainant. Ambulance personnel finished securing the Complainant to the gurney, put the Complainant in the ambulance, and transported him to the hospital.

BWV also depicted Supervisor #1 screening the use of force, which was consistent with his UMS submission.

All three named employees completed Type I use of force statements because they were in physical control of the Complainant when the complainant said “ow.” Supervisor #1 completed a Type I use of force investigation, which was consistent with the facts summarized above. The use of force was reviewed by the named employees’ watch commander and acting captain, both of whom found the force to be objectively reasonable, necessary, and proportional.

D. OPA Interviews

OPA interviewed all three named employees to ask about their de-escalation efforts.

NE#1 described responding with his partner, NE#2, and coming up with a plan to speak with the 9-1-1 callers to determine what occurred. NE#1 described learning about and observing the Complainant’s aggressive behavior and determining they needed to request another unit. NE#1 described first attempting to learn the Complainant’s identity but giving up due to his aggressive reactions. NE#1 said, instead, he tried talking to the Complainant to try to get him to calm down. NE#1 said the Complainant’s response was “up and down . . . the behavior was all over the place.” NE#1 described the Complainant trying to walk away and determining, at that point, he would be a danger to others. NE#1 said he and the other officers intervened to prevent the Complainant from walking away. NE#1 described spending a lot of time trying to talk with the Complainant, building rapport, and de-escalating the situation. NE#1 stated he and the other officers gave the Complainant space and felt the three officers that were present were sufficient resources.

NE#2’s description of contacting the Complainant was consistent with NE#1. NE#2 described giving the Complainant space, attempting to de-escalate, but also being cognizant of the hazard to other people. NE#2 described giving the



Complainant a fist bump and engaging with the Complainant but said the Complainant's demeanor changed when he asked for his birthdate. NE#2 described requesting more officers to the scene as a "trained tactic to have more officers present to kind of deter the subject's willingness to fight."

NE#3 also described giving the Complainant space ("depending on the person, ten to fifteen feet of space"), attempting communication, and having multiple officers present on scene as a de-escalatory tactic. NE#3 also described his role as a trained Crisis Intervention Team (CIT) officer. NE#3 said he responded to the call because he thought his specific skills could assist with the situation.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.100 - De-Escalation, 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De Escalation Tactics...

It was alleged the named employees failed to use de-escalation tactics.

SPD Policy instructs that: "When safe, feasible, and without compromising law enforcement priorities, officers will use de-escalation tactics in order to reduce the need for force." SPD Interim Policy 8.100-POL-1 (effective April 24, 2023). Officers are also encouraged to use team approaches and consider whether any officer has successfully established rapport with the subject. *See id.* The selection of de-escalation options is to be guided by the "totality of the circumstances." *Id.* The goal is voluntary compliance. *See id.* The policy gives several examples of de-escalation emphasizing the use of communication, time, distance, and shielding to minimize the need for force. *Id.*

Based on the evidence provided, this allegation is unfounded. All three named employees used de-escalation in the form of a team approach and had multiple officers on scene, including NE#3, a CIT-trained officer. Moreover, NE#1 and NE#2 spent a significant amount of time—about thirteen minutes—speaking with witnesses, engaging with the Complainant, and attempting to establish rapport. While engaging with the Complainant, the officers used space by standing at a distance from the Complainant. NE#2 asked the Complainant to back away from him rather than going hands-on, to avoid the potential escalation of the situation.

Ultimately, further de-escalation efforts became unfeasible when the Complainant tried to walk away. The named employees had already determined the Complainant needed to be detained under the Involuntary Treatment Act based on his risk of harm to himself or others. The Complainant exhibited disorderly and disruptive behavior and appeared out of touch with reality. Also, the Complainant exhibited physically threatening and aggressive behavior towards others. The named employees were waiting for an ambulance to transport the Complainant to the hospital and had received a supervisor's approval for the ITA detention. It would not have been safe for the named employees to allow the Complainant to walk away. The named employees then worked together to detain the Complainant using de minimis force³ that was categorized as a Type I only due to the Complainant's articulation of pain.

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

Recommended Finding: **Not Sustained - Unfounded**

³ De minimis force is "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." SPD Interim Policy 8.050. Examples of de minimis force include control holds or using hands to stop, push back, separate, or escort a person without causing pain. *See id.*



Named Employee #2 - Allegation #1

8.100 - De-Escalation, 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De Escalation Tactics...

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #3 - Allegation #1

8.100 - De-Escalation, 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De Escalation Tactics...

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

Recommended Finding: **Not Sustained - Unfounded**