



## CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 23, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0256

### 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	8.200 - Using Force 4. Use of Deadly Force	Not Sustained (Lawful and Proper)
# 3	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:

It was alleged that the Named Employee may have failed to de-escalate prior to using deadly force and that the force he used towards the Subject may have been contrary to policy. Lastly, it was alleged that the Named Employee may have acted based on bias towards the Subject.

### ADMINISTRATIVE NOTE:

Throughout this memo, there are some terms and concepts that may not be familiar to some readers. OPA defines and explains them here.

- **CAD Call/Call Updates:** Virtually every incident that officers respond to is assigned an incident number. In addition, each incident is tracked through the Computer Aided Dispatch (CAD) system. This is a system that logs the initial information obtained from a 911 caller, as well as logs any updates. The CAD can be viewed by officers from the Mobile Data Terminal (MDT) in their patrol vehicles. Most officers follow the CAD to determine what is happening on the call.
- **Radio Updates:** When officers learn important information during their investigation into an incident, they often transmit that information over an SPD radio channel. This ensures that the information can be heard by other officers. A dispatcher assigned to SPD’s Communications Section may also repeat the information or other information that was obtained from 911 callers. Any officer listening to those channels will hear the information.



- **Officer Equipment:** Each of the officers who responded to this incident, including Named Employee #1, were assigned with a Body Worn Video camera positioned on the chest and a radio. They were required to record their involvement in the incident with the Body Worn Video and were able to listen to and transmit ongoing updates via their radios.
- **Probable Cause:** This is the legal standard for when an officer may arrest a community member. Probable cause exists when an officer is aware of facts and circumstances that give the officer a reasonable belief that an offense has been or is being committed.
- **Force Investigation Team (FIT):** FIT is a team of SPD employees that is tasked with investigating Type III uses of force. Type III uses of force are, for all intents and purposes, synonymous with the serious and deadly force defined by Initiative 940. FIT conducts administrative not criminal investigations. If, at any point during its investigation, FIT believes that criminal conduct may be at issue, it is required to confer with OPA and, together, the entities evaluate whether a criminal referral and investigation is appropriate. Unlike all other jurisdictions in Washington State, Seattle is exempted from I-940 so long as it is under the federal Consent Decree. This means that, while Seattle conducts administrative reviews that are more robust than the remainder of the state, it does not take part in a simultaneous criminal review as is performed by the Independent Investigation Teams under Initiative 940. Whenever FIT responds to a Type III use of force, it immediately notifies OPA and the Office of Inspector General for Public Safety (OIG). Both entities send representatives to the scene and monitor the investigation, including the contemporaneous interviews of involved and witness officers.
- **Force Review Board (FRB):** The FRB is a panel of SPD supervisors – generally Sergeants and Lieutenants – who meet periodically to review uses of force. The FRB reviews all Type III uses of force and a subsection of lower level uses of force. The FRB analyzes whether the officers who used force applied appropriate tactics and acted consistent with training. The FRB also evaluates whether the officers de-escalated prior to using force and whether the force, itself, was consistent with Department policy. Lastly, the FRB considers the quality of the chain of command investigation into the use of force, including those conducted by FIT. The FRB reaches its decisions based on a majority vote of its members. OPA and OIG are non-voting members of the FRB.

## **SUMMARY OF INVESTIGATION:**

### **A. Introduction**

The investigation concerns the fatal shooting of the Subject by a Seattle Police officer, Named Employee #1 (NE#1). OPA self-initiated this investigation on April 29, 2020. Thereafter, the former girlfriend of the Subject – referred to here as the “Victim,” also alleged to FIT that NE#1’s shooting of the Subject was based on bias. That allegation was added to OPA’s pending investigation.

In this investigation, OPA evaluated whether NE#1 sufficiently de-escalated prior to using force, whether his ultimate application of deadly force was consistent with policy, and whether his actions constituted biased policing.

### **B. 911 Calls and Search for the Subject**



At 2:11 p.m. on April 29, 2020, a 911 call was placed concerning a dispute that was occurring at the Rainier Playfield between a male and a female. A young child – approximated to be around two years of age – was reportedly present. The 911 caller said that the male possessed and brandished a handgun. The 911 caller said that he told the female to run because of the presence of the handgun. The 911 caller gave a description of the male and said that, while there were others at the playfield, the male was largely alone with the child. The 911 caller said that the male placed the handgun in the back of his waistband.

A few minutes after, at 2:13 p.m., the female – who is the Victim in this case – called 911 and reported that the male – who is the Subject – had taken her child. She stated that she had a no-contact order against the Subject. She told 911 that he had a handgun, which she saw earlier that day. She called again and stated that the Subject was intoxicated and reiterated that he had her daughter.

Numerous officers were dispatched to the scene. Witness Officer #1 (WO#1) made contact with the Victim. She told WO#1 that the Subject had her child and said that she was “only one.” The Victim was emotional at that time and appeared frightened for her daughter’s safety. She appeared to have been assaulted. Some of her hair had been pulled out and blood was visible on her clothing. WO#1 remarked on her being beaten up by the Subject. The Victim responded: “He always does.” She told WO#1 that they needed to find her baby and that the baby was not safe with the Subject when he was drunk. WO#1 told her: “everybody is coming.” The Victim told WO#1 that the Subject shot the handgun in the park and showed him where. WO#1 located a shell casing. WO#1 went over the radio and stated that the handgun had been fired, the Subject was “severely intoxicated,” and that the Victim believed that the child was in “grave danger.” The Victim repeated: “She’s in danger, like danger.” WO#1 made advisements for K-9 and King County Metro. WO#1 asked for authorization for a ping of the Subject’s cell phone to determine his location.

This information conveyed by WO#1 was included as an update to the call at 2:19 p.m. and then at 2:20 p.m. At 2:24 p.m., the assistance of the Guardian One helicopter was requested and, at 2:24 p.m., a ping was requested of the Subject’s cell phone. In addition, at 2:25 p.m. and 2:27 p.m., SWAT officers were requested to respond.

Over the next twenty minutes, the call was updated several times to provide the names of the Subject and the Victim, a more detailed description of the Subject, and a description of the child. A photograph of the Subject was transmitted to officers. At 2:35 p.m., officers were updated that there was probable cause to arrest the Subject for possession of a firearm. Two minutes later, at 2:37 p.m., there was an update that, the previous evening, shots were fired at an address associated with the Subject. Further, at 2:44 p.m., there was an update that the Victim had suffered a possible broken arm and contusions to her face, arm, and chest from being assaulted by the Subject.

In addition, several 911 callers reported seeing the Subject and the child in various locations. At 2:28 p.m., a witness reported seeing the Subject at a Safeway store. At 2:44 p.m., a caller reported that a person matching the description of the Subject may have broken into a house that was under construction at the corner of 37<sup>th</sup> Avenue South and South Dakota Street. That caller later provided the exact location of the house in question – 4104 37<sup>th</sup> Avenue South – and reported that the Subject was observed with the child on the third floor.

At 2:48 p.m., the ping on the Subject’s cellphone – which had been approved by a prosecutor – indicated a location of 3841 38<sup>th</sup> Avenue South. Approximately one minute later, the Subject was observed running through the alley near that location and the houses under construction. Officers requested that the air be held – meaning that no further radio transmissions were issued pending the attempts to locate and arrest the Subject. One shot was reported to have been fired two minutes later.



### **C. Officer Response to the Incident and First Observation of the Subject**

As discussed above, WO#1 was the first officer on-scene at the park and contacted the Victim. Other officers began to arrive after that and engaged in a number of duties, including searching for the Subject and the child. This included patrol officers, officers assigned to the South Precinct Anti-Crime Team (ACT), and SWAT officers.

Witness Officer #2 (WO#2), who was assigned to South ACT, arrived at the houses that were under construction. His Body Worn Video (BWV) indicated that he did not initially see the Subject. A number of other officers had surrounded the house and were setting up a perimeter. He and two South Precinct officers – Witness Officer #3 (WO#3) and Witness Officer #4 (WO#4) – walked up to an alley by the house where NE#1, a SWAT officer, was standing. NE#1 told WO#2 to set up somewhere so that they could see the backside of the house and pointed down the driveway of an adjacent property. NE#1 then reacted as if he heard a sudden sound and looked down the alley next to the house. WO#2 went over the radio and asked that the air be held. NE#1 spotted someone moving and yelled: “Hey.” WO#2 yelled: “Seattle Police.” He further yelled the Subject’s name and said “stop.” The Subject did not do so. NE#1 ran up the driveway of the adjacent building with WO#3 and WO#4. Witness Officer #5 (WO#5), another SWAT officer, followed them. WO#2 ran further down the street and began to cut up another alley when a shot was fired. WO#2 was not in the immediate vicinity of where the shooting occurred and did not witness it.

WO#3 and WO#4 were together in a patrol vehicle. Their BWV indicated that they received updates over radio that the Subject was armed with a handgun and that the child was believed to be in “grave danger.” They viewed a photograph of the Subject that was transmitted over their MDT. The officers conducted an area check and then met up with a K-9 officer to perform a track of the Subject. Once the location of the house where the Subject had been seen was provided over the radio, the officers went there. They discussed roles among themselves, with WO#4 telling WO#3 that he should be the Taser officer if they saw the Subject. They arrived at the house and made contact with two SWAT officers – NE#1 and WO#5. WO#5 was standing stationary and scanning from side to side. They checked in with other officers and then, with WO#2, walked back towards where NE#1 was standing. NE#1 told them that they should set up containment around the back. They began to do so when NE#1 and WO#2 spotted the Subject and WO#2 yelled for him to stop. While WO#2 proceeded down the street southbound, NE#1, WO#3, WO#4 ran up the driveway adjacent to the alley and around several buildings until they turned the corner around a house to a partially paved walkway where they observed the Subject emerging from behind the house holding the child in the crook of his left arm.

NE#1 and WO#5 were dispatched pursuant to the call for SWAT resources. They drove to the vicinity of the house where the Subject and the child were observed. Their vehicle’s In-Car Video (ICV) recorded that they discussed the information that they received concerning the Subject’s location. They briefly discussed where they should position themselves given the location information received from radio and the K-9 search that had been conducted. They exited their vehicle and approached WO#2, WO#3, and WO#4, who had also arrived at the location. They briefly discussed their tactical plan. NE#1 stated: “Let’s set up containment [blocking off the Subject’s potential escape routes] on this back and work our way around to the front.” WO#5 told NE#1 to position the officers in the manner that NE#1 wanted. Approximately 12 seconds after that, NE#1 and WO#2 spotted the Subject and the child. NE#1’s BWV showed the Subject appear to climb up and over a fence. Officers yelled for the Subject to stop. WO#2 ran after the Subject in one direction and NE#1, WO#3, and WO#4 ran in another direction in an apparent attempt to cut the Subject off. WO#5 followed behind them. As indicated above, they ran through a driveway and around a building before coming into contact with the Subject who was holding the child.



#### **D. Second Observation of the Subject and the Fatal Shooting**

BWV recorded by NE#1 indicated that the Subject emerged from around the house and proceeded into the partially paved pathway. He was holding the child in the crook of his left arm. The positioning of his right hand at that point was not clear from OPA's review; however, the Subject was not holding a weapon and his hand was not raised towards the officers. WO#3's BWV indicated that NE#1 yelled: "stop." WO#3 stated: "You better stop right now." The Subject took a step towards the officers and NE#1 fired once with his rifle, striking the Subject who slumped down to the ground. From the time that the Subject came into view to the time the shot was fired was approximately two seconds. Once he made contact with the ground, the Subject released the child, who rolled forward. An officer immediately yelled: "Pick the baby up." WO#4 picked the child up and said: "I've got the baby." He walked with the child back to where the other officers were located and made sure that the child was uninjured.

Additional officers responded to the location of the shooting. Approximately 50 seconds after the shot was fired, officers began to provide life saving measures to the Subject, including chest compressions; however, the Subject was deceased at that time and the measures were, thus, ineffective.

It was later determined that the Subject did not possess a handgun at the time he was shot and killed.

#### **E. Immediate Aftermath of the Shooting**

NE#1 was walked away from the scene of the shooting by a SWAT sergeant. The sergeant subsequently read NE#1 a public safety statement, which required NE#1 to answer questions regarding how many times he fired his rifle and the direction of fire. He provided this information. NE#1 was also asked whether and in what direction the Subject fired rounds. He stated that the Subject did not do so. He was also asked where the Subject was located, and he informed the sergeant. He was asked if there were any outstanding suspects and NE#1 said that there were not. NE#1 was asked whether any evidence needed protection and he said that he did not know. He was questioned about witnesses and he referred to the officers who were behind him but said that he did not know who they were. Lastly, NE#1 was told not to discuss the incident with anyone except for his legal counsel until investigators from FIT arrived. He placed his rifle in a locked container in his vehicle. All of the officers on scene, including NE#1, continued to record their BWV. NE#1 did not discuss the shooting during this time.

FIT arrived on scene and took custody over the investigation. FIT ultimately notified officers that they could turn their BWV and ICV off. FIT arranged for NE#1 to be photographed by CSI and a round count was performed of his rifle to verify how many shots were fired.

OPA and OIG were notified of the shooting and came to the scene. Both entities observed the FIT and CSI investigations that subsequently took place.

Lastly, just short of three hours after the shooting occurred, a K-9 officer with a dog specially trained to identify firearms and bullets, located the handgun that was believed to belong to the Subject. It was found in the alleyway near the house under construction.

#### **F. FIT Investigation**



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FIT's investigation involved collecting evidence via CSI, reviewing Department video, and canvassing for witness who may have observed the incident and third-party video. FIT also conducted interviews of NE#1, WO#3, WO#4, and WO#5 that afternoon and into the evening. FIT lastly spoke with the Victim on several occasions.

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

NE#1 stated that, upon responding to this incident, he was aware that a male – the Subject – had fired his handgun at a female – the Victim – and that the Subject had taken a child away from the Victim. He learned the description of the Subject and that the Subject had been tracked to the vicinity of a house under construction. While on scene, NE#1 spoke with other SWAT officers concerning their tactical plan. NE#1 was assigned to monitor the back of the property and, specifically, an alleyway directly next to the house and an adjacent parking lot. Several patrol officers then approached him, and he discussed their positioning.

At that time, he saw movement at the back of an alley and what he thought was an arm, elbow, and/or hand with a black sleeve. He observed the arm be yanked back, which, in his opinion, suggested someone trying to duck out of sight. He thought that this could be the Subject but was not sure and waited for the person to reappear. He said that he did not yell out at that time because he did not know if the person had seen him and he was hoping that the person would show themselves. NE#1 said that he continued to monitor that location and was on "alert." NE#1 estimated that, less than a minute later, he saw a male, who he believed to be the Subject, reappear. The Subject was carrying the child in his right arm "like a football" and NE#1 could not see his left hand. He saw the Subject run towards a fence and appear to be in the process of jumping the fence. NE#1 ran as fast as he could with the patrol officers through the driveway of the adjacent property in an attempt to cut the Subject off.

At the time, NE#1 described knowing that the Subject was being sought for felony assault with a handgun and the kidnapping of the child. NE#1 said that he immediately went to his training and viewed this as a potential hostage rescue situation with the child being the hostage. In NE#1's perspective, the safety of the child was of the utmost importance, even over his own life. He did not believe that he could allow any risk of harm to the child. He stated that, to ensure this, he needed to "stop the threat or take the guy into custody."

NE#1 rounded the corner and came to a pathway between a fence and a building. He saw the Subject come into view. The Subject now had the child in the crook of his left arm and NE#1 said that he could not see the Subject's right hand. The Subject rushed into view and, after seeing the officers, glanced towards a fence to his left. NE#1 said that he yelled "stop," but that the Subject took a step towards the officers. NE#1 interpreted this as indicating that the Subject was cornered and out of options and was thinking of a way to escape. NE#1 noted that the Subject did not speak but looked right at him and other officers. NE#1 said that he believed that the Subject was coming up with a plan and that this involved hurting or killing the child and/or officers.

NE#1 felt that taking the shot at that point was the only thing he could do to ensure the safety of the child. He was concerned that, if he did not do so, the Subject would harm or kill the child or NE#1 and other officers to get away. He saw the Subject holding the child down by his waist and observed that he had a clear view of the Subject's head. Given his training, he believed that he had a "window of opportunity" that he "could not pass up" to protect the child. NE#1 explained:

It looked to me like he was trying to come up with a plan, I felt like he was cornered. He knew we had him cornered in this position and he was coming up with some crazy thing





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to do to end this situation, I'm positive he's gonna hurt the kid and if not that he is gonna try and hurt me. Like I said, I knew he was armed, he already fired a round, he was willing to pull the trigger, I was aware of the child's position and knew I would not hit the child.

NE#1 further stated:

It just kinda boils down I think to at the moment of the UOF I feel like I was in a position to decide if I could gamble with this baby's life or not, and I had an opportunity to not gamble with her life and stop the threat to her.

NE#1 accordingly fired one shot at the Subject's head, striking him. He recalled that the Subject slumped to the ground and the child rolled out of the Subject's hands. An officer immediately picked up the child and other officers began life saving measures on the Subject.

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

WO#3 stated that he was partnered with WO#4. From radio transmissions, they were aware that the Subject had taken the child and fired a shot. He knew who the Subject was prior to this incident. He did not know whether the child was the Subject's and said that what he knew at the time was that "some guy just stole someone's baby and took a shot at her." He was aware that the Subject had also physically assaulted the Victim causing her to suffer injuries, including a potential broken arm.

He and WO#4 were involved in a search for the Subject that culminated at the house under construction. He said that he walked to the south side of the house and saw that SWAT officers were setting up containment. He walked towards the north side but, given that there were a number of other officers there, he and WO#4 returned south.

WO#3 saw NE#1 raise his rifle towards the alley next to the house. He looked in that direction and saw the Subject. WO#3 also raised his handgun. He saw the Subject run east and then south. WO#3, NE#1, and WO#4 ran through a parking lot in the same direction as the Subject. They turned up a pathway next to another residence and saw the Subject come into view. The Subject was between 12 to 15 feet away from them.

WO#3 observed that the child was in the Subject's left hand and was "flopping" around, which WO#3 felt showed a disregard for the child's safety. He and other officers yelled for the Subject to stop. WO#3 said that NE#1 then fired a single shot that struck the Subject and caused him to slump to the ground. An officer picked up the child and other officers began to perform life saving measures on the Subject.

WO#3 stated that, at the time deadly force was used, he did not believe that further de-escalation was safe or feasible. WO#3 said that the officers gave the Subject orders, but he did not respond and, instead, took a step towards them. In response to the question of whether the Subject appeared to acknowledge the orders, WO#3 stated: "I don't think so, he faced towards us but it looked like when he stopped in his tracks it was not to stop but to change directions or do something else. It did not look like he was planning to stop." WO#3 asserted that, in his opinion, deadly force was warranted under the circumstances. WO#3 said that, among the facts he considered were that the Subject was believed to be armed and had shot at the Victim and that he had taken her child. WO#3 told FIT that he felt that the life of the child was in imminent danger at the time.



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

WO#4 recalled that he was initially aware that the Victim alleged that the Subject pointed a handgun at her. The call was later updated to reflect that the Victim had been assaulted by the Subject and that he had fired the handgun and had taken her child. WO#4 also learned that the Subject was intoxicated. He believed that there was probable cause to arrest the Subject for felony assault and kidnapping.

WO#4 and WO#3 met up with a K-9 officer and assisted in beginning a K-9 track for the Subject. They located the Subject's vehicle, which had a broken-out window. Based on this, and the other information that the officers were aware of, WO#4 believed that the Subject was armed and dangerous. The officers received an update that the Subject may have been seen at a house under construction and the K-9 track led them there. An officer stated that the Subject was in the building, so WO#4 ran to the south side to set up containment.

While there, he heard another officer yell: "Stop, I see movement." WO#4 looked and saw an individual, who he believed to be the Subject, running. WO#4 ran with WO#3 and NE#1 to try to locate the Subject. They turned the corner around a residence and saw the Subject. WO#4 said that it looked like the Subject was "trying to figure out what to do" because of a fence "right there." WO#4 said that the Subject turned away from them and then again turned to face them. At that time, he heard a shot from beside him. WO#4 indicated that, at the time he heard this, he did not feel that he personally had a clear shot at the Subject. He saw the Subject, who was holding the child in his left arm, slump down to the ground. He picked up the child and removed her from the area. He and another officer made sure the child was unharmed.

### **4. WO#5's FIT Interview**

WO#5 was partnered with NE#1. He heard the information over the radio concerning an assault, the taking of the child, and a shot being fired by the Subject. He said that it was unclear whether the Subject was one of the parents of the child, but that he believed it was possibly a domestic violence (DV) situation. WO#5's understanding was that there was probable cause to arrest the Subject for DV felony assault and kidnapping. WO#5 was not positive that it was a hostage call, as it was possible that the Subject had put the child down, but he felt it likely that it would be so. WO#5 said that SWAT officers received extensive training on how to handle such situations. He stated that the response was not necessarily a shot being fired and that it depended on the actions and posture of the hostage-taker.

WO#5 and NE#1 learned that the Subject was spotted in the vicinity of a house that was under construction in South Seattle. He and NE#1 arrived and got out of the car with their rifles. WO#5 and NE#1 began to set up containment with other officers who were already on scene. WO#5 and NE#1 positioned themselves on the south side of the house. Several of the patrol officers who were with them on the south side began to move to the north. NE#1 told WO#5 that he needed those officers to stay south to help with containment.

WO#5 then heard an officer yell: "Seattle Police stop." He started back towards NE#1 and where the patrol officers had been positioned and observed them running through a parking lot adjacent to the house. They were moving eastbound. WO#5 ran after them as, based on SWAT training, he wanted to be shoulder to shoulder with NE#1. While doing so, he heard a shot that was consistent with a SWAT issued suppressed rifle being fired.

When WO#5 turned the corner, he saw the Subject slumping to the ground with the child in his left hand. The child was taken by a patrol officer. Multiple officers began administering life saving measures. WO#5 observed the shell





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casing from NE#1's rifle shot and asked another officer to place a business card over it to mark the shell casing as evidence.

#### **5. Community Member's FIT Interview**

FIT interviewed a community member who took video contemporaneously to the incident. The video captured audio of the shooting but did not actually depict what occurred. The community member was not a direct witness to the shooting. He said that he saw officers running and saw one officer kick down a fence. He then heard a shot, which sound to him like a "pop," and saw an officer walking away with the child.

#### **6. Statement to FIT by the Victim**

A FIT detective spoke to the Victim. She was upset about what occurred and the Subject being shot by NE#1. She was angry that that her child was being held by the Subject at the time and that she lost her "best friend." The Victim asserted that NE#1, who is White, shot the Subject because he was Black. The Victim also asserted that NE#1 may have done so because he believed that the Subject was gang-affiliated and because of animus towards the Subject from prior interactions. The FIT detective explained that NE#1 did not know the Subject prior to this incident.

The FIT detective raised that this case would be investigated and reviewed by the FRB. The Victim responded that this would take a long time. The Victim told the FIT detective that people in the Subject's family were trying to "fight" her and were threatening her. The Victim said that she was trying to understand why the officer who shot the Subject was on paid leave and her and her daughter "don't get nothing." The FIT detective asked her whether she had been connected with a Victim Support Advocate and the Victim eventually stated that she had been but that the advocate had not done anything for her. She said that the advocate gave her a \$100 gift certificate for her child and advised her to stay out of Seattle, which the Victim felt was insufficient. The FIT detective recognized that the Victim was very upset and offered to stay on the line to speak with her. The Victim expressed her dislike for SPD and hung up the phone.

#### **G. FRB Review**

After FIT's investigation was concluded, the case was reviewed by FRB. The FRB was not permitted to reach ultimate conclusions as to whether NE#1 de-escalated and used appropriate force due to the fact that this case was under active OPA investigation at the time (*see* SPD Policy 8.500-POL-4(11)). However, the FRB did evaluate and opine on NE#1's tactics and decision-making and whether this was consistent with SPD policy and training. The FRB found that it was. The FRB also considered and discussed the elements of de-escalation of the use of deadly force. No issues contrary to policy or training were identified by the FRB.

#### **H. OPA Investigation**

OPA's investigation remained on hold until both the FIT investigation and FRB review were concluded. Once commenced, OPA's investigation involved reviewing the FIT file, including the interviews therein. OPA also reviewed the BWV and ICV for NE#1 and the witness officers, as well as listened to 911 and dispatch audio recordings. Lastly, OPA conducted independent interviews of NE#1 and WO#5, as well as attempted to interview the Victim.

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



While in the SWAT office, NE#1 heard over the radio that shots had been fired within the confines of the South Precinct. He was informed by a SWAT sergeant that a male – who he later learned was the Subject – had fired a handgun at a woman – the Victim – and had taken her child. The sergeant directed NE#1 and WO#5 to respond. NE#1 said that, at this time, he believed that there was probable cause to arrest the Subject for felony assault with a handgun and kidnapping. NE#1 did not know whether the Subject was on foot or in a vehicle.

NE#1 explained that SWAT members train extensively for these types of situations. He said that each officer was familiar with the tactics of the other members on the team, as well as with the concepts of containment, arrest teams, and contact teams. He said that this incident was believed to be a hostage situation based on what they knew at the time. He had received routine training on how to respond to hostage rescue scenarios. NE#1 explained that a hostage rescue scenario is defined as where there is a victim who is in grave danger and is being held against their will. He told OPA that, in such cases, the critical nature of the immediate threat to the victim is so dire that the SWAT team prepares to intervene in a manner that will immediately separate the victim or eliminate the threat to the victim. This includes shooting the hostage-taker if appropriate and necessary. NE#1 stated he was trained to aim for the head in a hostage rescue scenario because that shot will immediately incapacitate the hostage-taker and eliminate the threat posed to the victim. NE#1 noted that he was a tactics trainer within SWAT and that he was an instructor for the Washington State Tactical Officers Association.

NE#1 indicated that he received a description of the Subject. He and WO#5 learned that the Subject was believed to be at a house that was under construction. NE#1 and WO#5 drove to that location. NE#1 was told that the Subject had forcefully entered the home by kicking open the door. He and WO#5 set up containment at the south end of the home while other officers went to the north side. He did so to watch the area in case the Subject tried to escape. He summarized that, at the time, he considered that the Subject was at large and believed to currently be armed, that the Subject still had the child, that the Subject had fired at least one round from his handgun, and that the Subject had kicked in a door, while still having the child with him. NE#1 expressed that he was concerned that the Subject would try to hurt the child and/or officers.

He spoke to patrol officers and told them that the plan was to contain the house and to wait to see whether the Subject would exit. At that point, he saw movement up the alley next to the house and believed that it may have been a person's arm. It appeared as if someone had moved out of sight quickly. He continued to watch that area until he saw the Subject "pop back out into view." The Subject matched the suspect description and was running while holding the child. NE#1 recalled that the Subject was holding the child like a football and that the child's limbs were flopping all over the place and the child's head was bouncing. In NE#1's perception, this elevated the threat risk, and he was further concerned by the Subject's treatment of the child. He saw the Subject jump a fence while holding the child. This was despite officers yelling at the Subject to stop. At that point, NE#1 felt that it had evolved into a hostage rescue scenario. He believed that the child was in imminent danger that was steadily increasing. This confirmed in his mind that he needed to intervene immediately.

NE#1 ran after the Subject with several other patrol officers. He came around the corner and the Subject entered his line of sight. NE#1 said that the Subject was holding the child in his left arm and was doing so in a manner that suggested to NE#1 that the Subject did not care about the child's welfare. NE#1 perceived that the Subject was in an elevated location and said that the Subject looked at the adjacent fence as if to calculate whether he could or should jump over it. NE#1 yelled at the Subject to stop. The Subject again looked at the fence and then back at NE#1. NE#1 felt that the Subject was realizing that his plan of escape was not going as the Subject had hoped it would. NE#1 stated



that the Subject then took a step towards him and, at that moment, NE#1 fired one shot at the Subject's head, striking him.

NE#1 explained that, prior to firing, he considered that the Subject was cornered, was desperate to get away, and was looking for options. NE#1 also believed that he was presently armed. NE#1 knew that the Subject had already fired his handgun in order to get the child and believed that the Subject was planning what to do next. NE#1 felt that this presented too great of a risk to the child and was convinced that he needed to take the shot at that time. When the Subject shifted the child's position, NE#1 believed that he had a clear shot at the Subject's head, and he took it. He said that he did so to prevent harm to the child and potential danger to himself or others. He considered it possible that the Subject could shoot the child and run, shoot officers to get away, or throw the child onto the ground and shoot the child and/or officers.

## **2. WO#5's OPA Interview**

WO#5 said that the call they initially became aware of involved felony assault and kidnapping. He further was aware that a shot was fired. He believed that it was possible that this was a hostage rescue scenario and said that SWAT officers extensively trained for these events. WO#5 responded to the call with NE#1. During the drive, they discussed what they knew. They were unsure of the relationship of the Subject to the child. They agreed that the child was in danger.

When they arrived on scene, they were informed that the Subject had kicked open the door of a house under construction and was believed to be inside. They began setting up containment around the building. WO#5 sent several officers over to where NE#1 was standing in order to help him with creating containment.

WO#5 then heard officers from that location say: "stop" and "hey don't move." WO#5 saw NE#1 and the patrol officers begin to run and he ran behind them. He heard NE#1 say: "stop, police." As he was about to turn the corner behind the other officers, he heard a muffled gun shot, which he believed came from NE#1's rifle. As he rounded the corner, he saw the Subject slump to the ground. WO#5 did not witness the shooting and only observed the aftermath.

With regard to de-escalation, WO#5 stated that officers set up containment, attempted to slow the incident down, formed a plan, and communicated instructions to the Subject prior to using force. WO#5 denied hearing NE#1 make any statements or seeing him engage in any actions that suggested that bias played any part in NE#1's decision to use deadly force towards the Subject.

## **3. OPA's Call with the Victim**

OPA called the Victim and attempted to interview her. She declined to have the phone call recorded. She told OPA that she continues to receive threats on social media and via her phone and that she was seeking to change her phone number. She further stated that the Subject's family was attempting to have CPS take custody of her child.

With regard to the investigation, the Victim stated that she was intending on suing SPD even though she did not believe that the officers were completely at fault and recognized that the Subject presented a threat. She stated that, regardless, she wanted the police to help the Subject not kill him.



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OPA asked whether the Victim wanted to be a complainant in this case, and she declined. The Victim asked that OPA speak with her sister to convey the same information. While the sister encouraged the Victim to give a statement, the Victim ultimately decided not to do so.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #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.*)

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.

With regard to whether he engaged in sufficient de-escalation, NE#1 explained that he and other officers set up a tactical plan, including containment, that was purposed to take the Subject into custody without using force. He engaged in communication with those other officers to ensure that everyone was on the same page. When the Subject started running and broke through the containment, NE#1 and other officers gave him multiple orders to stop, but the Subject did not comply.

NE#1 stated that, once he came face to face with the Subject and given the Subject’s prior violence, repeated non-compliance, and dangerous physical handling of the child, no further de-escalation was safe or feasible. He told OPA that seeking additional time, distance, and shielding was not practical or appropriate as, in that moment, he “needed to save that baby and make sure she was not harmed.”

Based on OPA’s review of the evidence, it concurs with NE#1’s analysis. Given the totality of the circumstances and when evaluating the information known to NE#1 at the time – including that the Subject was armed and dangerous, further de-escalation was not safe or feasible. As discussed more fully below, NE#1 – reasonably in OPA’s opinion –



assessed that the Subject posed an imminent deadly threat to the child and officers. He was permitted to act accordingly, and policy did not require him to wait or engage in further de-escalation. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

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

**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.” (SPD Policy 8.200-POL-4.) Deadly force must also be reasonable, necessary, and proportional as defined under SPD Policy 8.200-POL-1. 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-POL-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, force must be proportional to the threat faced by officers. SPD Policy instructs that: “The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be proportional, objectively reasonable, and necessary to counter it.” (*Id.*)

**A. Overview**

Two concepts are crucial to the evaluation of NE#1’s force. First, as a matter of policy and law, NE#1 must be held to a reasonable officer standard. This means that OPA must view his conduct through the lens of how a reasonable officer with similar training and experience would have acted under the same circumstances. In the context of NE#1, this means the reasonable officer is presumed to have NE#1’s same extensive SWAT experience and training. Second, NE#1’s actions cannot be evaluated using 20/20 hindsight. This means that OPA cannot look at evidence that was unknown to him at the time or that would not have been considered by a reasonable officer and use that to second guess the actions that NE#1 took.

**B. Propriety of the Use of Deadly Force**

From OPA’s review of the totality of the evidence, OPA finds that the elements of SPD policy governing the application of deadly force were met here. First, NE#1 articulated how the Subject’s actions posed a threat to cause serious or deadly harm to the child and possibly himself and other officers. NE#1 described that the Subject was fleeing, including jumping over fencing, while holding the child in a manner that appeared to exhibit a disregard for the child’s safety. NE#1 also noted that the Subject had previously shown that he was willing to engage in violence when he shot his firearm in the vicinity of the Victim and said that the Subject was still believed to be armed and dangerous at the time deadly force was used. NE#1’s observations in this regard were supported by the BWV and the accounts of the witness officers.



Second, OPA concludes that, based on what NE#1 knew at the time, the Subject had the instrumentality or means to inflict deadly harm on the child and officers. Most notably, NE#1 still believed that the Subject was armed with a handgun at the time and could not see the Subject's right hand. While it was later determined that the Subject ditched the weapon elsewhere, NE#1 did not and could not have known that at the time.

Third, OPA determines that, again based on the information available to NE#1 at the time, the Subject had the opportunity and ability to subject him and the child to serious bodily harm or death. NE#1 explained that he felt it possible that the Subject could have access to the handgun with his right hand and, given the Subject's actions and demonstrated willingness to use a high level of violence, he felt it likely that the Subject would do so here if he did not stop him.

### **C. Whether the Force was Reasonable, Necessary, and Proportional**

As discussed above, SPD Policy 8.200-POL-1 requires force to be reasonable, necessary, and proportional. These three factors and my conclusions as to each are outlined below.

#### **1. Reasonableness Factor**

As discussed above, the reasonableness determination is based on an evaluation of a number of elements that are set forth in the policy. While none of these elements are by themselves determinative, they virtually unanimously weigh in favor of finding that the force used by NE#1 was reasonable.

##### **a. Severity of the Offense**

The Subject was sought for felony assault with a handgun and kidnapping. NE#1 was aware that he had fired a shot at the victim, that he had taken the child, and that he was considered armed and dangerous. Moreover, NE#1 observed the Subject running with the child in a manner that NE#1 viewed put the child at risk and he repeatedly failed to comply with officers' directions to stop. As such, this factor weighs in favor of a determination of reasonableness.

##### **b. The Level of Threat or Resistance**

At the time deadly force was used by NE#1, he reasonably believed that the Subject posed a high level of threat to the child, himself, and other officers. NE#1 explained, and the BWV confirmed that, at the time of the shooting, the Subject had the baby in his left arm and his right hand was not completely visible. While NE#1 and WO#3 yelled for the Subject to stop, he took a step towards them. Based on the totality of the circumstances, NE#1 believed that the Subject had run out of options and was looking for an opportunity to escape and, to do so, was willing to cause harm to the child or officers. NE#1 felt that his only option at that point was to fire. For these reasons, OPA also finds that this factor weighs in favor of reasonableness.

##### **c. Potential Threat to the Community**

The most significant threat was to the child and the officers; however, there were residents throughout the community who were also potentially at risk. In addition, the Subject had earlier demonstrated a disregard for the safety of others when he assaulted the Victim and fired his handgun in a public park.





As there was a high potential risk to the community from a fleeing, potentially armed individual, this factor weighs in favor of a finding that the force was reasonable.

**d. *Potential of Injury to Bystanders and Officers***

As explained above, there was a significant potential of injury to bystanders and officers during this incident. As such, this fact also weighs in favor of a finding of reasonableness.

**e. *The Risk or Apparent Attempt by the Subject to Escape***

The Subject indisputably attempted to escape multiple times during this incident. Moreover, he did so with a handgun – even though he ditched it unbeknownst to the officers – and while holding the child. This factor weighs in favor of a finding of reasonableness.

**f. *The Conduct of the Subject***

As described herein, at the time deadly force was used, the Subject had fled, was continuing to be non-compliant, was holding the child, and was believed to be armed and dangerous. Moreover, prior to that time, he had assaulted the Victim and fired his weapon. In addition, the Subject took no actions and made no statements that indicated any intention on his part to surrender. As such, this factor supports a finding that the force was reasonable.

**g. *The Time Available to the Officer to Make a Decision***

From OPA's analysis of the video, NE#1 made the decision to fire at the Subject approximately two seconds after seeing him and observing the Subject's conduct. NE#1 stated that his timeline was compressed because of what he perceived to be an imminent threat to the child. NE#1 said that further de-escalation was not safe or feasible at that time and, given the Subject's body movements and believed possession of a weapon, he needed to act immediately.

As indicated by his statements and the video, NE#1 had a very short timeframe in which to make the decision to use deadly force. As such, I find that this factor weighs in favor of reasonableness.

**h. *The Availability of Other Resources***

At the time of the shooting, the Subject had been given multiple opportunities to surrender but had not done so. In addition, he was told to stop by multiple officers and did not do so or give any indication that he had the intent to comply.

Given this, and because the officers reasonably believed that the Subject was armed and dangerous and posed an immediate threat to the safety of the child and others, there were no other available resources at that time that would have been practical, including a Taser or OC spray. The officers, and particularly NE#1, were trained to view this incident as a deadly force scenario as it evolved.



Moreover, even if it was possible that there were other force options that NE#1 could have evaluated, a reasonable officer in his place, with the same experience and training, was warranted in believing that taking the shot was the only feasible and appropriate action under the circumstances. As such, this factor weighs in favor of reasonableness.

**i. *The Training and Experience of the Officer***

NE#1 had received extensive training while a member of SWAT concerning how to handle a hostage crisis scenario, including engaging in mock responses. He said that he received SWAT-wide training in this area around four times a year but conducted relevant training with his specific team on numerous other occasions. At his OPA interview, NE#1 provided significant detail concerning the specific training scenarios that they engage in and the instruction that they are given to separate the hostage from the hostage-taker and to, if needed, use deadly force to do so. He was further trained on when, whether, and how to fire his rifle in such scenarios, including the expectation that he aimed for the head where it was an available target.

OPA reviewed the section of the SWAT Manual that governed hostage rescue scenarios. From OPA's review, NE#1 acted consistent with his unit's operating manual in his response to this incident. As such, this factor weighs in favor of a finding of reasonableness.

**j. *The Subject's Proximity to or Access to Weapons***

The Subject was believed at the time to be armed and dangerous. The officers did not know and could not have known that he had earlier ditched the firearm. As such, this fact supports a finding that the force was reasonable.

**2. Necessity Factor**

During his OPA and FIT interviews, NE#1 asserted his belief that deadly force was necessary under the circumstances that faced him. NE#1 explained that he felt the Subject posed an imminent risk of serious harm or death to the child and officers. He said that this was based on the totality of the Subject's conduct, his willingness to use violence, his attempts to escape, his apparent disregard for the safety of the child, and the belief that the Subject was still armed and dangerous.

He further explained that, despite being given orders to stop and being cornered by officers, the Subject did not give up and appeared to NE#1 to be desperate and looking for a way to escape. NE#1 felt that he would do so by any means available to him, even if that meant hurting or killing the child and officers.

Lastly, NE#1 noted that he could not see the Subject's right hand and felt it possible that he could have or reach for the handgun. This heightened the risk in NE#1's mind and increased the necessity of the force.

Given this and based on the information available to him during the immediacy of the incident, NE#1's use of deadly force was necessary under the circumstances. Moreover, and discussed more fully herein, there was no other force that would have been a reasonable alternative to the use of deadly force and that was also consistent with the training received by NE#1.



In reaching this conclusion, OPA recognizes how quickly NE#1 acted. Certainly, it could be argued that, knowing after the fact that the Subject did not possess the handgun at the time of the shooting, had NE#1 waited just a few more seconds, the Subject may have surrendered. However, this is purely speculative and, in any event, is barred under the prohibition on using 20/20 hindsight. NE#1 must be judged based on what he knew and what he perceived at the time. In applying this standard, OPA finds that the force was necessary and that there were no reasonable effective alternatives available to NE#1 in the immediacy of the moment.

### **3. Proportionality Factor**

Lastly, with regard to the proportionality of the force, NE#1 reasonably believed that the Subject posed an imminent threat to child, as well as his and other officers' lives and safety. Accordingly, NE#1 was able to use a high level of force to prevent this harm from occurring. NE#1's use of deadly force was thus proportional under the facts of this case.

### **D. Conclusion**

In reaching these findings, OPA offers its condolences to the Subject's family, who are also victims under the circumstances. OPA also extends its sympathies to the Victim and the child for the loss they suffered and what they experienced.

However, when analyzing the facts – including the BWV – and when applying policy and law to those facts, OPA reaches the conclusion that the application of deadly force was consistent with policy and Department training. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

### **Named Employee #1 - Allegation #3**

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

As discussed above, the Victim told the FIT detective that she believed that NE#1's shooting of the Subject was based on bias.

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.*)

OPA uncovered no evidence supporting the assertion that NE#1 engaged in biased policing during this incident. As discussed herein, NE#1's actions were based on the facts and circumstances that he faced, not on the Subject's race. OPA reaches this conclusion due to the BWV and the contents of the interviews provided by NE#1 and the other witness officers.

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

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