



City of Seattle

Seattle Police Department

June 20, 2018

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RE: OPA Case No. OPA 2017-0859

Dear Mayor Durkan and Council President Harrell:

As required under the Seattle Municipal Code, I provide this written statement to explain my decision to change OPA's finding of "Sustained" to "Not Sustained—Lawful and Proper" in the matter investigated under OPA 2017-0859. The underlying incident in this case involves an officer's decision to "bear hug" a man carrying an ice axe down the street instead of continuing de-escalation tactics that to this point had been demonstrably ineffective. My decision is based on the reasons stated below and my analysis under the facts presented in this particular case.

FACTUAL SUMMARY

On August 21, 2017, two Department officers were flagged down regarding a robbery that occurred in the downtown/South Lake Union REI store. The suspect in the robbery reportedly stole several items, including an ice axe. As he was leaving the store, the man allegedly threatened a store employee with the axe.

The officers located the suspect walking away from REI. They began following the man, identified themselves as Seattle Police officers, and ordered him to drop the ice axe. Backing officers arrived, and all officers continued to follow the suspect, repeatedly ordering him to drop the axe. The suspect periodically turned around to face them, but he did not speak or stop. At times, he waved the ice axe in the air.

By the time the officer named in the OPA investigation¹ arrived at the scene, other officers had been following the man for several blocks. Those officers had updated the man's location and actions on radio, which was broadcast to other officers nearby. The named officer stopped his patrol car in a nearby intersection, waved away pedestrians in the area, and joined the other officers. At that point, the suspect entered a construction tunnel that had walls on both sides, had his back turned to officers, and was holding the ice axe to his side, with the edge at his legs. Considering the confined space a tactical advantage and seeing an opportunity, the named officer ran behind the suspect, placed him in a bear-hug, and pushed him up against one of the tunnel walls. The suspect then dropped the axe and was placed under arrest. Neither the suspect nor any officers were injured.

CHAIN OF COMMAND AND OPA REVIEW OF FORCE

The use of force is among the most serious actions that any law enforcement officer can take. Force used by officers is of significant concern to the community and the Seattle Police Department, and critical and careful review of the use of force and surrounding tactics is among the highest of the Department's responsibilities to the community. The force review process is vital to the Department's mission and one that I, and the Department, take extremely seriously.

After screening the video of the incident, the named officer's sergeant flagged concerns about whether the named officer's conduct was consistent with the Department's de-escalation policy. The sergeant reviewed the video with the named officer's lieutenant, who shared those concerns. At the lieutenant's direction, the matter was referred to OPA. That is precisely how the force review system is designed to work, and I commend the officer's supervisors for ensuring that this use of force was fully and fairly reviewed and evaluated.

After a full and fair investigation, OPA determined that the officer's actions violated the Department's policy on de-escalation and recommended that the allegations referred by the officer's chain be sustained.

I have reviewed the record in this case thoroughly, including OPA's investigation, officer statements, and available video. I have taken into consideration the statements made during the *Loudermill* meeting with the officer and my own experience as a law enforcement officer. I also met with the Director of the OPA to hear his concerns directly. My disagreement with the OPA Director should not be viewed as any criticism of the OPA investigation or the Director's analysis, but rather reflective of the reality that reasonable minds may differ in applying policy to facts that develop in dynamic circumstances.

¹ SMC 3.28.812 and 3.29.135 (D) direct that this letter not contain the name of the subject employee or any personal information.

THE DEPARTMENT'S DE-ESCALATION POLICY

The Department's de-escalation policy (8.100) states:

1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance. (See [Section 8.050](#).)

The policy notes that an officer shall consider reasons that an individual may not be responding to de-escalation efforts and balance those reasons "against the facts of the incident facing the officer when deciding which tactical options are the most appropriate to bring the situation to a safe resolution."

I find that the officer's actions were consistent with the de-escalation policy for three primary reasons. First, under these facts, the law enforcement priorities of protecting the public and taking an armed robbery subject into custody justified the discontinuation of de-escalation efforts and intervening before the subject reached a high-pedestrian area. Second, the physical environment at the time the officer used force presented tactical advantages. Third, when balanced against these tactical and public safety priorities in flux, there was little reason to believe that further de-escalation would be anything other than futile.

A. Significant Public Safety Concerns Justified Moving from De-escalation to Low-level Force

Prior to any use of force, officers had attempted substantial de-escalation efforts over time. They had issued numerous verbal warnings, called additional officers to the scene, and sought to use time and distance to bring the incident to resolution without force. The suspect showed no indication of responding to officers' continued attempts to engage; his only action was to raise or wave the axe. As officers continued to undertake de-escalation efforts, this suspect, who had allegedly threatened a store employee during a robbery, was walking towards a dense area near downtown (Eastlake), around the lunch hour, when heavy pedestrian traffic would be reasonably anticipated. I believe a reasonable officer would be concerned that the suspect's actions placed the safety of the public at risk.

By policy, de-escalation is not required where law enforcement priorities will be compromised. A law enforcement priority here was to stop an individual from endangering lives of the public by continuing to wander in an uncontained public space while carrying, and occasionally waving, a weapon. One of the officers on scene explained:

If we can't get something contained, there's not a lot of other resources we can use to try slowing the scene down. And it was my belief that we couldn't just let him keep walking all over downtown until he finally does decide to swing it at somebody. Like I said, he already passed numerous other citizens that for

whatever reason didn't perceive it to be a threat and there were several times where I had to scream at people to get out of the way for fear that he may swing it at them and strike them and then we're required to take a higher level of, of action or force.

Under these circumstances, I find that the foundational law enforcement priority of ensuring the public's safety was paramount.

B. Tactical Advantages Justified Using Low-Level Force at the Time it was Applied

At the time the named officer moved to go hands-on with the suspect, the suspect was in an enclosed space (construction walkway with barriers on both sides), which contained and separated him from members of the public, and thus presented a tactical opportunity. Other officers were available to provide cover. At the time the named officer made his decision to act, the suspect was facing away from him, and had the ice axe down by his side. The officer was able to run from behind him and embrace him in a bear hug so he could not raise the axe, and he was brought into custody without injury.

The Department's de-escalation policy is intended to balance the opportunity to utilize de-escalation efforts "against the facts of the incident facing the officer when deciding which tactical options are the most appropriate to bring the situation to a safe resolution." The policy recognizes that officers may consider and take advantage of tactical opportunities that will help bring a situation to a safe resolution. Here, such a tactical advantage existed due to the physical surroundings of this armed individual. As such, I find the officer's use of force in these circumstances to be consistent with the Department's de-escalation policy.

C. Significant De-escalation Efforts Had Been Ineffective

Officers had repeatedly attempted to de-escalate the situation and bring it to a safe resolution without any use of force. The individual was not responding to officers' efforts or engaging with them. Again, officers had been following the individual for several blocks, asking him to drop the weapon, and attempting to engage him. They warned him that he may be Tased. They attempted to make verbal contact. Based on the individual's refusal or inability to engage to this point, I have no reason to believe that he would have responded to further de-escalation.

CONCLUSION

For the above reasons, I disagree with OPA's application of the facts of this case to Department policy. I find that the officer's actions were consistent with the Department's De-escalation policy. I am therefore changing the recommended Sustained finding for violation of the Department's De-escalation policy to Not Sustained (Lawful and Proper).

Please let me know if you have additional questions.

Sincerely,



Carmen Best
Interim Chief of Police

cc: Sally Bagshaw, District 7
Lisa Herbold, District 1
Rob Johnson, District 4
Debora Juarez, District 5
Teresa Mosqueda, Position 8
Mike O'Brien, District 6
Kshama Sawant, District 3
File