



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 5, 2022

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0094

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	Sustained
# 2	8.200 - Using Force 4. Use of Deadly Force	Not Sustained (Management Action)
Imposed Discipline		
Suspension Without Pay - 1 Day		

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 - 3 Days		

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 Employees may have failed to de-escalate prior to using force and that the deadly force that they ultimately used towards the Subject may have been contrary to policy.

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 #1 (NE#1) and Named Employee #2 (NE#2) failed to de-escalate prior to using force and whether they subsequently used deadly force that was inconsistent with policy.



B. Initial Contact with the Subject

On the evening of February 16, 2021, two officers employed by the Port of Seattle Police Department (PSPD) were driving northbound on Alaskan Way in their vehicle. They stopped at a red light and saw an individual – later identified as the Subject – walking on the west sidewalk. The PSPD officers later reported that the Subject stepped off of the sidewalk and approached the police vehicle. The Subject was holding what was described as a large butcher knife to his throat. The PSPD officers recalled hearing the Subject say: “I need you to kill me” and “I need help, I need you to kill me.” The PSPD officers exited their vehicle. One of the officers – referred to here as PSPD Officer #1 – deployed with a 40mm less lethal launcher (“40mm launcher”). The officers advised radio concerning the situation and also called for assistance from SPD. Five officers were initially dispatched and logged to the call. The information provided on the CAD Call Report was the following: “Per Port PD, suic male has a knife to his throat. He is running from Port PD SB.”

After the two PSPD officers exited their vehicle, the Subject began jogging away from them. The Subject continued to travel northbound on the west sidewalk. The PSPD officers got back into their vehicle and followed behind the Subject. During this time, the PSPD officers communicated with the Subject, including offering help and mental health assistance. SPD Dispatch requested that an officer equipped with a 40mm launcher respond but no such officer was on-duty at the time in the West Precinct. However, an East Precinct officer replied, said he was equipped with a 40mm, and indicated that he would go to the call.

The Subject continued northbound proceeding towards Pier 55. The PSPD officers continued to follow him from a distance. When he reached Pier 55, the Subject used the knife to cut his neck. The PSPD officers tried to communicate with the Subject unsuccessfully. At that time, five SPD officers began arriving, all getting to the scene in close proximity to each other.

The SPD officers began to take the lead in following the Subject. During this time, the Subject remained a constant distance of around 100 feet away from the officers. The PSPD officers were not equipped with video; however, the SPD officers recorded their response to this incident on both Body Worn Video (BWV) and In-Car Video (ICV). The BWV showed that one of the officers – referred to here as Witness Officer #1 (WO#1) – began to take the lead in coming up with a tactical plan. He recognized that PSPD Officer #1 had a 40mm launcher and he began to divvy out roles to the other officers, including hands-on, less-lethal, and lethal cover. WO#1 took control of communications with the Subject and tried to make contact with him. The Subject was non-responsive. At least one other officer – referred to here as Witness Officer #2 (WO#2) – gave commands to the Subject to drop the knife; however, the Subject did not do so and continued to hold it, including up to his neck. The officers maintained distance between themselves and the Subject, with officers estimating that they were anywhere from 20 feet to 75 feet away. During this time, one person came out of a business and WO#2 directed the individual to go back inside. Other than this, pedestrian traffic appeared minimal. WO#1 went over the radio and stated that they had an officer equipped with a 40mm launcher at the scene – PSPD Officer #1 – and he asked for the air to be held (putting a hold on radio transmissions so that emergency broadcasts could be made by the officers without confusion or interruption). SPD officers also asked PSPD Officer #1 to take the lead.

C. Response to the Scene by the Named Employees and the Fatal Shooting of the Subject

At around this same time, NE#1 and NE#2 were driving together to the scene in their patrol vehicle. Throughout that time, they had their radio on and updates were audible. They were emergency driving with their lights and sirens on



as they proceeded southbound on Western Avenue. They approached a flashing red traffic light and NE#2 told NE#1 to turn right. As they did so, radio updated that there was an SPD officer available with a 40mm launcher and then again that there was a 40mm launcher on scene. There was one further update that the officers were going to make contact and a request for the air to be held.

NE#1 and NE#2 continued towards the scene and took a left turn from University Street onto Alaskan Way. NE#2 told NE#1 that he was going to deploy with his patrol rifle. Two seconds later, NE#2 exclaimed, pointing forward: "There he is, there he is, stop." NE#2 grabbed his patrol rifle and told NE#1 to hold on because the Subject was armed with a knife. NE#2 opened the door and got out of the patrol vehicle. At that time, the Subject was walking northbound on Alaskan Way, still on the west sidewalk. NE#2 stepped away from the open door, away from the patrol vehicle, and into the street. He told the Subject: "You need to stop." Other officers could also be heard telling the Subject to stop and to get on the ground. The Subject continued northbound until he got to the corner of Seneca Street. He stepped off of the sidewalk and began walking towards NE#2. In response, NE#2 told the Subject: "stop where you're at." The Subject, who still had the knife in his hand, said: "just do it." NE#2 moved back away from the Subject and said: "get down on the ground, stop!" The Subject moved closer to NE#2, closing the distance between them. The Subject had the knife in his hand raised up and towards NE#2. He repeated: "do it, please, just shoot me."

As this occurred, NE#1 moved from around the front of the vehicle to the rear left quadrant. She had her firearm drawn and pointed towards the Subject. The Subject advanced towards NE#2 and both NE#1 and NE#2 fired shots at the Subject. NE#2 hit the Subject several times, causing him to fall to the ground. NE#1 did not appear to hit the Subject with any of her shots. Simultaneously PSPD Officer #1 also deployed his 40mm launcher. However, at that point, NE#1 and NE#2 had already fired and the Subject was mortally wounded.

All in all, the Subject began advancing towards NE#2 approximately nine seconds after NE#2 emerged from the patrol vehicle. NE#2 fired shots at the Subject 14 seconds after exiting the patrol vehicle and five seconds after the Subject began advancing towards him.

After the shots were fired and the Subject struck, Officers began life-saving measures on the Subject and called for medical assistance. The Subject was ultimately declared deceased at the scene. NE#1 and NE#2 were separated, and the Force Investigation Team (FIT) was notified.

D. FIT Investigation

Shortly thereafter, 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 stated where they, other officers, and the Subject were standing at the time of the shooting.

Later that evening, FIT conducted interviews of NE#1 and NE#2. Both officers also sat for follow up interviews. FIT further obtained written statements from a number of other witness officers.

On February 23, 2021, the FIT Captain made a referral to OPA concerning potential misconduct on the part of the Named Employees. In that referral, he wrote the following:



Officers responded to a call of a suicidal man with a knife walking on Alaskan Way. There were several officers walking a safe distance behind the subject trying to engage the subject. [NE#1] and [NE#2] pulled north of the subject's location and in the direction he was walking. The officers left the safety of their car, confronted the suspect and ultimately shot and killed him. There was no exigency requiring immediate intervention by the officers, and no crime had occurred. The officers appear to have violated the de-escalation policy by failing to utilize time, distance and shielding to reduce the chance of using force.

E. OPA Investigation

As part of its investigation, OPA reviewed the BWV and ICV from a number of officers, including the Named Employees. OPA further reviewed the contents of the FIT investigation, including the interviews conducted. OPA also reviewed SPD training's 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 and NE#2.

1. Named Employee #1 Interview

At the time of this incident, NE#1 had been employed with SPD for nearly two and a half years. NE#2 was her partner and they worked together often. She was relatively new to West Precinct Third Watch and was somewhat unfamiliar with that area of the city. NE#2 had more familiarity with it.

NE#1 recalled that there was a radio update of a suicidal male on Alaskan Way. It was reported that the male was armed with a knife and had the knife to his own throat. When asked by OPA whether she remembered any other radio broadcasts, she said that there was an update that the Subject had cut himself and was moving northbound towards the Argosy Cruise Terminal.

NE#1 said that she was driving, and NE#2 was in the passenger seat. She said that, in their partnership, the passenger was responsible for directions to allow the driver to focus on the operation of the vehicle and compliance with traffic laws. Given her lack of familiarity with the location, NE#2 played an active role in directing her to the scene. NE#1 said that she and NE#2 did not engage in any tactical planning during the drive. She explained that they had worked together for a while and had responded to other weapons calls together. NE#1 stated the following:

We follow training that we have both received from the Department. That scene security is a number one priority as is life safety for everybody involved. With that in mind, securing the scene containing the subject in that—in that instance, this man containing him to the area so that we can limit his access to civilians to community members to people walking their dogs people going to dinner at the Red Robin that was open. People enjoying this nice February night out.

NE#1 told OPA that their goals were to prevent the Subject from accessing people he could harm, to secure the scene, and to disarm the Subject. At that point, she did not know what crime, if any, the Subject had committed.

NE#1 stated that, while driving to the scene, she did not recall what updates she heard over the radio. She remembered that the incident was evolving quickly. She did hear an officer state that they were making contact with



the Subject and asking for the air to be held. In her mind and particularly given that the Subject was armed with a knife, this indicated that she needed to get to the scene as quickly as she could. She and NE#2 did not engage in tactical planning after that point. She also did not go over the radio to assess the tactical plan because the air had been held. She did not recall NE#2 or herself checking the MDT for updates or her and NE#2 engaging in any discussions about the number of officers currently at the scene.

NE#1 recalled that she saw patrol vehicles with their emergency lights on south on Alaskan Way. She also observed three or four officers between those patrol vehicles and her patrol vehicle. She further saw the Subject walking in front of the officers, but she could not tell how far. As she approached, NE#1 told her to stop the vehicle in order to make contact with the Subject. She explained to OPA:

[The] subject was a distance far enough away from us in front of our vehicle that we could—we believed we could—I believed we could communicate with him at that point. We could verbally communicate with him or we can communicate with them over the PA system, and our vehicle provided shielding.

NE#1 believed that they stopped at a distance that would allow them to communicate with the Subject, including using their patrol vehicle's PA system. They also felt that the distance would allow them time to communicate with the other officers. NE#1 recalled that, at the time they stopped the vehicle, the Subject was holding a knife (she described it as a "chef's knife") and had it to his throat. She recalled that he was facing away from her and NE#2 at the time, and towards the other officers. When asked about the decision to stop their vehicle where they did, NE#1 said that, had she made a U-turn further on Alaskan Way, she would have bypassed the threat and given the Subject access to community members, officers, and time to harm himself or others.

NE#1 said that, when she exited the patrol vehicle, she did not hear officers or the Subject saying anything. She did not see pedestrians in the immediate vicinity but knew that it was an area that community members could be. NE#1 and other officers gave the Subject orders to stop, but he did not comply and continued to walk forward with his knife. The Subject became focused on NE#2, who had exited from the passenger's side of the vehicle. NE#1 said that she did not approach the Subject and, instead, she remained behind the patrol vehicle, which she used as cover. OPA asked NE#1 what shielding NE#2 had available to him given how she stopped the patrol vehicle. She stated that he could have used the open door or that he could have moved behind the patrol vehicle.

NE#1 told OPA that, at that time, she observed the Subject begin to move towards NE#2 with the knife upheld. She described the Subject as moving "aggressively" forward and she heard him say: "Just do it." She believed that NE#2's life was at risk. She moved around the side of the vehicle and, as she perceived an imminent threat of serious bodily harm or death to NE#2, she fired her handgun. She did not recall how many times she fired.

NE#1 believed that she took sufficient steps to de-escalate prior to using force. She cited to turning off the patrol vehicle's siren in order to allow communication with the Subject. She said that their goal was to contain the Subject and disarm him, potentially using a less-lethal tool to do so. She felt that he could then be involuntarily detained.

NE#1 lastly asserted that her ultimate use of deadly force was permissible under SPD policy. Again, she contended that the Subject presented an imminent threat to NE#2, that the Subject had the apparent means, opportunity, and intent to do so.



2. Named Employee #2 Interview

At the time of the incident, NE#2 had been employed by SPD for approximately six and a half years. He said that NE#1 was his steady partner and that they had been working together since around 2019. NE#2 stated that he was pretty familiar with the area around Alaskan Way and that NE#1 was somewhat familiar with it.

NE#2 recalled that he and NE#1 were at the West Precinct when the call concerning the Subject came over the radio. They began driving to the scene. NE#1 drove the patrol vehicle and NE#2 was the passenger. NE#2 said that he remembered hearing over the radio that a 40mm launcher was not available. He did not discuss this with NE#1. NE#2 did not remember making any request for information during the ride to the scene and he did not discuss tactics or planning with NE#2. He stated that they were focused on getting to the scene quickly.

NE#2 stated that he did not recall hearing the later radio update that a 40mm launcher was available and on scene, but he did remember hearing an officer ask for the air to be held. He said that, at this time, he was still trying to figure out where everyone else was at the scene and did not engage in tactical planning or the setting of roles between him and NE#1. He was not sure whether it would have changed his tactics and approach if he had recognized the availability of a 40mm launcher. Again, he said that his primary focus was getting to the scene and figuring out where everyone else was situated.

NE#2 stated that, as they proceeded towards Alaskan Way, he saw patrol vehicles with emergency lights on approximately two blocks down the street. He saw the Subject on the sidewalk and officers behind the Subject. When they turned onto Alaskan Way, he could see the knife. When asked to estimate the distance between the other officers and the Subject, NE#2 said that they were a "fair distance away." NE#2 described the Subject as moving up the sidewalk in a half-jog/half-walk. The Subject was looking back at the officers and, at times, holding the knife to his neck. NE#2 could not remember seeing any pedestrian or vehicular traffic in the Subject's path.

NE#2 did not know what, if any, crime the Subject had committed up until that point. He said that he did not use the MDT to get updates concerning the incident, because he was using it for directions and to look up information concerning the Subject. When asked by OPA why he did not actively check for updates, NE#2 again stated the need to get to the scene quickly. He noted that he was one of few patrol rifle-trained officers at the West Precinct and, getting to the scene would allow for him to get that resource there and to build in stand-off distance with the Subject.

NE#2 described the decision to stop the patrol vehicle where they did. He believed that, at the time, the Subject was approximately 16 to 20 feet away from them. He recalled that the Subject was looking at the other officers in that moment. He said that he did not consider driving further down the street and doing a U-turn so that they could link up with the other officers. He provided the following explanation:

So he's on the sidewalk, he has a knife. We're on the waterfront. It's a large tourist area. There's restaurants, shops, right? All kinds of things. People are always, you know, on their bikes, walking dogs. So what I was trying to achieve was to contain him, I can't—we can't contain him. If we drive past him. If we drive past him, he could find any of these potential people who are out there and cause them harm. I wanted to achieve the tactical L that we generally train on. That way we could try to contain him and talk with him and get him to drop the knife.



NE#2 said that, when he got out of the patrol vehicle, he could clearly see the knife. He did not notice any pedestrians or vehicles in the immediate vicinity, but he said that he was focused on the Subject. NE#2 said that, after exiting the patrol vehicle, the Subject faced him and began approaching him. NE#2 said that he was looking for cover at that point and moved backwards in an attempt to use the patrol vehicle. When asked what he did immediately after exiting the patrol vehicle, he said that he closed the door, gave the Subject commands, and then moved backwards.

NE#2 stated that the Subject continued to move towards him and that the Subject shifted his grip on the knife, holding it up and pointing it down. NE#2 kept moving back and giving the Subject commands to drop the knife. NE#2 did not remember what the Subject may have been saying at the time. NE#2 explained that he was trying to move back behind the vehicle in order to de-escalate, but that the Subject was quickly advancing towards him. He said that, at this time, he believed that, if he did not fire his patrol rifle, the Subject would try to stab him and could kill him. He told OPA that he had been trained on the 21-foot rule and explained that this meant that, if a person was within 21 feet of an officer and armed with a knife, they could quickly advance and stab the officer without the officer being able to react. He then fired, striking the Subject who fell to the ground.

When asked by OPA how the Department trains officers to respond to these types of calls, NE#2 said that officers are expected to engage in pre-planning. However, he said that most of their pre-planning was trying to figure out where they were going and how to get there. He also stated that the air was held prevented him from engaging in discussions with the officers already on scene.

NE#2 did not know what conversations were ongoing with the Subject at the time and whether other officers were speaking with him. He assumed that this was the case because he heard over the radio that officers were contacting the Subject. However, when he arrived, he saw the Subject moving away from the officers and he believed that the communication had broken down.

NE#2 said that, when they turned onto Alaskan Way and he viewed the Subject, his plan was to try to contain him. He believed that he and NE#1 were positioning themselves in a "tactical L." When asked why he did not use his patrol vehicle as cover and a shield, he opined that this was not an option. He said that, if he was inside the vehicle, he could not communicate with the Subject. He also stated that, had he remained in the vehicle, they would have been in the backdrop of the other officers if the Subject advanced towards them and they fired.

NE#2 believed that he de-escalated prior to using force as he tried to communicate with the Subject, he tried to place a barricade between himself and the Subject, and he gave the Subject orders to drop the knife. NE#2 further asserted that, given the Subject quickly advancing towards him with a knife, he had no option other than to fire at him and that his use of force was consistent with policy.

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.*) 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 Named Employees, and Department training – OPA concludes that the Named Employees violated SPD’s de-escalation policy during this incident.

A. Tactical Planning and Discussions

At the outset, OPA finds that the Named Employees failed to engage in any planning or tactical discussions prior to using force. The Named Employees both told OPA that they had been partners for a period of time and had responded to weapon calls in the past. However, that they responded to such calls previously did not excuse them from communication and planning during this incident.

There was no discussion between them concerning what roles they would play at the scene, how they would approach the Subject, or what potential plan the other officers who were already there may have formulated. To this end, the Named Employees made no attempt to engage with these other officers to determine the plan. Indeed, such a plan had already been formulated and the officers – both SPD and PSPD – were appropriately following the Subject at a



distance, moving him away from populated areas, trying to communicate with him, and assigned PSPD Officer #1 to take lead with his 40mm launcher.

While both officers said that such communication was prevented because of WO#1's request that the air be held, this did not occur until virtually right before the Named Employees turned on Alaskan Way. Prior to that time, there were multiple updates that came over the radio and the Named Employees had the opportunity to coordinate with the officers already on scene. NE#1 said that she was focused on driving at the time and NE#2 said that he was trying to make sure that they got to the scene quickly; however, NE#2 could have gone over the radio as he was the passenger, even if only to inform the other officers that they were arriving and asking where they should situate themselves.

By not doing so, the decision-making by NE#1 and NE#2 fundamentally altered the officers' existing plan, which was consistent with Department training and tactics, and sped the incident up, ultimately contributing to the fatal shooting.

B. Positioning of the Patrol Vehicle

At her interview, NE#1 said that NE#2 told her to stop the patrol vehicle where they did. NE#2 stated that he they parked the patrol vehicle in that location for two main reasons. First, they did so to create containment. Second, he stated that he meant to create a tactical L through the positioning of the patrol vehicle.

In assessing NE#2's first explanation, OPA finds a recent decision in 2020OPA-0519 to be instructive. In that case, officers were responding to a call of an individual in crisis with a knife. The first officer to respond to the scene positioned his patrol vehicle directly in the path of the individual. He then emerged from the patrol vehicle with a K-9. This created a situation where the officer was directly in the line of sight of the individual and in his immediate path. This was exacerbated by the fact that the officer had no cover at the time.

The positioning of the patrol vehicle here yielded the same result. Here, NE#1 parked the vehicle in the path of the Subject and doing so caused the Subject to focus his attention on NE#2. At that time, NE#2 got out of the vehicle with his patrol rifle in his hands, closed the door, and moved away from cover. The Subject then moved towards NE#2 with the knife and, when this occurred, NE#2's options for responding to this in any manner other than using deadly force were extremely limited if not non-existent.

With regard to positioning themselves in a tactical L, OPA recognizes that this is a trained tactic. However, whether to use this tactic is not universal and expected in every situation. The decision to create a tactical L has to be balanced against the interruption the positioning of the patrol vehicle had in the existing plan held by the officers. Again, those officers were doing exactly what was expected from them. They were following the Subject slowly and from a significant distance, they were moving him away from a populated area, they were assigning roles, and they had an officer with a 40mm launcher taking the lead. The Named Employees' driving, and positioning of their vehicle, changed all of this, sped up a situation that was moving slowly, and increased the likelihood that deadly force would be used. This is exactly what the de-escalation policy is purposed to avoid and protect against.

Lastly, OPA disagrees with both of the Named Employees concerning their decision to park the vehicle in the Subject's path versus driving further, making a U-turn, and then emerging to join with the other officers. Both of the Named Employees said that they did not do so, in significant part, because this would allow the Subject access to community members. However, there were no community members visible at the time. Moreover, the officers were moving the



Subject into a less populated area that would have been safer for all involved. As such, OPA does not believe that this provided a justification for parking the patrol vehicle where they did.

C. Time, Distance, and Shielding

Most fundamentally, the actions and decision-making by the Named Employees undermined time, distance, and shielding.

First, as discussed above, the Named Employees pulling in front of the Subject, and NE#2 emerging in front of him with a patrol rifle, eliminated time. In OPA's perspective, this is the most important of the factors as everything else flows from time. If there is more time, there are fewer bad decisions, there is more opportunity to gain voluntarily compliance, and there is less of a chance that someone will react in a fashion that sets force – and potentially deadly force – in motion. Here, the officers already on scene were taking advantage of time. They were not rushing the incident, and they were letting the Subject walk from a safe distance. Importantly, the Subject was not committing a crime and had not threatened anyone but himself. Time would have allowed the situation to evolve, it would have given the officers more opportunity to build a rapport with the Subject, it would have allowed them to call in more resources (including supervisors, crisis response teams, and trained negotiators, as examples), and it would have permitted them to walk with the Subject until he moved out of an area where community members were present. Had that been able to occur, as long as the officers kept their distance, the threat would have been minimal, and they could have taken as long as needed to reach a peaceful resolution. However, because of the Named Employees' decision-making, all of this was preempted, and these options were eliminated.

Second, the Named Employees' positioning and then NE#2 getting out of the patrol vehicle and moving into the street eliminated distance. Notably, prior to that moment, the other officers were a significant distance away from the Subject and following slowly behind him. The Named Employees closed the distance to the Subject when they parked between 15 to 20 feet away and created a scenario where the other officers were pushing the Subject directly into the path of the Named Employees. Inherently, this closed the distance between the Subject and officers unnecessarily and made it more likely that they would come into close contact, increasing the likelihood that force would be used.

Third, the Named Employees – specifically NE#2 – took away shielding. NE#2 made the decision to get out of the patrol vehicle, to close the door, and to step out into open space. At that time, there was nothing between him and the Subject. He had nothing to step behind or to take cover behind. As a result, the Subject began advancing towards NE#2 and NE#2 was stuck. His options had been reduced to using deadly force and that is what he did. However, NE#2 had better options available to him. He could have stayed behind the patrol vehicle's door, or he could have moved around the front of the patrol vehicle, positioning himself behind it. He did not do either.

While perhaps one of these standing alone would not be sufficient to establish a failure to de-escalate, that all three components of de-escalation were not complied with convinces OPA that the Named Employees violated policy.

D. Conclusion

Officers are regularly placed in life and death situations. For this reason, they receive significant training on tactics, the formation of contact teams, and de-escalation to increase the likelihood that the use of deadly force is avoided if at all possible. Here, the Named Employees engaged in tactics and decision-making that increased the odds that force



would be used and, more concerningly, failed to ensure time, distance, or shielding. This caused the breakdown of the plan employed by the officers on scene and ultimately resulted in the fatal shooting of the Subject.

Given this, OPA finds that both officers acted inconsistent with the Department's de-escalation policy and recommends that this allegation be Sustained as against them.

Recommended Finding: **Sustained**

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.

That OPA finds that the Named Employees failed to de-escalate does not require, in and of itself, a determination that the deadly force used was inconsistent with policy. Again, OPA believes its precedent in this area to be instructive. In 2020OPA-0519, OPA reasoned that, although the involved officer failed to de-escalate, the individual who was fatally shot made a decision to turn and face the officer and lunge at the officer with a knife. When that decision was made and the officer was faced with imminent bodily harm, that officer was entitled to use force to prevent this from occurring.

Similarly, here, the Subject made the decision to advance at NE#2 with the knife raised and pointed down. When the Subject did so, NE#2 was authorized to use force to defend himself, even deadly force. Indeed, at that time, all of the elements of SPD Policy 8.200-POL-4 were met. Specifically, the Subject 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 hand, and he had the opportunity to do so as he moved towards NE#2, even though NE#2 told him repeatedly to stop. As such, while OPA finds that the Named Employees' actions and decision-making increased the likelihood that force would be used, it was not necessarily the causal factor behind the Subject's decision to advance towards NE#2. That decision was his alone.

Ultimately, together with 2020OPA-0519, this is the second case that OPA has seen in which SPD officers did not apply appropriate tactics and failed to de-escalate in a situation with an individual armed with a knife. In 2020OPA-0519, OPA issued a four-part Management Action Recommendation purposed to help the Department prevent such a situation from happening again. OPA renews that Management Action here and sets forth the below requests.

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. Since OPA issued its decision in 2020OPA-0519, OPA watched a demonstration of the Bola Wrap. This less-lethal device, which looks akin to a Taser, deploys two barbs that are connected to both sides of a thin rope. The barbs attach to the clothing of an individual and the rope wraps around the individual's arms or legs. While perhaps not a panacea standing alone, OPA feels that this tool could contribute to better outcomes and, even if it only distracts the individual, will serve to increase time for officers to safely take the individual into custody. OPA strongly recommends that SPD begin using this tool in a pilot program to determine its efficacy and whether it will engender better outcomes in these cases.

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)**

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

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #2

8.200 - Using Force 4. Use of Deadly Force

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Management Action.

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