



## CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 31, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0237

### **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 Will Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained - Training Referral

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained - Training Referral

***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 Named Employee #1 (NE#1) and Named Employee #2 (NE#2) failed to de-escalate a reportedly in crisis subject armed with a knife.

### **ADMINISTRATIVE NOTE:**

The incident in question occurred June 27, 2022. On August 4, 2022, OPA received a Blue Team complaint flagging the Named Employees' possible failures to de-escalate. OPA opened an investigation.

### **SUMMARY OF INVESTIGATION:**

OPA reviewed the complaint, body-worn videos (BWV), General Offense/Incident report, Use of Force statements/reports, computer-aided dispatch (CAD) data, 9-1-1 call recordings, photographs, surveillance video, the Seattle Fire Department's (SFD) run report, and the Named Employee's training records. OPA also interviewed the Named Employees.

#### ***A. Blue Team Complaint:***

The complaint stated officers were dispatched to a "male in crisis with 9 in knife" call. It stated several officers radioed they were en route, including officers who broadcasted they had less than lethal weapons: an officer stated she had



a “40-mm less than lethal launcher” and another stated he had a TASER. A dispatcher provided an update suggesting the subject threatened restaurant patrons with a knife and threatened others with rocks. The Named Employees arrived and immediately approached the subject, who was apparently unarmed at that point. The subject walked into traffic and was almost struck by a vehicle. The Complainant, an SPD lieutenant, reviewed the Named Employees’ response and flagged missed opportunities to coordinate a better plan.

*B. 9-1-1 Calls*

The first caller (W#1) reported “a mentally ill guy with a knife, making racial slurs.” That caller also reported the subject was “actively wielding a knife and threatening an African American woman.” That caller estimated the knife was nine inches. A second caller reported “a male saying derogatory things and threatening to pull a knife out.” That caller also reported the subject was “threatening people with rock.” That caller stated the knife was in the subject’s pocket and he held a rock as she spoke to the dispatcher.

*C. Computer-Aided Dispatch Data*

The initial call was made at 12:21 PM. The subject was described as “White male, 50-60’s, 5’8, shoulder length hair, black/gray shirt, blue jeans.” Seven SPD officers logged to the call, including an acting sergeant, an officer who stated she was “enroute with a 40MM,” and an officer with a TASER.

*D. General Offense/ Incident Report*

NE#2 wrote the GO report. NE#2 stated, upon arrival, he immediately spotted the subject based on the dispatched description. NE#2 wrote the subject swayed near a pole. He wrote the Named Employees approached to handcuff the subject and search for weapons. NE#2 also wrote the subject was unarmed as they approached. He further wrote the subject ran into traffic in an apparent attempt to get struck by a car. The subject was caught and arrested. Incident to the subject’s arrest, two nine inch knives were recovered from his person: “The knives were sharp and pointed and facing outboard, I know this because my right shin had been hit by the point of one of his knives.” NE#2 interviewed Witness #1 (W#1), who stated the subject repeatedly directed the N-word at a woman. That woman left before police arrived.<sup>1</sup> NE#2 wrote W#1 also reported the subject playing “war games” by shaping his hands like a gun. W#1 also reportedly saw the subject drinking and talking to himself. Last, W#1 stated the subject, who had an aggressive expression, stood within 30 feet of W#1 and waved a knife in his direction, causing W#1 to fear for his life. NE#2 also documented the subject’s run into traffic. NE#2 listed the subject was arrest for felony Harassment of W#1 (RCW 9A.46.020.2B.)

<sup>1</sup> Police later contacted her, but she declined involvement.



Recovered Knives



*E. Washington State Patrol*

Prior to the Named Employees' arrival, a Washington State Patrol (WSP) trooper was at a nearby restaurant. He was alerted to a disturbance outside involving the subject, described as having a knife, and W#1. The Named Employees arrived "within moments." He heard the Named Employees "give verbal commands to return and comply, but the male refused." He also "saw the officers grab on to [the subject] and return to the sidewalk." The trooper stated "[The subject] began to resist and begin to pull away" before he was taken to the ground. While the subject was on the ground, the trooper saw a knife "protruding from his back left pocket." The trooper further described the subject as "not combative but was physically resisting and not complying." The subject was handcuffed thereafter.

A second WSP trooper heard a radio concerning "an unknown WSP unit at 1 Av S/S Holgate St, out with a person with a knife." She responded to assist. She arrived and saw a trooper with the Named Employees, who were trying to handcuff the subject, in the roadway on 1<sup>st</sup> Avenue S. She described the subject as noncompliant. She also blocked northbound traffic to protect the parties in the street. She heard a metal clink and turned to see a knife. She saw a second knife on the sidewalk. The subject was handcuffed thereafter.

*F. Body-Worn Video*

OPA reviewed the Named Employees' body-worn video, which showed in summary:

Named Employee #2 (NE#2) entered *SFD CAD Data and Run Report*

SFD's CAD data showed they were dispatched at 12:32 PM and cleared the call at 12:48 PM. An SFD run report listed the subject as the patient. SFD's listed primary impression was injury and the secondary impression was alcohol use. It described the subject as "alert and able to orient himself." The subject's injuries were listed as arm abrasions. According to SFD, the officers and subject were unable to explain what caused the subject's abrasions. The subject declined further evaluation or treatment.

*G. Use of Force Reports*

NE#2 completed a Type II Use of Force Statement. NE#2 wrote the Named Employees immediately moved to handcuff the subject, even though the subject had no visible weapon. The subject ran into traffic and was apprehended. NE#2 listed his lawful purpose was "reasonable suspicion for harassment due to the threats with a knife." He listed de-



escalation tactics as “clear instructions” from both officers. NE#2 noted, although no weapon was visible, the caller reported the subject had a knife so “he could have reached down to grab a knife and stab Officers with it.”

NE#1’s statement stated, upon arrival, the subject held a plastic bag. NE#1 admitted not seeing a weapon, but stated he knew there were reports about the subject having a knife. NE#1 stated it was safest to approach the subject while he was without a weapon in-hand. NE#1 stated the subject immediately walked into traffic as officers approached. The Named Employees gave orders for him to stop, but the subject ignored them. NE#1 stated once the subject walked into traffic de-escalation was unfeasible because the subject’s “life was in danger.”

#### *H. Chain of Command Review*

An acting sergeant [Sergeant Officer #1 (SO#1)] screened the arrest. SO#1 spoke with the subject, who accused officers of “manhandling” him. He denied hurting anyone. SO#1 saw abrasions on the subject’s elbows and a dot of blood on his left wrist.



An admin lieutenant [Lieutenant #1 (L#1)] also review incident. L#1 listed the Named Employees’ lawful purpose as reasonable suspicion of felony harassment. L#1 also stated, “Officers approached the suspect and identified themselves as police. The suspect turned and started to flee into traffic. Officers gave commands to the suspect to stop. When the suspect continued to flee, de-escalation was no longer feasible.” Describing the Named Employee’s “pre-force/tactical considerations,” L#1 wrote:

*Officers were dispatched to a call of a man threatening people with a nine inch knife and threatening to throw rocks at people. When contacted by officers, the suspect’s hands were empty, but officers did not know if he was still armed. During the arrest, officers recovered two knives from the suspects pockets. Further, the suspect was clearly willing to endanger himself by running into traffic.*

#### *I. BWV/ICV*



NE#1's ICV showed them pass the subject, who stood alone at a bus stop, before pulling into a parking lot. There was no one near the subject, and the nearby restaurant patio was empty.

BWV showed, NE#1 asked NE#2, "Ready?" NE#2 replied, "I guess. Of course, I'm ready." About 39-seconds later, NE#1 stated, "That's him right there." Less than a minute after they arrived, on foot, the Named Employees approached the subject, who stood a bus stop. Several feet away, still slowly approaching, NE#1 yelled, "Hey, you got a knife?" As officers get closer, still several feet away, the subject steps off a curb into oncoming traffic. Within ten-seconds, NE#1 grabbed the subject's upper body. The subject turns and appears to fall with NE#1 still holding him. While the Named Employees struggled to get the subject on his stomach, the WSP trooper retrieved a knife from the subject's back pocket. The Named Employees struggled to get the subject's arms behind his back until other officers arrived to help gain control.



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

On September 26, 2022, OPA interviewed NE#1. NE#1 worked at the Department about 16 ½ years. On the day in question, NE#1 responded as a backing officer. The initial call described a male, possibly in crisis, threatening people with a knife and throwing rocks. NE#1 knew other officers, including SO#1, were en route. Prior to contacting the subject, NE#1 did not speak with witnesses. He stated his main concern was ensuring the subject was unarmed. NE#1 stated once he confirmed the subject was unarmed he wanted "to just engage him in conversation." NE#1 described his attempted conversation as a de-escalation tactic: "In my mind, I was going to talk to him like a human being de-escalate try to probably de-escalate him and just try to get him to have a conversation with me." NE#1 admitted not developing a tactical response with NE#2, stating:

*Uh, if I would have seen weapons in his hands, I would of done something like that. Um, but just the guy standing at the bus stop. I don't think I need to come up with a tactical plan. Because it's something that we deal with. Quite often we get out and talk to people. Um, and at that point, I guess like I said I didn't. He had no weapons in his hands. I felt like we could just go up and have a conversation with him and kind of see what his mindset was.*

NE#1 further stated he and NE#2 would have waited for more officers and less than lethal tools had the subject possessed visible weapons.

**K. NE#2's OPA Interview**

On October 18, 2022, OPA interviewed NE#2. NE#2 worked at the Department about 13 years. He reportedly completed a 40-hour CIT training. NE#2 also recalled the dispatch concerned a male threatening people with



knives and making “bias remarks.” NE#2 stated he awaited NE#1 arrival prior to engaging the subject. NE#2 stated the plan was to dialogue with the subject. NE#2 knew other officers were en route, including someone with a 40 MM. However, NE#2 estimated the 40 MM was about ten minutes away so there was no time to “watch someone alleged to be armed with a knife run around while a 40 MM is en route.” NE#2 stated the WSP trooper pointed the subject out. NE#2 stated, “as I turned to walk towards [the subject],” the subject immediately walked into traffic. OPA asked whether they should have planned a tactical response prior to engaging the subject. NE#2 replied, “maybe I was you know, maybe—maybe, you know, in hindsight, maybe that's something that we should have done really quick before we went over there. But I was just expecting this to go a totally different way. So, I wasn't, and I don't think, you know, [NE#1] wasn't expecting it to go this route either, you know.”

### **ANALYSIS AND CONCLUSIONS:**

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

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

It was alleged NE#1 failed to use de-escalation tactics.

SPD Policy instructs that: “When safe, feasible, and without compromising law enforcement priorities, officers will use de-escalation tactics in order to reduce the need for force.” SPD Policy 8.100-POL-1. Officers are also encouraged to use team approaches consider whether any officer has successfully established rapport with the subject. *Id.* The selection of de-escalation options is to be guided by the “totality of the circumstances.” The policy gives several examples of de-escalation emphasizing the use of communication, time, distance, and shielding to minimize the need for force. *Id.*

Here, the Named Employees offered conflicting explanations about why it was necessary to immediately approach the subject. NE#2 told OPA because callers described the subject as threatening others with a knife and rocks, waiting for a less than lethal tool (like a 40 MM) was unfeasible. However, ICV and BWV showed the subject standing alone at a bus stop when the Named Employees arrived. Even if he had a concealed knife, he posed no imminent threat to anyone considering no one was near him. Department policy encourages “[t]eam approaches to de-escalation.” SPD Policy 8.100-POL-1. Here, the Named Employees knew several officers, including a supervisor, were en route. Where there was no exigency, it was safe and feasible to wait for additional resources and a plan. Had the circumstances changed and the subject re-escalated as the Named Employees monitored him, then immediate police action would be reasonable. However, the circumstances the Named Employees faced afforded them ample opportunity to utilize time, distance, and shielding before engaging the subject.

Further, despite NE#2 telling OPA their plan was to dialogue with the subject, BWV showed there was no planning. The totality of their planning was NE#1 asking NE#2, “You ready?” To which NE#2 affirmatively responded. As the Complainant noted, where there was no imminent threat, the Named Employees’ time awaiting backup could have been used for information gathering to make a proper threat assessment. Particularly where the apparent threat level was not as high as when the initial 9-1-1 calls were made. Immediately approaching someone they suspected was armed put themselves at risk, as the subject could have quickly produced a weapon and charged them. *See Nehad v. Browder*, 929 F.3d 1125 (*The 21-foot rule provides that a person at a distance of 21 feet or less from an officer may*





pose a threat to the officer's safety.) Moreover, with additional resources and supervisor guidance, the Named Employees could have brainstormed a plan to mitigate the risk of a reportedly in crisis subject walking into traffic.

Overall, the Named Employees did not demonstrate an appreciation for the risks introduced by their unplanned response. Both officers attended SPD's 2022 Tactical Response to Edged Weapons and Crowd Management training.<sup>2</sup> While that training noted a dangerous subject in a crowded area may require immediate action, it also provided a list of other factors to consider to reach that determination, including: location of suspect, access to possible victims, and available tools or resources. It also emphasized the factors of time, distance, shielding, leadership, pre-arrival planning, tools, and dialogue. With that said, while OPA agrees with the Complainant's position that better options were available, it also acknowledges the luxury of a hindsight assessment. OPA also accepts the Named Employees' stated intention to use verbal techniques, like Listen and Explain with Equity and Dignity (LEED) to calm an agitated subject and promote rational decision making. Particularly where NE#2 was CIT trained.

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

Recommended Finding: **Not Sustained - Training Referral**

- **Required Training:** NE#1's chain of command should discuss OPA's findings with NE#1, review SPD Policy 8.100 POL 1 with NE#1, and provide any further retraining and counseling it deems appropriate. NE#1's chain of command should also consider having SPD's Training Unit review BWV and offer guidance. Any retraining and counseling should be documented and maintained in Blue Team.

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

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

It was alleged NE#1 failed to use de-escalation tactics.

For the reasons stated at Named Employee #1 - Allegation #1, OPA recommends this allegation be Not Sustained – Training Referral.

Recommended Finding: **Not Sustained - Training Referral**

- **Required Training:** NE#2's chain of command should discuss OPA's findings with NE#2, review SPD Policy 8.100 POL 1 with NE#2, and provide any further retraining and counseling it deems appropriate. NE#2's chain of command should also consider having SPD's Training Unit review BWV and offer guidance. Any retraining and counseling should be documented and maintained in Blue Team.

<sup>2</sup> NE#1 attended April 12, 2022, and NE#2 attended May 1, 2022.