



## CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 6, 2020

CASE NUMBER: 2019OPA-0482

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	8.200 - Using Force 4. Use of Deadly Force	Not Sustained (Lawful and Proper)
# 4	8.200 - Using Force 7. Recognizing the Urgency of Providing Medical Aid and the...	Not Sustained (Lawful and Proper)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	8.200 - Using Force 7. Recognizing the Urgency of Providing Medical Aid and the...	Not Sustained (Lawful and Proper)
# 4	8.200 - Using Force 4. Use of Deadly Force	Not Sustained (Lawful and Proper)

**Named Employee #3**

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

**EXECUTIVE SUMMARY:**

The Complainant alleged that Named Employee #1 and Named Employee #2 violated Department policy when they used deadly force against her son, the Subject. She further alleged that Named Employee #1 and Named Employee #2 failed to de-escalate prior to using force and that their actions were based on bias. The Complainant also alleged that Named Employee #1 and Named Employee #2 did not provide sufficient medical assistance to the Subject after he was shot. Lastly, the Complainant alleged that Named Employee #3, a 911 Dispatcher, asked questions of the victim that suggested bias.



---

**SUMMARY OF INVESTIGATION:**

**A. Victim's 911 Call**

On May 8, 2019, a woman (the "victim") called 911 twice. The first call lasted seven seconds prior to disconnecting. The victim did not say anything but could be heard screaming. During the second call, the victim reported that her boyfriend (the "Subject") was "trying to kill" her. She said that she had tried to get him out of their apartment but that he would not leave. She further stated that the Subject was armed with a knife, the knife was "out," and that he was telling her that he was "going to kill" her. The victim said that the Subject "tackled" her when she tried to call the police earlier. She stated that she was not injured aside from the tackle. The victim disclosed that the Subject was threatening to "kill" her and himself.

The 911 dispatcher, who is Named Employee #3 (NE#3), asked the victim for a description of the Subject. Specifically, NE#3 asked the victim "what race" the Subject was and how old he was. The victim responded that the Subject was "Black and Mexican" and that he was 31-years old. NE#3 also asked for a description of the Subject's clothing, which the victim provided. Lastly, NE#3 asked for and received a description of the knife.

At one point, the victim told NE#3 that the Subject said that "there's blood everywhere." The victim indicated that the Subject was not trying to force his way into the bathroom at that time and that she was holding the door closed as it did not have a lock. She said that she had an object that she was using to block the door. She told NE#3 that she could not leave the apartment and that the Subject was going to kill her. She told NE#3 that the Subject had been pounding on the bathroom door earlier and was now scraping on it with his nails. She updated NE#3 that the Subject told her that there was "blood everywhere" outside of the bathroom and he said that she could not come out of the bathroom because she "fucked up."

The victim stated that the Subject, who she identified by name, needed help. She said that she had been trying to get him to leave the apartment "for hours." She confirmed that the Subject was still inside and that he was near the bathroom door. NE#3 obtained a description of where the bathroom was in relation to the rest of the apartment.

The victim remained on the line with NE#3 as officers attempted to gain access into the apartment. She made several statements at that time, including referencing officers shooting the Subject. Shots could be heard on the 911 call and the Subject started screaming. The victim was not responsive to any further questions from NE#3 and the line disconnected approximately one minute after shots were fired.

**B. Officer's Response to the Scene**

Officers, including Named Employee #1 (NE#1) and Named Employee #2 (NE#2), were dispatched to the call. Officers were notified that the screaming victim had hung up the phone. Dispatch also stated that the victim said that: "her boyfriend has a knife and is trying to assault her." Dispatch noted that the Subject was threatening to kill himself and the victim with a knife. Dispatch provided a description of the Subject and the knife, as well as the Subject's name, and informed officers that the victim said that there was "blood everywhere, inside the bathroom." Dispatch lastly updated the officers that the victim had locked herself in the bathroom and that the Subject was "scratching at the bathroom door" and was "still inside the apartment."



The CAD Call contained much of this same information, including: that the Subject was trying to assault the victim with a knife and threatened to kill himself and her with the knife; that the Subject was armed with a “4 inch switchblade knife”; the name and description of the Subject; that the victim was in the non-locking bathroom and had barricaded it with an object; that the Subject “was now scratching on the bathroom door with his hands”; and that there was “blood everywhere.” Lastly, the CAD Call contained a description of the layout of the apartment, noting that the “bathroom will be to the left of the front door.”

The response to the apartment by SPD officers was captured on their Body Worn Video (BWV). NE#1, NE#2, and Witness Officer #1 (WO#1) located the apartment door and positioned themselves in front of it. Witness Officer #2 (WO#2) also proceeded down the hallway to back up the other officers. The officers had their firearms drawn.

### **C. Use of Deadly Force**

The officers identified themselves as police officers and yelled for the occupants of the apartment to “open the door” and “open the door now.” When the door was not opened, NE#2 kicked the door three times; however, he was not able to gain entry. NE#1 moved in front of NE#2 and WO#1 and stood before the door. NE#1 began kicking the door and, after kicking it approximately nine times, was able to break the door frame and collapse the center of the door. NE#2 cleared the door panel. At that time, the officers saw the Subject standing behind the destroyed door. The Subject was not wearing a shirt and, when first observed by the officers, had his hands at his side. The officers told the Subject to put his hands up; however, he did not comply with those directions.

NE#1’s BWV recorded that the Subject then raised his arm at approximately chest level and that he was holding a knife. The officers yelled: “get on the fucking ground” and “drop the knife.” The Subject instead began walking towards the officers. At that time (see NE#1’s BWV at approximately 04:00), the Subject’s arm was positioned across his chest at approximately a 45-degree angle. He was holding a knife in his hand with the blade facing out towards the officers. The officers had their firearms pointed at the Subject and illuminated his body with their gun-mounted lights. When the Subject continued to move towards them with the knife raised in his hand and pointed towards them, NE#1 and NE#2 discharged their firearms. NE#1 fired twice and NE#2 fired eight times. Several of these rounds fatally struck the Subject, who fell to the ground where he remained.

Officers announced over the radio that shots were fired and NE#1, NE#2 and WO#1 entered the apartment. WO#1 opened the bathroom door and located the victim. She was walked out of the apartment and was placed into the custody of WO#2, who removed her from the area. Approximately 48 seconds after the shots were fired and after the apartment had been secured, WO#1 advised that they should place the Subject in the recovery position. WO#1 knelt down next to the Subject and began evaluating the Subject’s injuries. Around 6 seconds later, NE#2 went over the radio to advise that the Subject was “down” and to request that the Seattle Fire Department (SFD) come to the scene to provide medical assistance. After observing the Subject’s condition, WO#1 noted that the Subject had a gunshot wound to his neck. NE#1 began opening up a bandage and NE#2 said, referring to the Subject: “leave him for fire.” WO#1 felt for a pulse but did not detect one. NE#1 asked what, if anything, they could do and WO#1 replied that there was “nothing” and that the Subject was dead.



---

**D. FIT Investigation**

In the aftermath of the shooting, supervisors and other officers arrived, and the scene was secured. The officers were ordered to provide public safety statements and did so. The Department's Force Investigation Team (FIT) and the CSI Unit were notified and responded to the scene. Per SPD policy, FIT took over the investigation. OPA and the Office of Inspector General for Public Safety (OIG) were also notified and responded to the scene.

CSI collected forensic evidence, documented the layout of the scene, and took further investigatory steps. CSI also collected the officers' firearms and conducted round counts. FIT organized walkthroughs of the scene by the witness officers, which OPA and OIG were present for. FIT then conducted interviews of NE#1, NE#2, WO#1, and WO#2. OPA staff were also present for these interviews.

**1. NE#1's FIT Interview**

NE#1 recalled that he had been part of the investigation into a domestic violence incident at that same apartment approximately one month earlier. This incident was reviewed by OPA under case number 2019OPA-0452 due to another officer's failure to take proper investigative steps. That case involved a 911 call by the victim in which she alleged that the Subject had assaulted her, had made threats to harm her, had potentially referenced committing suicide by cop, and was in possession of knives. NE#1 remembered that he had developed a good "rapport" with the Subject at that time.

He recounted that NE#2 started kicking the door but then asked for another officer to do so. NE#1 stepped in front of the door and began kicking it. He stated that the door was older and was hard to kick down; however, he was able to do so, and he believed that NE#2 moved the remnants of the door out of the way. NE#1 explained that, at the time the officers were attempting to gain entry into the residence, he believed that they had exigent circumstances to do so based on a possible threat to the victim's life.

NE#1 stated that he saw the Subject standing motionless behind the door and that this surprised him. He reported that the Subject looked significantly different than he did during their first interaction and that the Subject was staring at the officers with a blank expression. NE#1 reflected that this "terrified" him. NE#1 saw that the Subject was holding a knife in his hand, which was by his side at the time. He described the blade as being approximately three inches.

NE#1 recalled that officers yelled commands at the Subject, but he did not remember exactly what was said. NE#1 stated that the Subject was verbally unresponsive and that he began stepping towards the officers. NE#1 described that he had nowhere to go at that time, as there was a wall to his right side and behind him, as well as three other officers to his left. NE#1 stated that, at the time, he "felt like [he] was in imminent danger of being killed or seriously wounded" by the Subject. NE#1 recalled that NE#2 fired and then he fired shortly thereafter. NE#1 described that, at the time he fired, the Subject was approximately three feet away from him and the other officers. NE#1 said that, after he and NE#2 discharged their firearms, the Subject fell down to the ground.

Officers entered the apartment, cleared it for other threats, and then removed the victim. NE#1 observed that the Subject had gunshot wounds to his torso and his neck and was bleeding heavily. While not an EMT, NE#1 believed that it was likely an arterial bleed that he did not think he was able to treat. He stated that WO#1 felt for a pulse and determined that there was none.



With regard to de-escalation, NE#1 asserted that it was not safe or feasible under the circumstances. He again explained that the officers believed that there was an imminent risk or serious harm to the victim and themselves.

## **2. NE#2's FIT Interview**

NE#2 stated that he was dispatched to the apartment and, while driving there, he learned that the victim was reporting that the Subject was armed, was attempting to harm her, and had threatened to kill himself and her. NE#2 said that he also heard the updates that the victim was barricaded in the bathroom and that there was blood everywhere. NE#2 said that he arrived at the apartment with WO#1 and that NE#1 joined them shortly thereafter. He kicked the door twice and then asked NE#1 to switch places with him. After NE#1 kicked the door open, NE#2 saw the Subject standing there. NE#2 recalled that the Subject was in a "fighting stance" with his "hands up at chest level and he was holding a knife, point down, at that point, up against his chest."

NE#2 said that he yelled "drop the knife" several times and that he moved to his left to create space. However, he explained that he and the other officers had nowhere to retreat to. He further stated that he was concerned about the victim inside of the apartment and whether or not she had been injured and needed immediate medical attention. NE#2 explained that the Subject then rotated the knife blade forward and pointed it towards him and NE#1. NE#2 perceived that the Subject "rushed towards" him and the other officers. NE#2 described the Subject as being a "lunge" away and he believed that the Subject posed an imminent threat to him and NE#1. NE#2 subsequently discharged his firearm multiple times. Thereafter, the Subject dropped the knife and fell to the ground. NE#2 entered the apartment and located the victim in the bathroom. The victim was removed from the apartment by WO#1. NE#2 said that he called for medics to come to the apartment once the scene was safe and under control. He further recalled that WO#1 evaluated the Subject's condition and placed him into the recovery position.

NE#2 provided the following explanation for his use of deadly force: "I believed that if I didn't stop the [Subject] immediately, he was going to harm or kill me or kill my partner." NE#2 did not believe that there were any other alternatives to deadly force under the circumstances. NE#2, like NE#1, believed that de-escalation, other than providing verbal commands, was not safe or feasible. He asserted that he had immediate concerns for the victim's welfare, and they had to take exigent action to enter the apartment. NE#2 also referenced an incident that had occurred in North Seattle several months earlier where officers responded to a DV call in which the female victim reported that the suspect was trying to kill her. That incident resulted in the murder of the victim. He asserted that this was on his mind during his response to this case.

NE#2 was re-interviewed eleven days later. At that time, he provided more detail concerning what occurred during this incident as he had since watched his BWV. He recalled that, immediately upon seeing the Subject, he began to transition to his Taser and took a step back. However, as the Subject began advancing towards the officers, NE#2 disregarded his Taser as a viable force option and went back to his firearm. NE#2 asserted that the evaluation of the Taser as an option and taking a step back constituted de-escalation. NE#2 also addressed the provision of medical treatment to the Subject. He said that he assigned another officer to evaluate the Subject's medical status. NE#2 said that he deliberately did not do so because he had used deadly force.

NE#2 was interviewed for a third time on August 13, 2019. The focus of this interview was the provision of medical assistance to the Subject. NE#2 confirmed that he told NE#1 to leave the treatment of the Subject to SFD. NE#2 said that he saw that the Subject had lost a large quantity of blood and he believed that CPR would exacerbate that blood loss given the nature of the Subject's injuries.



He did not believe that he had the training or experience to medically treat the Subject and explained that he had not been taught how to treat a bleeding neck wound. NE#2 did not think that he had the ability to medically save the Subject. He said that SFD was the best placed to evaluate and provide assistance to the Subject. NE#2 also noted that he had been involved in a prior incident where a shot and downed individual had returned fire, striking him and another officer. Lastly, NE#2 confirmed his belief that it was better for officers other than him and NE#1 to provide medical treatment to the Subject as they were both dealing with the immediate trauma of being involved in the shooting.

### **3. WO#1's FIT Interview**

WO#1 stated that he was positioned to the left of NE#2. He said that he observed NE#2 kick the door twice and that NE#1 then kicked it several more times. When the door opened, WO#1 saw the Subject standing inside of the doorway. WO#1 said that the Subject was holding a knife in his hand with the blade pointed out. WO#1 recalled stepping back behind NE#2, who then obstructed his view of the Subject. WO#1 described the hallway as being very tight. WO#1 heard NE#2 tell the Subject to drop the knife. He then heard multiple gunshots and loud screaming coming from inside of the apartment.

WO#1 followed NE#2 into the apartment. He located the victim, removed her from the bathroom, and then escorted her out of the apartment. He provided medical assistance to the Subject and determined that the Subject was deceased.

### **4. WO#2's FIT Interview**

WO#2 and NE#1 arrived on scene at approximately the same time. When WO#2 arrived at the apartment door, NE#2 and WO#1 were already there. WO#2 observed NE#1 and NE#2 kicking the apartment door. WO#2 heard officers yelling "Seattle Police" and "open the door." He then saw the door break and observed an officer push it open. WO#2 recalled that, at this point, officers were saying "drop the knife" and "get on the ground." He felt the officers at the door moving back towards him, so he shifted to his left. He then heard several gunshots. He saw a knife on the ground and observed NE#2 and WO#1 entering the apartment. WO#1 exited with the victim and WO#2 took custody of her.

When asked about de-escalation, WO#2 explained that, under the circumstances of this incident and based on the information available to the officers, it was not safe or feasible.

### **5. Victim's FIT Interview**

The victim said that, on the date in question, she came home and found the Subject passed out on the couch. She woke him and asked him to leave the apartment. At that point, he became belligerent. She said that she and the Subject fought and that her chest was scratched. The victim stated that she took her food and left the apartment. When she returned later that afternoon, the Subject was still there slamming doors in the apartment. She began packing a bag for the Subject and again told him to leave. She recalled that he replied that she "better call the cops because that was the only way [he was] going to get out of" the apartment. She indicated that the Subject was threatening her with a switchblade, and she stated that she was concerned with her safety. She said that the Subject threatened her life and that this was not the first time that he had done so. She went inside of the bathroom and she used an object to barricade the door. She recalled that the Subject tried to breach the door on several occasions and hit it twice. She indicated that she was on the phone with 911 when "chaos broke loose."





The victim stated that the Subject suffered from depression and was suicidal. She also reported that the Subject had a history of threatening her. She said that he was a “terrible drinker” and an “angry drunk.” He was prescribed anti-depressants, but the victim did not believe that he had been taking them.

She acknowledged that there had been prior domestic violence incidents between them but stated that this occasion was “way different” and that the Subject was like a different person. She speculated that this may have been due to too much alcohol. She lastly stated that she did not know why the shooting was needed.

#### **E. OPA Investigation**

OPA’s review consisted of analyzing the documents and investigatory materials generated concerning this incident, which included the interviews conducted of the involved and witness officers. OPA also reviewed the audio recordings of the 911 calls and radio dispatches, as well as watched the BWV that fully captured the shooting.

OPA further interviewed the Complainant. The Complainant confirmed that, prior to initiating her complaint, she had not reviewed the BWV or the documentation concerning this case. Her complaint was based, in large part, on information learned from family members, friends, and acquaintances, some of whom were involved in law enforcement. She told OPA that the Subject had suffered from depression for his “entire life” and used alcohol to “numb the depression.”

When asked what she knew about the case, the Complainant asserted that the victim called 911 to get the Subject to leave the apartment. The Complainant speculated that the victim may have been overly “dramatic” in order to get the police to quickly respond to the apartment and remove the Subject. She also asserted that the victim used “strong language” that was untrue, but later clarified that she was referring to the Subject’s purported statement about blood being everywhere that the victim relayed to the 911 dispatcher.

With regard to her allegations, the Complainant confirmed her belief that the officers failed to de-escalate prior to using force. She pointed to the officers running down the hallway and virtually immediately trying to kick down the door, as well as her belief that the officers did not use sufficient communication and verbal persuasion.

The Complainant further asserted that the Subject did not “pose a physical threat to the responding officers or anyone in the apartment.” She stated that the officers were aware that the Subject did not possess a firearm. She also referenced the fact that the toxicology report indicated that the Subject was “incoherent” given the amount of alcohol and medication that was in his system. She further contended that the officers continued to shoot the Subject after he no longer posed a threat. As such, she believed that that the deadly force used by the officers was inappropriate and excessive.

The Complainant also alleged that NE#1 and NE#2 targeted the Subject, racially profiled him, and were biased towards him. She asserted that the officers knew the Subject’s race prior to entering the apartment and, once they saw the color of his skin, they shot him. She referenced the fact that the Subject was Black, and the victim was White. She opined that, had the Subject been White, the officers would not have acted as aggressively and would have been more compliant with SPD policy. She also specifically asserted her belief that NE#2 was “racist” and referenced past incidents he had been involved in and a lawsuit that he was a party to.



The Complainant further raised her belief that NE#1 and NE#2 did not care for the life of the Subject and that they “didn’t care about saving a life.”

Lastly, the Complainant asserted that NE#3 asked a racist line of questioning while speaking to the victim. The Complainant specifically referenced her belief that NE#3 repeatedly asked race-related questions. She also asserted that the dispatcher was “suggesting” things to the victim and was “adding things to the story that just weren’t happening.” After further questioning by OPA, the Complainant clarified that the leading question she was referring to was NE#3’s question to the victim concerning whether the Subject was using his nails to scratch on the bathroom door. The Complainant believed that this may have escalated the incident. The Complainant’s allegations are addressed below.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegations #1**

#### ***8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, 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.

The officers were dispatched to the victim's apartment based on her statements to 911 that she had been threatened by the Subject, that he stated that he would kill her, and that the Subject was armed with a knife. The officers were also aware that the victim had barricaded herself in the bathroom and the Subject was trying to gain entry, as well as that there was potentially blood everywhere. As such, given the information available to them, the officers felt it likely that the victim could be injured and/or that she was at risk of imminent serious harm or death. As NE#2 described, just months before, officers had responded to a similar call in which a woman was murdered during a domestic violence incident and this heightened their concern.

Four officers were dispatched to the apartment, which was consistent with Department policy for responding to an incident of this nature. While the officers did not have time to set up a formal plan given the exigency of the situation, they positioned themselves in front of the apartment door and began acting in line with their training. The officers announced themselves as police and ordered the occupants to open the door. When the door was not opened, the officers began kicking it to gain entry. Again, these actions were based on their belief that the risk of harm to the victim compelled them to immediately access the apartment.

At the moment that the officers were able to break through the door, they observed the Subject, who was armed with a knife. The officers gave the Subject multiple verbal orders to drop the knife and he did not comply. To the contrary, he stepped towards them, raised the knife to chest level, and pointed the blade at the officers.

The distance between the officers and the Subject at that time was three feet and was getting smaller as the Subject moved towards them. As the officers described, there was nowhere for them to go. They were standing in a narrow hallway with walls to their right and rear. Moreover, retreat was not a viable option as the officers reasonably believed that the victim was still in the apartment and that her life could be in danger.

As discussed above, when the armed Subject failed to open the door, did not comply with the officers' verbal commands, and began advancing towards them, de-escalation was no longer safe or feasible. Indeed, further de-escalation at those times could have placed the officers and the victim at significant risk of harm and would have compromised legitimate law enforcement priorities. In addition, based on OPA's review of the totality of the record, the evidence does not support a finding that the officers' actions or tactics increased the need to use force. As such, I recommend that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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



---

**Named Employee #1 - Allegation #2**

***5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

The Complainant alleged that NE#1 and NE#2 targeted and subjected the Subject to a higher level of force because of his race.

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

There is simply no basis to find that NE#1 and NE#2 engaged in biased policing during this incident. As discussed herein, the officers’ actions were based on the facts and circumstances that they faced, not on the Subject’s race. OPA reaches this conclusion based on the BWV, as well as based on the substance of the officers’ interviews.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

**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 officers 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.” (SPD Policy 8.200-POL-4.)

Based on OPA’s evaluation of the totality of the evidence and when applying the requisite standards under law and policy, OPA concludes that the application of deadly force by NE#1 and NE#2 was consistent with policy.

First, as discussed above, NE#1 and NE#2 reasonably believed that, if they did not make entry into the apartment, the victim could be subject to imminent serious physical harm or death. This was based on the content of the 911 calls, during which the victim explicitly stated that the Subject was armed with a knife and had threatened to kill her, as well as the officers’ observations upon arrival on scene. Moreover, it was based on their knowledge of and experience with similar situations in the past.

Second, when they observed the Subject, he was armed with a knife. As such, he had the means or instrumentality to cause serious bodily harm or death to the victim and/or the officers. Indeed, both officers articulated that, at this point, they had little room to move back, retreat was not an option, and they imminently feared for their and the victim’s safety. That the Subject was armed with a knife as opposed to a gun does not change this calculus. Notably, at the time shots were fired, the Subject was standing just three feet away from the officers, was non-compliant, and was moving towards them. Had he been allowed to further approach the officers, he could have catastrophically harmed them with the knife.



Third, and last, while in the closed apartment and then again when advancing towards the officers, the Subject had the opportunity and means to use the knife to harm or kill the victim and the officers.

The toxicology report later performed on the Subject showed that he had an extremely high blood alcohol content at the time he was shot. While this could explain why the Subject was non-responsive and, as NE#1 described, blankly stared at the officers, they did not and could not have known this at the time.

Approximately 30 seconds elapsed from when the officers first began trying to access the door to the moment that shots were fired. During that time, the officers were dealing with an exigent threat of harm to the victim, the unknown of what lay behind the apartment door, and, then, an advancing armed Subject. The actions of officers, especially when they use deadly force, are consistently second guessed. The questions of whether the officers could have waited longer for compliance, tried a different type of communication, used some other less severe force, or taken countless other actions will always be asked. However, SPD policy and the law prohibits OPA from engaging in exactly this type of hindsight analysis. The issue before OPA is not whether the officers could possibly have done something else, but whether what they did was objectively reasonable under the totality of the circumstances. While recognizing the great pain and anger that the Complainant and the Subject's friends and family feel, OPA concludes that the use of deadly force here was objectively reasonable and, as such, that it was consistent with Department policy. Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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

#### **Named Employee #1 - Allegations #4**

##### ***8.200 - Using Force 7. Recognizing the Urgency of Providing Medical Aid and the...***

SPD Policy 8.200-POL-7 concerns the provision of medical aid after the application of force. The policy stresses the urgency of providing such aid and the "importance of preserving human life." The policy directs that: "When safe and feasible, officers will request a medical aid response for any apparent injury, complaint of injury, or sign of medical distress for subjects and others even if the aid is declined. Officers will closely monitor subjects taken into custody." (SPD Policy 8.200-POL-7.) The policy further explains that: "After requesting a medical aid response, officers will render aid within the scope of their training unless aid is declined. Certified EMT officers should be given priority to render care, when feasible. Consent should be assumed for unconscious subjects or subjects incapable of providing consent." (*Id.*) Lastly the policy states that: "Absent exigent circumstances, prone subjects will be placed on their side in the recovery position or assisted to an upright position as soon as safe and feasible." (*Id.*)

In the immediate aftermath of the shooting, the officers ensured that there were no continued active threats in the apartment. They further located the victim in the bathroom and removed her from the apartment. At that time, and less than a minute after the shooting had occurred, WO#1 examined the Subject's physical condition and began to move the Subject into the recovery position. Seconds later, NE#2 called for SFD to respond to the scene. NE#1 took out bandages in an apparent effort to treat the Subject; however, given the nature and extent of the Subject's injuries, NE#2 told him to "wait for fire." WO#1 continued to examine the Subject and, after determining that he had no pulse, reported that the Subject was deceased. No further medical assistance was provided to the Subject.



As discussed above, officers on scene did provide medical assistance to the Subject. While that assistance did not occur until around a minute after the Subject had been shot, this did not violate policy and was reasonable under the circumstances.

Notably, during that time, the officers were actively ensuring that there were no remaining threats to safety, verifying the victim's condition, and removing the victim from the Department. SPD Policy specifically provides that, while the provision of medical assistance is crucial, it is only required after it is "safe or feasible" to do so.

In addition, of initial concern was NE#2's statement to NE#1 that he should leave the treatment of the Subject for SFD. However, NE#2 provided two reasonable explanations for why this statement was not contrary to policy. First, NE#2 indicated that the medical treatment of the Subject's injuries, which were severe, were well outside of his training. He and NE#1 had not been taught how to properly treat a neck wound like the Subject suffered and neither officer was an EMT. Indeed, policy recognizes that officers are only required to provide aid "within the scope of their training." Based on the Subject's condition and the limits of their abilities, there was no further assistance that NE#1 and NE#2 could have given to the Subject at the time. Moreover, as determined by WO#1 given the lack of a pulse, the Subject was deceased and, in reality, there was no medical aid that the officers could have provided that would have altered this fact.

Second, while neither NE#1 nor NE#2 personally provided medical assistance to the Subject, WO#1 attempted to do so. NE#2 explained that, due to the trauma of him and NE#1 being involved in the use of deadly force, he believed it better for WO#1 to do so.

For these reasons, OPA finds that the officers on scene, including NE#1 and NE#2, acted consistent with the requirements of this policy. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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

**Named Employee #2 - Allegations #1**

***8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force***

For the same reasons as stated above (see Named Employee #1, Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #2 - Allegation #2**

***5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

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

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



---

**Named Employee #2 - Allegation #3**

***8.200 - Using Force 7. Recognizing the Urgency of Providing Medical Aid and the...***

For the same reasons as stated above (see Named Employee #1, Allegation #4), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #2 - Allegations #4**

***8.200 - Using Force 4. Use of Deadly Force***

For the same reasons as stated above (see Named Employee #1, Allegation #3), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #3 - Allegations #1**

***5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

The Complainant alleged that NE#3 continually asked “racist” questions of the victim. Specifically, the Complainant pointed to what she believed were repeated questions regarding the Subject’s race. The Complainant acknowledged that she had not listened to the audio recording of the 911 call prior to making this allegation.

As discussed above, the 911 call audio indicated that NE#3 did ask the victim one question concerning what race the Subject was. NE#3 did not, as the Complainant contended, repeatedly query the victim regarding the Subject’s race or bring up race at all other than on that one occasion. Further, when trying to obtain a physical description of the Subject, NE#3 also asked what age the Subject was and what clothes he was wearing.

In determining whether the question concerning the Subject’s race was biased, as the Complainant alleged, OPA found it instructive to review the training provided to NE#3 in this area. Notably, the 911 Call Taker Manual, which is maintained by the Communications Unit, specifically addressed what questions dispatchers should ask when trying to determine a subject description. Included in those questions are, as NE#3 asked here, race and age.

Given this, OPA finds that NE#3 acted consistent with policy and with the expectations of the Department when he asked for the Subject’s race in order to formulate a description to provide to the responding officers.

The Complainant also contended that NE#3 suggested facts to the victim during the 911 call and included information in later dispatches to officers that were inaccurate. There is no support for this allegation in the record as, from OPA’s review, NE#3 provided information to the officers that was consistent with that relayed to him by the victim.

For the above reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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