



## CLOSED CASE SUMMARY

ISSUED DATE: JULY 1, 2024

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

CASE NUMBER: 2023OPA-0530

### 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 (Effective April 24, 2023)	Not Sustained - Lawful and Proper
# 2	6.150 – Advising Persons of Miranda and the Right to Counsel, 6.150-POL-1 Advising Miranda Rights, 2. Miranda Warnings Must Precede Custodial Interview	Not Sustained - Training Referral

*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) arrested Community Member #1 (CM#1) for obstructing a public officer and possession of a stolen vehicle. CM#1 alleged that NE#1 used excessive force during the arrest. It was also alleged that NE#1 failed to Mirandize CM#1 before questioning CM#1.

### ADMINISTRATIVE NOTE:

On June 11, 2024, the Office of Inspector General certified OPA's investigation as thorough, timely, and objective.

### SUMMARY OF INVESTIGATION:

#### A. OPA Complaint

On December 11, 2023, the Complainant—an acting sergeant when the complaint was made—submitted an OPA complaint, writing that CM#1 reported that NE#1 injured his finger<sup>1</sup> when NE#1 tackled him.

OPA investigated the complaint, reviewing the incident report, body-worn video (BWV), and a photograph of CM#1's right hand. OPA also interviewed NE#1. OPA was unable to contact the Complainant for an interview.

<sup>1</sup> CM#1 told the Complainant his finger was "jammed" when NE#1 "tackled" him. CM#1 stated his finger was not broken. The Complainant first observed CM#1's finger was "bent at the tip but not bruised, scraped or swollen." The Complainant opined it "appeared as if [the Complainant's finger] had a previous injury that had improperly healed." The Complainant wrote that when she was speaking with CM#1 later, she observed his finger was "straightened out and no longer bent."



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**B. Incident Report**

NE#1's incident report documented that NE#1 was on routine patrol in an area known for stolen vehicles. NE#1 wrote that he spotted CM#1 driving a vehicle. NE#1 ran the vehicle's license plate and discovered that it was not reported stolen at the time. NE#1 wrote that CM#1 exited the vehicle and walked away. NE#1 visually inspected the vehicle and saw the ignition was disassembled—a "strong indicator" of a stolen vehicle. NE#1 wrote that he followed CM#1 in his patrol vehicle until a backup officer arrived to effect an arrest.

**C. Body-Worn Video (BWV)**

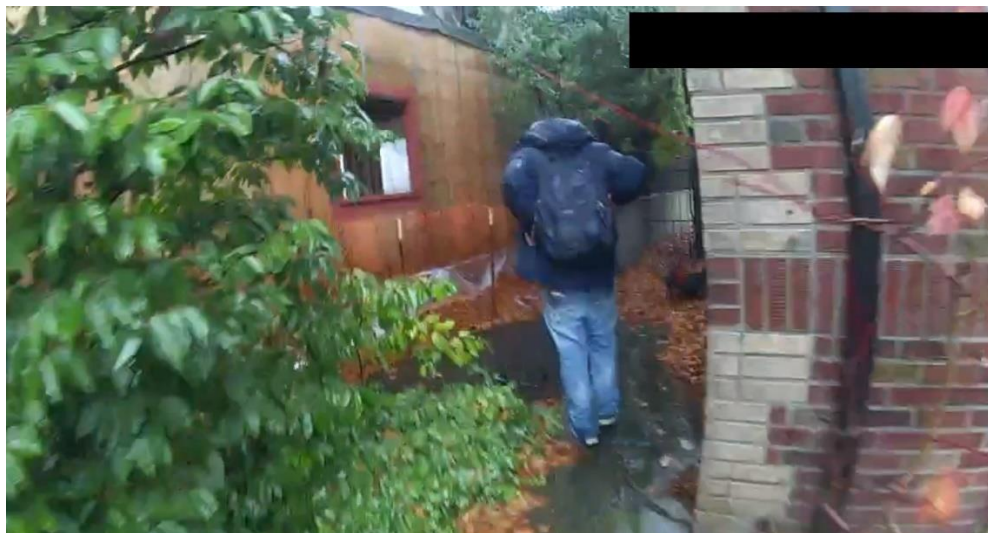
NE#1's BWV captured the following:

NE#1 exited his patrol vehicle and shouted at CM#1, "Hey, Seattle police! Stop! Get your hands out of your pocket now!" CM#1 walked toward a house. NE#1 shouted, "Do not move! Seattle police! Stop! You are not free to go! Stop!"

NE#1 ran toward CM#1, who raised his hands but continued walking toward the side of the house.



As NE#1 approached CM#1, CM#1 lowered his hands and appeared to place them in his jacket pockets.



NE#1 shouted, "Get your hands out of your fucking pockets!" Immediately before NE#1 physically contacted CM#1, CM#1 raised his left hand. CM#1's right hand was not visible.





NE#1 brought CM#1 to the ground.<sup>2</sup> NE#1 and a backup officer handcuffed CM#1 on his stomach. NE#1 and the backup officer rolled CM#1 to his side. NE#1 and CM#1 had the following exchange:

CM#1: *I wasn't sure if you were talking to me or not.*  
NE#1: *Of course we were talking to you. You're the only person out here.*  
...  
NE#1: *So, the reason I stopped you was because you got out of what looks like a stolen Hyundai at [address]. I saw you do it. I saw you drive it. I saw ignition damage on the car, and I followed you for like five blocks.*  
CM#1: *[Inaudible] saw me do it? You saw me do what?*  
NE#1: *You got out of the driver's seat of a stolen vehicle.*  
...  
NE#1: *Alright. We're going to stand you up and take you to a car. You good?*  
CM#1: *[Inaudible] what do you mean I – you saw me get out of a stolen car? I don't understand you.*  
NE#1: *So, Hyundais are stolen all day, every day.*  
CM#1: *Okay.*  
NE#1: *Okay? The Hyundai you got out of, that I saw you driving, has heavy ignition damage.*  
CM#1: *I was not driving a Hyundai.*  
NE#1: *You were. Don't lie to me. Don't fucking lie.*  
CM#1: *Sir...*  
NE#1: *No. Don't lie. I watched you with my eyeballs, and it's on camera.*

*[NE#1 and a backup officer stood CM#1 and began escorting him to a patrol vehicle.]*

NE#1: *Where were you going back here, dude? Is this your house?*  
CM#1: *No, I was...*  
NE#1: *Okay, then what were you doing?*  
CM#1: *I was scared of you all, man. Hey, I promise you. See how wet I am? I didn't get out of...*  
NE#1: *Look how wet I am!*  
CM#1: *I didn't get out of a Hyundai.*  
NE#1: *You're wet 'cause I tackled you onto the wet ground.*  
CM#1: *[Inaudible] out of a Hyundai, dude.*  
NE#1: *You did. I watched you do it, dude. Stop lying. I watched you do it. I saw you driving the car. I said, "Oh, look. That looks pretty juicy to me." And then I turned around and I saw you driving it. And then you got out of it.*  
CM#1: *How do you know that was me? I wasn't driving it.*  
NE#1: *I looked at you. Same hat, same face.*  
CM#1: *No, man. I didn't steal no car, bro. I didn't steal a car, sir. Please could we talk for a second, man?*

<sup>2</sup> In his OPA interview, NE#1 said he tackled CM#1 using a body wrap. BWV did not capture this takedown because of its proximity to CM#1. Additionally, the BWV of a backup officer, who assisted NE#1 with handcuffing CM#1, did not capture the takedown.



CM#1 arrived at the front of a patrol vehicle. NE#1 briefed backup officers. NE#1 asked CM#1 for his name, and CM#1 provided it. NE#1 Mirandized CM#1.

#### **D. OPA Interview**

On April 9, 2024, OPA interviewed NE#1. NE#1 said he was experienced in investigating stolen vehicles. NE#1 expressed concern about citizens' safety and losing site of CM#1 when CM#1 walked toward the backyard of a house. NE#1 said people who steal vehicles usually carry weapons. NE#1 said CM#1 briefly raised his hands but lowered them and continued walking away, electing to ignore NE#1. NE#1 said he saw CM#1 raise his left hand but could not see his right hand, which could have drawn a weapon from his waistband area or pocket. NE#1 said his decision to quickly tackle CM#1 was motivated by safety concerns. NE#1 said he utilized a full body wrap when taking down CM#1 to minimize NE#1's exposure to a weapon.

NE#1 said he explained his reasons for stopping CM#1, which NE#1 said was a way to de-escalate a situation. NE#1 denied intending to question CM#1 before Mirandizing him. NE#1 said the best place to Mirandize a suspect is in front of a patrol vehicle where the *Miranda* warning would be recorded. NE#1 expressed concern his BWV may have deactivated upon tackling CM#1. NE#1 said he communicated his observations to CM#1 but denied questioning him. NE#1 said CM#1's responses were not admissions since CM#1 denied stealing a vehicle. NE#1 claimed he would have Mirandized CM#1 if CM#1 began admitting to stealing the vehicle.

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

##### **Named Employee #1 – Allegation #1**

##### ***8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)***

CM#1 alleged that NE#1 used excessive force during CM#1's arrest.

Officers will only use objectively reasonable, necessary, and proportional force to the threat or urgency of the situation to achieve a law enforcement objective while protecting the life and safety of all persons. SPD Interim Policy 8.200(1) (effective April 24, 2023). Reasonability must consider that officers are often forced to make split-second decisions about the force necessary in a particular situation in tense, uncertain, dynamic, and rapidly evolving circumstances. *Id.* The question is whether the officers' actions were objectively reasonable considering the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Id.* Several factors should be weighed when evaluating reasonableness. *See id.* Force is necessary under the totality of the circumstances when there is no reasonably effective alternative to using physical or deadly force, and the type and amount of physical or deadly force used is a reasonable and proportional response to effect the legal purpose intended or to protect against the threat posed to the officer or others. SPD Interim Policy 8.050 (effective May 19, 2023). A proportional use of force must reflect the totality of circumstances surrounding the situation, including the nature and immediacy of any threats posed to officers and others. *Id.* Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied. *Id.*

NE#1's use of force was objectively reasonable, necessary, and proportional. First, NE#1's use of force was objectively reasonable since CM#1 was noncompliant. CM#1 repeatedly ignored NE#1's orders to stop. Also, even though CM#1 raised his hands while walking away, CM#1 placed them back in his jacket pockets as NE#1 approached, heightening





NE#1's concern that CM#1 was drawing a weapon. Immediately before NE#1 tackled CM#1, CM#1's right hand was not visible and could have grasped a weapon. According to NE#1, people who steal vehicles are often armed with weapons, so it was reasonable under these circumstances to assume that CM#1 was armed. NE#1 utilized his training when he tackled CM#1 using a full body wrap, minimizing NE#1's exposure to a weapon. Second, NE#1's use of force was necessary since there was no reasonably effective alternative to force. Verbal commands were ineffective, and CM#1 placed his hands in his jacket pockets. NE#1 was motivated to protect himself and nearby citizens, so his takedown was necessary. Third, NE#1's use of force was proportional, given CM#1's noncompliance. NE#1 applied relatively low-level force to prevent CM#1 from leaving or using a weapon. Therefore, OPA finds based on the evidence provided, in review of the totality of the circumstances, by a preponderance of the evidence, that NE#1's use of force was objectively reasonable, necessary, and proportional under the circumstances.

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

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

#### **Named Employee #1 – Allegation #2**

#### ***6.150 – Advising Persons of Miranda and the Right to Counsel, 6.150-POL-1 Advising Miranda Rights, 2. Miranda Warnings Must Precede Custodial Interview***

It was alleged that NE#1 failed to Mirandize CM#1 before questioning him.

Sworn employees must give *Miranda* warnings before questioning a person who is in custody. SPD Policy 6.150-POL-1(2). Custodial interrogation means “express questioning or other actions or words by a law enforcement officer which are reasonably likely to elicit an incriminating response from an individual and occurs when reasonable individuals in the same circumstances would consider themselves in custody.” RCW 10.122.020(1).

CM#1 was in custody after he was handcuffed. NE#1 spoke with CM#1 for roughly two minutes before NE#1 Mirandized CM#1. Whether that conversation constituted interrogation within the meaning of RCW 10.122.020(1) is unclear. On one side, NE#1 did not ask CM#1 any questions about the stolen vehicle. Although NE#1 asked CM#1 where he was going, whether he owned the house, and what he was doing there, these questions were not directly related to the crime NE#1 was investigating. Most of NE#1's comments reflected his observations and reasons for arresting CM#1. See SPD Policy 6.010-POL-2 (when taking a suspect into custody, officers are required to “state the reason for the arrest, as early as practical”). NE#1 repeatedly announced seeing CM#1 drive and exit a stolen vehicle and saw ignition damage to the car. On the other side, the definition for custodial interrogation is broader than express questioning. It also includes “actions or words by a law enforcement officer which are *reasonably likely to elicit an incriminating response* from an individual.” (emphasis added). NE#1's comments could reasonably have elicited an incriminating response from CM#1. Although CM#1 repeatedly denied NE#1's claims, CM#1 could also have made incriminating statements. While NE#1 claimed he would have Mirandized CM#1 had CM#1 admitted guilt, such a *Miranda* warning would have been arguably untimely, and any admission would have been possibly suppressed. Finally, NE#1's statement that “I watched you with my eyeballs, and it's on camera” could have elicited an incriminating response from CM#1. NE#1's comments during the roughly two-minute conversation may have constituted custodial interrogation within the meaning of RCW 10.122.020(1).

To avoid untimely *Miranda* concerns, NE#1 should have either Mirandized CM#1 immediately after CM#1 was handcuffed or refrained from any actions or words that could reasonably elicit an incriminating response before he



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could Mirandize CM#1. Though NE#1 expressed concern that his BWV may have been deactivated from tackling CM#1, a backup officer was with NE#1 during CM#1's handcuffing. A *Miranda* warning could have been captured on that officer's BWV. Moreover, NE#1 could always repeat the warnings when he was sure they were being recorded. Ultimately, NE#1 did read CM#1 *Miranda* warnings shortly after effecting the arrest. Additionally, NE#1 has no prior sustained findings or training referrals related to providing *Miranda* warnings. Based on the evidence provided, in review of the totality of the circumstances, OPA finds that given the delay before mirandizing, NE#1 could benefit from additional training and counseling on this policy.

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1, review SPD Policy 6.150-POL-1(2) with NE#1, and provide any other training and counseling it deems necessary. Any retraining and counseling should be documented and maintained in Blue Team.

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