



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 6, 2018

CASE NUMBER: 2017OPA-1059

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Sustained
# 3	8.200 - Using Force 4. Use of Deadly Force	Sustained
# 4	8.200 - Using Force 5. Deadly Force May Be Used to Prevent the Escape of a Fleeing Suspect Only When an Objectively Reasonable Officer Would Believe That it Is Necessary and [...]	Sustained
# 5	8.300-POL-4 Use of Force - FIREARMS 8. Officers Shall Not Fire at or From a Moving Vehicle	Sustained
# 6	5.001 - Standards and Duties 5. Employees May Use Discretion	Sustained
# 7	8.100 - De-Escalation 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	Sustained

Imposed Discipline

Termination

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Sustained
# 3	8.200 - Using Force 4. Use of Deadly Force	Sustained
# 4	8.200 - Using Force 5. Deadly Force May Be Used to Prevent the Escape of a Fleeing Suspect Only When an Objectively Reasonable Officer Would Believe That it Is Necessary and [...]	Sustained
# 5	8.300-POL-4 Use of Force - FIREARMS 8. Officers Shall Not Fire at or From a Moving Vehicle	Sustained
# 6	5.001 - Standards and Duties 5. Employees May Use Discretion	Sustained

Imposed Discipline

Termination

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 and two witness officers responded to a suspicious vehicle call in the alley behind a building. As the officers approached the subject car, at least two persons got inside. Named Employee #1 stepped in front of the vehicle and the vehicle moved forward. Named Employee #2 ran towards the vehicle and fired her handgun into the driver's side window. Named Employee #1 moved to the side of the vehicle and fired his rifle, also at the driver's side window area. Both Named Employees fired multiple rounds in this first volley. The vehicle crashed into a wall of a building and then started driving away again. The Named Employees fired multiple additional rounds at the vehicle as it drove away. There were three passengers in the vehicle at the time. These actions by the Named Employees appeared to be potentially in violation of Department policy and law.

STATEMENT OF FACTS:

A. Facts Preceding the Use of Force

On October 8, 2017, a civilian witness called 911 to report what he perceived to be suspicious activity that was being engaged in by several individuals that were in and around a parked car. This car was situated in the alley just west of (and behind) his apartment building. He stated that the occupants, who he identified as two white men, were smoking out of a glass pipe. He stated that a third white male had run from the car, but he later told the dispatcher that this individual had returned to the scene. When the dispatcher asked the witness whether he observed any weapons, he stated: "well actually, this is sort of funny. What caught my attention is I thought I saw the one in the front seat loading and unloading a .38." He later said, however, that he could not be sure if it was a gun. He said that it could have been a phone. He also stated that one of the other males had what appeared to be a six-inch knife or a screwdriver in his hand. Later in the call, he identified that one of the passengers who he believed was a male was actually a woman. He remained on the phone with 911 until the officers arrived at the scene and the eventual shooting occurred.

Named Employee #1 (NE#1) and Witness Officer #1 were partners and were riding together in the same patrol vehicle. They heard the radio transmissions and responded to the location. The license plate that was provided for the subject car was the same as that for a potentially stolen vehicle that had fled from them two nights earlier. This incident, which was not reported by either officer, was investigated in a separate OPA case (2017OPA-1101).

Named Employee #2 (NE#2) and Witness Officer #2 were partners and riding together in the same patrol vehicle. NE#2 and Witness Officer #2 offered to back NE#1 and Witness Officer #1 in their response to the alley. Both NE#2 and Witness Officer #2 were aware that the subject vehicle had previously fled from NE#1 and Witness Officer #1.

As the officers proceeded to the location of the subject car, they received updates from the dispatcher and on their Mobile Data Terminal (MDT) systems. The officers were informed that the car's occupants were potentially using drugs and that a witness believed that he had seen one individual loading and unloading a firearm. The call was updated to make clear that the witness was unsure whether the individual actually had a gun.

NE#1 and Witness Officer #1 drove down the alley. They eventually neared the subject car and used their spotlight to illuminate it. NE#2 and Witness Officer #2 were driving behind them. At that time, another officer radioed regarding these officers' location. However, this other officer was not informed of their location, even after the officers found the subject car. When the officers neared the car, the subject's mother was in front of the car and the hood of the car



was raised. She ran around the side of the car and the subject came to the front of the car. He lowered the hood and then ran around to the driver's side. At this point the officers approached the car, setting in motion the incidents that led to the shooting.

B. The Use of Force and Aftermath

The officers' response to this incident was captured by both In-Car Video (ICV) and Body Worn Video (BWV). The clearest and most relevant recordings are NE#1's and Witness Officer #1's front ICV and the BWV for both NE#1 and NE#2.

The video depicts the officers' search for the car and shows the instant when they locate it. The patrol vehicle stops, the doors open and close, and NE#1, who is armed with an AR-15 rifle, runs up towards the car. NE#1 and Witness Officer #1 can be heard saying "Seattle Police" and "stop." NE#1 runs directly in front of the car with his rifle pointed towards the front windshield. NE#2 is seen running towards the car from NE#1's back right. NE#2 is armed with a handgun. When NE#1 is approximately a foot away from the front of the car and approximately one second after he arrived at that location, the car juts out, stops, and then pulls out and to the right (northbound). When the car initially juts out, NE#1 places his left hand on the front hood. As it pulls out and starts driving north up the alley, he steps around the left side of the car. The car does not appear to make contact with any other part of NE#1's body. At this point, NE#1 and NE#2 fire multiple rounds into the driver's side window of the car, shattering the glass. As the car pulls by them to the north, they fire multiple additional rounds into the left side and rear of the car. The car then crashes into the cement wall of an apartment building. The Named Employees cease shooting at that point. The car stops for a moment and then the back lights illuminate. It reverses for an instant and then comes again to a full stop. The car then pulls forward driving northbound down the alley to the intersection. As the car drives away, the Named Employees both fire multiple rounds into the rear of the car. The officers run back towards their vehicles and drive in pursuit of the car.

NE#1 fired his AR-15 16 times in total. NE#2 fired her handgun 11 times in total. The timing between the first and last shot of the first volley was 2.432 seconds. The timing between the last shot of the first volley and the first shot of the second volley was 3.76 seconds. The timing between the first and last shots of the second volley was 2.209 seconds.

As discussed above, as the shooting unfolded, the civilian witness who had initially called 911 remained on the line with the dispatcher. During the call, the witness said that the subject "tried to run over the policeman." He then told the dispatcher that "the cops are shooting at them with rifles." He also stated that the car "ran into the building" and that he "guess[ed] that they got away." He opined that the "officers fired close to 20 shots."

After they were unable to find the vehicle, the involved officers returned to the scene. Other officers, including supervisors, then responded. In addition, given that the officers had discharged their weapons, the Department's Force Investigation Team (FIT) rolled out to the scene to investigate the force. FIT performed a preliminary investigation, including identifying evidence and doing walkthroughs at the scene with the involved officers. Both NE#1 and NE#2 received *Garrity* warnings at their attorney's request prior to doing the walkthrough. Video of the incident was collected and was reviewed by FIT and OPA representatives at the FIT office.



Several days after the incident, on October 13, 2017, the subject and the subject's mother were arrested in Everett, Washington. The subject had two gunshot wounds to his back and the subject's mother had shrapnel wounds to her leg. The third occupant of the car was not located.

C. Criminal Referral, Investigation, and Decline Notice

After the video of the incident was reviewed, it was determined collectively by FIT and OPA that the Named Employees had engaged in potential serious misconduct. As a result, this matter was referred to OPA by the former FIT Captain. OPA, in consultation with SPD command staff, then referred this matter for criminal investigation.

The shooting was investigated by SPD's Homicide Unit. The assigned criminal investigator scheduled interviews of the Named Employees on October 9, 2017. On that day, their representative from the Seattle Police Officer's Guild (the "Guild") requested that the Named Employees be provided with *Garrity* warnings. A lieutenant assigned to the Homicide Unit did so. The Named Employees' interviews were rescheduled for the following day. When the Named Employees returned, they were read Miranda warnings and, during their recorded interviews, both declined to answer any questions regarding this case and their conduct.

The criminal investigator reviewed the statements that had been previously generated and then conducted recorded interviews of Witness Officer #1 and Witness Officer #2. The criminal investigator also reviewed the 911 calls concerning the incident and decided to interview the civilian witness who had called 911 and recounted observing the shooting.

The criminal investigator also interviewed the subject and the subject's mother. The subject stated that he was shot but would not answer any further questions (he purportedly told the interviewing officers "go fuck yourself") and requested a lawyer. The subject's mother answered several questions that placed her at the scene and in the subject vehicle. She stated that there was a third person in the vehicle, but she did not provide the identity of that person. She indicated, however, that this third person was not injured or deceased. She then requested an attorney and the interview was terminated.

The criminal investigator completed his investigation and provided it to the Assistant Chief for Investigations on October 16, 2017. The case file was then provided to the King County Prosecuting Attorney's Office (KCPAO) for review. On October 19, 2017, the KCPAO Criminal Chief sent email to SPD's Senior Legal Counsel that constituted a "decline to file any criminal charges."

D. FIT Investigation

On October 23, 2017, given the decline by the KCPAO, the former FIT Captain ordered that the FIT investigation proceed and that the assigned detectives go forward with interviews.

FIT interviewed NE#1 twice and NE#2, Witness Officer #1, and Witness Officer #2 once. FIT also obtained statements from a number of other officers (some written and some emailed) concerning their involvement in the case. None of these officers possessed any firsthand knowledge of the incident.



FIT also interviewed six civilians that FIT deemed “primary witnesses” to the shooting, 39 civilians that were deemed “secondary witnesses,” and eight civilians that were deemed “non witnesses.” Of note, three of the civilians raised concerns with the shooting and, particularly, with the number of shots fired by the Named Employees. All three were included as Complainants in this case.

FIT interviewed the civilian witness who initially called 911. This witness said that he observed three individuals in and around the car, including the subject, the subject’s mother, and another white male passenger. The witness said that this second male was the individual who he believed was handling a firearm. The witness further described seeing the individuals smoking from a “meth pipe.” The witness recounted seeing the officers approach the car and that the subject then “floored it and stepped on the gas” and NE#1 jumped to the right. He then saw the officers start firing. He heard approximately 20 shots before the car drove out of the alley. In an email to a FIT detective, the witness stated that: “with all the upset about the shooting I was probably the closest bystander and I never felt danger from the officers [sic] actions, felt no need to drop to the floor. The officers looked very professional and in control. The actual shooting was focused and contained.”

The subject also agreed to an interview with FIT. That interview occurred on December 18, 2017. The subject told FIT that he was frightened when he saw the police approach his car. He did not want to be arrested and intended on fleeing. When he saw NE#1 pointing a rifle at his face, he pulled the car forward “just a couple inches.” He stated that his intent was to get NE#1 to move out of the way, not to harm anyone. When NE#1 did move back and out of the way, the subject said that he pulled past him. He then heard gunshots and he ducked his head. He stated that he ran into the wall and no longer heard gunshots. He then put the car in drive and moved forward. The subject stated that while there were drugs in the car, none of the occupants had a firearm. He stated that he was shot twice in his back and his mother had shrapnel in her legs. He told FIT that they should not be worried about injuries to anyone else that might have been in the car.

FIT retained a forensic video expert to perform an analysis of the involved officers’ video. That analysis was completed on February 9, 2018, and the final FIT investigatory file was submitted to the Force Review Unit on that same day.

E. FRB Proceedings

On March 6, 2018, this matter was reviewed by the Department’s Force Review Board (FRB). FRB was generally limited to a review of the officers’ tactics and decision-making given that the force had already been referred to OPA for investigation. FRB did, however, evaluate NE#1’s potential failure to de-escalate this matter, as this was not one of the allegations initially referred to OPA.

FRB, which is comprised of representatives from Patrol, Investigations, the Audit Policy and Research Section, and the Crisis Response Team, found that the tactics employed by all of the involved officers were inconsistent with the Department’s training and expectations. With regard to NE#1, the FRB further found that he failed to de-escalate this matter prior to using force and that his tactics increased the need to use force in this case. The FRB referred their finding concerning this failure to de-escalate to OPA and this allegation was added to OPA’s investigation. OPA sent NE#1 new five-day and 30-day notices, as well as a new five-day interview notice. NE#1 was re-interviewed concerning this newly added allegation.

The final version of FRB’s findings had not been issued as of the submittal of this Director’s Certification Memo.



F. OPA Investigation

OPA's investigation, like the FIT investigation, commenced after the KCPAO declined to prosecute the Named Employees.

During its investigation, OPA interviewed NE#1 twice, and NE#2, Witness Officer #1, and Witness Officer #2 once. OPA reviewed the criminal investigation conducted by SPD, as well as FIT's investigation. OPA was also present during the FRB concerning this matter.

OPA reviewed all of the video generated by the involved officers – including BWV and ICV, the audio of the 911 calls and dispatches, and reviewed all of the documents generated as a result of the investigations into this matter.

1. Named Employee #1

NE#1 told OPA that he had been trained in high-risk vehicle stops. He stated that he was aware of the appropriate tactics to use in such scenarios. NE#1 agreed that while real-world situations were different than trained ones, he was expected to consistently apply the training that he was given. He explained that he was trained that, when performing a high-risk stop, the officers should place themselves in a position of cover and give the occupants orders to exit the vehicle. When they had all exited, the officers would then move in and secure the car. He stated that a high-risk stop was appropriate for a stolen vehicle. NE#1 stated that, prior to this incident, he had engaged in high-risk stops, but none as the primary officer. NE#1 said that there was not a scenario in training where an officer ran in front of the subject vehicle. NE#1 agreed that, under the circumstances of this case, the subject vehicle was high-risk for a number of reasons. NE#1 stated that he had gone to rifle school. He was taught to use cover and to use his rifle to create distance or "stand-off distance." NE#1 stated that he was never trained to run in front of a car with his rifle.

NE#1 recalled that he and Witness Officer #1 responded to a call concerning a stolen vehicle and a possible handgun. NE#1 did not recall whether he was aware of the call update that indicated that the civilian witness had not seen the gun for 15 minutes and was not sure that it was actually a gun. NE#1 also stated that he did not consider whether the occupant of the car was lawfully in possession of the firearm, even though he conceded that it was possible. NE#1 felt that this was a "serious" situation from the inception; however, aside from the vehicle containing NE#2 and Witness Officer #2, he did not call for any additional resources or notify a supervisor before attempting to make contact with the car.

NE#1 and Witness Officer #1 quickly determined that this was likely the car that had fled from them two nights before. NE#1 recalled that they drove down the alley and located the car. NE#1 saw the subject close the hood of the car and move around the driver's side. At the point that NE#1 was about to lose sight of the subject, he made the decision to advance towards the vehicle. NE#1 said that there were pros and cons of this tactical decision. The pro was that he had greater visibility of the occupants of the vehicle. The con was that he was right in front of them if they had a gun.

NE#1 explained that the officers responded quickly based on the perceived exigency. He stated that they did not engage in much planning prior to their response and that his normal practice would have been to plan more. NE#1 said that he approached the vehicle in the safest way he thought possible under the circumstances, even though his actions ultimately placed him in an unsafe position. NE#1 was asked whether his instructions to Witness Officer #1 at that time to pull the car up created a crossfire situation. He responded that he did not believe so because he did not



know where Witness Officer #1 was going to go and whether NE#1 would ultimately be between Witness Officer #1 and the subject car. NE#1 said that he did not know what he wanted Witness Officer #1 to do when he gave him that instruction. When NE#1 approached the car, he thought other officers were directly behind him. NE#1 further stated that, based on the circumstances of this case, there was no opportunity to apply time, distance, and shielding. Ultimately, NE#1 stated that he did not have sufficient time and it was not feasible to de-escalate prior to using force. NE#1 stated that once he was in front of the car, it started and he made eye contact with the driver. He was concerned at that point that the driver would run him over. He agreed with OPA that he could have moved south down the alley away from the car. NE#1 stated that it was not feasible to de-escalate prior to when he moved in front of the vehicle. Further, when he was asked whether his actions contributed to the need to use force, NE#1 stated: "I don't know."

NE#1 stated that he was concerned that the car could kill him if it hit him and that he was also concerned that it would again flee. OPA asked NE#1 why, given his concerns, he still put himself directly in front of the car. He stated that because the car's hood was up he did not know whether it would run. In response to that answer, OPA further asked why NE#1 did not try to engage in further containment if he did not think the car could run. NE#1 explained that it was because they were already halfway up the alley at that point.

NE#1 explained that he fired the first volley of shots because he believed that the driver of the car was trying to kill him. NE#1 told OPA that he was targeting the driver with those shots. He stated that he stopped firing when the car crashed into the wall and it was not moving anymore. At that point, NE#1 did not perceive the car to be an imminent threat.

NE#1 said that, after the first volley of shots, he did not seek cover. He stated that, at the time of the second volley of shots, he was behind the car. He explained that the car backed towards him and, had the driver accelerated, it could have caused significant harm to him and the other officers. He stated that the car then drove forward but still posed a "imminent, exigent threat to the community." NE#1 said that he aimed at the head/upper shoulder area of the subject. NE#1 knew that there was at least one passenger in the car and recalled seeing someone in the front passenger seat. NE#1 thought that all of his rounds went into the vehicle and not northbound into the alley.

2. Named Employee #2

NE#2 explained that she had been trained in high-risk vehicle stops and had performed a number of such stops during her career. She stated that high-risk stops were appropriate for approaching occupied stolen vehicles. She told OPA that, pursuant to training, officers were supposed to coordinate among themselves, give the occupants instructions, and to keep the situation as safe as possible. When feasible, officers were expected to use their vehicles for cover. NE#2 said that she did not receive training where an officer ran out in front of the vehicle that was being stopped.

NE#2 was generally aware that there was a vehicle that had fled from NE#1 and Witness Officer #1 two days prior to this incident. She believed that she learned this at roll call. NE#2 knew that the car they encountered in the alley was the same car that fled from NE#1 and Witness Officer #1, but she was not sure when she knew that.

NE#2 did not recall whether she formulated a plan or discussed tactics with the other officers before approaching the car. She said that the officers did not feel that there was a "need" to do any pre-planning. NE#2 expected that they would perform a high-risk stop, but she said that they were unable to do so because the situation evolved so quickly. She said that what they ultimately performed was an "untraditional" high-risk stop.



NE#2 stated that they only waited seconds before getting out of their vehicles and approaching the car. When asked why she did not use her vehicle for cover or wait for more units to arrive, she told OPA that she was dispatched to deal with a specific threat and to keep the community safe, as well as that she would have been potentially at risk of harm if she stayed in her vehicle. She pointed to the fact that they believed one of the occupants of the car to have a firearm. She further recognized that approximately only 20 seconds elapsed from when she exited her vehicle to when she fired her first shot.

NE#2 stated that, at the time she fired, she believed that NE#1's life was in danger and that he had been hit by the car and was "down." She told OPA that she wanted to prevent him from being "dragged" under the car. While she recognized that this did not occur in reality after watching the video, she claimed to have had "tunnel vision" at the time of the shooting. NE#2 stated that she was aiming at the driver and she did not consider the location of the passenger. NE#2 believed that her justification for her first volley of shots ended when the vehicle crashed into the wall.

With regard to the second volley of shots, NE#2 stated that the subject vehicle had been used as potential lethal force against NE#1 and that the occupants were potentially both high and armed. She stated that she started shooting when the vehicle backed up because she thought it was going to run over her. She recalled that the vehicle backed up several feet. NE#2 stated that she made the decision to fire at that point, but started firing when vehicle pulled away. NE#2 shot the second volley towards the rear of the car and down the alley northbound. NE#2 did not worry about potential pedestrians or vehicles because she was focused on the threat of the subject vehicle. She stated that she targeted the driver at this time.

NE#2 told OPA that she did not think that NE#1's actions created the need for deadly force. She stated that acting "decisively" was preferred to getting ambushed in their vehicle. At the time of the incident, NE#2 did not believe it necessary to have more units at the scene or to engage in containment. She felt comfortable with the team of four that was present at that time. NE#2 did not respond to another officer that had radioed them concerning their location. She further did not feel that it was necessary to call a sergeant to the scene. NE#2 told OPA that even though she was the most senior officer on the scene, she did not take command of the situation. She stated that she thought NE#1 was capable of being the primary officer and had the situation under "control." She stated that she incorporated time, distance, and shielding when she moved forward to get into a better position but that the situation then quickly evolved.

3. Witness Officer #2

Witness Officer #2 told OPA that she responded to the alley with her partner, NE#2. They followed NE#1 and Witness Officer #1 there. Witness Officer #2 stated that she saw NE#1 get out of his patrol vehicle and approach the subject car. She stated that she viewed NE#1 step in front of the car and that the car "then pulled forward and it looked like it was attempting to run over" him. Witness Officer #2 noted that she moved forward and was approximately 10 feet away from the car when NE#1 and NE#2 began firing their weapons. She told OPA that she could not see who or how many people were in the car from her vantage point. She explained that she then saw the vehicle "pull out of the parking space" and begin moving northbound through the alley and that it then drove east. Witness Officer #2 said that she called out "shots fired" over her radio and gave the car's direction of travel. She got back into her patrol vehicle with NE#2 and tried to locate the subject car, but could not do so. They then returned to the scene.



Based on Witness Officer #2's statement, there was no indication that the officers came up with any sort of plan or coordinated tactics prior to contacting the vehicle. She stated that she assumed at the inception of her arrival at the scene that they were going to perform a high-risk vehicle stop of the car. However, this did not occur because, in her description, "everything moved a lot quicker" and "things changed." At her OPA interview, Witness Officer #2 was asked about whether it would have been possible to call for additional units prior to approaching the car or to engage in further containment. She did not have an answer for either inquiry and deferred to the decisions made by NE#1 and NE#2, who were closer to the vehicle. Witness Officer #2 could not explain how the officers engaged in time, distance, and shielding during their response.

Witness Officer #2 recounted that she observed the car "move forward and try to strike" NE#1, "move forward in kind of a haphazardly way, like it was trying to move – flee," and then "continue moving northbound in the alley." She said that "it just looked like they were trying to navigate while officers were firing at them, away from the officers." She recalled seeing the car back up at one point, and described her memory of the car moving "in a haphazardly kind of aggressive manner, just like it was jumping back." She could not say definitively that there were officers in the path of the car when it was backing up.

With regard to the backdrop for the shots fired by the officers, Witness Officer #2 said that the backdrop for the first volley was the "solid cement wall" of an apartment building that abutted the alley. With regard to the backdrop for the second volley, Witness Officer #2 stated that at the north side of the alley was an open street.

4. Witness Officer #1

Witness Officer #1 told OPA that, prior to this incident, he had never attempted or performed a high-risk vehicle stop with NE#1. Witness Officer #1 indicated that the subject car was high-risk, given that it was believed stolen, had fled from them two evenings prior, and because one of the occupants potentially had a weapon. Witness Officer #1 denied ever receiving Department training where he was instructed that an officer should run in front of a vehicle during such a high-risk vehicle stop. He stated that he was trained not to approach the vehicle until he knew that "the vehicle has been essentially cleared."

Witness Officer #1 recounted that he did not perceive the subject car to be an active threat when they approached the alley. He stated that this was the case even though he knew that an occupant of the car could have a firearm. He knew this was the vehicle he had previously chased and he indicated that when he had interacted with the car then, the driver was not violent towards officers and only drove away from them. Witness Officer #1 told OPA that there was no plan discussed between him and NE#1. He stated that he and NE#1 "kind of feed off...each other's motions." When asked whether he considered containment, Witness Officer #1 said "I believe that after the fact it, it ran through my head that, you know, obviously there could have been a better tactical approach..." He further stated that the officers' positioning was poor. He said that they did not call for extra units because "at that point we were already in the alley." Lastly, when asked why they moved as quickly as they did, Witness Officer #1 said that they should not have done so and that there was no hurry.

Prior to exiting his patrol vehicle, Witness Officer #1 thought that they were going to perform a high-risk stop. He then saw NE#1 run towards and up to the vehicle. When NE#1 moved in front of the vehicle, Witness Officer #1 was between five to 10 feet away. He stated that they had not practiced those tactics before and he did not know why



NE#1 did that. When he was asked by OPA whether he believed that NE#1's actions escalated this incident, Witness Officer #1 stated that he could not say for sure. He said, however, that NE#1's actions caused him to believe that there was a need for him to discharge his firearm – even though he did not ultimately do so.

Witness Officer #1 described that they had only been in the alley for a short time before NE#1 got out of the vehicle and ran towards the car. This prevented them from collectively planning how to approach the car. Witness Officer #1 stated his belief that, in hindsight, he should have shouted at NE#1 and called him back. He described seeing that the car “jolted forward” and then he heard the shots. He also saw NE#2 run up and saw the muzzle flashes from her handgun. He said that, at the time the car began moving, he thought NE#1 could possibly be killed. But he stated that “clearly it all could have been avoided if, if things weren't rushed into...” He stated that the backdrop for the first volley of shots was the wall of an apartment building facing onto the alley. The backdrop of the second volley was an open alley facing north into a residential block.

Witness Officer #1 stated that, before watching video of the incident, he was not aware that there were two separate volleys of shots. He did not recall seeing the vehicle back up towards officers. Witness Officer #1 said that, at the time the car hit the wall (after the first volley of shots), he did not perceive it as presenting a threat to him or the other officers that were present. He did think that the subject car presented a threat to the public or other officers that might be responding given that it drove off into a residential neighborhood and because there were bars and restaurants several blocks east. Regardless of this threat, Witness Officer #1 said that he was not going to shoot “because it was a moving vehicle.”

Ultimately, Witness Officer #1 stated his belief that if NE#1 had not placed himself in front of the car, there would have been no risk of being injured or hit. He further opined that if NE#1 had not done so and had NE#2 not engaged in her actions, the force would have been avoided.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

SPD Policy 5.001-POL-2 requires that SPD employees adhere to laws, City policy and Department policy. It further mandates that employees comply with the SPD Manual. (SPD Policy 5.001-POL-2.)

As described more fully herein, I find that the Named Employees' actions violated a host of Department policies. The evidence amassed in this case, as well as the statements given by all of the involved officers, further did not change my initial opinion during the night of the incident that the Named Employees' actions were potentially criminal in nature. With regard to this determination, however, I defer to the KCPAO.

Given that the violations of policy are already captured by the other allegations in this case, it is unnecessary to sustain this allegation based on that same conduct. However, as indicated above, since I still have serious concerns regarding the lawfulness of the Named Employees' conduct and given that it is within the authority of a prosecutor, not OPA, to determine whether the charging and prosecution of the Named Employees is warranted, I recommend that this allegation be Not Sustained – Inconclusive against both Named Employees.



Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #1 - Allegation #2

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

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*) These three factors and my conclusions as to each are outlined below.

When the force at issue is the firing of a weapon, each individual shot fired by an officer must be reasonable, necessary, and proportional to be consistent with policy.

For the purpose of determining whether the force used by NE#1 was consistent with policy, I evaluate the two volleys of shots separately.

A. The First Volley of Shots

1. Reasonableness Factor

Were the subject the only occupant in the vehicle and viewing the facts of this case in the light most favorable to NE#1, the first volley of shots could arguably have been reasonable. NE#1 articulated that, at the time he first shot, he believed that the subject car was trying to run him over and could potentially kill him. The subject was believed to be in possession a stolen vehicle and the occupants of the vehicle were suspected of being high and possibly armed. NE#1 articulated that there was a significant risk of escape and it is undisputed that this was what was occurring at the time of the force. Moreover, NE#1 explained that he had limited time to make the decision concerning whether to initially fire.

However, I cannot deem the shots as being reasonable given that NE#1’s first 12 shots put not just the subject at risk of death, but also the subject’s mother and the unknown occupant. Even presupposing that the subject had attempted to harm or kill NE#1, these other individuals had not. As such, it was unreasonable for NE#1 to fire numerous shots into the car that were directed towards the immediate vicinity of where these individuals were. This is exactly the reason why SPD policy (discussed below) generally precludes officers from shooting into cars and instructs them to instead move out of the way and attempt escape. The risk of harm or death to individuals not posing an immediate threat or to innocent civilians is simply too high. Moreover, at the time he began firing, NE#1 had already moved around the front left of the car and was situated at around the left driver’s side wheel. The car had already turned and was pulling away from him. As such, at this instant, he was not in the direct path of the vehicle. While NE#1 contended that he had already made the decision to shoot, and while this may very well have been the case, this factor coupled with the risk of harm to the occupants convinces me that the force was unreasonable under the totality of the circumstances.



2. Necessary Factor

With regard to whether the first volley of shots was necessary, again viewing the facts in the light most favorable to NE#1 and interpreting his threat assessment as reasonable, he could have believed that there was no reasonable alternative to firing his rifle. Moreover, NE#1 could have further believed that the force he used was warranted and of a degree reasonable to further the lawful goal of preventing the subject from harming or killing him. However, this only applies to the subject. With regard to the other occupants, the force was not necessary.

3. Proportionality Factor

Lastly, with regard to the proportionality of the force, to the extent NE#1 reasonably believed that the subject was trying to seriously harm or kill him with the car, shooting the subject, himself would have been proportional under the circumstances. While NE#1 claimed that he was solely able to target the subject during this incident, from a review of the forensic evidence, I disagree. The other occupants of the car posed no threat to him and thus any deadly force used towards them would not have been proportional under the circumstances.

B. The Second Volley of Shots

Even assuming that the first volley of shots was reasonable, necessary, and proportional, the second volley was clearly outside of policy and inconsistent with the Department's expectations.

1. Reasonableness Factor

First, at the time NE#1 fired the first of the second volley of shots, the subject car was driving away from him northbound down the alley. At that time, the car was not backing towards him. Moreover, even had the car been reversing towards him, he was to the back right of the car and outside of its path.

Second, there was no imminent threat of harm to either NE#1 or any of the other involved officers at that time. NE#1 appeared to concede this at his OPA interview and, instead, pointed to the threat to pedestrians/civilians and other officers that might be responding to the incident. However, as discussed more fully herein, that threat was entirely speculative. There was no concrete evidence that this would occur and certainly not sufficient evidence to warrant firing multiple rounds into the back of a vehicle containing three occupants that was driving away from him.

Third, while the car was still attempting to escape, SPD policy dictated that NE#1 should have allowed the car to do so instead of shooting indiscriminately into the rear. This was particularly the case where there was no imminent threat.

Fourth, contrary to the first volley, NE#1 had sufficient time to decide whether to fire at the moving car. Notably, there were almost four seconds that elapsed from the last shot of the first volley to the first shot of the second volley. NE#1 had enough time to make an informed determination that the car did not pose an imminent threat to his and the other involved officers' safety and to decide not to fire.



For these reasons, I believe the second volley of shots to have been unreasonable.

2. Necessary Factor

With regard to whether the force was necessary, there were other actions that NE#1 could have taken instead of firing the second volley of shots. Most notably, he could have escaped to a position of safety, let the car drive away, called in its description and direction of travel, and other units could have attempted to apprehend it. Even if the subject had not been apprehended on that date, the officers had the car's license plate number and could have tracked it down and made an arrest at a later time. These would have been more effective alternatives. Moreover, as stated above, the force actually used was not a reasonable degree of force and, thus, was unnecessary.

3. Proportionality Factor

Lastly, with regard to the proportionality of the force, the force ultimately applied was not commensurate with the threat facing NE#1 at the time or the speculative threat of harm to others were the subject allowed to drive away. As indicated above, not only was the subject put at risk of serious harm or death, but the occupants, who did not pose an imminent threat of harm to NE#1, were as well. At the time the subject was driving away from the officers down the alley, the force used – multiple rifle shots into the rear of the vehicle – was not proportional to the threat posed by the subject and certainly not proportional to the non-existent threat posed by the other occupants.

For these reasons, the force used by NE#1 was outside of policy and I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

8.200 - Using Force 4. Use of Deadly Force

SPD Policy 8.200-POL-4 governs the use of deadly force by SPD employees. It states that: "Deadly force may only be used in circumstances where threat of deadly or serious physical injury to the officer or others is imminent." The policy defines an imminent danger as when an objectively reasonable officer believes that: (1) "A suspect is acting or threatening to cause death or serious physical injury to the officer or others"; (2) "The suspect has the means or instrumentalities to do so"; and (3) "The suspect has the opportunity and ability to use the means or instrumentalities to cause death or serious physical injury."

As discussed above and below, even presupposing that the first volley of shots by the Named Employees was reasonable, necessary, and proportional, the second volley of shots, fired at the car while it was moving away from them, was outside of policy. Moreover, when the Named Employees fired the second volley of shots they used inappropriate deadly force as there was no imminent threat of deadly or serious physical injury to the officers or others.

First, at the time of the second volley, the car was clearly driving away from the officers. It was not, at that time, backing up towards them. However, even had it been, neither NE#1 nor NE#2 were actually behind the car and were in no danger of being run over. As such, the car did not present an imminent threat of death or serious physical injury to either officer.



Second, the Named Employees' purported belief that the subject car and its occupants could pose a threat to pedestrians and other vehicles was speculative. There was no actual imminent threat that either officer was able to articulate. Notably, perhaps the most significant threat presented to civilians and bystanders that night came from NE#1's actions that added to the need for force and both NE#1 and NE#2 firing shots northbound down the alley and directly into a street of residences.

As such, even if the Named Employees could establish the second and third elements of the test set forth in this policy, they cannot demonstrate an imminent threat at the time of the second volley. Accordingly, I recommend that this allegation be Sustained as against Both Named Employees.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #4

8.200 - Using Force 5. Deadly Force May Be Used to Prevent the Escape of a Fleeing Suspect Only When an Objectively Reasonable Officer Would Believe That it Is Necessary and [...]

SPD Policy 8.200-POL-5 concerns the use of deadly force on a fleeing suspect. The policy states the following: "Deadly force may be used to prevent the escape of a fleeing suspect only when an objectively reasonable officer would believe that it is necessary and that there is probable cause" to meet three elements: (1) "The suspect has committed or is in the process of committing a felony involving the infliction or threatened infliction of serious physical injury or death"; (2) "The escape of the suspect would pose an imminent danger of death or serious physical injury to the officer or another person unless the suspect is apprehended without delay"; and (3) "The officer has given a verbal warning to the suspect, if time, safety, and circumstances permit."

As explained above, even if the officers reasonably believed that the initial intent of the subject was to run NE#1 over and cause death or serious injury to him, that threat ceased by both Named Employees' accounting at the time the vehicle crashed into the wall and stopped moving. As such, in order to use deadly force on a fleeing individual – the subject – the officers needed to demonstrate that his escape would pose an imminent danger of death or serious injury to the officers or another person. Here, the officers cannot do so. Again, there was no ongoing threat to the officers and any threat to other officers not at the scene or civilians was entirely speculative. An officer requires more than just guesswork prior to using deadly force on a fleeing individual.

Lastly, when the Named Employees fired at the car, they used deadly force not just against the subject, but also against the subject's mother and the other unidentified passenger. While both Named Employees contended that they targeted the driver, the video of the incident and the actual paths of the shots they fired contradict those assertions. NE#2 fired 11 shots at the vehicle. Three of those shots went directly into the driver's side door and could have hit the front passenger. One shot went into the driver's side passenger door and could have hit a backseat passenger. Two additional shots went through the left rear quadrant of the car and five shots were fired directly into the rear of the vehicle and could have hit anyone therein. NE#1 fired 16 shots, 12 of which were fired directly into the driver's side front and passenger doors. All of these rounds could have hit anyone in the vehicle. Moreover, NE#1 shot an additional four rounds into the rear of the car. Importantly, even if it was assumed that the Named Employees had the right to use deadly force against the fleeing subject, they were not legally permitted to use such force against the passengers in the vehicle. Here, however, they used force indiscriminately, firing 27



rounds into the vehicle. That no one was killed as a result of the Named Employees' force was the result of good luck not good marksmanship. Had a passenger died or been seriously injured, this case would have been even more problematic.

For these reasons, I recommend that this allegation be Sustained against both Named Employees.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #5

8.300-POL-4 Use of Force - FIREARMS 8. Officers Shall Not Fire at or From a Moving Vehicle

SPD Policy 8.300-POL-4(8) states that, as a general matter, "officers shall not fire at or from a moving vehicle." The policy directs officers that: "Firearms shall not be discharged at a moving vehicle unless a person in the vehicle is immediately threatening the officer or another person with deadly force by means other than the vehicle."

With regard to a moving vehicle, the policy states that: "The moving vehicle itself shall not presumptively constitute a threat that justifies an officer's use of deadly force." It further instructs that: "An officer threatened by an oncoming vehicle shall, if feasible, move out of its path instead of discharging a firearm at it or any of its occupants."

While the policy generally proscribes firing at a moving vehicle, it discusses potential deviations from this policy. With regard to such deviations, the policy requires that the "involved officers must be able to articulate clearly the reasons for the use of deadly force" and that the factors to be considered in determining whether the deviation was reasonable, include, but are not limited to: (1) "whether the officer's life or the lives of others were in immediate peril"; and (2) "if there was no reasonable or apparent means of escape."

When the subject car initially pulled toward NE#1, it did not appear to accelerate towards NE#1 (as the civilian witness opined), but was more consistent with jerking forward to try to move NE#1 out of the way (as the subject described). As a result, NE#1 jumped backwards and placed his hand on the hood. When the car again pulled forward and to the right, NE#1 moved around the front left of the car and was standing in the vicinity of the driver's side door. At the time of NE#1's first shot, the vehicle was already pulling by him to his left. The forensic video analysis conducted indicated that he was "a few feet from the driver's side of the vehicle, at approximately the location of the driver's side front wheel" when he fired his first shot. Moreover, the forensic video analysis demonstrated that the "front driver's side wheel is turned to direct the vehicle to the right and away from" NE#1 prior to when he fired his first shot.

This yields the conclusion that when NE#1 fired his first shot, he was already out of the way of the subject car and it was pulling by him. As such, at that time, the car did not pose an immediate threat to him. Moreover, for his deviation from policy in this instance to have been reasonable, he must have been able to establish that his life or the lives of others were in immediate peril and that he had no reasonable or apparent means of escape. Further, even if viewed in the light most favorable to NE#1 and given that his first shot was fired within about one second of the car moving towards him, the first volley could have been reasonable if the subject was the only individual in the car. However, here, there were two other occupants therein that posed no threat to him. Regardless, NE#1 subjected them to possible great physical harm or death.



This same general reasoning can be applied to the second volley of shots. At the time those shots were fired, the vehicle was driving away from NE#1. There was no risk of imminent physical harm to him or NE#2 and he had a means of escape. NE#1 argued that there was an “immediate, exigent threat to the community” that provided a justification for the second volley. However, not only was that threat speculative, but it did not provide a basis for him to shoot indiscriminately into the car and put the subject and the occupants at risk of death.

This policy envisions that officers will deviate from its prohibition when there is a vehicle bearing down on them or imminently threatening the life of another officer or civilian. The policy does not anticipate that officers will fire into the back of a vehicle that is driving away from them and where there is no clear risk of harm to anyone. In this case, NE#1’s second volley of shots violated policy and the Department’s expectations, tactics, and training. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #6

5.001 - Standards and Duties 5. Employees May Use Discretion

As indicated in SPD Policy 5.001-POL-5, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-5.)

In this case, NE#1 failed to exercise his discretion in a reasonable manner. First, as he was the primary officer at the scene, it was up to him to engage in planning and to discuss tactics with the other involved officers. Had he done so, this situation might have been avoided in its entirety. Second, he failed to apply his training and learned tactics to this incident. Instead, he acted contrary to everything he had been taught by running in front of the subject vehicle with his rifle. Third, even excusing his first shots, the second volley of shots were inconsistent with policy. Moreover, all of the shots fired, and particularly the second volley, inappropriately put the subject’s mother and the unknown occupant, both of whom had presented no threat to NE#1, at risk of death.

For these reasons, NE#1’s decision-making in this case was unreasonable and constituted an abuse of his discretion. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #7

8.100 - De-Escalation 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.” (SPD Policy 8.100-POL-1.)



The policy further instructs that: “When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.” (*Id.*) Officers are also required, “when time and circumstances permit,” to “consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors” such as “mental impairment...drug interaction...[and/or] behavioral crisis.” (*Id.*) These mental and behavioral factors should be balanced by the officer against the facts of the incident “when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.” (*Id.*)

The policy gives several examples of de-escalation, which include: mitigating the immediacy of the threat to give officers time to use extra resources and to call more officers or specialty units; and increasing the number of officers on scene to thus increase the ability to use less force. (*Id.*) Other examples of de-escalation include, but are not limited to:

- Placing barriers between an uncooperative subject and officers;
- Containing the threat;
- Decreasing exposure to the potential threat by using distance, cover and concealment;
- Avoidance of physical confrontation unless immediately necessary to protect someone or stop dangerous behavior;
- Using verbal techniques, such as “Listen and Explain with Equity and Dignity” (LEED) to calm an agitated subject and promote rational decision making;
- Calling extra resources, including CIT officers and officers equipped with less-lethal tools; and
- Using “any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject.

(*Id.*) De-escalation is inarguably a crucial component of the Department’s obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department’s policy and expectations.

While not all of the examples of de-escalation cited in the policy were applicable to this case (most notably, applying LEED), there were a number of de-escalation options available to NE#1. However, NE#1 took advantage of none of them.

As was clear from his interviews, as well as the interviews of the other involved officers, there was no pre-planning or tactical discussion prior to NE#1 approaching the vehicle. All of the officers indicated that they trusted each other and relied on their familiarity with their partners instead of planning. Only NE#2 had performed a significant amount of high-risk vehicle stops. She did not, however, take command of the scene and deferred to NE#1. NE#1 admittedly had never been the primary officer during a high-risk stop. It was problematic that four officers with relative inexperience engaged in no planning or tactical discussions before running towards a stolen vehicle with occupants that were believed to be both high and armed.

In addition, NE#1, as the primary officer, did not engage in any containment, nor did he call in extra resources. Notably, there was another unit in the vicinity that was attempting to determine the officers’ location in order to provide further backup. However, none of the officers coordinated with this other unit. Moreover, NE#1 did not



notify a supervisor or include a supervisor in any planning or tactical discussions. This would have been advisable given his relative inexperience.

Further, NE#1 (and for that matter the other officers) failed to use time, distance, and shielding to decrease the officers' exposure to the threat. NE#1 was trained to do so, particularly given his status as a rifle officer. Notably, he was also trained that during a high-risk stop he should take cover behind a vehicle and give the occupants of the car orders to get out. Only once the car was emptied of occupants and potential threats was it appropriate to approach the vehicle. He did not do so here. Instead, he did the opposite. He ran directly in front of the car with his rifle, thus increasing his exposure to the threat.

Lastly, his actions were the reason why he was put in the position of potentially getting struck or run over by the subject car. As such, instead of taking steps to avoid physical confrontation, his actions greatly increased the risk of such confrontation occurring. But for his decision to step in front of the car, it is likely that deadly force would not have been used and this incident would likely have been avoided.

In reaching my findings with regard to this allegation, I place significant weight on Witness Officer #1's statement that had NE#1 had not placed himself in front of the car, there would have been no risk of NE#1 being injured or hit. Witness Officer #1 clearly believed that NE#1 failed to de-escalate as he further opined that had NE#1 not placed himself in front of the car, the force would have been avoided.

In summary, NE#1 took a static situation – a car that had been sitting in a parking space for over 20 minutes and had its hood up – and turned it into a fast moving and potentially deadly incident. This is exactly the type of behavior that this policy is purposed to eliminate. While the Department's de-escalation policy places significant expectations on the conduct of its officers, it is in place for a reason – to prevent exactly these types of situations.

I note that the FRB also concluded that NE#1 failed to properly de-escalate. While not ultimately determinative to my finding concerning this allegation, the FRB's conclusion provides additional evidence supporting my recommendation.

For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**



Named Employee #2 - Allegation #2

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

As with NE#1, I find that the totality of the force used by NE#2 was not reasonable, necessary, and proportional, and was thus inconsistent with policy.

A. The First Volley of Shots

1. Reasonableness Factor

With regard to the first volley of shots, NE#2 stated that she fired because she perceived that NE#1 had been hit, had gone to the ground, and was at risk of serious physical harm or death. While this did not actually occur, NE#2 contended that this was her reasonable perception at the time. I note that NE#2 fired her first two shots while NE#1 was still in front of the car. NE#2 then fired multiple shots into the driver's side window in order to ensure that NE#1 was not killed.

In doing so, NE#2, like NE#1, also subjected the other occupants of the car to risk of death. However, at the time she fired her first shots of the first volley, she did reasonably perceive an imminent threat to NE#1 given his position in front of the car and the fact that the car was pulling out towards him. While this was due to NE#1's poor tactics and decision-making, NE#1's failures do not cause NE#2's initial force to be unreasonable.

2. Necessary Factor

Based on NE#2's account, she did not believe that there was a reasonable alternative to firing her handgun at the time she saw NE#1 in front of the car and the car was pulling towards him. Moreover, I find that she believed that the force she used was a reasonable degree of force that was necessary to prevent NE#1 from being harmed or killed.

3. Proportionality Factor

Lastly, viewing the facts in the light most favorable to NE#2, I find that her initial force was proportional to the threat she perceived towards NE#1. Again, she believed that the subject was about to immediately harm or kill NE#1. Notably, she explained that she thought that NE#1 had been hit and had gone down to the ground at the time she fired. While she was ultimately incorrect in this regard, this does not necessarily mean that the force was not proportional.

As such, I find that the first volley of shots by NE#2 was arguably within policy.

B. The Second Volley of Shots

I reach a different conclusion, however, on the second volley of shots. I find that this second volley was clearly outside of policy.



1. Reasonableness Factor

First, at the time NE#2 fired the first of the second volley of shots, the subject car was driving away from her northbound down the alley. At that time, the car was not backing towards her or NE#1. Moreover, even had the car been reversing towards her, she was to the back left of the car and outside of its path.

Second, there was no imminent threat of harm to either NE#2 or any of the other involved officers. While NE#2 argued that there was an ongoing threat to herself and NE#1 at the time, the video and NE#1's own statement contradicts that contention. Moreover, as discussed more fully herein, any potential threat to civilians/pedestrians or other officers who might be responding to the scene was speculative. There was no concrete evidence that this would occur and certainly not sufficient evidence to warrant firing multiple rounds into the back of a car containing three occupants that was driving away from her.

Third, while the car was still attempting to escape, SPD policy dictated that NE#2 should have allowed the car to do so instead of shooting indiscriminately into the rear. This was particularly the case where there was no imminent threat.

Fourth, contrary to her first volley when she stated that she responded to an articulable imminent threat to NE#1, NE#2 had sufficient time to decide whether to fire at the fleeing car. Notably, there were almost four seconds that elapsed from the last shot of the first volley to the first shot of the second volley. NE#2 had enough time to make an informed determination that the car did not pose an imminent threat to her and the other involved officers' safety and to properly decide not to fire.

For these reasons, I believe the second volley of shots to have been unreasonable.

2. Necessary Factor

With regard to whether the force was necessary, there were other actions that NE#2 could have taken instead of firing the second volley of shots. Most notably, she could have escaped to a position of safety, let the car drive away, called in its description and direction of travel, and other units could have attempted to apprehend it. Even if the subject had not been apprehended on that date, the officers had the car's license plate number and could have tracked it down and made an arrest at a later time. These would have been more effective alternatives. Moreover, as stated above, the force actually used was not a reasonable degree of force and, thus, was unnecessary.

3. Proportionality Factor

Lastly, with regard to the proportionality of the force, the force ultimately applied was not commensurate with the threat facing NE#2 at the time or the speculative threat of harm to others were the subject allowed to drive away. As indicated above, not only was the subject put at risk of serious harm or death, but the occupants, who did not pose an imminent threat of harm to NE#2, were as well. At the time the subject was driving away from the officers down the alley, the force used – multiple shots into the rear of the vehicle – was not proportional to the threat posed by the subject and certainly not proportional to the non-existent threat posed by the other occupants.



As discussed above, I find that the second volley of shots by NE#2 was not reasonable, necessary, or proportional. Accordingly, even though I believe that the first volley of shots was arguably within policy, I conclude that the totality of the force used by NE#2 was contrary to policy. For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #3

8.200 - Using Force 4. Use of Deadly Force

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #4

8.200 - Using Force 5. Deadly Force May Be Used to Prevent the Escape of a Fleeing Suspect Only When an Objectively Reasonable Officer Would Believe That it Is Necessary and [...]

For the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #5

8.300-POL-4 Use of Force - FIREARMS 8. Officers Shall Not Fire at or From a Moving Vehicle

As discussed in the context of NE#1 (see Named Employee #1, Allegation #5), at the time the second volley of shots were fired, the vehicle was driving away from NE#2. There was no risk of imminent physical harm to her or any of the other involved officers and she had a means of escape. NE#2 contended that the vehicle backed several feet towards her; however, this is simply inconsistent with the video. Moreover, NE#2 did not fire at that point. Indeed, she did not do so until the vehicle was pulling away. In addition, there was no imminent threat at that time to civilians/pedestrians or other officers not yet on the scene. Any perceived threat was unreasonable and speculative. It further did not provide a basis for NE#2 to shoot indiscriminately into the car and put the subject and the occupants at risk of death. Lastly, the second volley of shots were fired northbound after the fleeing vehicle and directly towards the front of a row of homes. It was not inconceivable that a bullet could have missed the vehicle and harmed a civilian in one of those homes. This was an unacceptable risk of harm.

This policy envisions that officers will deviate from its prohibition when there is a vehicle bearing down on them or imminently threatening the life of another officer or civilian. The policy does not anticipate that officers will fire into the back of a vehicle that is driving away from them and where there is no clear risk of harm to anyone else. In this case, and as discussed above, NE#2's second volley of shots violated policy and the Department's expectations, tactics, and training. As such, I recommend that this allegation be Sustained.



Recommended Finding: **Sustained**

Named Employee #2 - Allegation #6

5.001 - Standards and Duties 5. Employees May Use Discretion

While NE#1's actions set this course of events into motion and was the causal factor behind the force ultimately used, NE#2 made equally poor decisions throughout this incident.

First, NE#2 was the most senior officer on scene at the time of the incident. However, she abdicated all responsibility to NE#1, who had never been the primary officer on a high-risk vehicle stop. She did not engage in any planning or tactical discussion, even though she knew that her fellow officers were fairly inexperienced. Moreover, NE#2 did not apply any time, distance, and shielding, or attempt to convince any of the other involved officers to do so.

Second, NE#2's decision to fire the second volley into the rear of the subject car represented extremely poor judgment and an abuse of her discretion. As discussed above, the car was fleeing at that time and presented no imminent threat to her, any civilians, or other officers. Not only did she put the subject at risk of death, but she did the same to the subject's mother and the unknown occupant, who at no point presented a threat to her. That no such harm occurred was extraordinarily lucky.

Third, by firing down the alley and towards residences, NE#2 subjected other civilians to the risk of injury and death. This was tactically unsound and unacceptable conduct.

For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**