



OFFICE OF PROFESSIONAL ACCOUNTABILITY

Closed Case Summary

Complaint Number OPA#2015-1149

Issued Date: 05/10/2016

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 8.100 (5) Using Force: Use of Deadly Force (Policy that was issued 01/01/14)
OPA Recommendation	Sustained
Chief's Finding	Not Sustained (Lawful and Proper)
Final Discipline	N/A

Named Employee #2	
Allegation #1	<u>Seattle Police Department Manual</u> 8.100 (5) Using Force: Use of Deadly Force (Policy that was issued 01/01/14)
OPA Recommendation	Sustained
Chief's Finding	Not Sustained (Lawful and Proper)
Final Discipline	N/A

Named Employee #3	
Allegation #1	<u>Seattle Police Department Manual</u> 8.100 (5) Using Force: Use of Deadly Force (Policy that was issued 01/01/14)
OPA Recommendation	Sustained
Chief's Finding	Not Sustained (Lawful and Proper)
Final Discipline	N/A

INCIDENT SYNOPSIS

The Named Employees responded to a call to investigate a domestic violence (DV) disturbance. The 911 caller reported that her boyfriend was kicking in the front door. The Named Employees arrived and saw the man, the subject, at the front door. Named Employee #1 and #2 took the subject to the front of a patrol car. Named Employee #3 spoke first with the 911 caller and then with the subject. As Named Employee #3 walked toward the subject in front of the patrol car, multiple gunshots came from the east. Officers reported they heard bullets whizzing past their heads. Named Employee #1 and #2 pulled the subject to the ground. All three Named Employees took cover behind the patrol car. While the shots were coming towards the officers, a vehicle drove towards the patrol car and then stopped. All three Named Employees fired at this vehicle. The driver of the vehicle exited his car and yelled that there was a car behind him shooting at him. Officers ceased fire. Named Employee #1 informed Dispatch of the driver's statement that a different vehicle was firing the shots. The driver-side door was struck multiple times by the shots fired by the Named Employees. The Named Employees were aware that there was a threat of assault to officers on this particular night and that there already had been recent violent crimes in the area.

COMPLAINT

The complainant, the Force Review Unit, alleged that the documentation provided by the Named Employees failed to adequately describe the threat the officers perceived that justified the use of deadly force.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complaint memo
2. Review of In-Car Videos (ICV)
3. Search for and review of all relevant records and other evidence
4. Review of the Force Investigation Team witness interviews
5. Interviews of SPD employees

OPA ANALYSIS AND CONCLUSIONS

Deadly force may only be used in circumstances where threat of death or serious physical injury to the officer or others is imminent. For circumstances to be considered imminent, the policy imposes a three-pronged test: the suspect must (1) be acting or threatening to cause death or serious physical injury, (2) have the means or instrumentalities to do so, and (3) have the opportunity and ability necessary to cause death or serious physical injury. The evidence and testimony reviewed and collected in this investigation leave little doubt that all three Named Employees were reasonable in believing they and others were under imminent threat of death or serious physical injury. They heard gunshots and experienced the sensation of bullets passing close by. Under such circumstances, each officer was authorized under this policy to use deadly force against the person or persons who posed the threat and met the three-pronged test articulated in the policy and summarized above.

Named Employee #1 testified that he perceived that the vehicle stopping behind the police car was the source of the shots being fired at him and the other officers. He stated he fired at the driver's side of the vehicle with the intention of striking its driver. Further, Named Employee #1 stated he could neither see the driver, nor any weapons in or associated with the vehicle, nor did he report seeing muzzle flashes or other signs that the person or persons firing at him were inside the vehicle. Given the totality of the circumstances known to Named Employee #1 at the time he did not have a reasonable basis to believe that any of those persons posed an imminent threat of death or serious physical injury.

Named Employee #2 testified that he saw a vehicle driving towards him and concluded that the people inside the vehicle had been the source of the earlier gunfire directed at him and that they were attempting to "ambush" him and his fellow officers. He believed that, if the vehicle was not immediately stopped, it would drive right up to the officers and place them in danger of being shot and killed. He saw the car after hearing the sound of the shots and observed that the car was coming from the same direction as the shots. Other than this, Named Employee #2 had insufficient factual basis to conclude that the driver or other occupants of the vehicle were acting or threatening to cause death or serious physical injury, or that they had the means or instrumentalities to do so.

Named Employee #3 testified that she looked and saw another car stopped in the street directly behind the police car. The headlights from both the police car and the car behind it were shining right at Named Employee #3. She said that she saw the driver's window of the other car was down and that the driver's hand was out of the window. Because she had just been shot at and the driver's hand was out of the window, Named Employee #3 concluded the driver of that vehicle had just shot at her and the other officers. She then fired two shots, aiming at the driver of the car. She did not report seeing any muzzle flash coming from the car, nor did she observe the driver shooting or holding a gun in his hand. Based on the totality of the circumstances known to Named Employee #3 at the time, she had insufficient factual basis to conclude that the driver or other occupants of the vehicle were acting or threatening to cause death or serious physical injury, or that they had the means or instrumentalities to do so.

OPA RECOMMENDATIONS

Named Employee #1, #2 and #3

Allegation #1

Given the totality of the circumstances known to the Named Employees at the time, the OPA Director concluded they had insufficient factual basis to conclude that the driver or other occupants of the vehicle were acting or threatening to cause death or serious physical injury, or that they had the means or instrumentalities to do so. Therefore a **Sustained** finding was recommended by OPA for *Using Force: Use of Deadly Force*.

CHIEF'S FINDINGS

Named Employee #1, #2 and #3

Allegation #1

Chief O'Toole determined that the three officers involved in this shooting acted reasonably based on the information available to them at the time they were called upon to make an instantaneous decision to protect not only their lives but the life of the civilian they were interviewing at the time. Chief O'Toole changed the finding to **Not Sustained** (Lawful and Proper) for *Using Force: Use of Deadly Force*.

See attached letter from Chief O'Toole regarding her findings of this case.

NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.