




## CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 4, 2024

FROM: DIRECTOR GINO BETTS, JR.   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0399

### Allegations of Misconduct & Director's Findings

#### Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties POL-2. Employees Must Adhere to Laws, City Policy	Sustained
# 2	8.200 - Using force, 8.200-POL 1. Use of force: When Authorized	Allegation Removed
# 3	8.300 - Use of Force Tools, 8.300-POL-14 Firearms, 9. Officers Will Not Fire at or From a Moving Vehicle	Sustained
# 4	5.001 - Standards and Duties, 5.001-POL 10. Employees Will Strive to be Professional	Allegation Removed
# 5	9.060 - Firearms, 9.060-POL, 5. Sworn Employees will Store Department-Authorized Firearms Properly	Sustained

#### Proposed Discipline

90 (10 Days) to 135 Hours (15 Days) Suspension

#### Imposed Discipline

135 Hours (15 Days) Suspension

***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.***

#### **ADMINISTRATIVE NOTE ON PROPOSED FINDINGS:**

*When the OPA Director recommends a sustained finding for one or more allegations, a discipline committee, including the named employee's chain of command and the department's human resources representative, convenes and may propose a range of disciplinary to the Chief of Police. While OPA is part of the discipline committee, the Chief of Police decides the imposed discipline, if any. See OPA Internal Operations and Training Manual section 7.3 – Sustained Findings.*

#### **EXECUTIVE SUMMARY:**

In Edmonds, WA, the named employee (NE#1), an off-duty Seattle Police Department officer, discharged a firearm at his car thief. NE#1's department-issued firearm, ballistic vest, radio, and other equipment were in the car.

#### **ADMINISTRATIVE NOTE:**

On July 16, 2024, OIG certified OPA's investigation as thorough, timely, and objective.



On August 22, 2024, a discipline meeting was held, including OPA's director and NE#1's chain of command. After discussing the allegations, investigation, and legal applications, the parties agreed that removing allegations #2 and #4 was appropriate since allegations #1, #3, and #5 best address the issues.

**SUMMARY OF INVESTIGATION:**

*Edmonds Police Department Incident Report*

Witness Officer #1 (WO#1), an Edmonds Police Department (EPD) officer, wrote a police report concerning the incident. WO#1 wrote that he was dispatched to NE#1's apartment complex in Edmonds on September 11, 2023, at 5:32 AM. WO#1 spoke with NE#1, who reported that his gun and body armor were inside his car, which was stolen from his complex's parking lot.<sup>1</sup> NE#1 reported that the car thief struck him with the car, and NE#1 fired a single gunshot at the vehicle in response. NE#1 did not believe the driver was hit. NE#1 told EPD that he entered the parking lot around 5:30 AM, preparing to go to work. He "heard a vehicle engine that sounded similar to his personal vehicle and thought his vehicle was getting stolen." NE#1 ran toward where he parked and "saw his vehicle was backing" out of the spot. NE#1 reportedly saw another car speed from the parking lot at high speed but was unable to discern its color or who was inside it. NE#1 said he stood near a curb "at the end of the parking lot, close to the southeast corner of the complex's roundabout" and "saw [his car] heading in his direction." NE#1 reportedly raised his arms and yelled for the driver to stop.

NE#1 said as the car approached, it accelerated "as if the suspect hit the gas pedal trying to intentionally run him over." NE#1 said he turned and "got out of the way," but the driver-side front bumper hit his right leg, causing him to fall and injure his left leg and a finger. NE#1 unholstered his gun and fired at the car as it drove off. NE#1 said it was too dark to know whether he struck the vehicle. NE#1 told EPD that his department-issued Glock 17, three 9 MM magazines, a ballistic vest, a baton, a radio, 12-gauge shotgun ammunition, and other equipment were in the car. EPD took the firearm that NE#1 discharged as evidence. EPD photographed the incident location, including the shell casing from NE#1's firearm discharge. WO#1 canvassed the area and "found what appeared to be a bullet hole in the siding between the first and second [floors]" in an adjacent complex. Tracking an Apple Air Tag in NE#1's car, EPD found NE#1's car in Seattle.

*Force Investigation Team*

The Seattle Police Department's Force Investigation Team (FIT) responded and interviewed NE#1. NE#1's FIT interview was generally consistent with the account he gave EPD. NE#1 said he wore a dark, long-sleeved shirt and beige tactical pants and carried a backpack over his shoulder, his lunch, and a cell phone as he approached the parking lot that morning heading to work. NE#1 said he heard a car start and thought, "...that sounds exactly like mine." NE#1 ran towards his parking spot and saw his car "being backed out" and "realized...it's being stolen."

---

<sup>1</sup> WO#1's incident report indicated that WO#1's body-worn video equipment was not activated during his initial contact with NE#1. WO#1 activated it before interviewing NE#1.



*The yellow oval indicates where NE#1 told FIT he parked and later saw an unknown subject take his car.*

NE#1 said he “ran to the southeast corner of the planting strip in the middle of the parking lot” and “saw [his] car backing out of a space...like it was getting ready to turn and pull out of the parking lot.” NE#1 said he stood less than 20 feet from the approaching car and yelled, “Stop!” NE#1 said he only saw the car’s grill and headlights. He said the car revved and sped “straight at me.”



*The blue circle indicates where NE#1 told FIT he stood as the car (indicated by the yellow oval) approached.*

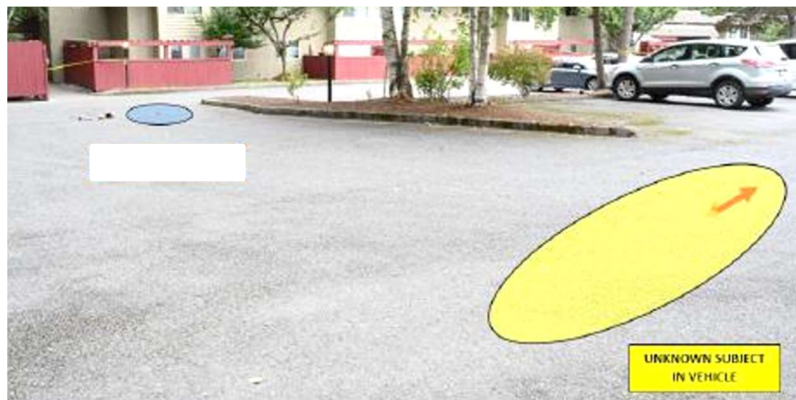
NE#1 said he “tried to get out of the way (by pivoting onto the planting strip) and got struck (on his right thigh) by the car.” He said the impact caused him to hit the car’s hood and believe he would die. NE#1 said the vehicle carried him for several feet before he fell onto his left hip and cut a knuckle on his left hand. NE#1’s possessions at the spot he indicated he fell from the car.





*The blue circle indicates where NE#1 told FIT he stood when the car (indicated by the yellow oval) struck him.*

NE#1 told FIT he got in front of the car “...to stop the theft of my car because my gun and my body armor were in the back of that car. That’s not something I wanted out on the streets that somebody else could take and use for nefarious purposes.” He said that after the car struck him, he stood, drew his off-duty firearm, “and fired at the car one time.” NE#1 said, “I saw the [side] of my vehicle. It was perpendicular to me at that moment. There was nothing else between us. That’s why I had [a] clear shot and took one.”



*The blue circle indicates where NE#1 told FIT he was when he shot at the fleeing car (indicated by the yellow oval).*

NE#1 told FIT that he stored his department-issued equipment in the back of his car under a rolling privacy screen for accessibility during a potential callout for the Robbery Unit, where he was temporarily assigned. Explaining why he fired at the fleeing vehicle, NE#1 said, “Knowing that this person tried to run me over, and also, keeping in mind that my body armor, my weapon are in the back of that car...I have no idea if they’re coming back for me. They [had] already tried to run me over once, so I thought they [might] do the same thing again. So, they were an imminent danger.”



*This photo captures the complex behind the car when NE#1 discharged his firearm.*

NE#1 said he aimed “at the center of the driver’s window” so “my bullet would hit the [driver].” He estimated that the car was about 20 feet away when he shot at it. Later, EPD notified FIT that “[a bullet] defect was located in the rear driver side [passenger] door panel...under the window [of NE#1’s recovered vehicle.]”





*The yellow circle indicates the bullet defect.*

NE#1 told FIT that the vehicle sped off after he fired at it. He thought firing another shot at it was inappropriate since there were several cars in the parking lot: "At that point, when I was looking at the car and took that one shot, and saw it [take] off, there [were] a bunch of other cars in the parking lot. So, I didn't feel that it would have been appropriate to fire another shot in case somebody else is sitting in their car ready to go to work [and] keeping in mind...there's another apartment building to the east." NE#1 said he called 9-1-1 to report the incident and awaited EPD's arrival.

#### *FIT Chain of Command Review*

FIT's sergeant wrote, "[NE#1] articulated that the vehicle struck him, he drew his firearm, then fired at the vehicle at it was fleeing...he believed the vehicle could turn around and try to hit him again... his duty weapon was in the vehicle, and he was concerned that [the subject] could use it on him or someone else in the future." The sergeant concluded, "The reasoning for firing is in direct contradiction to the policy as well as state law."<sup>2</sup>

FIT's lieutenant wrote, "There was an apparent violation of policy prohibiting firing at a moving vehicle unless a person in the vehicle is immediately threatening the life of the officer or another with deadly force by other means than with said vehicle. [NE#1] stated that he believed the driver struck him with his car intentionally, and he feared the driver would return to either continue the assault or kill him. [NE#1] was also worried about the possibility of the driver using [NE#1's] second firearm to inflict harm on the public. This firearm was in the vehicle when the suspect stole the car. While the perception of the officer is his belief at the time and his reality, the vehicle had been driving away from him when he fired his weapon at it. The suspect driving away negated the immediate threat." The lieutenant also questioned the clarity of the department's policy (SPD Manual 9.060) requiring firearms "to be stored properly."

FIT's captain wrote, "The use of deadly force appears to be outside of department policy, in that the threat to the officer had passed. After the officer was struck, the vehicle continued to drive away to leave the parking lot at a high rate of speed. The officer got up off the ground, drew his firearm, and fired one shot. He estimated the vehicle was approximately 20 feet away. [SPD's Crime Scene Investigation Unit's] diagram illustrates an approximation of just

<sup>2</sup> Citing House Bill 1054: A peace officer may not fire upon a moving vehicle unless necessary to protect against an imminent threat of serious physical harm resulting from the operator's or passenger's use of deadly weapon. A vehicle is not considered a deadly weapon unless extraordinary circumstances apply where it appears the operator is using the vehicle for the purpose of causing serious physical harm to another person and the officer has no other reasonably accessible means to stop the harm.



under 40 feet (Edmonds PD feral scan data was not accessible...). There was concern by the officer, knowing that his firearm was in the vehicle, [that] the vehicle could come back to kill or injure him either with the stolen firearm or with the vehicle itself. This assumes the officer would stay in one place and not move to find cover or shelter, to protect himself from such an act or call for assistance.” The captain further noted, “...the probability of the suspect returning to kill or injure the officer and further provoke a confrontation after the suspect appeared to be leaving the parking lot. Although we cannot speculate what is in the mind of the suspect, the suspect knows he just stole the vehicle, ran over a person, and was shot at by the person he just ran over and was leaving at an accelerated pace.” Moreover, like FIT’s lieutenant, the captain thought the department’s “policy should be modified to clarify whether or not a vehicle without a separate secure trunk is considered secure.”

#### *Prosecuting Attorney’s Office*

In a correspondence dated November 22, 2023, the Snohomish County Prosecuting Attorney’s Office [SCPAO] notified EPD that it would not pursue second-degree felony assault charges against NE#1. SCPAO called the case “legally insufficient” to support viable felony charges “based on lack of proof of intent and a lack of a victim” and suggested that “the gross misdemeanor charge of Unlawful Discharge of a Firearm (RCW 9.41.230)” was more appropriate.

#### *OPA Interview*

On May 14, 2024, OPA interviewed NE#1. His account was consistent with his EPD and FIT interviews. NE#1 said he was four days into a 30-day Robbery Unit assignment on the incident date. Although he was off duty, he suggested that his status shifted to on duty when he observed the car theft: “Whenever a law enforcement action was taken, at that moment, I converted from being off duty to on duty.” He described the weather as clear but “very dark.”<sup>3</sup> Like his previous interviews, NE#1 said he heard his car start as he approached the parking lot and went towards it. He said his vehicle reversed from its reserved spot, and he yelled, “Stop!” NE#1 said the car accelerated, and he ran toward the planting strip to “get out of its way.” He said the vehicle targeted and struck him as he fled. NE#1 said he landed on the car’s hood and thought he would die. He said he fell from the vehicle onto his left side. NE#1 noted that construction workers typically staged north of his complex around that time, so although he had not seen them there that morning, he considered the driver a significant threat to them and others. NE#1 said he “believed the best course of action was to stop that threat,” so he drew a firearm from his hip and fired at the car. He said, “After I fired the shot, I holstered my weapon because I didn’t have any chance of a clear shot again.” The car sped off, and NE#1 called 9-1-1.

He said his department-issued equipment, including a Glock 17, three magazines, body armor, a radio, and handcuffs, were “stored in the back end of the vehicle where the windows [were] tinted” under a “cargo cover.” NE#1 explained although he was off duty, “I knew that we could be on call, and on that Friday, I specifically said to my sergeant that if there was an incident or call out, to please include me because I wanted to get the full experience of a [Robbery Unit] rotation. I wanted to have that gear ready, ready to go. I didn’t have a locker at headquarters to store that in, so I wanted to make sure that I had the stuff with me and didn’t drive down to headquarters at 3:00 in the morning to meet them and realize I’ve got to go back home and get my stuff.” NE#1 said he did not bring the equipment inside his apartment because he wanted to deploy immediately if there was a callout: “I wanted to have everything ready to go, so that way, it would take the least amount of time possible to leave.” Since the incident, NE#1 said he changed his practice: “I always take my firearm in, from now on, ever since that happened.” He said his car was recovered on the incident date, but the Glock 17, magazines, ballistic vest, and police radio were not.

---

<sup>3</sup> NE#1 said some of the parking lot lights were inoperable, the complex’s lights “didn’t work at all,” and there were no security cameras.



---

**ANALYSIS AND CONCLUSIONS:**

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

***5.001 - Standards and Duties POL-2. Employees Must Adhere to Laws, City Policy***

NE#1 allegedly violated the law by firing at a moving vehicle and storing a firearm in his vehicle.

Employees must adhere to laws, city policy, and department policy. SPD Policy 5.001-POL-2.

A peace officer may not fire a weapon upon a moving vehicle unless necessary to protect against an imminent threat of serious physical harm resulting from the operator's use of a deadly weapon. For the purposes of this subsection, a vehicle is not considered a deadly weapon unless the operator is using the vehicle as a deadly weapon and no other reasonable means to avoid potential serious harm are immediately available to the officer. RCW 10.116.060(4).

Although prosecutorial offices declined to pursue criminal charges against NE#1, citing insufficient evidence for felony second-degree assault and misdemeanor unlawful discharge of a firearm charges, his actions violated state law. The evidence established that a car thief used NE#1's vehicle as a deadly weapon, running NE#1 over to escape. However, as covered below, when NE#1 fired at the moving vehicle, there was no imminent threat of serious physical harm. NE#1 was outside the vehicle's flight path, and there was no evidence of anyone else within it, necessitating immediate and deadly action. Moreover, there is no proof, only NE#1's subjective fear, that the driver intended to continue using the vehicle as a deadly weapon. As also covered below, NE#1 had "other reasonable means to avoid potential serious harm..."

Accordingly, NE#1's firearm discharge violated RCW 10.116.060(4), and OPA recommends a Sustained finding.

Recommended Finding: **Sustained**

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

***8.200 - Using force, 8.200-POL 1. Use of force: When Authorized***

NE#1 allegedly used unauthorized force by firing at a moving vehicle.

This allegation is removed, as noted in the "Administrative Note" section.

Recommended Finding: **Allegation Removed**

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

***8.300 - Use of Force Tools, 8.300-POL-14 Firearms, 9. Officers Will Not Fire at or From a Moving Vehicle***

NE #1 allegedly violated policy by firing at a moving vehicle.

Officers will not fire at or from a moving vehicle. SPD Interim Policy 8.300-POL-14(9) [effective date: 04/24/2023].



As mentioned above, state law and department policy prohibit firing at moving vehicles. NE#1 contends that since the driver “used the vehicle as a deadly weapon” by accelerating, targeting, and hitting him about a second before NE#1 discharged his weapon, the shooting was justified. However, EPD records, based on NE#1’s statement and physical evidence, estimated that the vehicle was “25 to 38 feet beyond [NE#1] when he fired the round.” EPD further concluded, “There [was] a lack of evidence supporting the vehicle remained an immediate threat as [NE#1] initially described.” Like EPD and FIT, OPA found that the vehicle was no longer an immediate threat when NE#1 fired and struck its rear passenger door. RCW 10.116.060(4) explains, “...a vehicle is not considered a deadly weapon unless the operator is using the vehicle as a deadly weapon and no other reasonable means to avoid potential serious harm are immediately available to the officer.” Although it was used as a deadly weapon moments before, when NE#1 fired his weapon, the vehicle was speeding off, and NE#1 had reasonable means to quell his fear that it would circle the parking lot and target him again, like retreating to his apartment or seeking another shelter.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #4**

***5.001 - Standards and Duties, 5.001-POL 10. Employees Will Strive to be Professional***

NE#1 allegedly violated policy by storing a firearm, magazines, a police radio, a baton, handcuffs, and other department-issued equipment in his vehicle and firing at a fleeing vehicle.

This allegation is removed, as noted in the “Administrative Note” section.

Recommended Finding: **Allegation Removed**

**Named Employee #1 - Allegation #5**

***9.060 - Firearms, 9.060-POL, 5. Sworn Employees will Store Department-Authorized Firearms Properly***

NE#1 allegedly failed to store his department-authorized firearm properly.

Sworn employees are responsible for taking reasonable precautions to store their department-authorized firearms safely. SPD Policy 9.060-POL-5. Sworn employees will store department-authorized firearms in such a manner as to prevent loss or access to prohibited or unauthorized persons. *Id.*

However, as FIT’s captain and lieutenant suggested, SPD Policy 9.060-POL-5 could benefit from clarifying the proper storage of department-authorized firearms. Nevertheless, NE#1, storing a loaded firearm and magazines in his trunk overnight, fell short of taking “reasonable precautions to ensure that their department-authorized firearms are safely stored,” as the current policy requires. NE#1’s explanation that he left the firearm in the car for a quick response in case there was a Robbery Unit callout does not justify that decision, mainly when he was off duty and, if he was called out, transporting the firearm from his home to his car would not have meaningfully impacted his response time. At a minimum, if leaving it in the car was the best option, reasonableness required it to be stored in a lockbox rather than merely concealed by tinted windows and a retractable cargo cover. The policy required NE#1 to ensure the firearm was not lost or accessible to unauthorized persons. He did neither, proven by it being gone when the vehicle was recovered that same day.





Accordingly, OPA recommends that this allegation be Sustained and that the department clarify what constitutes reasonable precautions for safely storing department-authorized firearms.

Recommended Finding: **Sustained**