



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 5, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0519

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)

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	Sustained
# 2	8.200 - Using Force 4. Use of Deadly Force	Not Sustained (Management Action)

Imposed Discipline

Suspension Without Pay – 20 Days and Disciplinary Transfer
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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 Named Employee #1 may have failed to de-escalate prior to using force and that the deadly force that Named Employee #2 used towards the Subject may have been contrary to policy.

ADMINISTRATIVE NOTE:

This DCM concerns the actions of two of the three Named Employees involved in this incident. The third Named Employee, who was one of the two officers who shot the Subject, left the employment of SPD during the pendency of this investigation and while the case was tolled. The third Named Employee has not responded to requests that he participate in an OPA interview. Given that the timeline for the third Named Employee is presently in abeyance as he no longer works at SPD and does not continue to receive the protections of the collective bargaining agreement, OPA intends to keep this aspect of the case open to allow for additional opportunities to interview the third Named Employee.

In addition, it is important to provide an explanation of the timing for the commencement of this case and, relatedly, how the 180-day was calculated. As a general matter, OPA has six-months from the date of incident to issue findings. Per the collective bargaining agreement, this is explicitly the case with deadly force incidents where OPA responds to



the scene. All deadly force incidents are investigated by the Department's Force Investigation Team (FIT) and are later assessed by the Force Review Unit and the Force Review Board (FRB). Even where OPA opens an investigation into the use of deadly force at or shortly after the incident, OPA generally functionally pauses its investigation to allow for both the FIT and FRB proceedings to be completed prior to issuing findings. Doing so is particularly useful when the case revolves around de-escalation and whether the involved officers applied appropriate tactics and complied with their training as it allows OPA to hear from SPD experts prior to reaching a decision. However, an unfortunate result of immediately initiating an investigation is that, because the case is then under OPA's jurisdiction, SPD Policy 8.500-POL-4(11) precludes the FRB from reaching ultimate opinions on whether the officers complied with the de-escalation and force policies, even though the FRB can still discuss and reach findings on whether the officers complied with their training and utilized appropriate tactics.

Given all of this, despite having questions surrounding the Named Employees' de-escalation and the use of deadly force, OPA chose to not immediately initiate an investigation to allow the FIT and FRB evaluations to be completed and, most importantly, to allow the FRB to fully assess and opine on the potential policy violations. However, two issues intervened that made this impractical. First, both the expansion of COVID restrictions coupled with the unprecedented protests in May through August greatly delayed the work of both FIT and the FRB. Accordingly, investigations that would normally be finished within two to three months, thus allowing OPA another three months to conduct its independent review, had no anticipated completion date. Second, after an article was published on a news blog concerning the shooting, OPA received an influx of complaints, which required a case to be opened. OPA later identified that another community member had made a separate complaint approximately two months prior; however, that email was not timely read as it was sent at the same time as approximately 19,000 complaints concerning the demonstrations, which consumed OPA's limited resources. This delay was simply academic, however, as the case was ultimately opened.

Consistent with the contractual requirements outlined above, OPA initially ran the 180-day deadline from the date of the incident. This case then received, along with virtually all other investigations, a 60-day extension recognizing the influx of protest cases. OPA then received two additional extensions of the deadline, the latter purposed to allow FRB to conclude its assessment.

SUMMARY OF INVESTIGATION:

A. Introduction

The investigation concerns the fatal shooting of the Subject by two Seattle Police officers. In this investigation, OPA evaluated whether Named Employee #2 (NE#2), who was one of the officers who shot the Subject, failed to de-escalate prior to using force and ultimately used deadly force that was inconsistent with policy. OPA also evaluated whether Named Employee #1 (NE#1), who did not discharge his firearm, also failed to de-escalate. As noted above, OPA classified allegations of de-escalation, use of force, and use of deadly force against the second SPD officer who shot the Subject. As discussed above, this officer – who is referred to here as the Second Involved Officer ("SIO") – has since left the Department and has thus far declined to participate in an interview relating to this matter. The portion of the case involving him will remain open until he does so or until when OPA makes the decision that it should be closed. At that time OPA will issue findings in a supplemental DCM.



B. 911 Calls and Search for the Subject

At approximately 3:20 p.m. on May 19, 2020, a community member – referred to here as Community Member #1 (CM#1) – called 911. He reported that a male – later identified as the Subject – had pulled a knife on him and rushed at him. CM#1 said that he was uninjured. He provided a location of the Subject – Elliot Avenue West on the west side of the street – and a description. CM#1 recalled that, when the Subject initially walked by him, the Subject pulled the knife, looked at him, and said: “are you one of them, motherfucker.” CM#1 stated that he then ran away. CM#1 believed that the Subject was likely high or suffering from mental illness. This call was followed in quick succession by three other calls from community members.

Community Member #2 (CM#2) also reported being chased by the Subject who was holding a 3” to 4” knife. CM#2 recounted that the Subject was screaming “gibberish.” CM#2 provided a location and description for the Subject. CM#2 said that he was jogging when the Subject came out from under some trees and told CM#2 to “stay the fuck away.” The Subject then drew a knife.

Community Member #3 (CM#3) called 911 to report a “crazy, aggressive man walking down the street.” She said that she saw the Subject, who was armed with what she perceived to be an 8” knife, run at and lunge towards a jogger, forcing the jogger off the street. She said that the Subject was yelling loudly and that she could hear him from a distance. CM#3 characterized the Subject as “dangerous.” CM#3, like the other witnesses, provided a description and location for the Subject.

Lastly, Community Member #4 (CM#4) reported that the Subject was walking up the street while shouting and holding a knife. CM#4 described the Subject as swinging his arms. CM#4 did not see the Subject threaten anyone and opined that the Subject appeared to be mentally ill. CM#4 provided the Subject’s description and location. During the call, CM#4 noted seeing officers begin to arrive on scene and said, regarding the officers: “It looks like they’re converging on him.” CM#4 was advised by the 911 dispatcher to walk in the opposite direction from where the incident was unfolding.

Information concerning these 911 calls and the location of the Subject were put out over radio. The incident was categorized as a “priority one weapons call.” Officers, including NE#1 and SIO, were dispatched to respond to the scene. Additional officers – one of whom was NE#2 – self-dispatched to the scene. NE#2 was assigned as a K-9 officer and traveled to the scene with his K-9 with him in his patrol vehicle.

Approximately three and a half minutes after officers were first dispatched to the call, NE#1 went over the radio and stated that he potentially located the Subject moving south on the sidewalk at the vicinity of Mercer and Harrison. One of the officers who had self-dispatched – referred to here as Witness Officer #1 (WO#1) – stated that the Subject was: “running southbound, he’s got the knife.” Seven seconds later, an officer reported: “Shots fired. Shots fired. Subject down.”

C. Incident and Fatal Shooting

All of the officers who responded to this incident recorded both In-Car Video (ICV) and Body Worn Video (BWV). The video showed the officers’ arrival at the scene, their initial locating of the Subject, their contact with him, their respective actions, and the fatal shooting.



NE#2 was handling another incident when he heard this call come over the radio. NE#2 got into his patrol vehicle and drove to the scene. He stopped his patrol vehicle by the sidewalk in front of where the Subject was walking and got out. NE#2 moved to the rear passenger door and opened it, removing his K-9. NE#2's BWV showed that, while he did so, the Subject was walking towards him. As he removed his K-9, NE#2 told the Subject to "get on the ground."

Simultaneous to this, NE#1 drove to the scene and his BWV showed him visually locate the Subject. He said: "I think I got him." He updated the location via radio and continued to drive south. NE#1 slowed to a stop. At that point, the Subject was to the right of his patrol vehicle and was walking southbound on Elliott Avenue West. NE#2's patrol vehicle was stopped directly in front of NE#1 and in the path of where the Subject was walking. NE#2 was already standing outside of his patrol vehicle and on the sidewalk, with his K-9 immediately near him. NE#1 exited his patrol vehicle and stated: "Hey man, stop. Stop. Hey, stop." The Subject was walking away from NE#1 and towards NE#2, who was out of his patrol vehicle and had his K-9 by his side on a short leash. NE#1 began running towards the sidewalk. NE#1 stopped running when he got to the front of NE#2's parked patrol vehicle. At that time, and as the Subject approached NE#2, NE#2 moved a step towards him.

WO#1, like NE#2, self-dispatched to the call. He pulled up to the scene after NE#1 and NE#2 had already arrived. He saw the Subject walking down the street towards NE#2, who was standing outside of his patrol vehicle with his K-9. WO#1's BWV captured him stating at the time: "Don't park right near him guys, are you crazy?" WO#1 exited his patrol vehicle with his rifle and advanced towards where the Subject and the officers were. As he did so, WO#1 yelled: "Hold up."

The Subject continued to walk past NE#2, who was standing at the rear passenger door of the patrol vehicle with his K-9 in his right hand. At that time, as well as prior to walking up to and past NE#2, the Subject made multiple statements, including referencing being raped. The Subject also stated, while looking at NE#2: "You're going to have to kill me." As the Subject moved past NE#2, NE#2 stepped behind him and started following him, shifting the K-9 leash to his left hand. NE#2 repeatedly told the Subject to "get on the ground." The Subject's left hand and forearm were covered by a jacket and no knife was visible at the time. The Subject performed a quick sidestep, moving sideways down the sidewalk. He then began running away from the officers. While doing so, he yelled: "You're going to have to kill me." He also threw the jacket away from him and onto the ground.

NE#2 ran directly behind the Subject with his K-9. SIO, who had since responded to the scene, ran to NE#2's right with his Taser outstretched and pointed at the Subject's back. SIO deployed the Taser at least once, but it did not cause neuro-muscular incapacitation. The Subject then stopped abruptly and began to turn, opening his body to the right and towards the officers. Simultaneously, NE#1 yelled: "He's got the knife, he's got the knife." The Subject lunged towards NE#2 with the knife in his hand. NE#2 fired multiple shots, striking the Subject, who fell to the ground face-forward. SIO also fired his handgun. When the Subject fell to the ground, the knife came out of his hand.

Based on NE#1's BWV, the time that elapsed between NE#1 first exiting his car to shots being fired was approximately 17 seconds. Based on NE#2's BWV, the time that elapsed from when the Subject first came into view from shots being fired was approximately 14 seconds. NE#2's BWV indicated that from when the Subject turned to when NE#2 fired his first shot was one second if not less.

In addition, from a review of the various video, there were no community members visible either in front or behind where the officers and the Subject were situated at the time of the shooting. While there were community members in the area, they were either a distance away on the other side of Elliott Avenue West across four lanes of traffic or in



the vicinity of an overpass that was around two blocks away (estimated at a distance of approximately 600 feet, if not further).

After the shooting occurred, WO#1 took tactical control of the scene and told SIO to move around the Subject and to come behind him and the other officers. WO#1 moved the knife away from the Subject. Approximately 50 seconds after the first shot was fired, multiple officers began providing first aid and applying other life-saving measures, including CPR. After around 12 minutes of virtually continuous CPR, the Subject was moved into an ambulance where he continued to receive medical treatment. However, he was ultimately declared deceased.

D. FIT Investigation

In the aftermath of the shooting, personnel from FIT responded to the scene. FIT notified OPA and OIG, both of which sent representatives to monitor the investigation into the incident. Once FIT arrived, they took jurisdiction over the investigation. FIT worked with CSI to document and collect evidence and to conduct round counts of the officers' firearms to determine who fired shots and how many shots were fired. Witness officers performed walkthroughs during which they placed where they, other officers, and the Subject were standing at the time of the shooting.

Later that day and into the evening, FIT conducted interviews of NE#1, NE#2, SIO, WO#1, and two other witness officers. During its investigation, FIT also interviewed a number of community members, including those who initially called 911 and others who witnessed aspects of the force from different vantage points.

The FIT sergeant, lieutenant, and captain all completed reviews of the incident and of the thoroughness and completeness of FIT's investigation. In his review of the case, the FIT sergeant wrote:

During his interview, [NE#2] states on multiple occasions that this scenario was not suited to deploy his patrol K-9 service animal as a less lethal option. It appears there was an opportunity to deploy the patrol K-9 that would have potentially given the officers involved more time to make decisions, distance from the subject and possibly the K-9 could have subdued the subject.

The FIT sergeant further noted in the section that referenced any policy-related issues: "There was possibly a failure to deescalate during this incident."

The FIT lieutenant identified concerns regarding SIO being in a crossfire situation with officers in the backdrop when he fired.

The FIT captain wrote regarding the FIT investigation: "The investigation is thorough and complete however more information should have been gathered about why they stopped so close to the subject and why they followed...so close." The FIT captain further wrote:

There were no civilians in view of the camera that the subject posed an immediate threat of harm [to]. The officers could have maintained a greater distance that would have allowed for more reaction time and options when the subject turned back towards them. The subject posed a serious risk to officers [and] the dog could have been used to lessen the risk to officers. Additional verbiage should be used to try to establish communication



with the subject. It may not have worked but something other than orders could have been attempted.

E. FRB Review

After the FIT investigation concluded, the case was reviewed by the FRB. As discussed above, because OPA had an open investigation at the time, FRB was not permitted to reach ultimate conclusions on the force and de-escalation allegations. However, FRB was permitted to and did consider the involved officers' tactics and decision-making.

With regard to NE#2, the FRB raised concerns that he did not maintain distance from the Subject, that he did not use his patrol vehicle for cover, and that he only used commands rather than trying to communicate with the Subject. The FRB also found that SIO was not aware of his backdrop when he fired and was positioned in a manner that created a possibility of crossfire. The FRB found that both officers' tactics and decision-making were inconsistent with their training.

F. OPA Investigation

As part of its investigation, OPA reviewed the BWV and ICV from a number of officers. OPA further reviewed the contents of the FIT investigation, including the interviews conducted. OPA was present for the FRB's deliberations on this case and considered FRB's conclusions as part of its analysis. OPA further reviewed SPD trainings surrounding responding to individuals in crisis, the formation of contact teams, de-escalation, and other tactical considerations relevant to this case. Lastly, OPA interviewed NE#1, NE#2, WO#1, and a Sergeant assigned to SPD's Training Unit.

1. Named Employee #1 Interview

NE#1 was aware of the general nature of the call, including that the Subject had a knife and had threatened community members. NE#1 confirmed that he did not engage in tactical planning or discussions prior to responding. He said that he was alone in his patrol vehicle at the time and did not speak with other officers. NE#1 described the incident and scene as "dynamic" and "high risk." He said that, as such, there was no "safe area to formulate a plan." NE#1 said that they did not form a contact team and there was no less-lethal coordination.

With regard to the Subject, NE#1 described him as appearing "angry" and "walking with a purpose." NE#1 did not see any community members in the immediate vicinity. He did see people by an overpass that was a distance south of the officers and the Subject.

NE#1 stated that he got out of his patrol vehicle and told the Subject to stop multiple times. He saw NE#2 standing with his K-9 and watched NE#2 begin "walking up towards the suspect." He continued to give the Subject orders to stop and SIO then came up on his right side with his Taser out. NE#1 told OPA that, at that point, they "almost made a contact team." The Subject then began running and the officers ran after him. NE#1 saw the knife and yelled: "Knife."

NE#1 indicated that he had received training on de-escalation and was familiar with the tactical model utilized by SPD. He described that this model included scene control, limiting exposure, and the use of time, distance, and shielding to make the scene safer. He had undergone scenario-based training in this area.



NE#1 asserted that, in his opinion, the use of de-escalation tactics during this incident would have compromised his law enforcement objectives. NE#1 explained that he perceived this to be more akin to an “active shooter type scene.” In his training, where an individual had “unlimited exposure to victims” the scene had to be “made safe.” In NE#1’s perspective, this was particularly the case here as the Subject was armed with a knife and had threatened community members.

He further stated that de-escalation was not safe or feasible. In reaching this conclusion, he cited the Subject’s direction of travel, potential victims in the area, and not knowing what was in the Subject’s mind. When asked whether he or other officers tried to slow down or stabilize the situation to allow for more time, resources, or options, he said that it was not feasible. Similarly, when asked whether he or officers took any steps to limit the Subject’s mobility, he said that there was no time to do so. NE#1 stated that he and the other officers were trying to prevent the Subject from being able to access community members.

NE#1 was asked about his running towards the Subject and whether that constituted a failure to de-escalate by abandoning cover and distance. NE#1 stated that he ran towards the Subject to get next to the other officers, not to make contact with the Subject.

NE#1 said that, while he tried to give the Subject directions to stop, the Subject was non-compliant. He said that there was not time to try to communicate with the Subject in a different, more conversational fashion. NE#1 told OPA that he did not believe that the Subject had any medical or physical impairments at the time or that the Subject had any physical limitations.

Lastly, NE#1 asserted that, in his perspective, the Subject represented a deadly threat to NE#2 at the time the shots were fired. NE#1 felt that, when the Subject turned while holding the knife, the Subject’s intent was to kill NE#2. As such, he believed that deadly force was appropriate.

2. Named Employee #2 Interview

NE#2 stated that he was on a separate call when he heard the reports of a man with a knife over the radio. He self-dispatched with the primary intent of providing K-9 support to locate the Subject. He believed that this was an “extremely serious” call based on what he heard on the radio. Specifically, he believed that the Subject was armed with a knife and had tried to stab/slash community members. NE#2 continued to receive radio updates but said that no one knew where the Subject was at the time. He did not hear any tactical planning or the assignment of roles over the radio, and he did not engage in any such conversations. He said that he did not do so because of the ongoing radio traffic and because K-9 deployments were usually not pre-briefed prior to arrival.

NE#2 said that he viewed community members on the street, including by the overpass, as he drove down Elliott Avenue West. He recalled seeing community members on the east side of the street and believed that he may have seen community members south of the Subject’s position on the west side of the street (the same side the Subject was walking on); however, he could not be sure of this. He stated that, when he first observed the Subject, he saw the Subject walk past a community member who was on the same side of the street.

NE#2 heard an officer state over the radio that the Subject had been located. He said that officers began arriving behind him (to the south). He also saw patrol vehicles coming towards him from the north. NE#2 parked his patrol vehicle by the curb on the west side of Elliott Avenue West and south of the Subject. The Subject was walking on the



sidewalk towards NE#2's patrol vehicle. NE#2 described that he angled his patrol vehicle to provide cover and a potential barrier from the Subject. NE#2 told OPA that he was not concerned with placing his patrol vehicle in that location because he felt that it would serve to contain the Subject and prevent him from proceeding southbound and potentially towards community members. NE#2 felt that this positioning constituted de-escalation. He said that it generally provided increased time for other officers to respond and react, as well as provided him time to remove his K-9 from the patrol vehicle. NE#2 told OPA that he did not consider driving past the Subject and meeting up with other officers to create a tactical plan prior to making contact. He felt that this would have undermined his ability to control the scene and to prevent the Subject from accessing potential victims.

NE#2 confirmed that, when he removed his K-9 from the rear of the patrol vehicle, he stood with his K-9 on a planting strip by the edge of the sidewalk. NE#2 said that he left the rear door open as a barrier if needed. NE#2 stated that he did not see any weapons at that time, and he felt that the Subject may have ditched the knife. NE#2 felt that his taking his K-9 out of the patrol vehicle and positioning the dog in front of him and at his feet was a de-escalation tool and a "force mitigator." He acknowledged that he moved towards the Subject while holding his K-9. He said that this occurred due, at least in part, to the momentum of his K-9. He felt that moving forward with the K-9 was consistent with his training on de-escalation and that the K-9 served as a barrier or shielding. He told OPA that the rear door remained open and continued to be potential shielding; however, he affirmed that he moved towards the Subject. He said that this was a further attempt to de-escalate as it allowed the Subject to see both himself and his K-9. NE#2 asserted that, at this time, he was waiting for other officers to respond to form a contact team. However, the Subject closed the distance with him. NE#2 remained close to his shielding (the open door) and attempted to communicate with the Subject.

NE#2 also acknowledged that he stepped towards the Subject with his K-9 when the Subject passed him and that the K-9 advanced. He said that this was due to his K-9 providing feedback to him that the dog had locked onto the Subject. He stated that he did not move towards the Subject until other officers arrived at his location. He told OPA that his goal was to follow the Subject for as long as necessary until it was no longer safe or feasible to follow him. He believed that he fulfilled the need to keep an "actionable distance" to react to the Subject, as well as helped him to gain "scene control" and to prevent the Subject from having unrestricted access to community members. NE#2 denied that this constituted a failure to de-escalate or that this escalated or changed the Subject's behavior.

OPA questioned NE#2 about various statements he made to FIT concerning his taking his K-9 out of the patrol vehicle and his ultimate non-deployment of the K-9. During his FIT interview, NE#2 stated that, as a general matter, he would not deploy his K-9 against an individual armed with a knife or edged weapon. OPA asked NE#2 why, given this statement, he would have taken his K-9 out here. He explained that, while it was not best practice, he could not tell at that point whether the Subject was armed as no knife was visible. He also referenced the possibility of a directed apprehension – meaning allowing his K-9 to bite and seize the Subject, ideally immobilizing the Subject and causing him to go down to the ground. NE#2 noted that, while in his opinion, a directed apprehension would have been warranted based on the facts known to him, it would not have constituted de-escalation.

OPA asked him why he did not get out of his car with his firearm drawn and stand behind his patrol vehicle as cover rather than extracting his K-9. He said that he felt that his K-9 was the best tool available to him at the time to de-escalate and to gain the Subject's voluntary compliance.

NE#2 said that, once the Subject passed him and threw the jacket exposing the knife, it was not reasonable to deploy his K-9. He believed that the Subject would have harmed his K-9 and he was concerned that another officer would



have incorrectly viewed the injury to the K-9 as a reason to use deadly force. He stated that he was willing to sacrifice his K-9 to protect the life of an officer or a community member.

OPA further questioned NE#2 concerning his statement to FIT that de-escalation was not safe or feasible during this incident. He stated that he believed it to have been a “rapid, dynamic, evolving, fluid motion.” He said that officers, including himself, attempted to de-escalate with verbal commands, use of less-lethal tools, and attempting to follow the Subject. However, the Subject remained non-compliant, yielding further de-escalation neither safe nor feasible. Lastly, OPA asked NE#2 about his ultimate use of deadly force. NE#2 recalled that, while the Subject was running away, he quickly turned towards NE#2. At that time, the Subject had the knife in his left hand and engaged in what NE#2 described as an overhand “stabbing, thrashing” motion. NE#2 stated that, while doing so, the Subject dove towards him and, in NE#2’s opinion, “tried to kill” him. NE#2 said that he backed up while drawing his handgun. He then fired multiple times. He estimated that he was approximately two feet away from the Subject at the time. NE#2 told OPA that, at the time he fired, he believed that the Subject was acting in a manner purposed to cause NE#2 serious bodily injury or death and that NE#2 posed an imminent threat. NE#2 further believed that, as the Subject was armed with a knife within two feet of him, the Subject had the means and opportunity to seriously injure or kill him. Accordingly, NE#2 asserted that his use of deadly force was justified.

3. Witness Officer #1 Interview

WO#1 stated that he self-dispatched to the call. He did so because of the nature of the call – a man with a knife threatening community members – and because more officers on scene is a component of de-escalation. While in transit to the scene, WO#1 did not hear any tactical planning between officers, discussions concerning staging, the assigning of roles as part of a contact team, or less-lethal coordination. He further did not hear any calls for a supervisor, CIT certified officers, or hostage/crisis negotiators.

Given the threats by the Subject with a knife, WO#1 perceived this to be a high-priority call that could possibly turn into a deadly force scenario. WO#1 mentally prepared himself to deal with someone who was armed, and potentially also high or mentally ill.

WO#1 indicated that, upon arrival, he observed NE#2 standing on the sidewalk with his K-9 out. The Subject was around 15 yards away and was walking towards NE#2. WO#1 was situated approximately 25 yards north of where they were. WO#1 heard officers giving the Subject commands but could not hear what was being said. The Subject was not compliant. WO#1 exited his patrol vehicle with his rifle. At that time, the Subject had started running away and WO#1 ran to that location. He saw and heard SIO deploy the Taser but determined that it was ineffective. He then saw the Subject turn to face the officers with a large knife in his hand. WO#1 described the Subject as “slashing the air towards” the officers. Shots were then fired, and the Subject fell to the ground. WO#1 stated that he was approximately 10 yards away at the time.

WO#1 did not hear any officers on scene engaging in tactical planning and said that he did not think there was time to do so as the Subject was advancing towards a “higher populated part of the city.” He did not see any community members in the immediate vicinity of where the Subject was and thought that it was mainly vacant office buildings.

OPA asked WO#1 about why he stated upon his arrival on scene: “Don’t park right near him guys, are you crazy?” WO#1 confirmed that this comment was directed to the officers in the immediate vicinity of the Subject. He explained that he would have preferred more distance and timing to give more of a “reactionary gap.” This was in part because



he was assigned with a rifle, but also because he did not want the Subject to harm officers by getting too close to them. With regards to his other statement to the officers to “hold up,” WO#1 said that the comment was purposed to get the officers to slow down so that he could help begin to form a contact team. WO#1 explained that, at this point, they had not seen a knife and the Subject had not begun running. As such, he felt that the officers might “have a little bit of a window” to give the Subject “a little bit of distance.” However, that was no longer feasible once the Subject began running away and then turned with the knife brandished.

In response to a question concerning whether de-escalation was safe or feasible for NE#1, NE#2, and SIO, WO#1 stated that it was “to a certain degree.” He felt that some de-escalation had already occurred, including having multiple officers on scene, giving verbal directions, applying some distance, and having the K-9 out as a deterrent and less-lethal tool. WO#1 further stated that, while possible, he ultimately did not believe that it was feasible to come up with a tactical plan as the Subject was mobile. When asked whether officers used distance, he said that, in his perspective, officers tried to maintain a “reactionary gap” and did not rush towards the Subject and try to grab him. He believed that, at the time the Subject started running, there was around a 25-foot gap between the Subject and the officers. With regard to shielding, WO#1 said that there was not much cover available other than patrol vehicles.

4. Training Sergeant Interview

OPA interviewed the Training Sergeant concerning the current instruction provided to officers on de-escalation and how to interact with individuals armed with edged weapons. The Training Sergeant stated that the Training Unit taught the Tactical Concepts Model (TCM) of de-escalation. This model has three components: (1) Limit Exposure: threat assessment, time, distance, shielding, angles; (2) Teamwork: command, communication, and coordination; and (3) Scene Control: containment, tools and techniques, and flexibility. The Training Sergeant explained that this model was used as an “assessment tool” and “a way of organizing things tactically” for officers and had the goal of: “limiting your exposure to some degree, having some degree of scene control, and then employing team work towards a problem.”

When training on the model, the Training Unit used a case study from Miami where an officer approached a man holding a knife. This was utilized to show a lack of scene control and, as such, increased exposure to danger. This was further used to accentuate the importance of time, distance, and shielding in these scenarios.

The Training Unit provided officers with instruction on each of the three components of the model. With regard to limiting exposure, a role player walked towards the officers and officers were tasked with creating shielding and distance. The key was to see how officers would adjust their positioning and angles when the role players did so. The Training Sergeant said that, for more advanced groups, they presented scenarios where the role player walked away to see how officers would react. With regard to the communication component, the goal was to help officers develop “active listening skills, open-ended questioning, paraphrasing, and empathy.” There was an emphasis on not just issuing commands, but also trying to establish a dialogue with the individual. Lastly, in the teamwork block, there was a focus on preplanning and foreshadowing certain scenarios, such as confronting an armed person who is suicidal or in crisis. Officers were also expected to understand and be familiar with the concepts of contact teams and the roles of team members (contact, less-lethal, lethal cover).

OPA questioned the Training Sergeant about best practices for responding to an individual armed with a knife. The Training Sergeant explained that, in his experience, there was no perfect response because every case was different. However, he stated that, as a general matter, the first thing to consider was the threat level. He noted that this often depended on the individual’s access to other people. If community members were in harm’s way, the response



changed and the need to act was significantly more exigent. The Training Sergeant next cited containment. He explained the importance of trying to contain the individual in order to reduce the threat to others. He stated, however, that containment also had some risks along with it, including creating crossfire situations or giving too much space to the individual. Again, the higher level of the threat, the more difficult containment would be. The Training Sergeant said that, in the ideal response, officers would coordinate their approach to the scene – either via MDT or phone – and would also assign roles and determine what less-lethal tools were available. It would also be important to determine whether there were other necessary resources available, including CIT certified personnel or hostage negotiators.

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

As discussed more fully in the context of NE#2, below, OPA finds that there was a failure to de-escalate on NE#2's part. This was primarily based on NE#2's failure to apply time, distance, and shielding and his decision to, instead, advance towards the Subject.

In evaluating NE#1's conduct, OPA focused on his lack of tactical planning and his decision to quickly run towards the Subject and NE#2. With regard to the absence of tactical planning, NE#1 explained that he was alone in his patrol vehicle while traveling to the scene. He said that, when he arrived, he saw the Subject advancing towards NE#2, who was already standing on the sidewalk in the Subject's path of travel. NE#1 asserted that, at this time, it was not feasible to engage in any tactical planning or to create a contact team. With regard to his running up to where the Subject and NE#2 were situated, he said that he did so to provide support and cover for other officers, not to go hands-on with the Subject.

Based on its review of the evidence, OPA finds that NE#1's conduct did not violate policy. In reaching this conclusion, OPA concludes that his explanations of his actions were supported by the video. First, when NE#1 arrived on scene, he parked behind rather than in front of the Subject; however, NE#2 did the opposite and positioned himself in the Subject's path. Given this and as the Subject was advancing towards NE#2, it was only a matter of seconds before they would make contact. At that point, there was simply no time for NE#1 to engage in tactical planning or to create a contact team, as SPD officers are trained to do in these types of situations. Similarly, OPA concurs that NE#1's rushing towards the officers and the Subject after exiting his patrol vehicle was purposed to provide backup and safety to other officers, not to go hands-on or make contact with the Subject. OPA finds this reasonable and, moreover, concludes that NE#1's actions in this regard were functionally caused by NE#2's tactics and decision-making. Lastly, once NE#1 arrived to where the officers and the Subject were, the Subject had already advanced past NE#2, NE#2 had taken a step towards him with the K-9, and the Subject had started the process of running away. Given this, OPA finds that NE#2's conduct, not NE#1's, caused the incident to speed up and increased the likelihood to use force.

For these reasons, and with respect to the actions and decision-making by NE#1, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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



Named Employee #2 - 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.*) 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.

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.

Based on the totality of the evidence – including the video, the statements by the various involved and witness officers, Department training, and the reviews and findings by FIT and the FRB – OPA concludes that NE#2 violated SPD’s de-escalation policy during this incident. Specifically, OPA finds that NE#2: did not avail himself of time, distance, and shielding; did not apply appropriate tactics or engage in any tactical planning; did not try to use any communication styles other than commands or evaluate whether the Subject’s non-compliance was based on mental illness or another impairment; and took affirmative actions that sped the incident up and made an imminent use of force more likely, including stopping his patrol car directly in front of the Subject and stepping into his path of travel, doing so with a K-9, and then quickly moving behind the Subject with the K-9 prompting the Subject to start running.



A. Planning and Formation of a Contact Team

At the outset, OPA finds that NE#2 failed to engage in any planning or tactical discussions prior to using force. This included not making meaningful attempts to form a contact team, as contemplated by SPD training. This can be primarily attributed to how NE#2 initially positioned himself. By pulling his patrol vehicle directly in the path of the Subject, who was walking towards him, NE#2 set up a situation where he had just seconds to prepare before being in the immediate vicinity of an armed individual. This was all prior to him having any backing officers by him at the time. Given this, NE#2 created a situation where the lack of time to discuss tactics, form a plan, and create a contact team was a self-fulfilling prophecy.

At his OPA interview, NE#2 dismissed the possibility of driving past the Subject and pulling up towards other officers to allow a contact team to be created. He cited the potential danger to community members. However, there was no evidence of any community members in the immediate vicinity and the closest individuals were either across four lanes of traffic or were hundreds of feet away. Accordingly, the threat to community members was, at that time speculative, and should not have outweighed the benefit in creating a plan and engaging in team tactics.

As referenced above, part of de-escalation is allowing for more officers to arrive and assist, including officers equipped with less-lethal tools and those who have certifications or expertise in CIT or hostage negotiation. Moreover, as indicated in SPD's training materials, a core component of de-escalation is teamwork, which involves officers working together to take the Subject into custody without needing to use deadly force unless absolutely necessary. NE#2's positioning and decision-making prevented this aspect of de-escalation from being satisfied.

B. Consideration of the Subject's Mental Condition or Impairment

OPA further finds that NE#2 did not fully consider whether the Subject suffered from a mental condition or from another impairment that prevented him from voluntarily complying and giving up.

Here, the initial reports to 911 from community members indicated that the Subject was almost certainly suffering from a mental health crisis and/or was high/intoxicated. Given this, it was possible that the Subject's mental status was a significant contributor to his actions, which suggested paranoia and irrationality. However, despite this, NE#2 positioned himself in front of the Subject while holding his K-9 and advanced towards him.

The de-escalation policy does not require officers to read minds, but it does expect that officers will take steps to consider an individual's mental status based on the information available to them, as well as that officers will then apply appropriate tactics. OPA finds that, given the specific facts of this case, NE#2 advancing towards the Subject while issuing orders and with his K-9 were not those tactics most likely to bring the situation to a safe resolution. To the contrary, it heightened the situation and made the likelihood that the incident would not result in violence significantly smaller.

C. Open Communication versus Orders

As noted by both FIT and the FRB, NE#2 also did not utilize any open communication styles. Instead, he issued repeated orders to the Subject who simply may not have had the wherewithal or capacity to comprehend and comply with those directions.



The de-escalation policy sets forth the expectation that officers will engage in verbal techniques that are most likely to “calm an agitated subject and promote rational decision making.” This is echoed in Department training, where the communication component of the TCM and trying to create a dialogue with the armed individual is stressed. NE#2 did not do so here.

D. Time, Distance, and Shielding

Perhaps most concerning for OPA was NE#2’s failure to avail himself of time, distance, and shielding. As a starting point, NE#2 made the decision to park directly in front of where the Subject was walking to and in a place where the Subject would be momentarily. When NE#2 did so, he substantially reduced if not eliminated both time and distance.

While NE#2 initially opened his car door and stood behind it, utilizing shielding, he abandoned that when he stepped away from the door and stepped towards the Subject. NE#2 opined that his K-9 constituted shielding or a barrier. However, OPA struggles to see how this is the case. A K-9 is a moving sentient animal, not a static object behind which an officer can seek safety while forming a calculated plan and trying to build channels of communication. As such, OPA further finds that NE#2 did not utilize shielding, as required by policy.

Though NE#2 asserted that there was not sufficient time to engage in any additional time, distance, shielding other than the actions he took here, OPA believes this to be inconsistent with the evidence. First, as discussed above, that NE#2 lacked time was primarily due to his own actions. Second, the video simply does not support the assertion that seeking further time, distance, and shielding was not feasible because of a threat to community members. Indeed, there were no community members in the near vicinity. In addition, NE#2 and other officers could have and should have set up containment, which would have ensured time, distance, and shielding, while cutting off the Subject’s routes to innocent people. However, even though expected, this was not done here.

E. Tactics and Decision-Making

Lastly, NE#2 engaged in tactics and made decisions that increased the likelihood that force would be required.

First, his decision to take his K-9 out in the first place was problematic. As NE#2, himself, described, K-9s are generally not appropriate when dealing with individuals armed with knives. While NE#2 claimed that his use of a K-9 here represented de-escalation, it seemed, at best, to have no such effect and, at worst, to escalate the situation. In explaining why he took out his K-9, he said that he could not see the knife. However, that an armed individual was secreting a knife while walking past an officer seems not unpredictable. Moreover, once NE#2 took his K-9 out, he functionally abandoned shielding and distance. Had he not done so, he could have drawn his firearm and waited safely behind his car door, as he was trained to do.

Second, NE#2’s decision to take an affirmative step towards the Subject as the Subject approached him was contrary to the expectation that he de-escalate and, similar to his other actions, heightened and sped up the situation.

Third, NE#2 again closely following the Subject as the Subject walked past and away from him also constituted an act that increased the likelihood that force would be used. As NE#2 did so, his K-9 moved forward towards the Subject. Virtually immediately after, the Subject sidestepped and then began running. At that point, NE#2’s actions eliminated any possibility of avoiding force and increased the possibility that a high level of force would be used.



Fourth and last, once he made the decision to take the K-9 out and due to the Subject continuing to advance towards him, he should have initiated a directed apprehension with his K-9. As NE#2 stated, that would have been appropriate under the circumstances given the suspected criminal conduct of the Subject and his non-compliance up until that point. When he did not do so, NE#2 was stuck. He now had his K-9 out and was just feet away from the Subject, who almost certainly was still armed with a knife. Similarly, once the Subject started running, NE#2 should have used his K-9 to do a direct take, which was the only less-lethal tool immediately accessible to him at that time. When discussing why he did not do so at his OPA interview, NE#1 asserted that he was concerned that the Subject would stab his dog and that another officer might use inappropriate deadly force in response. However, OPA does not find this convincing for two reasons. To start, when weighing the risk and benefits of releasing the K-9, OPA believes that the benefit that the K-9 could stop or at least slow the Subject down to allow the officers to disarm him outweighed the speculative risk that the Subject could stab the K-9 thus resulting in an out of policy use of force in response. OPA does not discount the real risk that the K-9 could have been stabbed and seriously harmed or killed; however, the K-9 is a tool not a person. While it may seem insensitive, the value a K-9's life and safety is less than that of an officer, community member, or a criminal suspect.

This segues into OPA's second reason for finding NE#2's account unconvincing. At his FIT interview, NE#2 explained: "So, I thought about releasing my dog at that point, um, but I thought that it would...it's just going to get my dog killed and there would be no point to that. It wasn't a dog centric call right now." At his OPA interview, he repeated that he would have sacrificed his K-9 to save another officer or a community member; however, he explicitly did not mention a criminal suspect. Again, the K-9's life was not more important than the Subject's life and, if releasing the K-9 could have possibly reduced the likelihood of shooting the Suspect, it should have been done.

F. Conclusion

Officers are regularly placed in incredibly difficult and fast-moving situations. This can include, as was seen here, individuals who are armed and who may be in crisis or otherwise impaired. Officers have seconds to make a decision, and it is not an exaggeration to say that these decisions are the difference between life or death. This may seem like an impossible onus to place on someone; however, to mitigate this, officers receive extensive scenario-based training on de-escalation and how to handle these types of situations. This training includes, as discussed above, teaching the TCM and its attendant parts and repeatedly reminding officers to slow situations down, rather than speeding them up. To do so, officers are always brought back to time, distance, and shielding, and the crucial importance of these elements. While this training is not enough and needs to be amplified, it provides clear guidance on what officers should and should not do.

Here, NE#2 placed himself in a situation where he increased the likelihood that force would be used. He stepped directly in front of the path of a man who he knew was likely armed and in crisis and did so while holding a K-9. He took these steps instead of using his vehicle for cover and as a means to achieve time, distance, and shielding. Moreover, once the Subject walked past him, he took an affirmative step towards the Subject with the dog at his side, which, in OPA's perspective, was the causal factor behind the Subject starting to run away and throwing away the jacket that was covering the knife. NE#2's actions served to speed the incident up, not to slow it down. It also caused the other involved officers to modulate their actions and decision-making to conform with what NE#2 had set in motion.

Under the facts and circumstances of this case and given an evaluation of the threatening and violent conduct earlier engaged in by the Subject, it is certainly possible – and perhaps likely – that deadly force would have been



used even had the officers used perfect tactics. Moreover, and as discussed more fully below, NE#2 could not have predicted that the Subject would stop short and turn to face him while swinging the knife and was permitted to act at that point to protect his own life. However, this does not excuse NE#2's failure to comply with SPD's training and policy concerning de-escalation. For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - 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.

This is a very difficult allegation for OPA to evaluate. On one hand and as discussed above, OPA finds that NE#2 failed to de-escalate and to comply with SPD training during this incident. In reaching this finding, OPA further concludes that NE#2's conduct sped up this incident and increased the likelihood that it would only be ended through a high-level use of force. On the other hand, in OPA's opinion, NE#2 could not have predicted that, of the continuum of acts the Subject might engage in, the Subject would stop mid-run, turn around, and lunge towards NE#2 while slashing the knife. Moreover, once that occurred, he was allowed to act to prevent himself from being stabbed and potentially killed.

When evaluating the elements of SPD Policy 8.200-POL-4, OPA finds that all three were clearly met here at the instant of the shooting. Specifically, the suspect was threatening to cause serious injury or death to NE#2, he had the means to do so as he was holding a knife in his left hand, and he had the opportunity to do so as he was two feet away from NE#2 and was actively slashing at him.

Ultimately, even with all the mistakes made by NE#2 during this incident and his failure to meet the Department's expectations surrounding de-escalation, the Subject made the tragic choice to turn around and attempt to stab NE#2. Stated somewhat differently, while OPA concludes that NE#2's actions increased the likelihood that force would be used, it was not the clear causal factor behind the Subject's decision to turn and slash at NE#2 and, thus, does not mandate a finding that the force was impermissible. Given this, OPA does not find that the use of deadly force at that instant violated policy.

That being said, this result could very well have been avoided and is one that nobody wants. The Department needs to come up with innovative tactics and training that give officers the tools to make sure that this never happens again.

First, OPA firmly believes that SPD needs to revamp the training for responding to individuals with knives. For example, the training needs to be more dynamic and to occur outdoors with multiple moving parts. SPD specifically needs to focus on individuals with knives who are not static, but who are either moving towards or away from officers. While expensive and time consuming, the risks are simply too high to not move forward with this as soon as possible. OPA



is committed to working with SPD to build out these training scenarios using past and current cases and to assist in creating the various contingencies that officers may see. In making this recommendation, OPA recognizes the current financial and personnel limitations of the Department. OPA accordingly urges City leadership to properly fund SPD's development and carrying out of this training as it could literally save lives.

Second, SPD also needs to conduct a national and international survey of other Departments and even non-law enforcement agencies to see whether anyone has better tactics for dealing with individuals with knives. OPA and the OIG would both be willing partners in that work.

Third, SPD should consider what other less-lethal tools are out there to supplement its existing equipment. For example, over the past several years, the technology surrounding nets has evolved where there are devices that can shoot twelve-foot nets that could contain a subject. Net guns and other new tools may ultimately not be effective when tested out by SPD, but the point is that the Department needs to think outside of the box to solve this problem.

Fourth, SPD should set a public-facing and internal Department expectation that shootings in these types of cases will not occur again. While OPA recognizes that even perfect tactics and equipment may not be able to stop these incidents from taking place in the future, this should be SPD's stated goal and what the Department collectively works towards.

Recommended Finding: **Not Sustained (Management Action)**